



Written by [Jack Kenny](#) on November 4, 2010

## Iowa Voters Oust Judges Over Same-sex Marriage

Iowa voters Tuesday turned out of office all three state Supreme Court justices who were up for term renewal. The three judges seeking new eight-year terms were part of a unanimous decision by the seven-member court last year, holding that a state law defining marriage exclusively as a union between one man and one woman is unconstitutional. The ruling made Iowa the first state in the Midwest and the sixth in the nation to establish same-sex marriage. The vote in Iowa is further evidence of how widespread and deeply ingrained opposition to same-sex marriage is with the voting public. More than 30 states have held referenda on the question and in every one voters have turned thumbs down on the proposition that unions between same-sex couples should be regarded by law as marriage.



Iowa is one of 16 states that employ a merit system, allowing voters to decide if judges on the Supreme and lesser courts should receive another term. It is a “yes” or “no” vote, with the judges standing unopposed by other candidates. In Iowa, however, term renewal for the three judges was opposed by foes of same-sex marriage, both within and outside the state. Money for the removal campaign came from organizations including the National Organization for Marriage and the American Family Association. The judges did not raise campaign money and only made public appearances defending themselves toward the end of the election, the *New York Times* reported.

The vote was hailed by removal advocates as both an affirmation of traditional marriage and a rebuke to judges who many believe are legislating from the bench to impose values and judgments on a populace opposed to a liberal or “progressive” agenda.

“I think it will send a message across the country that the power resides with the people,” said Bob Vander Plaats, the leader of the removal campaign and an unsuccessful Republican candidate for governor. “It’s we the people, not we the courts,” he told the *Times*.

But others see the move as a threat to the independence of the judiciary, creating a “chilling effect” on judges when they deliberate over challenges to laws that are arguably violations of minority rights.

“What is so disturbing about this is that it really might cause judges in the future to be less willing to protect minorities out of fear that they might be voted out of office,” said Erwin Chemerinsky, the dean of the University of California, Irvine, School of Law. “Something like this really does chill other judges,” he told the *Times*.

“Obviously it has an impact on the independence of judges and how they think of their role — I think that’s demonstrable,” said Joseph R. Grodin, a law professor and one of the three California judges who



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ousted in 1986 when the issue was judicial opposition to the death penalty. Grodin told the *Times* that as judges become more subject to political pressure, “courts will come to be seen and judges will come to be seen as simply legislators with robes.”

Replacements for the three ousted Iowa justices will be appointed by the governor from a slate of candidates nominated by a committee of lawyers. They also will have to stand for periodic retention votes.

Judges in five other merit selection states were also the targets of removal campaigns over issues ranging from abortion to tort reform. Removal efforts in Alaska, Colorado, Florida, Illinois, and Kansas failed, however as all judges seeking term renewals were reelected.

*Photo: U.S. Rep. Steve King, R-Iowa, right, at a rally before a bus tour through the state to convince voters to remove three state Supreme Court justices who joined in a unanimous ruling legalizing same-sex marriages, Oct. 25, 2010, in Des Moines, Iowa: AP Images*



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