

# Crisis in Court

The result of the judicial retention election in Iowa is a grim reminder of how important it is to defend fair courts.

By Camilla Taylor, Senior Staff Attorney

**THE NOVEMBER ELECTIONS DEALT** fair courts quite a blow in Iowa. Three well-respected Iowa Supreme Court Justices lost retention elections after antigay groups targeted them because of the Court's unanimous 2009 decision to strike down Iowa's ban on marriage for same-sex couples.

The loss of the justices had no impact on marriage equality in Iowa; the Court's ruling in *Varnum v. Brien* is still the law of the land, and more same-sex couples marry every day. Antigay groups knew this, but they spent almost \$1 million on a campaign to oust the justices in a spiteful gesture designed to intimidate judges in Iowa and across the nation, and to scare lesbians and gay men out of bringing discrimination claims to court.

Since the Iowa election, opponents of equality for gay and lesbian couples around the country have exulted in the ouster of the three justices and signaled their intention to target courts again in future elections. David Barton, a Texas antigay activist, crowed, "This is what we call hanging a bloody scalp on the gallery rail." Judges and courts nationwide have become magnets for an alarming outpouring of misguided rage, a politicization of the judicial process that even mainstream elected officials are embracing. The U.S. Senate now has blocked or impeded the confirmation of so many federal judges that legal professionals from all perspectives have declared a crisis.

Make no mistake: The Iowa election had nothing to do with the competence or ideology of the individual judges voted out. The three native Iowans—Chief Justice Marsha Ternus, Justice Michael Streit, and Justice David Baker—are skilled jurists known more for their long years of steady service on the bench than for adherence to any particular ideology. Two were appointed by Republican governors.

The campaign in Iowa is part of a larger movement nationwide by antigay groups to tear down equal treatment of LGBT people wherever it occurs and by whatever means they can find. The anti-judge activists who toured the state during the

campaign represented some of the same groups whose appeals were rejected by the U.S. Supreme Court earlier last year when they tried to conceal the names of supporters who signed an antigay ballot measure in Washington State by making false claims that they were fearful of retribution. Carolyn Jenison, the director of One Iowa, the statewide LGBT equality group, called the results of the Iowa election a "perfect storm of electoral discontent and out-of-state special interest money."

The impact of Iowa's judicial election goes way beyond the justices themselves and this particular election cycle. Antigay extremists are undermining the system of checks and balances that has served us for over 200 years, and targeting the constitutional guarantee of equality itself. If the right to equal protection means anything, it means that courts are empowered to strike down a piece of legislation—regardless of whether it enjoys majority support—when that legislation targets a minority for unequal treatment. Indeed, it is the absolute obligation of a court to do so. If courts are not insulated from voters who disagree with one decision or another, then majorities will have the power to strip fundamental rights away from minorities. As retired United States Supreme

Court Justice Sandra Day O'Connor has noted, "a judge who is forced to weigh what is popular rather than focusing solely on what the law demands" loses "independence and impartiality."

What's next for Iowa? While the November election results have diminished the number of political officeholders who support equality, a constitutional amendment continues to appear unlikely in the state. Newly empowered antigay groups will lobby the newly elected Republican Iowa House to insist upon passage of a constitutional amendment. But amending the Iowa constitution requires a vote in both chambers of the legislature, and Senate Majority Leader Mike Gronstal stands firm against passage, saying, "What's ugly is giving up what you believe in, that everybody has the same rights. Giving up on that? That's ugly."

Nonetheless, the spiteful campaign against Iowa's justices was a wake-up call for all of us. The next time extremists set out to try and punish judges for deciding cases with integrity, we'll be ready. **L**



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Antigay groups targeted three Iowa Supreme Court justices.