

# Eastern Iowa News Now

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## Supporters of Iowa judicial system remain confident about future

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Nobody knows what the future holds for Iowa's judiciary but supporters of the current way judges and justices are selected are confident efforts to impeach the four remaining Supreme Court justices won't prevail, nor will the lawsuit threatening the system.

Mark McCormick, Des Moines attorney and former justice, said Wednesday (Dec. 29) the discussions among legislators in the last few weeks regarding impeachment is irresponsible.

"There is law all over the country defining malfeasance for these purposes and the kind of conduct that folks are using as a basis for even talking about impeachment would just be so far removed from anything that would justify impeachment it is just outrageous to consider that that's a possibility."

McCormick is also confident the lawsuit filed Dec. 8 in federal court will be defeated. The suit asks the court to prevent the lawyer members of the State Nominating Commission from selecting three new justices because they were not elected by the public. They are elected by attorneys admitted to the Iowa bar. Similar suits filed in Kansas and Alaska have been defeated.

The most recent attack came last week when three House members said they were were drafting articles of impeachment against remaining Justices Brent Appel, Mark Cady, Daryl Hecht and David Wiggins, for their part in the 2009 Varnum ruling that legalized same-sex marriage. Chief Justice Marsha Ternus and Justices David Baker and Michael Streit lost their retention votes last month and their term ended Dec. 31.

Rep.-elect Kim Pearson, R-Pleasant Hill, said the remaining justices should be impeached because they overstepped their authority and violated the state Constitution when they ruled a state law that defined marriage as being between one man and one woman was unconstitutional.

Speaker-elect Kraig Paulsen said two weeks ago he wouldn't stand in the way if the people wanted the impeachment proceedings.

"I do not think that one of the messages out of the election was 'OK, we decided to fire three. Now

we expect you guys to fire the other four,” Paulsen said Monday (Jan. 3). I just didn’t hear that. The majority of Iowans I have heard from (say) “We expect you to get state government under control, we expect you to work on jobs and the economy, and in two years we get a chance to fire another one.”

Sally Pederson, former Lt. Governor and co-chair of Justice Not Politics, said when legislators speak of “the will of the people” it usually reflects the political winds. The courts adhered to the constitution in Varnum because it protected equal rights for the minority against the majority.

Ben Stone, ACLU of Iowa executive director, said he hopes Paulsen will step up and rein in emotions of this issue.

“Impeaching members of the judiciary is indefensible,” Stone said. “For Paulsen to say he will let the impeachment vote come to the floor...it gives more weight than other hundreds and hundreds of bills because it’s being endorsed by the speaker.”

Rep. Jeff Kaufman, R-Wilton, said he’s not supporting impeachment efforts because he hasn’t seen anybody make a case of malfeasance.

“Impeachment requires extraordinary circumstances,” Kaufman said. “Not because you disagree with their (justices’) decision. I didn’t agree with it. And I don’t think the people are demanding that.”

Kaufman said the House will make good on campaign promises and take up the same-sex marriage issue by passing an amendment to define marriage as between a man and a woman.

Kaufman said he also favors discussing changes in how the nominating commission is chosen to correct the imbalance and take out “partisan politics.”

“I think it’s prudent to have a discussion to bring the people’s voice into the commission,” Kaufman said. “I’m not wanting to eliminate the lawyers from it - just let the people of Iowa have more of a voice.”

Rachel Caulfield, of the American Judicature Society, said if impeachment efforts were successful it would be devastating to the courts. The courts are under extreme pressure as it is with more budget cuts looming and eliminating judges now would have serious repercussions on the day to day work.

Mike Marshall, Iowa Secretary of the Senate, said when someone is impeached that person is immediately suspended from their office until acquitted.

Marshall didn’t know when the House would take up the issue, but if they voted for impeachment early in the session it’s possible this could happen before the three new justices are selected. The session begins Jan. 10 and the commission won’t start interviews until Jan. 24.

Caulfield pointed out what's particularly troubling about this sustained effort to undermine the judiciary is that it's based on one case.

"One case is driving the animosity and it doesn't deal with the underlying issue – it doesn't change gay marriage being legal," Caulfield said.

Pederson said it's that one issue which got the special interests groups outside the state to fund the effort in the retention election and now they are behind the lawsuit. The groups will continue "to flex their muscles" now that they had a win, she said.

"Bob Vander Plaats won't stop now that he has a full-time paid position," Pederson said.

Vander Plaats was named CEO and president of The Family Leader, a reorganized conservative policy and political advocacy group, after he led the campaign to oust the justices in the retention election. The Family Leader is an umbrella organization consisting of the Iowa Family Policy Center, the Iowa Family PAC and Marriage Matters.

Vander Plaats asked for the four justices to resign and then encouraged the legislators to impeach them if they didn't resign. He put out a plea on his organization's website asking for help to raise \$8,000 for direct mail, robo-calls, polling and online ads in the effort.

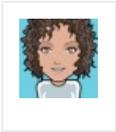
James Bopp Jr., an attorney with the James Madison Center for Free Speech in Indiana, is representing four Iowa people in the lawsuit. According to the center's website, Bopp has worked on many Republican campaigns and mostly represents conservative organizations such as, National Right to Life Committee, Focus on the Family and the National Organization for Marriage.

Alan Olson, president of Iowa Association for Justice, said people need to understand the context of these threats, which are focused around the merit selection process and come from those states that have a politicized system.

"We are the envy of the country," Olson said. "Our system is fair. We select judges based on their abilities, experience and character.....above politics. The commission makes an informed decision (of the candidates)."

Olson said many lawyers in the association have heard from people after the election that they regret their "no" vote. They admit they didn't understand the larger issue of how it would affect the courts and didn't have enough information.

"Consider this, there hasn't ever been a merit system that has gone back to a politicized system and there's good reason for that," Olson said. "We want our judges to be fair and impartial and not influenced by politics."



#### About Trish Mehaffey/SourceMedia Group News

I'm the courts reporter for SourceMedia Group. I moved to Iowa from Kansas City and have been with the company for two years. I'm originally from Kansas but have lived various places in my 15 years as a journalist including Oklahoma, Illinois, Missouri and Arkansas. I'm also a Kansas State University Alumni and faithful K-State Wildcats fan but I have no ill will towards the Iowa teams ;)

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