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FISCAL IMPACT REPORT

SPONSOR Adair ORIGINAL DATE 2/21/09
LAST UPDATED _____ HB _____
SHORT TITLE Judicial Candidate Free Speech Rights SB 664
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1 See Below			Non- Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 664 adds a new section of the Election Code stating that judicial candidates retain all constitutionally protected rights of free speech during the election process, and further stating that candidates may discuss controversies or issues that are relevant to voters.

SB 664 clarifies in both subsections (A) and (C) that the provisions in the Code of Judicial Conduct shall not limit judicial speech during an election.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

Under the Code of Judicial Conduct, judicial candidates are prohibited from making pledges, promises or commitments with respect to issues or controversies that may come before the court. Rule 21-700 (B) (4) (a) NMRA. The purpose of this rule is to ensure that judges decide all cases impartially, and not commit themselves to a particular position before an issue has been finally resolved.

The 2002 U.S. Supreme Court case of *Republican Party of Minnesota v. White* invalidated a state law that prohibited a judicial candidate from announcing views on disputed legal issues or disputed political issues. The Court held that judicial candidates could not be prohibited from announcing their views on disputed legal or political issues.

The AOC states this bill appears to address any possible conflict that may exist between the prohibition against making pledges, promises or commitments contained in Rule 21-700 (B)(4)(a) NMRA, and the holding in *White* regarding announcement of views by judicial candidates. SB 664 resolves any possible conflict in favor of all constitutionally protected rights of free speech, stating that such rights are not to be limited by a canon of judicial conduct.

ADMINISTRATIVE IMPLICATIONS

If passed, this statute would likely be referred to the appropriate rules committee for analysis of any possible implications for the Code of Judicial Conduct.

The courts should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities.

DW/mt