

To: Interested Parties

From: Kellyanne Conway, President & CEO
the polling company™, inc.

Date: March 2008

Re: Key Findings from a Survey of 500 Likely Voters in Wisconsin

On behalf of The Federalist Society, the polling company™, inc. conducted a statewide telephone survey of 500 likely voters in Wisconsin to assess their knowledge, opinions, and expectations of the state's Supreme Court. The survey revealed that Wisconsin's voting public approved of their current role in seating the state's highest court. They vowed to select those who purge all personal perspectives in their decision-making processes in order to ensure a restrained and responsible judiciary.

Wisconsin Voters Strongly Approve of the Current Method of Selecting Its State Supreme Court Justices.

By a margin of 2.75-to-1 (66%-24%), the likely voters surveyed endorsed the status quo, that is, non-partisan elections of Justices to their highest court. This embrace of free elections spanned the demographic spectrum as majorities of every major subgroup surveyed concurred with allowing the people to seat their own court. What's more, it is a method that attracts the often-illusory tri-partisan agreement: 70% of Democrats and Independents and 57% of Republicans expressed their approval, saying the way things are is the way they ought to be.

Respondents' desire to elect their State Supreme Court Justices was confirmed by their elevation of voters in a separate question as the body they believed *should* have the greatest input into who served on the bench: 78% chose voters from the list that also included the state legislature (8%), the governor (6%), and Wisconsin lawyers (4%).

The Electorate Embraces Strict Interpretation; Vetoes Injection of Personal Viewpoints into Official Rulings.

An eye-popping 77% of likely voters surveyed agreed that "judges should interpret and apply the law as written and not take into account their own viewpoints and experiences." By comparison, just 20% felt judges should migrate beyond this proscription and draw upon their personal beliefs and observations of facts and events when issuing decision from the bench. Big majorities of all three political parties adhered to this view, as 83% of Republicans, 81% of Independents, and 71% of Democrats agreed. This agreement extended to majorities of all age, gender, and regional cohorts as well.

This preference for strict construction was evidenced in response to other questions. By a margin of 6-to-1, voters said they would support a candidate who would “interpret the law as written” over one who would “take into account his personal views and experiences.” A majority of Independents (69%) and Republicans (72%) and exactly half of Democrats (50%) backed a candidate who would strictly *evaluate* the law. Again, both genders and all age and regional subgroups agreed.

Judicial Restraint Preferred Doctrine for Wisconsin Jurists.

After judicial restraint was defined for Wisconsin voters as “when a judge views his or her role as an evaluator of whether a law or lower ruling is in line with the state constitution,” 69% immediately pronounced it a “mostly positive” thing for the Wisconsin Supreme Court. Only 16% felt restraint was not a good principle for the court to follow, some 53% points lower than those who lauded it.

Voters were mixed in their independent evaluation of judicial activism, defined as “when a judge feels that his or her role is not simply to review the law as it is written, but instead to allow for new or evolving meaning of the law over time.” Forty-five percent felt it would be good doctrine for the court compared to 41% who believed it was not a proper doctrine.

When judicial activism and judicial restraint were pitted against each other in a type of head-to-head match-up, voters’ preference for judicial restraint was clear and unmistakable – **56% wanted the Wisconsin Supreme Court to practice restraint, 31% activism.** Though a tri-partisan majority did not emerge, members of all three political parties were all more likely to choose restraint than activism as the better judicial principle. Others particularly apt to favor restraint included men, senior citizens, conservatives, and Metro Milwaukee residents.

METHODOLOGY

On behalf of **The Federalist Society, the polling company™, inc.** conducted a statewide telephone survey of 500 likely voters in Wisconsin.

Interviews were conducted March 15-17, 2008 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was randomly drawn utilizing a list of registered voters in Wisconsin. Potential respondents were then screened to reconfirm that they were registered to vote in the state and to assess their likelihood of voting in the April 1, 2008 election for State Supreme Court Justice, among other offices. Only those who reported they were very or somewhat likely to participate in the election were administered the rest of the survey.

The margin of error for the survey is $\pm 4.38\%$ at a 95% confidence interval, meaning that in 19 out of 20 cases, the data obtained would not differ by any more than 4.38 percentage points in either direction had the entire population of likely voters in Wisconsin been surveyed. Margins of error for subgroups are higher.

For additional inquiries, please contact Kellyanne Conway, President & CEO of **the polling company™, inc.**, at 202-667-6557 or kellyanne@pollingcompany.com.