

To: Interested Parties

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

Date: March 2007

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 has a fragile grasp of the basic make-up of their Highest Court. Nonetheless these voters clung fiercely to their current system of electing Justices and vowed to select those who purge all personal perspectives in their decision-making processes.*

Wisconsin Voters Have a Tenuous Connection to Their State Supreme Court.

Wisconsin voters are detached from their High Court in that they are generally unacquainted with the make-up of the Court by name or in number. Basic inquiries to identify the voting public's self-professed familiarity revealed that 61% were "just a little bit" or "not at all" familiar with the Wisconsin State Supreme Court. Furthermore, **just 22% knew that there were seven Justices on the Bench and a stunning 76% of them couldn't name even a single sitting Judge or candidate.** Of the small group who did utter a name, a candidate – not a current jurist – emerged as the most recognized individual.

A Presumption of Good Faith.

Despite the majority of voters confessing a notable lack of knowledge when it comes to the basis of their highest court, **these likely voters across Wisconsin demonstrated a high degree of confidence in their Justices' ability to elevate the law over their personal political leanings** (18% had "a great deal" of trust and another 50% had "some"). These voters in the Badger State are placing faith in a Court with which they are only vaguely familiar.

Wisconsin Voters Cling to their Right to Select Supreme Court Justices.

Once informed of the process by which Wisconsin seats their justices, **seven-in-ten (71%) voters believed that Justices should be accountable to the Wisconsin voting public through elections to gain the privilege of serving on the state's High Court.** Though the wanted to maintain the system whereby Wisconsin voters select judges, 67% of those surveyed believed that such elections should undeniably remain non-partisan.

Furthermore, a plurality (43%) exalted a candidate who prioritized firm adherence to the written law over four other possible persuaders, although a judicial contender who had moral and political values in common with them would garner high standing among three-in-ten (30%).

Majority Rule: Personal Viewpoints Should Have No Role in Judicial Calculus.

When given the option to choose between a judge who would simply interpret and apply the law as written and one who would include personal experiences in his or her decision-making processes, Wisconsin voters strongly favored the former – chosen by 72% of respondents. A judge who honored his own perspectives over that of an established legal system only garnered one-quarter (24%) of the vote, and mostly by those who were just “somewhat” (15%) assured of this preference.

A Restrained Court Judged Best by Voters.

Given the widespread lack of knowledge about the Wisconsin State Supreme Court among these likely voters, it is not surprising that they were also unfamiliar with the overarching judicial principles of activism and restraint. Fewer than three-in-ten knew what either term meant (28% were familiar with “activism,” and 27% were acquainted with “restraint”). **Once the concepts were defined with strong arguments for each, these voters cast a clear ballot for restraint (55% vs. 31% over activism as the best principle for the Court to practice).**

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 1-4, 2007 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was drawn utilizing a Random Digit Dialing (RDD) method where phone numbers are generated by a computer to ensure that every household in Wisconsin had an equal chance to be surveyed. Respondents were then screened to ensure that they were registered to vote in Wisconsin and likely to participate in the April 3, 2007 Supreme Court judicial election.

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.

Topline Data
Statewide Survey of 507 Likely Voters in Wisconsin

prepared for
The Federalist Society
by the polling company™, inc.

March 2007

Field Dates: March 1-4, 2007

Margin of Error: +/-4.38%

- A. Are you 18 years of age or older and currently registered to vote here in Wisconsin, registered in a different state, or not registered at all?

100% REGISTERED IN WISCONSIN

- B. On April 3, 2007, Wisconsin voters will have the chance to elect a Justice to the Wisconsin State Supreme Court. Thinking ahead to this election, would you say that you will: (READ CHOICES)

61% DEFINITELY VOTE

39% PROBABLY VOTE

IMPRESSION OF THE WISCONSIN SUPREME COURT

1. How familiar would you say you are with the Wisconsin State Supreme Court and its rulings and decisions? Are you... (READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP)

39% FAMILIAR (NET)

6% VERY FAMILIAR

33% SOMEWHAT FAMILIAR

61% UNFAMILIAR (NET)

37% JUST A LITTLE BIT FAMILIAR

24% NOT AT ALL FAMILIAR

* DO NOT KNOW (VOLUNTEERED)

- REFUSED (VOLUNTEERED)

2. How much trust and confidence do you have in the Wisconsin State Supreme Court to make decisions based on law and not on political beliefs? (READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP)

68% TOTAL TRUST (NET)

18% A GREAT DEAL

50% SOME

31% TOTAL LACK OF TRUST (NET)

24% JUST A LITTLE BIT

7% NONE AT ALL

2% DO NOT KNOW (VOLUNTEERED)

- REFUSED (VOLUNTEERED)

KNOWLEDGE OF THE WISCONSIN SUPREME COURT

3. Which of the following best describes how Justices are first chosen to serve on the Wisconsin Supreme Court? [READ AND ROTATED]

67% JUSTICES ARE ELECTED BY THE VOTERS IN WISCONSIN

22% JUSTICES ARE APPOINTED BY THE GOVERNOR OF WISCONSIN

3% BOTH (VOLUNTEERED)

- NEITHER (VOLUNTEERED)

* OTHER (VOLUNTEERED)

8% DO NOT KNOW (VOLUNTEERED)

* REFUSED (VOLUNTEERED)

4. To the best of your knowledge, how many Justices serve on the Wisconsin Supreme Court at any given time? [OPEN ENDED – IF RESPONDENT SAID “I DON’T KNOW” SAID, “Just take a guess – how many Justices do you think there are on the Wisconsin Supreme Court?” IF RESPONDENT STILL DID NOT KNOW – RECORDED AS SUCH]

34%	TOTAL LESS THAN 7 (NET)
1%	1
2%	2
4%	3
4%	4
13%	5
10%	6
22%	7¹
23%	TOTAL MORE THAN 7 (NET)
4%	8
10%	9
3%	10
3%	11
2%	12
*	13
-	14
1%	15 OR MORE
20%	HARD DO NOT KNOW
1%	REFUSED

As you may know, there are seven Justices on the Wisconsin State Supreme Court. They are elected by Wisconsin voters in non-partisan elections (meaning the Justices do not identify as Republican or Democrat), for ten-year terms. If there is a vacancy in between elections, the Governor of Wisconsin appoints a Justice to serve out the rest of that term.

One current Wisconsin Supreme Court Justice’s term expires in 2007 and he is not running for reelection. The primary election for his seat on the State Supreme Court was held on February 20, 2007 and the top two vote getters in that election will appear on the ballot this April.

5. Can you name any of the Justices currently sitting on the State Supreme Court of Wisconsin or any of the people who are running for that office this year? [OPEN ENDED. PROBES: Can you name any others?]

11%	ANNETTE ZIEGLER
9%	SHIRLEY S. ABRAHAMSON
4%	LINDA CLIFFORD
2%	ANN WALSH BRADLEY
2%	N. PATRICK CROOKS
1%	JON P. WILCOX
1%	DAVID PROSSER, JR.
1%	PATIENCE D. ROGGENSACK
*	LOUIS B. BUTLER
*	JOSEPH SOMMERS
76%	NONE/DO NOT KNOW
1%	REFUSED

¹ There are seven justices on the Wisconsin Supreme Court
the polling company™, inc. for The Federalist Society
Wisconsin Statewide
March 2007

WISCONSIN SUPREME COURT ELECTIONS

6. Which of the following will be MOST important to you in deciding how to vote for Wisconsin State Supreme Court in April? (READ AND ROTATED, ACCEPTED ONE RESPONSE)

- 43% CANDIDATE WHO WILL INTERPRET THE LAW AS IT IS WRITTEN
- 30% CANDIDATE WHO SHARES MY MORAL AND POLITICAL VALUES
- 14% CANDIDATE'S PAST EXPERIENCE AS A JUDGE
- 5% CANDIDATE WHO IS ENDORSED BY THE WISCONSIN STATE BAR ASSOCIATION (AN ASSOCIATION OF LAWYERS)
- 5% CANDIDATE WHO WILL TAKE INTO ACCOUNT HIS OR HER PERSONAL VIEWS AND EXPERIENCES
- * OTHER
- 3% DO NOT KNOW (VOLUNTEERED)
- * REFUSED (VOLUNTEERED)

7. As I mentioned previously, judicial elections here in Wisconsin are non-partisan, meaning candidates do not identify themselves as Republican or Democrat. Do you think that judicial elections in Wisconsin should be non-partisan or do you believe people running for Supreme Court in Wisconsin should reveal whether they are Republicans or Democrats?

- 67% NON-PARTISAN
- 28% REVEAL POLITICAL PARTY
- 5% DON'T KNOW (VOLUNTEERED)
- 1% REFUSED (VOLUNTEERED)

8. I am now going to read you the opinions on two people. Please tell me which one comes closest to your view. (ROTATED)

PERSON 1: Supreme Court Justices should be elected by voters because elections hold Justices accountable for their decisions and rulings.

PERSON 2: Supreme Court Justices should not be elected by voters because elections put pressure on Justices to make certain decisions and rulings based on public opinion.

- 71% AGREE PERSON 1 (NET)**
- 51% STRONGLY AGREE PERSON 1
- 20% SOMEWHAT AGREE PERSON 1

- 27% AGREE PERSON 2 (NET)**
- 13% SOMEWHAT AGREE PERSON 2
- 14% STRONGLY AGREE PERSON 2

- 2% DON'T KNOW (VOLUNTEERED)
- * REFUSED (VOLUNTEERED)

ROLE OF PERSONAL VIEWPOINTS

9. I am again going to read you the opinions of two people. Please tell me which one comes closest to your view.

PERSON 1: Judges should interpret and apply the law as it is written and not take into account their own viewpoints and experiences.

PERSON 2: Judges should go beyond interpreting and applying the law and take into account their own viewpoints and experiences.

72% AGREE PERSON 1 (NET)

59% STRONGLY AGREE PERSON 1

13% SOMEWHAT AGREE PERSON 1

24% AGREE PERSON 2 (NET)

15% SOMEWHAT AGREE PERSON 2

9% STRONGLY AGREE PERSON 2

3% DON'T KNOW (VOLUNTEERED)

* REFUSED (VOLUNTEERED)

JUDICIAL ACTIVISM/ RESTRAINT

[ROTATED QUESTION SETS 10-11 and 12-13 SO THAT SOME VOTERS WERE ASKED ABOUT JUDICIAL ACTIVISM FIRST AND OTHERS WERE ASKED ABOUT JUDICIAL RESTRAINT FIRST.]

10. How familiar are you with the concept of "judicial activism"? Would you say you are...
[READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP]

28% FAMILIAR (NET)

9% VERY FAMILIAR

19% SOMEWHAT FAMILIAR

71% UNFAMILIAR (NET)

23% JUST A LITTLE BIT FAMILIAR

48% NOT AT ALL FAMILIAR

1% DO NOT KNOW (VOLUNTEERED)

1% REFUSED (VOLUNTEERED)

“Judicial activism” is a term used to describe when a judge feels that his or her role is not simply to review the law as it is written, but is instead to allow for new or evolving meaning of the law over time.

11. Do you think judicial activism is a (ROTATED) mostly positive or mostly negative thing for the Wisconsin State Supreme Court?

41% MOSTLY POSITIVE
46% MOSTLY NEGATIVE

12% DO NOT KNOW (VOLUNTEERED)
1% REFUSED (VOLUNTEERED)

12. And how familiar are you with the concept of “judicial restraint”? Would you say you are...
[READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP]

27% FAMILIAR (NET)
7% VERY FAMILIAR
20% SOMEWHAT FAMILIAR

72% UNFAMILIAR (NET)
28% JUST A LITTLE BIT FAMILIAR
44% NOT AT ALL FAMILIAR

1% DO NOT KNOW (VOLUNTEERED)
* REFUSED (VOLUNTEERED)

“Judicial restraint” is a term used to describe when a judge views his or her role solely as an evaluator of whether a law or lower court ruling is in line with the state constitution.

13. Do you think judicial restraint is a (ROTATED) mostly positive or mostly negative thing for the Wisconsin State Supreme Court?

70% MOSTLY POSITIVE
13% MOSTLY NEGATIVE

16% DO NOT KNOW (VOLUNTEERED)
1% REFUSED (VOLUNTEERED)

14. Based on the definitions I gave you, would you rather the Wisconsin Supreme Court practice (ROTATED) judicial activism or judicial restraint?

55% JUDICIAL RESTRAINT
31% JUDICIAL ACTIVISM

4% BOTH (VOLUNTEERED)
2% NEITHER (VOLUNTEERED)
8% DO NOT KNOW (VOLUNTEERED)
1% REFUSED (VOLUNTEERED)

MESSAGE TESTING

15. Some people have said Wisconsin's Supreme Court Justices are acting like "legislators in robes," meaning they are essentially rewriting laws and writing new ones rather than interpreting existing laws. Do you agree or disagree with that statement?

51% AGREE (NET)

26% STRONGLY AGREE

25% SOMEWHAT AGREE

27% DISAGREE (NET)

16% SOMEWHAT DISAGREE

11% STRONGLY DISAGREE

21% DON'T KNOW (VOLUNTEERED)

1% REFUSED (VOLUNTEERED)

WISCONSIN SUPREME COURT DECISIONS

I am now going to read you some of the rulings made by the Supreme Court in Wisconsin. For each one, please tell me if you agree or disagree with the ruling of the Court. (ROTATED 16-19)

16. In *Thomas v. Mallett*, the Wisconsin Supreme Court concluded that a company that manufactured lead-based paint at any time in its history can be held liable for a person's lead-poisoning even though the person cannot prove that the lead paint to which he was exposed was produced by the company.

19% AGREE (NET)

8% STRONGLY AGREE

11% SOMEWHAT AGREE

79% DISAGREE (NET)

22% SOMEWHAT DISAGREE

57% STRONGLY DISAGREE

3% DON'T KNOW (VOLUNTEERED)

1% REFUSED (VOLUNTEERED)

17. In *State v. Dubose*, the Supreme Court in Wisconsin ruled that eye-witness identifications of suspected criminals made at the scene of the crime (rather than in a police line-up) were no longer admissible as evidence in a criminal trial because it violated the suspect's legal rights.

22% AGREE (NET)

9% STRONGLY AGREE

13% SOMEWHAT AGREE

72% DISAGREE (NET)

26% SOMEWHAT DISAGREE

46% STRONGLY DISAGREE

5% DON'T KNOW (VOLUNTEERED)

1% REFUSED (VOLUNTEERED)

18. In the case of *In re Jerrell*, the Wisconsin State Supreme Court decided that it had the power to regulate police conduct that did not violate the constitution. Specifically, the Court ruled that all police questioning of juvenile or youth suspects at detention facilities, such as jails or juvenile detention centers, had to be electronically recorded and that any evidence obtained from questioning that was not recorded would not be allowed as evidence in court.

63% AGREE (NET)

38% STRONGLY AGREE
25% SOMEWHAT AGREE

32% DISAGREE (NET)

15% SOMEWHAT DISAGREE
17% STRONGLY DISAGREE

4% DON'T KNOW (VOLUNTEERED)
1% REFUSED (VOLUNTEERED)

19. In *Ferdon v. Wisconsin Patients Compensation Fund*, the Wisconsin Supreme Court overturned a state law that put a limit on certain money damages in medical malpractice cases, and by doing so, effectively made it easier for the Court to overturn state laws in the future.

39% AGREE (NET)

16% STRONGLY AGREE
23% SOMEWHAT AGREE

53% DISAGREE (NET)

23% SOMEWHAT DISAGREE
30% STRONGLY DISAGREE

9% DON'T KNOW (VOLUNTEERED)
1% REFUSED (VOLUNTEERED)

DEMOGRAPHICS

And now some questions for statistical purposes...

20. Which of the following categories best describes your age?

- 7% 18-24
- 12% 25-34
- 19% 35-44
- 20% 45-54
- 19% 55-64
- 21% 65+
- 2% REFUSED (VOLUNTEERED)

21. Would you describe your racial or ethnic background as...(READ LIST)

- 88% WHITE/CAUCASIAN
- 5% BLACK/AFRICAN-AMERICAN
- 3% HISPANIC/LATINO
- * ASIAN
- * MIDDLE EASTERN

- 1% OTHER (VOLUNTEERED)
- 1% DON'T KNOW (VOLUNTEERED)
- 2% REFUSED (VOLUNTEERED)

22. In politics today, do you consider yourself to be a (ROTATED) Republican, Independent, or Democrat?

- 35% REPUBLICAN (NET)**
- 15% STRONG REPUBLICAN
- 10% NOT-SO-STRONG REPUBLICAN
- 10% INDEPENDENT LEANING REPUBLICAN

- 23% INDEPENDENT**

- 36% DEMOCRAT (NET)**
- 9% INDEPENDENT LEANING DEMOCRAT
- 11% NOT-SO-STRONG DEMOCRAT
- 16% STRONG DEMOCRAT

- 1% OTHER (VOLUNTEERED)
- 6% DON'T KNOW/REFUSED (VOLUNTEERED)

23. Thinking for a moment about your political views...Do you consider yourself to be...?

44% CONSERVATIVE (NET)

17% VERY CONSERVATIVE

27% SOMEWHAT CONSERVATIVE

26% MODERATE

24% LIBERAL (NET)

17% SOMEWHAT LIBERAL

7% VERY LIBERAL

1% LIBERTARIAN

5% DON'T KNOW/REFUSED (VOLUNTEERED)

24. And regarding your family's annual income...Please tell me which of the following categories best describes your family's annual income. I don't need a specific amount, a broad range will be fine.

8% BELOW \$20,000

6% \$20,000 TO \$24,999

8% \$25,000 TO \$29,999

12% \$30,000 TO \$39,999

10% \$40,000 TO \$49,999

7% \$50,000 TO \$59,999

9% \$60,000 TO \$69,999

6% \$70,000 TO \$79,999

4% \$80,000 TO \$89,999

9% \$90,000 AND ABOVE

22% REFUSED ((VOLUNTEERED))

25. Are you...? (READ CATEGORIES)

- 38% CATHOLIC
- 42% PROTESTANT
- 1% JEWISH
- 5% AGNOSTIC/ATHEIST
- MUSLIM
- MORMON

- 1% OTHER (SPECIFIED) (VOLUNTEERED)
- 7% NONE/UNAFFILIATED (VOLUNTEERED)
- 6% REFUSED (VOLUNTEERED)

26. How often do you attend religious services?

- 45% FREQUENTLY (NET)**
- 2% EVERY DAY
- 11% A FEW TIMES PER WEEK
- 32% ONCE A WEEK

- 50% INFREQUENTLY (NET)**
- 20% A FEW TIMES PER MONTH
- 14% A FEW TIMES PER YEAR
- 16% SELDOM/NEVER

- 6% DON'T KNOW/REFUSED (VOLUNTEERED)

27. Gender

- 47% MALE
- 53% FEMALE

28. Region²

- 11% NORTHWEST
- 19% NORTHEAST
- 38% SOUTH
- 32% METRO MILWAUKEE

² **Northwest Wisconsin** includes Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, and Washburn Counties; **Northeast Wisconsin** includes Brown, Door, Florence, Forest, Kewaunee, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Oneida, Outagamie, Portage, Shawano, Vilas, Waupaca, and Wood; **South Wisconsin** includes Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Manitowoc, Marquette, Monroe, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Waushara, and Winnebago Counties. **Metro Milwaukee** includes Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties.