



Summary of Meeting with Al Quie

Civic Caucus, 8301 Creekside Circle, Bloomington, MN 55437

Friday, March 23, 2007

Guest speaker: Former Minnesota Gov. Al Quie, chair, Minnesota Citizens Commission for the Preservation of an Impartial Judiciary

Present: Verne Johnson, chair; Chuck Clay, Paul Gilje, Jim Hetland, John Mooty (by phone), Jim Olson (by phone), and Wayne Popham, by phone, and John Rollwagen

A. Context of the meeting : The Civic Caucus has been reviewing various election-related issues in Minnesota as part of its review of the question of polarization and paralysis in government. Today we're hearing a proposal for changing the method of selecting judges in Minnesota.

B. Welcome and introduction: Paul introduced Quie, former governor, former member of Congress, former member of the State Senate, and currently chair of the Minnesota Citizens Commission for the Preservation of an Impartial Judiciary. Quie is one of the most faithful participants in the Civic Caucus. He was one of the Caucus' first electronic participants some 18 months ago. He was a speaker early on and has met with the Caucus leadership on two other occasions. Quie said that in addition to his work on selecting judges his other major interests include early childhood education, prison fellowship ministry, peace prize forum, and reforming the Lutheran Church.

C. Comments and discussion on judicial selection — In Quie's comments and in discussion with the Civic Caucus the following points were raised:

E6 Former Gov. Al Quie, March 23, 2007 —The commission's recommendations —Quie outlined the proposed system as follows: The current system by which state district, appellate and supreme court judges are elected in the general election would be changed. All judges would be appointed by the Governor from a list of recommended candidates prepared by a Merit Selection Commission. A separate Judicial Performance Evaluation Commission would evaluate judges and prepare evaluations, both private, half way through the term, and public, at the end of a judge's term. Judges would be subject to Retention elections in which voters decide only whether judges should be retained in office or not. Voters in such retention elections would not choose among candidates. Judges would be identified on the ballot as "qualified" or "not qualified" as determined by the Performance Evaluation Commission. If a majority votes not to retain a judge, the office is vacated, the Governor appoints a new judge and the process begins all over again.

An amendment to the state constitution would be necessary. Quie said he hopes the Legislature will submit such an amendment to the voters in November 2008. The proposal is to be submitted to

legislative leaders within a week or so, he said. It's not necessary to push for a decision in 2007, he said. That can wait until the Legislature meets in 2008.

Quie summarized the proposed process as follows:

- Merit nomination of all judges
- Appointment of all judges by the Governor
- Performance evaluation of all judges by an evaluation commission
- Retention elections after four years and every 10 years thereafter

E6 Former Gov. Al Quie, March 23, 2007—"Quie" Commission was totally voluntary, with no official standing or funding —The Quie commission (Minnesota Citizens Commission for the Preservation of an Impartial Judiciary) was a voluntary body that made the proposals for change. It is distinct from the merit selection commission that would make nominations and the performance evaluation commission that would evaluate performance of judges. Quie said he doesn't like the commission referred to by his last name, although such an approach makes it easier to avoid confusion with other commissions. The Quie commission was formed with initiative from Associate Justice G. Barry Anderson of the Minnesota Supreme Court, in response to the White decision by the U. S. Supreme Court in Nov. 2005 that overturned MN Canon rules barring judicial candidates from typical political campaigning, including outspoken debate and party endorsements.

Members, according to the Quie commission's website, are Quie, John Brandl, Michael J. Ford, Judge James Hoolihan, Patrick Kelly, Sue Mauren, Thomas M. Mengler, Jann Olsten, Helen Palmer, John Stanoch, Mary R. Vasaly, Justice G. Barry Anderson, Greg Bulinski, Mark W. Gehan, Doug Johnson, Dr. Reatha Clark King, Annette Meeks, Dan Mikel, Vance Opperman, Dr. Jon Quistgaard, Rev. Gloria Roach Thomas, Judge Lucy Wieland, Steven V. Besser, Wil Fluegel, Susan Holden, Judge Thomas Kalitowski, Eric Lipman, Brian Melendez, Rick Morgan, Justice Alan Page, George W. Soule, and Dave Titus.

E6 Former Gov. Al Quie, March 23, 2007—Reasons for the recommended change —Quie listed two major reasons for the proposed change. The first reason is that a U. S. Supreme Court decision in 2005 (the White decision) has ruled that elections for judges must be conducted in the same manner as other elections. Thus, the long standing practice in Minnesota, whereby the Minnesota Supreme Court set Canon rules for conducting elections for judges, no longer applies. Those rules had prohibited candidates for judges to solicit funds for election campaigns or to campaign openly for office by indicating how they might decide certain cases that came before them. A great fear exists, Quie said, that without the special rules, candidates for judge in Minnesota could end up receiving campaign funds from individuals or groups with special interests in the outcome of cases or that candidates would speak openly about how they intend to rule on cases. Judges could lose their impartiality.

A second reason for change, Quie said, is that Minnesota's system for election of judges is largely, already, an appointed system disguised as an election system. Under existing practice, some 93 percent of judges reach the bench initially via appointment by the governor, not election. Judges who

decide not to run again, to a large extent, have decided to resign before the end of their terms, which gives the governor the opportunity to name a successor. Judges rarely let their terms run out. Consequently, it is unusual for there to be a contest for election. Under current law, incumbent judges—even those who have just reach office by appointment—are identified on the ballot as "incumbent". Only about 10 percent of judgeship re-elections are contested.

E6 Former Gov. Al Quie, March 23, 2007 —Tradition of a merit commission for initial nomination —Que said that when he was Governor (1979-1983), he initiated the first merit system for nominations for judges by executive order, developed with the cooperation of Robert Sheran, then chief justice of the Minnesota Supreme Court. The Quie system applied only to district court judges. The merit selection commission gave Quie three names from which he selected an appointee. The merit selection commission was made up one-half of persons named by the governor; one-fourth, by judges, and one-fourth, the bar association in the judicial district in which a judge was being appointed. Governor Rudy Perpich upon his election discontinued the commission, but a commission was reinstated by state law at the end of the Perpich term and remains in existence today. The Minnesota Commission on Judicial Selection seeks applicants and makes three to five recommendations to the Governor. For any given district court appointment, the Commission has 13 members, seven appointed by the Governor (five attorneys and two non-attorneys); two appointed by the Minnesota Supreme Court (one attorney and one non-attorney), and four from the judicial district in which the vacancy occurs, two by the Governor and two by the Supreme Court, each naming one attorney and one non-attorney. Eric Magnuson, an at-large attorney appointed by the Governor, is chair.

The Quie commission recommends the establishment of a separate appellate Selection Commission. The Governor would appoint the chair, two attorneys, and two non-attorneys and the Chief Justice of the Supreme Court would appoint two attorneys and two non-attorneys. We specify that in making appointments, the Governor and Chief Justice shall consider the diversity of the state's population and appoint individuals with outstanding competence and reputation.

E6 Former Gov. Al Quie, March 23, 2007 —Evaluating the performance of judges —Returning to a discussion of the proposed changes, Quie said the evaluation commission would be composed of a majority of non-lawyers and non-judges. This is a very important part of the process, he said. A key part of the public's confidence in the judicial system is its feeling that a person is treated fairly before a judge. The issue of treatment with both respect and impartiality is important to anyone who appears in court but is particularly critical among low-income and minority persons. The evaluation commission would pay close attention to how respectful judges are with persons who appear before them.

Among criteria for the evaluation commission would be integrity, showing up on time, administrative skill, and treatment of litigants, the jury, and citizens. Evaluation would not extend to evaluating the decisions judges hand down.

E6 Former Gov. Al Quie, March 23, 2007 —Many District court judges like the present system —Having to be evaluated and every voter having a chance to vote yes or no at the end of their term evidently is threatening. In other states where the retention election system was adopted, the same fear existed. In some of those states, either all or some of the trial judges (equivalent to our district court judges) were left out of the legislation and continue to be subject to regular elections. After the

White decision and study of outcomes from retention elections whereby defeat of sitting judges is 1/10 that of judges where the judges may face an opponent, there is now reconsideration of their original position.

7. Quie commission meeting schedule —Quie said the commission, in developing its recommendations, met monthly for 14 months, usually in four-hour sessions.

E6 Former Gov. Al Quie, March 23, 2007—Evaluating judicial competence based on performance —It was noted that the proposed performance evaluation commission would concentrate on the process that a judge follows, but not on the decision of the judge in making rulings. In the continuing discussion on this point, it was noted, however, that the issue of judicial competence can be addressed initially, when a judge is nominated by the merit commission. A member noted, however, that it's not always easy to get the best legal minds interested in serving as judges, which probably also goes to the question of judicial compensation. Quie said with the implementation of the merit selection process in his term of office the high quality of his appointments was noticeable.

E6 Former Gov. Al Quie, March 23, 2007 —Difference of opinion on the Quie commission — Quie said the commission countered one closely-divided issue: a motion by Brian Melendez for a pure appointment system similar to the commission's except that a Judicial Performance Commission would be the final decision makers rather than the voters.

E6 Former Gov. Al Quie, March 23, 2007—Successor group to Quie commission now being formed —Officially, the Quie commission has completed its work and disbanded, Quie said. A successor organization, Minnesotans for an Impartial Judiciary, has been formed, headed by Kevin Magnuson, an attorney and son of retired federal judge Paul Magnuson. The new group is being set up as a 501(c)4 organization, which means that it will be a lobbying organization seeking to implement the Quie commission recommendations.

11. No connection with Council for Electoral Leadership —In response to a question, Quie said that the advocates for changing the system of judicial selection do not have any connection with the Council for Electoral Leadership, another new organization working for changes in the election system. The Council for Electoral Leadership is active on changing the date of the state primary and on encouraging a presidential primary election in Minnesota.

E6 Former Gov. Al Quie, March 23, 2007—Rules for conduct of retention elections —If Quie commission recommendations are adopted, Quie said that retention elections would be open to whatever campaigning approach a candidate would choose to follow. In other retention states where there is a trusted performance evaluation those deemed unqualified usually do not run again and those who are deemed qualified do not need to do anything. Of course, endorsements are permitted as many groups have always done, he said.

E6 Former Gov. Al Quie, March 23, 2007—Don't wait for a crisis —It was noted that elections for judges in 2006 in Minnesota took place with no particular problem, even in light of the White decision of the U. S. Supreme Court. Quie said the absence of a crisis is the reason to act now. If the state were to go through a contentious campaign for judge, it is very likely that interest groups that were successful and supportive of a judge speaking out on certain issues would oppose making any changes in the future.

D. Comments and discussion on other matters —During the meeting Quie and the group touched on other matters:

ED3 Former Gov. Al Quie, March 23, 2007—Early childhood education —Quie said his chief interest and advocacy is for early childhood education. He cited data that 38 percent of children are proficient in reading at the 4th grade and only 50 percent fully prepared for kindergarten. Some 70 percent of parents of pre-kindergarten children are working outside the home. Asked about reluctance of Republicans to support DFL initiatives on early childhood education, Quie said that many conservatives are very nervous about certain "ready for kindergarten" programs that would place early childhood responsibilities in the traditional public K-12 system. These conservatives are not pleased with what has happened to children in K-12 and don't want to turn over their pre-K children to that system. He said that 44 percent of youth in north Minneapolis have chosen to enroll in charter schools or other districts. He likes the idea of empowering poor parents to find the preschool help they need for their children with an "allowance" using the tax system. It is good news when both the governor and senate DFL leadership support the same concept. .

F4 Former Gov. Al Quie, March 23, 2007—Placing revenue-raising in the state constitution —It was noted that many proposals are before the 2007 Legislature to give preferential treatment to certain functions by giving them a guarantee in the state constitution of a certain share of state taxes. Quie said he supported the transportation amendment that was opposed by the Civic Caucus but was approved by voters in 2006 because of the critical importance of transportation to the state's economy. He said he does not support efforts to extend constitutional revenue guarantees to outdoors and the environment, arts or any other subject, including early childhood education. He prefers a carefully proscribed initiative and referendum as a last resort for the voters. States like Colorado are more responsible in their use of that tool than California.

E. Thanks —On behalf of the Civic Caucus, Verne thanked Quie for meeting with us this morning.

***The Civic Caucus* is a non-partisan, tax-exempt educational organization. Core participants include persons of varying political persuasions, reflecting years of leadership in politics and business.**

A working group meets face-to-face to provide leadership. They are Verne C. Johnson, chair; Lee Canning, Charles Clay, Bill Frenzel, Paul Gilje, Jim Hetland, John Mooty, Jim Olson, Wayne Popham and John Rollwagen.