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Michael Koehler

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BASEBALL, APPLE PIE AND JUDICIAL ELECTIONS: AN ANALYSIS OF THE 1967 WISCONSIN SUPREME COURT RACE

MICHAEL KOEHLER

"Certain [state] constitutions make the members of courts elected and submit them to frequent re-elections. I dare to predict that sooner or later these innovations will have dire results ...."2

I. INTRODUCTION

One interesting, some would say fatal, consequence of Wisconsin's system of an elected judiciary is that judges who render decisions can be replaced by the will of the people who tend to judge the judiciary on the basis of a single controversial decision. A case in point is the effect that Wisconsin v. Milwaukee Braves, Inc.3 had on the 1967 Wisconsin Supreme Court election between George R. Currie and Robert W. Hansen.

In 1965, Milwaukee's major league baseball team, the Milwaukee Braves, moved to Atlanta, Georgia, over the objection of nearly everyone in Milwaukee and Wisconsin.4 Wisconsin's efforts to keep the Braves in Milwaukee proved fruitless, as the Wisconsin Supreme Court in a 4-3 decision held that the Braves transfer to Atlanta had not violated Wisconsin's antitrust statutes.5 Joining the majority in that case was George Currie, the highly respected chief justice of the Wisconsin


3. 144 N.W.2d 1 (Wis. 1966).


5. Milwaukee Braves, 144 N.W.2d at 18.
Standing for re-election to the high court in 1967, Currie was defeated, in part, because his opponent, Milwaukee circuit Judge Robert Hansen, blamed him for casting the deciding vote that allowed the Braves to leave Milwaukee. Currie's defeat not only marked the first time in Wisconsin history that a sitting chief justice of the Wisconsin Supreme Court was removed from the bench by the electorate, but it also cast a shadow over the wisdom of continuing Wisconsin's system of an elected judiciary.  

II. THE ELECTION OF JUDGES IN WISCONSIN  

From its infancy to the present day, Wisconsin has always had an elected judiciary. By a vote of seventy-eight to twenty, delegates at the 1846 Wisconsin Constitutional Convention adopted a system of electing judges. Wisconsin's adoption of an elective judiciary system was seen as a "radical innovation" and a "pioneer step in the field of experiment," largely because most judges had been appointed based on the English model since the earliest days of American history. Wisconsin's adoption of the elective system was consistent with the general trend of other states. In fact, every new state that entered the Union, from Iowa in 1846 to Arizona in 1912, adopted an elective judiciary system. Jacksonian Democracy was the impetus behind Wisconsin's and other states' switch to an elective judiciary. Based on the belief that the source of all power was the people, a central aim of Jacksonian Democracy was the democratization of America. Wisconsin's system of an elected judiciary furthered this aim by giving the citizens of Wisconsin the ability to elect candidates to the Wisconsin Supreme Court.

7. Id.; Hansen Attacks Currie's Vote In Braves Case, SHEBOYGAN PRESS, Mar. 31, 1967, § 1, at 7 [hereinafter Hansen Attacks].  
8. PORTRAITS OF JUSTICE, supra note 6, at 59.  
9. SUBCOMM. ON JUDGES, CITIZENS STUDY COMM. ON JUDICIAL ORG., NOV. REP., at 40–43 (1972) [hereinafter CITIZENS STUDY REPORT] ("During the early 1800's . . . the country was swept by the wave of 'Jacksonian democracy,' the result of which was the use of partisan elections to select almost all public officials.").  
11. See CITIZENS STUDY REPORT, supra note 9, at 40–41.  
12. Id. at 41.  
13. See id.; Heffernan, supra note 10, at 1036.  
However great the virtues of democracy, there were those at the 1846 constitutional convention, and there are still those today, who criticize judicial election systems like Wisconsin's. Many view the election of judges as compromising the fundamental principle of judicial independence, which refers to the ability of a court to perform its functions of judicial review and common and statutory law construction without fear of retribution from the voting public. Many believe that the mixing of courts of law and politics is a recipe for injustice. Recognizing such concerns, Wisconsin has attempted to insulate its judicial election process from politics. In fact, some would argue that no state has been as successful as Wisconsin in eliminating political considerations from its judicial contests.

Wisconsin's non-partisan judicial elections are largely the result of the rules that govern judicial elections in Wisconsin. First, candidates for the Wisconsin Supreme Court are nominated in non-partisan primaries and are elected on non-partisan ballots. Second, the Wisconsin Constitution prohibits judicial elections from occurring thirty days before or thirty days after general partisan elections for state or county offices. The intent of this thirty day requirement was to separate Wisconsin Supreme Court elections "from the excitement and turmoil of the general election," so that the voter would give full


18. JOHN B. WINSLOW, THE STORY OF A GREAT COURT 385 (1912). Winslow was the Chief Justice of the Wisconsin Supreme Court from 1907 to 1920. PORTRAITS OF JUSTICE, supra note 6, at 21.

19. See WIS. STAT. § 5.60(1)(a) (1999). The non-partisan nature of Wisconsin judicial elections was the result of a gradual recognition by the branches of government and citizens during the late 19th and early 20th century that the principle of non-partisanship, not party conventions or party organization, should dominate judicial elections. See WINSLOW, supra note 18, at 380–85.

attention to the qualifications of the judicial candidates. Finally, in an attempt to lessen the impact a particular unpopular decision may have on a judge's chance for re-election, the Wisconsin Constitution gives supreme court justices a ten-year term, the longest term of any elected state official.

Despite Wisconsin's efforts to insulate judicial elections from politics, there are still dangers inherent even in non-partisan judicial elections like Wisconsin's. One of the disadvantages of Wisconsin's elected judiciary is that Wisconsin judicial candidates are stripped of any meaningful party affiliation and are generally unable to campaign on many of the hot button political issues that resonate with the voting public. In addition, Wisconsin judicial candidates are further hampered by an array of ethical prohibitions that prohibit a candidate from engaging in political activity and from announcing in advance their viewpoints on divisive policy issues. How then is a Wisconsin judicial candidate supposed to electrify the voting public and garner votes? Generating discussion on theories of judicial review or different proposals for court reform would hardly seem an answer. The end result of Wisconsin's non-partisan judicial election system is that, in many cases, judicial candidates are often "reduced to 'flamboyancy' for there is little else for the public to see and understand." One of the most dramatic examples of such "flamboyancy" was showcased in Wisconsin's Supreme Court election of 1967 between George Currie and Robert Hansen. In this election, Hansen used a recent, controversial decision by the Wisconsin Supreme Court to propel himself to an unprecedented victory in Wisconsin history.

III. WISCONSIN V. MILWAUKEE BRAVES

To understand the Wisconsin Supreme Court election of 1967 and to appreciate more fully the effect the Milwaukee Braves case had on the 1967 Wisconsin Supreme Court election, it is necessary to go back in

21. See Winslow, supra note 18, at 9.
22. Wis. Const. art. VII, § 4. The original term for a Wisconsin Supreme Court justice was six years. Winslow, supra note 18, at 8. In November of 1877, a constitutional amendment increased the term to ten years. Id. at 380.
25. Heffernan speaks of prior judicial candidates attempting to stir up the electorate by basing their campaigns on such "provocative" issues as repeal of the deadman's statute and the problems inherent in the parole evidence rule. Heffernan, supra note 10, at 1044.
26. Id.
time to the 1950s and early 1960s, an era in which the Milwaukee Braves were clearly "Wisconsin's Team." Braves fans across the state helplessly looked on in 1965 as the Braves played their final home games at Milwaukee County Stadium. Wisconsin politicians soon came to the rescue by persuading the state to pursue legal action against the Braves and prevent them from leaving Milwaukee. In the end, however, not even the courts could stop the Braves from leaving Milwaukee. In a 4-3 decision, the Wisconsin Supreme Court removed the final obstacle impeding the Braves departure from Milwaukee and in the process closed the chapter on one of the darkest episodes in Wisconsin sports history.

A. Wisconsin's Love Affair with the Milwaukee Braves

Much like the Green Bay Packers of the late 1990s, the Milwaukee Braves of the 1950s and early 1960s were clearly a Wisconsin institution. Attendance at Braves games was almost a matter of "civic pride" as fans flocked to Milwaukee County Stadium to see such stars as Hank Aaron, Warren Spahn, and Eddie Matthews. As Matthews once remarked, "I don't think any city has ever gone as crazy over a baseball team as the city [sic] of Milwaukee did when the Braves arrived there in 1953." During their first full season in Milwaukee, the Braves set an all-time National League record for attendance and, in 1954, became the first major league team to draw over two million fans in one season. In the end, however, Wisconsin's love affair with the Braves was cut short in 1964 when the Braves owners received permission from National League owners to move the Braves to Atlanta, Georgia, to take advantage of the booming Southern market. On September 22, 1965, the Milwaukee Braves played their final home game at Milwaukee County Stadium, a 7–6 loss to the Los Angeles Dodgers. The next day

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27. See BUEGE, supra note 4, at 15–16.
29. See BUEGE, supra note 4, at 413.
31. See BUEGE, supra note 4, at 396.
32. Id. at 5. Matthews was a Hall of Fame Third Baseman who played for the Milwaukee Braves from 1953–1965. Id. at 4, 7.
33. Id. at 396.
34. Id. at 369, 393.
a photo of a downtrodden fan appeared in the Milwaukee Journal with a caption stating "I just feel blue[,]" which seemed to capture the collective mood of an entire city and state.36

B. What Happened to Milwaukee Was Morally Wrong

The State of Wisconsin, Milwaukee County, and the City of Milwaukee all tried in earnest to keep the Braves in Milwaukee and prevent them from relocating to Atlanta.37 As the Braves' rumored move to Atlanta gained legitimacy, it seemed like every "elected public official felt duty-bound" to prevent the inevitable.38 Milwaukee Mayor Henry Maier said that "what happened to Milwaukee is morally wrong."39 Milwaukee County Board Chairman, Eugene Grobschmidt, even suggested that someone was "trying to make the team look bad for Milwaukee."40 A team of elected officials including United States Congressman Henry Reuss threatened the possibility of an antitrust action against the Braves and Major League Baseball as a way of keeping the Braves in Milwaukee.41

In the end, litigation did ensue, and the State of Wisconsin alleged in state circuit court that the Braves, the National League, and the corporate owners of the individual teams of the National League had violated Wisconsin antitrust laws.42

C. Wisconsin's Failed Attempt to keep the Braves in Milwaukee

The State alleged in its complaint that the Braves and other National League teams held a monopoly in the field of major league baseball and that they agreed to shut down baseball in Milwaukee in restraint of trade and commerce and thus violated Wisconsin's antitrust statutes.43 The State sought monetary damages, a restraining order preventing the Braves' move to Atlanta, and a permanent injunction requiring the Braves and the National League to grant a new franchise to Milwaukee.

37. BUEGE, supra note 4, at 369–70.
38. Id. at 369.
40. BUEGE, supra note 4, at 370.
41. Id. at 369.
42. Id. at 392; See also Wisconsin v. Milwaukee Braves, Inc., No. 65-C-225, 1965 U.S. Dist. LEXIS 9542, at *1 (E.D. Wis. Nov. 9, 1965) (granting motion to remand from federal to state court).
43. See Milwaukee Braves, 1965 U.S. Dist. LEXIS 9542, at *1.
or permit the purchase of the Braves by local interests. In April 13, 1966, while the new Atlanta Braves were playing [baseball] in their most recent home of Atlanta, Circuit Judge Elmer W. Roller rendered his decision. In a 176 page opinion, Judge Roller concluded that the "Braves and the National League had violated Wisconsin's antitrust laws and must either: (1) give Milwaukee a major league franchise through expansion in 1967, or 2) return the Braves to Milwaukee." One court observer noted that in making his decision, Judge Roller "saved a lot of lives" because "if he had ruled the other way, a lot of people might have died of shock." Judge Roller's decision, of course, did not immediately return the Braves to Milwaukee, rather, Wisconsin's crusade to keep the Braves in Milwaukee shifted to a different playing field as the Braves and the National League appealed Judge Roller's decision to the Wisconsin Supreme Court.

The Wisconsin Supreme Court sympathized with the State by noting that the Braves and the National League "gave little heed to the interests of the Milwaukee community, and to the injury [which would result from the Braves leaving Milwaukee and Wisconsin.]" Further, the court found that the Braves and the National League had in fact agreed to restrain trade and commerce in violation of Wisconsin's antitrust statutes. However, the Wisconsin Supreme Court, in an opinion written by Justice Fairchild and joined by Chief Justice Currie, Justice Myron Gordon, and Justice Horace Wilkie, held that Wisconsin's antitrust statutes did not apply to the Braves and the National League because baseball's federal antitrust exemption extended to all decisions concerning league structure and organization. The issue before the Wisconsin Supreme Court in the Braves litigation was as much a question of the proper application of the Supremacy Clause of the United States Constitution as it was about Wisconsin's antitrust statutes. In its opinion, the court traced the peculiar history of baseball's judge-made exemption from the federal antitrust laws first articulated in Federal Baseball Club of Baltimore v. National League of

44. Id. at *13–*14.
45. BUEGE, supra note 4, at 412.
46. Id.
47. Id.
48. Id. at 413.
49. Wisconsin v. Milwaukee Braves, Inc., 144 N.W.2d 1, 18 (Wis. 1966).
50. Id. at 9.
51. Id. at 17–18.
Professional Baseball Clubs. This exemption was affirmed in Toolson v. New York Yankees, and the court further noted that the prevailing federal policy seemed to approve of the existing structure in organized baseball. Therefore, the Wisconsin Supreme Court concluded that because of the requirements of the Supremacy Clause of the U.S. Constitution, Wisconsin's antitrust statutes could not be applied to the "concerted action" by the Braves and the National League in moving the team from Milwaukee to Atlanta.

By all accounts it seemed like the Wisconsin Supreme Court made a correct, albeit unpopular, decision in the Milwaukee Braves case. Supreme Court Justice John Paul Stevens, speaking at the inaugural Thomas E. Fairchild Lecture at the University of Wisconsin Law School in 1989, recognized the difficulty of the Braves case and praised the majority opinion. Justice Stevens remarked that "the cynic is likely to assume that judges who must periodically stand for reelection will have a tendency to find that the result that is overwhelmingly favored by their outraged constituents is also the result that the law commands. But that did not happen in the Braves' litigation." Justice Stevens added that "[a] baseball fan has every right to voice his or her prejudices in or out of the ball park, but there is no room for intolerance in the chambers of the wise appellate judge."

The State appealed the decision of the Wisconsin Supreme Court to the United States Supreme Court. However, by a 4 to 3 vote, the United States Supreme Court refused to hear the State's appeal, thus slamming the door on Wisconsin's efforts to keep the Braves in Milwaukee. Despite being dead in the courts, the Braves case did not fade from public consciousness as it was quickly resurrected in the 1967 election for the Wisconsin Supreme Court.

IV. THE 1967 WISCONSIN SUPREME COURT ELECTION

The Wisconsin Supreme Court election of 1967 was the first judicial

52. 259 U.S. 200 (1922).
54. See Milwaukee Braves, 144 N.W.2d at 14.
55. Id. at 18.
57. Id.
58. Id. at 227.
election after the Wisconsin Supreme Court's controversial decision in the Braves case. In the election, an opportunistic candidate seized upon the public's dissatisfaction with the Braves case by blaming his opponent for authorizing the Braves departure from Milwaukee. What followed was both shocking and significant. It was shocking because for the first time in Wisconsin history, a sitting chief justice of the Wisconsin Supreme Court was removed from the bench by the electorate. It was significant because the election cast a shadow over the wisdom of continuing Wisconsin's established system of an elected judiciary.

A. The Candidates

A native of Princeton, Wisconsin, George Currie attended the University of Wisconsin Law School (UW). At the UW, Currie served as the Editor in Chief of the Wisconsin Law Review, was inducted into the Order of the Coif and graduated at the top of his class in 1925. After practicing corporate law in Sheboygan, Wisconsin for 26 years, Currie was appointed to the Wisconsin Supreme Court in 1951 by Governor Walter Kohler and became chief justice of the court in 1964. What Currie lacked in charm and charisma, he made up in intellect and character. While on the court, Currie quickly positioned himself as one of the great common law judges in the United States earning high marks for legal scholarship, court administration, and judicial integrity. Fellow Wisconsin Supreme Court Justice Nathan Heffernan once remarked that several nationally recognized jurists such as Roger Traynor of California and Frank Kennison of New Hampshire would come up to him at judicial meetings and comment on just "how fortunate [he] was to be a colleague" of Currie's.

A native of Milwaukee, Wisconsin, Robert Hansen graduated from Marquette University Law School in 1933 where he excelled in debate and served as the Editor in Chief of the Marquette Law Review. After a brief stint in private practice, Hansen was appointed to the Milwaukee

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61. See Hansen Attacks, supra note 7, § 1, at 7.
62. PORTRAITS OF JUSTICE, supra note 6, at 58.
63. Id.
64. Id.
65. Id.
66. Heffernan, supra note 10, at 1031, 1033.
67. Eldon Knoche, Hansen, Former State Justice, Remembered for Eloquence, MILWAUKEE J. SENTINEL, June 10, 1997, at 7B. Ex-colleague Shirley Abrahamson, Chief Justice of the Wisconsin Supreme Court, stated that Hanson: "loved law and loved to discuss it." Id.
District Court by Governor Walter Kohler in 1954.68 Thereafter, Hansen gained expertise in the fields of family and administrative law as the senior judge of Milwaukee's Family Court, a division of the circuit court that handled divorce and domestic relations cases.69 Hansen was actively involved in the Fraternal Order of the Eagles and became the only man at the time to have been elected twice as president of the organization.70 Intelligent, eloquent, and humorous, Hansen was a seasoned campaigner and well-connected politically.

B. The Issues and the Role the Milwaukee Braves Case Had on the 1967 Wisconsin Supreme Court Election

The Milwaukee Braves case was the most dramatic issue in the 1967 Wisconsin Supreme Court election; however, Wisconsin voters faced other issues during the election besides the Braves case. First, Chief Justice Currie's age—sixty-seven—was an issue.71 Hansen and his supporters pointed out that if re-elected, Currie would be able to serve only two years and one month of his ten-year term before Wisconsin's constitutionally mandated judicial retirement age of seventy would force Currie to step down.72 Currie, himself, considered the chief justice's age and experience an advantage, pointing out that if he would retire while still on the bench, the Wisconsin Constitution would allow him to continue to serve the State as a reserve circuit judge.73 In addition, fellow Wisconsin Supreme Court Justice Thomas E. Fairchild also considered Currie's age and experience an advantage during the election. At a midwinter meeting of the Wisconsin State Bar Association, Fairchild commented to fellow bar members that "[i]t would be foolish to defeat a good man and thus prevent him from retiring and becoming eligible to serve as a reserve judge."74

A second issue in the 1967 Supreme Court election was the interplay between a proposed judicial code of ethics and Hansen's membership with the Eagles.75 Rule 14 of the proposed code, which Currie allegedly supported, required that a judge not "be a member or participate in the

68. Id.
69. See PORTRAITS OF JUSTICE, supra note 6, at 70.
70. See Knoche, supra note 67, at 7B.
72. See Kelley, supra note 71, § 1, at 4.
73. Id.
75. See Kelley, supra note 71, § 1, at 4.
affairs of any group whose activities are inconsistent. . . with the impartial exercise of his judicial duties." As a result of the proposed code, several Wisconsin judges resigned their membership in the Eagles Club on the grounds that their judicial oaths conflicted with the fraternal organization's all-white membership policy. Hansen, on the other hand, was strongly opposed to the proposed code of judicial ethics and refused to resign from the Eagles. Hansen remarked that if he had to choose between being a judge and belonging to the Eagles he would choose the latter. Hansen's refusal to disassociate himself from the Eagles did cost him the endorsement of the AFL-CIO's Committee on Political Education (COPE), despite the fact that before becoming a judge, Hansen represented close to fifteen AFL-CIO unions.

1. If the Judiciary Will Not Rectify This Injustice, Then the People Must

The issues of age, the judicial code, and the Eagles Club aside, clearly the most controversial issue during the 1967 supreme court election, and the issue that is most discussed and cited as affecting the supreme court election of 1967, was the Braves case. Nearly two years had passed since the Wisconsin Supreme Court, Justice Currie included, ruled that Wisconsin's antitrust statutes could not be used to keep the Braves in Milwaukee. However, Wisconsin voters were still understandably angry and confused about the Braves departure, and the case still struck an emotional cord with the voters. Adding fuel to this emotional flame was the rhetoric of Wisconsin's Attorney General, Bronson La Follette. Referring to the Braves case, La Follette said that the "citizens of our state and people throughout the country are, and should be, aroused at the injustice of this judicial determination." In a challenge to voters, La Follette remarked: "If the judiciary cannot or will not rectify this injustice, then the people and their elected representatives must." From the outset of the 1967 supreme court election, several factors

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78. See Kelley, supra note 71, § 1, at 4; Leon Hughes, COPE Won't Back Hansen, MILWAUKEE J., Jan. 19, 1967, pt. 2, at 1.
79. Hughes, supra note 78, pt. 2, at 1.
80. Id.
82. Id.
seemed to indicate that Currie would be invincible and easily retain his seat on the court for another term. First, Currie was the incumbent candidate and an imminent jurist on one of the top state supreme courts in the country. Second, nearly every Wisconsin newspaper that had taken a stand in the election had endorsed Currie. Third, a remarkable outpouring of top leadership in the state rallied around Currie, including retired Wisconsin Supreme Court Justices Timothy Brown and John Martin who remarked that Currie's accomplishments "mark him as one of the most outstanding leaders in the court's history." Fourth, the influential Milwaukee Bar Association's judicial qualification poll gave Currie a qualification rating of 97.8% compared to Hansen's 75.6%. Finally, it seemed that Currie's participation in the Braves case would not be an issue in the election. In fact, Hansen, prompted by a reporter's question about the Braves case, commented that he "did not think that a judge who did not hear the case or arguments of counsel should comment on the decision of the judge or judges who tried the case."87

Such factors propelled Currie to a March 7, 1967 statewide primary victory over Hansen and a third candidate, Harry Halloway. Despite winning the primary, however, Currie's aura of invincibility was dealt a serious blow because of the closeness of the primary vote; Currie defeated Hansen by a margin of 91,691 to 90,539 in the primary. The size of Hansen's vote, his strength outside the Milwaukee area, and the

83. See PORTRAITS OF JUSTICE, supra note 6, at 59.
84. A sampling of what Wisconsin's leading newspapers had to say about Currie: "[Currie has demonstrated qualities of leadership [and] long service" (FOND DU LAC COMMONWEALTH REPORTER); "[Currie] is respected as a legal scholar [and] a man of diligence, scholarship and integrity" (MILWAUKEE SENTINEL); "[Currie was the] ablest student in his class at the University of Wisconsin law school, an esteemed lawyer" (MILWAUKEE JOURNAL); "[Currie is] one of the finest and most able . . . an outstanding background" (SHEBOYGAN PRESS). Re-Elect our Chief Justice, WIS. STATE., Apr. 3, 1967, § 1, at 5 (advertisement).
89. Id.
closeness of the race were all unforeseen and led many to believe that Currie was in danger of being defeated in the general election in April of 1967. With Currie's invincibility tarnished and Hansen sensing a legitimate shot at victory in the general election, Hansen and his supporters launched a more aggressive and extensive campaign against Currie. A centerpiece of this new and aggressive campaign strategy was an attempt by Hansen to rekindle the emotional flames of Milwaukee and Wisconsin baseball fans by blaming Currie for the Braves' departure from Milwaukee.

2. The People Always Seem to Lose the Close Ones.

One week before the April 4, 1967 election, Hansen, despite his prior campaign promise not to make the Braves case an issue in the election, claimed in a campaign speech and press release that Currie cast the deciding vote in the Braves case. Hansen said that "[w]hat happened in the Braves' case was a judicial abdication of our state's rights to enforce its antitrust laws against a violator." Further, in a statement sure to stir up the electorate, Hansen referred to the Braves case and proclaimed that the "people always seem to lose the close ones." Throughout the campaign, Currie sought to display his vast judicial experience by reminding voters that he authored nearly 600 opinions and participated in nearly 4000 decisions during his fifteen plus years on the court. Yet, Hansen used Currie's experience on the bench as justification for using the Braves case against the Chief Justice saying that "when you take credit for a whole barrel of apples, you cannot expect that a bad apple in the barrel will be overlooked."

The propriety of Hansen's use of the Braves case against Currie was questioned by many. Currie was well aware that the Braves case might be used against him in the election. With each new Braves attack, Currie was put in a precarious position: on the one hand, publicly responding to Hansen's Braves attack might be viewed by some as

90. Id.
91. See Hansen Attacks, supra note 7, § 1, at 7.
92. Id.
93. Id.
95. See Kelley, supra note 71, § 1, at 4.
97. See Kelley, supra note 71, § 1, at 4.
legitimizing them, while on the other hand not saying anything at all might be viewed by some as tantamount to an admission that Currie did in fact cast the deciding vote that allowed the Braves to leave Milwaukee. In the end, Currie chose the latter and refused to talk further about the *Braves* case, believing that any so called backlash from the *Braves* case was not an issue in the campaign. 98

Currie firmly believed that the only issue in the election was "whether a judge or justice who has given good, conscientious service should be returned to office by the voters." 99 Currie did acknowledge that a good judge must never be indifferent to the needs and concerns of the people but stressed, perhaps in reference to the *Braves* case, that a good judge must equally "be indifferent as to whether his decisions will win for him the people's acclaim or their condemnation." 100 Currie supporters openly criticized Hansen's use of the *Braves* case as foolish. They pointed out that the seven justices on the Wisconsin Supreme Court meet behind closed doors when they vote, and that it was impossible to know if Currie cast the deciding vote in the *Braves* case because no one could possibly know which justice voted first or last. 101 Even the *Milwaukee Journal* sharply criticized Hansen for campaigning opportunistically, unethically, and "using tactics that approach disgraceful." 102 The *Milwaukee Journal* chastised Hansen for implying that "local loyalty and not law should dictate the rulings of a supreme court justice." 103 Privately, some of Hansen's backers even questioned the propriety of Hansen's attacks on Currie regarding the *Braves* case. 104

3. Issue Finally Raised in Supreme Court Race

What is interesting about judicial elections is that they are remarkably uninteresting contests generally forced upon an apathetic voting public. However, the Braves issue seemed to resonate through

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98. Id.
103. Id.
the entire state during the spring of 1967 and dramatized an otherwise colorless and issueless supreme court campaign. In fact, after Hansen's attacks on Currie, the Wisconsin State Journal ran the headline: "'Issue' Finally Raised in Supreme Court Race: Hansen Raps Currie on Braves Decision."\(^\text{105}\)

It seemed like everyone, not just the candidates and their closest supporters, had an opinion on the Braves case and its proper role in the Wisconsin Supreme Court election of 1967. For instance, former Milwaukee Braves players were active in urging Currie's defeat.\(^\text{106}\) Weeks before the election, former Braves players Johnny Logan and Eddie Matthews filed papers with the Wisconsin Secretary of State's office forming the Braves for Judge Bob Hansen Committee.\(^\text{107}\) Likewise, Currie received some unlikely support in the days leading up to the election.\(^\text{108}\) Wisconsin Attorney General Bronson La Follette, the same Bronson La Follette who championed the state's cause during the course of the Braves litigation and urged all citizens to become aroused at the "injustice of [the] judicial determination" in the Braves case,\(^\text{109}\) urged his fellow citizens to vote for Currie in the upcoming election.\(^\text{110}\)

La Follette acknowledged that he had not always agreed with "Currie's interpretation of the law[,]" however, he never doubted that Currie's decisions "were arrived at only after careful, honest and diligent consideration . . . . without regard to the effect they might have on his chances for re-election."\(^\text{111}\) According to La Follette, "[u]nder an elective judicial process, this must be the prime criteria for gauging a judge's integrity."\(^\text{112}\)

C. The Outcome

On Tuesday, April 4, 1967, Wisconsin voters went to the polls to elect a justice to the Wisconsin Supreme Court.\(^\text{113}\) The campaign speeches were finished, the allegations had been made, and the choices were clear: George Currie or Robert Hansen. However, because of the

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107. *Id.*
109. *See supra* note 81 and accompanying text.
111. *Id.*
112. *Id.*
issues raised and the strategies employed, the 1967 Wisconsin Supreme Court race definitely was not an ordinary judicial race. For this reason, many observers felt that, beyond the mere exercise of electing another justice to the Wisconsin Supreme Court, the 1967 Wisconsin Supreme Court race represented, in a much broader sense, a referendum on Wisconsin's judicial election system. It was even said that the "integrity of the judicial election process [was] on trial... in Wisconsin" and that the defeat of Chief Justice Currie "would deal a sharp blow to the principle of an independent judiciary... in Wisconsin."

The results of the 1967 Wisconsin Supreme Court election were shocking. By a margin of 479,117 to 377,426, Robert Hansen had defeated Chief Justice George Currie. Currie was gracious in defeat remarking in his concession speech that in a democracy "one who is a candidate for public office should cheerfully accept the decision of the voters in defeat as well as in victory." Currie's defeat not only marked the third time in Wisconsin history that a sitting Wisconsin Supreme Court justice was defeated at the polls, but more importantly, his defeat represented the first time in Wisconsin history that a sitting chief justice of the Wisconsin Supreme Court was removed from the bench by the electorate. In a much broader sense, Currie's defeat was significant because it cast a shadow over the wisdom of continuing Wisconsin's system of an elected judiciary.

V. THE 1967 WISCONSIN SUPREME COURT ELECTION IN CONTEXT

Dissatisfaction with Wisconsin's elected judiciary system was growing even before Currie's unexpected defeat by Hansen in 1967. Like the 1967 supreme court election, two previous Wisconsin Supreme Court elections were marred by controversy and calls for reform. In both of these elections, the challenging candidate, like Hansen in 1967,
was criticized for using a single controversial decision by the Wisconsin Supreme Court in an effort to stimulate the voting public and defeat an incumbent justice.121

A. The 1964 Wisconsin Supreme Court Election: Wilkie v. Boyle

In many ways, the 1967 Wisconsin Supreme Court election was a replay of the 1964 Wisconsin Supreme Court election. Like Currie, incumbent Justice Horace H. Wilkie in 1964 was the overwhelming favorite to win another term on the high court and secured the support of nearly every major Wisconsin public official and newspaper.122 Like Hansen, challenger Howard H. Boyle, Jr. ran an aggressive campaign and assailed his opponent for a vote on a single, controversial case.123 The controversial case at issue in the 1964 Wisconsin Supreme Court election was the *Tropic of Cancer* case. In that case, Justice Wilkie voted with the majority of the Wisconsin Supreme Court in holding that Henry Miller's novel, *The Tropic of Cancer*, was not obscene.126

Boyle made the *Tropic of Cancer* case the battle cry of his campaign hoping that the decision was sufficiently unpopular with the voting public to affect the results of the Wisconsin Supreme Court election.127 Boyle claimed that the court's decision in the *Tropic of Cancer* opened the door to pornography in Wisconsin and boldly proclaimed that a vote for him was a "Vote Against Smut."126 Unlike Currie, Wilkie aggressively defended his decision in the *Tropic of Cancer* case, insisting "that pornography was not the issue" in the supreme court's decision and asserting that the supreme court's ruling "affirmed the right of free expression" and followed the constitutional test for obscenity established by the United States Supreme Court.129 Wilkie believed that nothing was more important to Wisconsin courts than the

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121. See infra notes 123–28, 141–43 and accompanying text.
122. See *Supreme Court Race Revolves on 'Tropic, '* MILWAUKEE J., Apr. 5, 1964, pt. 2, at 2 [hereinafter *Race Revolves*].
123. Id.
125. HENRY MILLER, TROPIC OF CANCER (1961). The *Tropic of Cancer* is about a poor American artist "living in Paris in the depression years about 1930." McCauley, 121 N.W.2d at 551. With little money and no permanent place to live, the character in the book drifts around Paris engaging in "frequent and casual sex experiences" with, among others, prostitutes and victims of venereal diseases. Id.
126. McCauley, 121 N.W.2d at 554.
"independence of judges" and asserted: "The integrity and independence of Wisconsin's judicial system would be endangered if the election of a judge were based on the momentary popularity of a decision."130

Boyle's campaign tactics did receive some support, most notably from the Green Bay Catholic Archdiocese;131 however, the overwhelming public reaction to Boyle's tactics was highly critical. Six of Justice Wilkie's colleagues on the court, including Justice Currie, publicly rebuked Boyle for using campaign tactics that "blatantly cater[ed] to prejudice" and "utterly lack[ed] the essential quality of judicial mind and temperament."132 The Milwaukee Junior Bar Association went a step further, censuring Boyle for what it saw as a "clear and direct violation of canon 30 of the canons of judicial ethics" and "a threat to the independence and integrity of judges everywhere and to our whole judicial system."133 The *Milwaukee Journal* was equally critical of Boyle's tactics, saying that his attack on Wilkie implied that Boyle would set aside "law and legal precedent" to reach the popular decision, and that these were "highly questionable tactics for a judicial candidate."134

In the end, Wilkie, unlike Currie, defeated his challenger by a margin of 556,639 to 489,703.135 Wilkie's victory was termed "a heartwarming victory for the cause of a sound and independent judiciary."136 Concern, however, was raised by the small margin of Wilkie's victory, the challenge it posed to Wisconsin's judicial election system, and to the notion of an independent judiciary in Wisconsin.137 To many, Wilkie's close call "showed [that] too many people still [were] not upholding the principle that justice must not be intimidated by fear

132. *Justices Rebuke Candidate*, MILWAUKEE J., Mar. 26, 1964, pt. 1, at 16. The only justice that did not publicly rebuke Boyle was Justice Harold Hallow. *Six Justices Scold Boyle*, MILWAUKEE J., Mar. 24, 1964, pt. 3, at 1. Hallow's refusal was based entirely on his belief that it was inappropriate for the court to defend a decision in public. *Id*.
137. *See id*.
of popular emotions over conscientious decisions."

B. The 1965 Wisconsin Supreme Court Election: Heffernan v. Boyle

A single controversial case decided by the Wisconsin Supreme Court was also a major issue in the 1965 Wisconsin Supreme Court election. The 1965 election cast the same Howard Boyle, fresh from his defeat by Justice Wilkie in 1964, against incumbent Justice Nathan S. Heffernan. Like the 1964 election, Boyle again challenged his opponent for his participation in the *Tropic of Cancer* case; however, he had a new case in his 1965 campaign arsenal. In *Barnes v. Wisconsin*, Justice Heffernan voted with the majority of the Wisconsin Supreme Court in setting aside the conviction of a known drug user for possession of marijuana, on the grounds that the search, which revealed the drugs, was unreasonable. Boyle assailed Heffernan and the court for its "ultraliberal" bent. However, the *Barnes* case, unlike the *Tropic of Cancer* case a year earlier, did not garner much media attention or resonate with the public, and therefore seemed to have a negligible affect on the 1965 Wisconsin Supreme Court election. The 1965 election saw Heffernan defeat Boyle 376,000 to 362,604 in a very low voter turnout.

Nevertheless, many followers of the court were concerned with what seemed to be an emerging trend in Wisconsin judicial elections: the frequency with which controversial decisions of the Wisconsin Supreme Court were becoming issues in judicial election campaigns. In fact, many of these same people were cautiously holding their breath in anticipation of the 1966 Wisconsin Supreme Court election when Justice Thomas E. Fairchild, the author of the *Tropic of Cancer* decision, was up for re-election. However, Justice Fairchild ran for the court unopposed and concern turned to relief over the absence of

138. *Id.*
140. *Id.* at 151.
141. *Id.* at 153–54.
142. 130 N.W.2d 264, 269 (Wis. 1964).
143. See Ladinsky & Silver, *supra* note 139, at 152.
146. *Id.*
controversy. Thus, it seemed like the disturbing trend had been reversed. Writing in the Spring of 1966, Jack Ladinsky commented: "Normality had been restored to judicial politics." However, as the 1967 Wisconsin Supreme Court election demonstrated, such "normality" was short lived.

The exact influence the Braves case had on individual voter decisions in the 1967 Wisconsin Supreme Court election will never be known. However, it is safe to assume, by all accounts, that the Braves case and Hansen's campaign tactics did have some effect on voter decisions in the election. Even Hansen himself was willing to concede a day after his election victory that the Braves case, at the very least, may have been a factor in determining the outcome of the election. Many people were alarmed and concerned that a single controversial Wisconsin Supreme Court case had yet again played a role in a Wisconsin judicial election. Dissatisfaction with Wisconsin's judicial election system had reached a pinnacle, and it seemed like the 1967 Wisconsin Supreme Court election was the proverbial "straw that broke the camel's back." Wisconsin's system of judicial selection was ripe for reform.

VI. THE AFTERMATH OF THE 1967 WISCONSIN SUPREME COURT ELECTION: THE CITIZENS STUDY COMMITTEE ON JUDICIAL ORGANIZATION

An enduring legacy of Wisconsin's 1967 Supreme Court election is that it contributed to the formation of a citizen led judicial reform movement. In 1971, The Citizens Study Committee on Judicial Organization (the "Committee") was formed to embark on a comprehensive study of Wisconsin's judicial system and make recommendations for its improvement. One of the more important tasks undertaken by the Committee was an analysis of Wisconsin's judicial election system. After months of gathering information and hearing testimony, the Committee recommended that Wisconsin abolish
its elective system of selecting judges and replace it with a merit based appointment system. Justice Currie's defeat in the 1967 Wisconsin Supreme Court election was a principle factor in the Committee's decision.

A. Formation of the Committee

During the State of the Judiciary speech on January 13, 1971, the Chief Justice of the Wisconsin Supreme Court, E. Harold Hallows, suggested the creation of a blue ribbon committee made up of non-judges in Wisconsin "to look into the problems confronting the Wisconsin judicial system." Following the suggestion of the Chief Justice, Wisconsin Governor Patrick J. Lucey signed Executive Order 13 on April 23, 1971, creating the forty-member Committee whose task was to "recommend changes in the judiciary so that we might better insure that all individuals have their rights protected—in an efficient and just manner." The scope of the Governor's instructions to the Committee was so broad that it was one of the "biggest reorganization[s] in the history of state courts." Issues to be considered by the Committee included court organization, such as the wisdom of establishing a court of appeals and a single level trial court, court procedures, and judicial selection. Although judicial selection was just one of a myriad of issues facing the Committee, it was one of the most important.

B. The Issue of Judicial Selection

Given the controversy surrounding the 1967 Wisconsin Supreme Court election, it surprised few that the topic of judicial selection

154. Id. at 56.
155. Id. at 57. Although not explicitly stating that the 1967 election was a principle factor in the Committee's recommendations, the Committee's focus on limiting the influence of outside pressure, and therefore heightening the importance of an individual's merits, shows the impact of the election. Id. at 52–53.
156. Id. at 1.
157. Id.
159. See email from Shirley Abrahamson, Chief Justice of the Wisconsin Supreme Court and key member of the committee, to Mike Koehler (April 20, 2000) (on file with author).
160. Jeffrey Bartell, counselor and administrator for the Committee, remarked that the manner in which we select our judges was "by far the most significant" issue facing the Committee. Elizabeth Gall, Picking Judges on a Merit Basis, TWICITY NEWS REC., Nov. 17, 1972, at 1.
appeared on the Committee agenda. The Charge and Instructions to the Judges Subcommittee (the "Subcommittee"), one of five standing subcommittees established by the Committee, impressed upon its members the monumental task ahead, proclaiming that "[n]o element of our courts is more important than the judges who staff them, for they are the central figures in the administration of justice." The Subcommittee recognized that the method by which judges are selected in Wisconsin had an impact on the quality of the Wisconsin judiciary and the public's confidence in the judiciary to remain independent from outside influences. Thus, the ultimate goal of the Subcommittee was to survey the many different proposals for the selection of judges and to recommend a judicial selection system that would "make it possible for the best qualified men to ascend the bench and remain there."

It soon became obvious to the Committee that Wisconsin's current non-partisan judicial election system was not the method that "[made] it possible for the best qualified men to ascend the bench and remain there." Leading the effort to abandon Wisconsin's judicial election system was Chief Justice Hallows of the Wisconsin Supreme Court who first suggested the establishment of the Committee "to look into the problems confronting the Wisconsin judicial system." In testimony before the Subcommittee, Hallows said that Wisconsin's current judicial selection scheme "is the least desirable method of attaining the goal of a strong and independent and competent judiciary . . . and does little to insure the selection of the best qualified candidate." The final report of the Committee (the "Report") echoed the complaints of Hallows and others regarding Wisconsin's judicial election system. Specifically, the first sentence of the Report clearly expressed the frustration members

161. See CITIZENS STUDY REPORT, supra note 9, at 1.
162. CHARGE AND INSTRUCTIONS TO JUDGES SUBCOMMITTEE 1 (1971) [hereinafter CHARGES AND INSTRUCTIONS]. A full collection of documents relating to the Citizens Study Committee on Judicial Organization are on file at the Wisconsin State Historical Society: Series 2557.
163. CITIZENS STUDY REPORT, supra note 9, at 39. The full Committee adopted verbatim the report of the Judges Subcommittee by a vote of 27-4. Therefore, the terms "Subcommittee" and "Committee" are used synonymously hereinafter unless otherwise indicated.
164. CHARGE AND INSTRUCTIONS, supra note 162.
165. Id. 166. CITIZENS STUDY REPORT, supra note 9, at i.
167. See CITIZENS STUDY COMMITTEE ON JUDICIAL ORGANIZATION, SUMMARY TRANSCRIPT OF HEARINGS, May 15-16, 1972, at 14 [hereinafter SUMMARY TRANSCRIPT].
168. See CITIZENS STUDY REPORT, supra note 9, at 39–40.
had with Wisconsin's judicial election system and stated: "For the election of judges by popular vote there is nothing to be said." 169

Several factors influenced the Committee's conclusion that Wisconsin's method of selecting judges was not serving the state well and that a more effective alternative needed to be established. First, Committee members were concerned that a judicial election system minimized the potential pool of qualified judicial candidates because qualified attorneys would be reluctant to leave their practices and enter an unstable and unpredictable election. 170 Second, the Committee expressed concern about the increasing costs of judicial elections and the resulting need for judicial candidates to collect campaign contributions that could potentially threaten their independence as judges. 171 Third, Committee members were concerned that judicial elections slowed down the wheels of justice by requiring judges to spend more time on the campaign trail than on the bench. 172

C. The Role of the 1967 Wisconsin Supreme Court Election in the Committee's Deliberations

In addition to the three factors mentioned above, the main impetus behind judicial selection reform in Wisconsin was the Committee's discontent over two ruinous elements of judicial elections that were clearly displayed during the 1967 Wisconsin Supreme Court election: 1) the increased politicization of judicial elections resulting from a lack of substantive issues, and 2) the increased use of single issues and cases in judicial elections. 173 Although specific reference to Currie's defeat in the 1967 election did not appear in any of the Committee's materials, it is axiomatic that Committee members were aware of, and influenced by, the circumstances surrounding Currie's defeat in 1967. 174

169. Id. at 42 (quoting Harold J. Laski, The Techniques of Judicial Appointment, 24 Mich. L. Rev. 529, 531 (1926)).
170. See id. at 53.
171. Id. at 51.
172. See id. at 52.
173. Id. at 56.
174. The Committee materials and transcripts contain numerous implicit references to Currie's defeat in the 1967 election. For example, one committee member asked a question regarding the "problems encountered by elected judges when they are called upon to decide 'hot' issues which arouse the active interest of the community." SUMMARY TRANSCRIPT, supra note 167, at 5. Moreover, another committee member questioned a judge about the impact of "community feelings" on judicial decisions. Id. at 7. Clearly, the Braves' departure from Milwaukee was a hot issue sparking intense community feelings.
1. The Politics of Judicial Elections

The Committee's Report stated that "[w]ithout issues [and] party identification . . . candidates for the bench must rely on their own political resources . . . [which] places a premium on their ability to act out the political role." As the 1967 Wisconsin Supreme Court election points out, the consequences of a "judge qua politician" can be daunting. Although Currie was well versed in the law, it was obvious that the erudite jurist lacked the necessary attributes of a successful politician. A colleague of Currie's once remarked that he "was far from being a charismatic personality" and noted that "he gave the impression on the platform of ambivalence and unease." Hansen, on the other hand, was the consummate politician; as an astute politician, he played on voters' emotion by making the Braves departure an issue in the 1967 election and was successful in portraying Currie as the villain in this drama. It seems that Hansen's tactics were the type of "hijinks" that Justice Hallows believed may consume those involved in a judicial election.

2. The Use of Single Cases in Judicial Elections

The most revealing evidence that Currie's defeat in the 1967 Wisconsin Supreme Court election influenced the Committee can be found in the following three references in the Committee's Report: First, the Committee noted that "one of the most troublesome and malignant consequences of judicial elections is the 'chilling effect' which public opinion may exert on a judge's decisions in a particular case." Second, the Report highlighted the very real danger that decisions in individual cases, although made in conformance with the law, may be unpopular with the electorate and result in a judge's defeat at the polls. Third, the Report cited with concern the results of a state-wide

175. CITIZENS STUDY REPORT, supra note 9, at 49 (citing RAYMOND MOLEY, TRIBUNES OF THE PEOPLE (1932)).
176. See id. at 49–53.
177. Heffernan, supra note 10, at 1033.
178. See Hansen Attacks, supra note 7, § 1, at 7.
179. Appointive Judges For Wisconsin Doubted, WIS. STATE J., May 25, 1972, §1, at 15. (Magistrates occasionally indulge "in some hijinks ... that can only be construed as bids for public attention and publicity in the press.").
180. CITIZENS STUDY REPORT, supra note 9, at 54.
181. Id. (noting that difficult decisions in the past have "resulted in defeat at the polls for excellent judges who were required at the wrong time to make the right decisions") (citation omitted).
judicial survey that showed the second most frequently mentioned major issue in judicial elections was a candidate's position on a specific legal issue or case. 182

These three concerns of the Committee obviously summarized the 1967 Wisconsin Supreme Court election when an excellent judge by the name of George Currie was required to defend the Wisconsin Supreme Court's difficult decision in the Milwaukee Braves case. Currie and the majority of the Wisconsin Supreme Court made the correct, albeit hugely unpopular decision that Wisconsin's antitrust laws had not been violated. Unfortunately for Currie, this right decision was made at the wrong time. The Braves case, more than any other issue in the 1967 election, resulted in the defeat of an excellent, incumbent justice at the polls. Thus, it is clear that Currie's defeat in the 1967 Wisconsin Supreme Court election was the principal factor in the Committee's decision to abandon Wisconsin's judicial election system in favor of a merit-based appointment system.

D. The Committee's Proposal to End Judicial Elections in Wisconsin

The Committee concluded that the ills associated with Wisconsin's judicial election system could best be cured by adopting a more effective merit-based appointment plan for selecting Wisconsin's judiciary. 183 The plan adopted by the Committee was largely based on the Missouri Plan of 1940, the prototype for merit-based appointment systems, which had been endorsed by numerous leading organizations. 184 A number of states, moreover, adopted some form of merit selection. 185 The version of the Missouri Plan adopted by the Committee cast the governor as the main player in nominating judicial candidates. 186 Under the Committee's plan, gubernatorial judicial nominees could only be appointed to the bench after first being certified as qualified by a

182. Id. at 47. It should be noted, however, that "70% of the 146 responding indicated that there was no major issue in their last campaign." Id.
183. Id. at 56.
184. Id. at 61-62. Leading organizations that had endorsed merit selection of judges included the American Bar Association, the Committee for Economic Development, the American Judicature Society, the Institute for Judicial Administration, the National Conference on the Judiciary, the Advisory Commission on Intergovernmental Relations, and the President's Commission on Law Enforcement and the Administration of Justice. Id.
185. Id. at 60. States which had adopted a form of merit selection included Missouri, Alabama, Alaska, Kansas, Louisiana, Colorado, Idaho, Iowa, Nebraska, Utah, Vermont, Indiana, and Tennessee. Id.
186. Id. at 57-58.
Commission on Judicial Qualifications.\textsuperscript{187} The Committee's plan did retain a vestige of past practice by allowing the electorate to remove judges in exceptional circumstances.\textsuperscript{188} However, in these judicial elections, judges would not run against another candidate; rather, they would run against their own record,\textsuperscript{189} thus alleviating any concerns of a repeat of the flawed judicial elections Wisconsin had seen in the past.

The virtues of the merit-based appointment plan proposed by the Committee were seen as a remedy for the flaws associated with past Wisconsin judicial elections including the 1967 Wisconsin Supreme Court election.\textsuperscript{190} Under a merit-based appointment system, judicial candidates would, to a great extent, be insulated from the type of politicking associated with judicial elections, like the ability of a single case to effect the election results, such as the \textit{Braves} case.\textsuperscript{191} The Committee also believed that keeping politics out of judicial selections would increase the pool of qualified candidates.\textsuperscript{192} Merit-based appointments would further eliminate less desirable aspects of judicial elections, such as the increasing costs of judicial campaigns and the appearance of impropriety associated with judicial candidates soliciting campaign contributions.\textsuperscript{193} Although, above all, merit-based selection of judges would permit a choice to be made "on the basis of a thorough evaluation of those characteristics and qualities essential for a good judge."\textsuperscript{194}

\textbf{E. Reaction to the Committee's Proposal}

Reaction to the Committee's decision to abandon Wisconsin's
judicial election system in favor of a merit-based appointment system was met with mixed results in Wisconsin. Chief Justice Hallows, a special committee studying the selection of Wisconsin Supreme Court justices, the past Wisconsin State Bar president, and the *Milwaukee Journal* had all endorsed merit selection of judges even before the Committee suggested such a plan for Wisconsin.\(^{195}\) Obviously these parties, along with other segments of Wisconsin's population, were enthused with the Committee's proposal to abandon judicial elections in Wisconsin.

However, not all Wisconsinites shared the same level of enthusiasm concerning the Committee's proposal to appoint judges. Among the most vocal opponents of the Committee's proposal was organized labor. The president of the Wisconsin AFL-CIO, John Schmitt, said the Committee's proposal to appoint rather than elect judges "was a snobbish insult to Wisconsin voters... and represents a drastic step backward for democratically controlled government in our state."\(^{196}\) In fact, labor members on the Committee felt so strongly about continuing Wisconsin's system of an elected judiciary that they threatened to defeat the whole judicial reform package.\(^{197}\) As an editorial cartoon indicated, the *Milwaukee Sentinel* agreed, saying the Committee's plan "would mute the voice of the public in judicial selection and place too much power in the hands of a select few."\(^{198}\)

In the end, those who favored judicial elections in Wisconsin prevailed. The Committee's proposal to end judicial elections never gained the necessary support of the Wisconsin State Legislature, and merit-based appointment of judges fell by the wayside.\(^{199}\)

VII. CONCLUSION

In the end, what matters most is not that the Committee's proposal for merit-based appointment of judges failed; rather, what matters the most is why judicial selection became such a divisive policy issue in the first place. The 1967 Wisconsin Supreme Court election provides the answer. This election showcased how inherent flaws in Wisconsin's judicial election system, and indeed in any judicial election system, can

\(^{195}\) *Id.* at 62–63.

\(^{196}\) *Plan to Appoint Judges Termed 'Snobbish Insult,'* *MILWAUKEE J.*, Nov. 13, 1972, pt. 1, at 1.

\(^{197}\) Heffernan, *supra* note 10, at 1041–42.

\(^{198}\) *Elect Judges,* *MILWAUKEE SENTINEL,* Nov. 7, 1972, pt. 1, at 14.

\(^{199}\) Heffernan, *supra* note 10, at 1042.
facilitate the defeat of an imminent, incumbent justice, like George Curriek, for making the right decision at the wrong time.

The debate over judicial elections continues today. Recent Wisconsin judicial elections have again raised public concern over Wisconsin's method of judicial selection.200 This concern has led to legislative action. Recently, legislation was introduced in the Wisconsin State Assembly that would provide for state Senate confirmation of gubernatorial judicial appointments.201 Nevertheless, despite such measures, it is safe to assume that Wisconsin will always have judicial elections. However, as long as Wisconsin retains its judicial election system, we as a state run the risk of repeating the results of the 1967 Wisconsin Supreme Court election—a consequence that some would say is fatal.

200. Richard P. Jones, High Court Race Brings Reform Cries, MILWAUKEE J. SENTINEL, Apr. 8, 1999, available at http://www.jsonline.com/election99/news/0408supreme.asp (last visited Sept. 18, 2001). The most notable example is the 1999 Wisconsin Supreme Court election between incumbent Chief Justice Shirley Abrahamson and challenger Sharon Rose. In that election more than $1 million dollars was spent between the two candidates.