



Administrative Office of the Courts

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Staggered retention elections for judges permissible under NM Constitution

SANTA FE – There is no constitutional prohibition against the staggering of retention elections for district and metropolitan court judges as enacted by legislation last year, the New Mexico Supreme Court concluded in an opinion issued today.

The unanimous opinion provides the legal reasoning for a Court decision announced from the bench on Dec. 2, 2021, when the justices rejected a challenge to the Legislature's latest effort to balance the number of judicial positions up for retention in the same election cycle.

Voters adopted a constitutional amendment in 2020 authorizing the Legislature to stagger the terms of "officers for a particular state, county or district office throughout the state." Lawmakers followed up in 2021 by approving legislation (Senate Bill 266) for staggered elections for judges of district courts and the Bernalillo County Metropolitan Court.

The Legislature submitted the proposed amendment to voters after the Supreme Court invalidated a first attempt at staggering terms through legislation in 2019. In that case, the Court concluded that lawmakers could not alter the timing of elections for affected offices only by a statutory change and that constitutional authorization was necessary.

A group of judges challenged the 2021 legislation for staggering the retention elections of district and metropolitan court judges. They contended the 2020 amendment to Article XX, Section 3 of the New Mexico Constitution conflicted with other constitutional provisions in Article VI requiring the retention elections of district court judges be held every sixth year and those of metropolitan court judges be conducted ever fourth year at the conclusion of their terms. The staggering of elections had the effect of shortening or extending the terms of some judges by two years as they transitioned to their new retention election cycles.

The Court concluded the sequence of legislative and judicial actions from 2019 to 2021 "reflects with sufficient and reasonable clarity that the 2020 amendment to Article XX, Section 3 was intended to implicitly repeal the requirement in Article VI, Sections 33, 35, 36 and 37, that all district and metropolitan court judges stand for retention at the same time."

The Court held that "Article XX, Section 3 authorizes the Legislature to stagger the retention terms of district and metropolitan court judges and there is no other constitutional bar to such staggering."

The Court's opinion was written by retired Court of Appeals Judge Henry M. Bohnhoff. He along with retired Justice Richard C. Bosson and Court of Appeals Chief Judge J. Miles Hanisee were designated to serve on the Supreme Court for consideration of the case with Justices Michael E. Vigil and Briana H. Zamora.

In New Mexico, appellate, district and metropolitan court judges run in a partisan election in the first statewide general election after their appointment. If elected, they are subject to periodic nonpartisan retention elections at the end of their terms. Voters decide yes or no whether to retain a sitting judge for another term.

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To read the decision in *State ex rel. Franchini v. Toulouse Oliver*, No. S-1-SC-38977, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/521120/index.do>