

# **JUDICIAL RETENTION ELECTION ISSUES**

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I. Iowa's present system of judicial selection and retention was adopted through constitutional amendment adopted in 1962.

A. The system replaced a system of partisan elections.

1. The system is called a "Modified Missouri Plan." Nonpartisan commissions comprised equally of non-lawyers, appointed to staggered terms by the Governor, and lawyer members, elected by members of the bar nominate candidates. The Governor appoints from the nominees.
2. Impetus for the change was the uncertainty in tenure created by Iowa becoming a "swing state" politically as well as recognition that judging is not partisan.

B. The retention vote is intended as a means of removing a judge whose performance is unsatisfactory.

1. Three district associate judges, and one district court judge have been removed through a negative retention vote since 1962.
2. One organized campaign at the district court level was unsuccessful.
3. The current organized campaign at the supreme court level is the first organized campaign against retention at the appellate level.

II. The Vander Plaats campaign is based on opposition to the unanimous April 2009 decision of the supreme court in *Varnum v. Brien*.

A. The case was decided solely under the equal protection clause of the Iowa Constitution.

B. The campaign against the judges is represented to be a way to impose a "check" on judges who in Iowa and elsewhere have gone "outside their jurisdiction."

1. Vander Plaats accuses the court of redefining marriage.
2. He also alleges the court infringed legislative power by invalidating the statute and executive power by making the decision applicable in all 99 counties.

III. The Iowa State Bar Association has organized a group to help educate the public about our system of judicial selection and retention.

A. The supreme court website contains biographical information on all judges standing for retention this year.

B. The bar association conducts a plebiscite among members of the bar and published the results in late September.

IV. Even though judicial ethics rules would permit the supreme court justices to organize campaign committees and raise funds, it is unlikely that they will do so.

A. Volunteers are appearing before groups to further the bar association effort to defend our system.

B. Individuals are also advocating retention of the three justices whose retention is the subject of the Vander Plaats campaign.

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# Supreme Court Justices

## Chief Justice Marsha Ternus



**Date of Appointment:** Chief Justice Ternus was appointed to the Iowa Supreme Court in 1993 by Governor Terry Branstad. The members of the court selected her as chief justice in 2006. She is the first woman to serve as chief justice of Iowa's highest court.

**Education:** Chief Justice Ternus is a native of Iowa, growing up on a farm in northern Benton County and graduating from Vinton High School in 1969. She received her bachelor's degree with honors and high distinction, Phi Beta Kappa, from the University of Iowa in 1972. She earned her law degree with honors, Order of the Coif, from Drake University Law School in 1977. While at Drake, she served as Editor-in-Chief of the Drake Law Review. She is admitted to practice law in the State of Iowa and the State of Arizona.

**Career:** Before joining the supreme court, Chief Justice Ternus worked in the private practice of law in the Des Moines law firm of Bradshaw, Fowler, Proctor and Fairgrave, with a primary emphasis on civil litigation and insurance law. While in private practice, she served as president of the Polk County Bar Association, on the Board of Governors of the Iowa State Bar Association, on the Iowa Jury Instructions Committee, and on the

Board of Directors of the Polk County Legal Aid Society. Chief Justice Ternus also served as president of the Board of Counselors of Drake University Law School and on the Drake Law School Endowment Board of Directors. Prior to joining the court, Chief Justice Ternus served several years on the Board of Directors of the Central Iowa Chapter of the American Red Cross and was a participant in the 1983–1984 Greater Des Moines Leadership Institute.

**Professional and Community Activities:** In addition to her judicial duties, Chief Justice Ternus has worked on a number of court initiatives and other efforts to improve the administration of justice. She served as the judicial branch representative on the IOWAccess Advisory Council, which was instrumental in encouraging and guiding e-government projects. She also served on the judicial team that oversaw the design, development and construction of the Judicial Branch Building. Chief Justice Ternus was a member of the steering committee of the Iowa Supreme Court Commission on Planning for the 21st Century and served as co-chair of the commission's administration team. She also served on the Multi-State Performance Test Policy Committee of the National Conference of Bar Examiners and chaired the Law School Task Force of the Drake University National Commission II.

As chief justice, she has made the improvement of court oversight of child welfare cases a priority for the Iowa Judicial Branch. To this end, Chief Justice Ternus led an effort to form

and now chairs the State Children's Justice Council, which consists of representatives of the judicial branch, state agencies and private entities involved in the child welfare system. The council works collaboratively to institute reforms and improvements in the Iowa courts' processing of child welfare cases to minimize the time children spend in the foster care system. Chief Justice Ternus also served on the planning committee that organized a national summit on the protection of children in 2009.

Chief Justice Ternus currently serves on the Board of Directors of the Conference of Chief Justices and is a member of the Conference's Courts, Children and Families Committee. In addition, she chairs the Conference's Court Management Committee and its Resolutions Committee. In 2009, United States Supreme Court Chief Justice John Roberts appointed Chief Justice Ternus to the Judicial Conference Committee on Federal-State Jurisdiction, where she is one of only four state supreme court justices serving on the committee. Chief Justice Ternus is also a member of the American Bar Association's Bar Admissions Committee and participates in the C. Edwin Moore Inn of the American Inns of Court.

Chief Justice Ternus is married, and she and her husband have three children. The family is a member of St. Francis of Assisi Parish in West Des Moines.

"Judges are not politicians who can promise to do certain things in exchange for votes."

Chief Justice John Roberts, U.S. Supreme Court

# Supreme Court Justices

Michael J. Streit  
Supreme Court Justice



Date of Appointment: 2001

**Education:** Justice Streit, Johnston, was born and raised in Sheldon Iowa. He received his bachelor's degree from the University of Iowa in 1972 where he majored in economics with emphasis in health economics. While attending the University of San Diego School of Law, Justice Streit was editor-in-chief of the San Diego Law Journal. He was a member of the law review and wrote articles on securities regulation. He has received the Distinguished Alumni award from the University of San Diego for his service to the profession and the Iowa courts.

**Career:** After graduating in 1975, Justice Streit was licensed in the Iowa, California, and Nebraska courts. He chose to practice law with the Morr and Shelton law firm in Chariton, Iowa where he served farmers, businessmen, and everyday Iowans. He also served as Assistant Lucas County Attorney and Lucas County Attorney. Justice Streit was appointed as a district court judge by Governor Terry Branstad in 1983. Justice Streit served in all 16 counties of the Fifth Judicial District. He held trials from Newton to Corydon, Des Moines to Bedford. Governor Branstad appointed Justice Streit to the Iowa

Court of Appeals in 1996. In the five years on the Court of Appeals he wrote over 600 decisions. In 2001, Governor Thomas Vilsack appointed Justice Streit to the Iowa Supreme Court. While serving on the court, Justice Streit has been Chair of the Rules committee. He has also served on the Bar Admissions and Administrative committees. He enjoys serving as liaison to the Fifth and Seventh Judicial districts and has served in that capacity to the Eighth Judicial district.

**Professional and Community Activities:** Justice Streit has been involved in professional education and public speaking. He has served in a wide variety of capacities with a large number of groups. A partial list includes: Board of Counselors of Drake Law School, Chair of the New Judge Orientation Program, Chair of the New Judge Mentor Program, STOP Violence Against Woman Coordinating Council, Iowa Supreme Court Select Committee on Child Welfare, State Bar Annual Committee, Judicial Evaluation and Performance Committee and the Anglo-American Exchange Program serving in the British courts for two months. Justice Streit also served on the Supreme Court Committee on Public Access to the Courts, Iowa Court Information System Board, Domestic Violence Group, Judges Association Family Law, Criminal Procedure, Gender/Racial Bias Committee, Supreme Court Advisory Committee on Evidentiary Presumptions, Rural Justice Institute in Montpelier, Vermont, Chariton Jaycees, Department of Human Services Forensic Mental Health Unit

Task Force, Criminal Justice Listening Post, Iowa Council for International Understanding, Chair of the Managing Trials Effectively group, Model Court Project, and the Iowa Court Improvement Project Training and Education Task Force.

Justice Streit is the chair of the Supreme Court Education Advisory Committee and was the chair of Judges Association Education Committee. He chaired the planning committee, formulating a five year education plan for all the judges and employees of the judicial branch aimed at improving the services provided every day to Iowans coming to our courts. He began the Iowa Judicial Institute in 1992. The Institute provides in-depth educational opportunities to Iowa judges at the Drake and Iowa Law Schools each year seeking to improve the professionalism and knowledge of judges as they serve Iowa citizens. He has taught Iowa Contract law in the Bar Review school for new lawyers taking the bar exam. He has done this for fifteen years. Justice Streit taught computer use to judges and served for ten years on the Supreme Court Judicial Technology Committee. As a founding member of the Blackstone Inn of Court he participates in presentations of legal and ethical presentations to some of Iowa's best attorneys.

Justice Streit has been involved with the public speaking to numerous groups concerning our courts. These groups or organizations include the Boy Scouts; numerous grade and high school classes; Rotary clubs;

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"The law sometimes demands unpopular outcomes, and a judge who is forced to weigh what is popular rather than focusing solely on what the law demands has lost some independence and impartiality."

Former US Supreme Court Justice Sandra Day O'Connor

# Supreme Court Justices

## Justice Streit

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churches; bar associations of District 5B, Storey County, Johnston County, Polk County, Districts 5A, Two, Three, Seven and eight; Iowa Magistrates; Leadership Iowa and Ames; Jaycees; Kiwanis; undergraduate classes at DMACC, Simpson, and Drake; Iowa and Drake Law Schools; Iowa Correction Association; Boys State; Blackstone and C. Edwin Moore Inns of Court; Judicature Society; Iowa Bar Association; Freedom of Speech group; Iowa State Bar Association Know Your Constitution; County Attorney Conference; Capitol Project 2001-2005; International Fellows Program; and elementary, high school and Intercollegiate mock trial competitions; Justice Streit has met and taught groups of lawyers and judges from Bosnia, Moldova, Russia, Ukraine, Germany, China, Turkey, Romania, Hungary, and students from more than 30 countries.

Justice Streit has been a member of the Lucas and Polk County Bar Associations, Iowa State Bar Association, American Bar Association, District 5B Bar Association, Iowa Judges Association, Blackstone Inn of Court, Nebraska Bar Association, California Bar Association and National District Attorneys Association.

Justice Streit is married and enjoys family activities surrounding his son's scouts, soccer, baseball, and golf.

## David L. Baker Supreme Court Justice



Date of Appointment: 2008

**Education:** A life-long Iowan, Justice Baker was born in Muscatine in 1952 and grew up in Waterloo. Justice Baker attended undergraduate and law school at the University of Iowa, receiving his bachelor's degree in 1975 with Honors in Sociology and his law degree in 1979 with high honors, Order of the Coif.

**Career:** Following graduation from law school, Justice Baker worked in the private practice of law for 25 years where he practiced in various areas including tax and corporate to bankruptcy to litigation. As an attorney, he received an "AV" rating from Martindale-Hubbell indicating his peers rank him at the highest level of professional excellence. While in practice, he was involved in many professional activities. As a member of the Iowa State Bar Association, he was involved in Jury Instructions Committee, Bench/Bar Committee, and the Appellate Practice Committee where he participated in the writing of the Appellate Practice Manual. Justice Baker also served as a temporary bar examiner for 10 years. In the Linn County Bar Association, he served as a member of the Ethics and Grievance

Committee. He was also a member of the Merit Selection Panel involved in the selection of the U.S. Magistrate for the Northern District of Iowa. He was the chairman of Amicus Curiae Committee for the Iowa Trial Lawyers Association. Based upon the recommendations of his peers and judges, he was inducted into the Iowa Academy of Trial Lawyers, whose membership is limited to 250 attorneys who have displayed exceptional skills and the highest integrity. He was also involved in pro bono work through the Volunteer Lawyers Project.

In 2005 Justice Baker was appointed as a district court judge for the Sixth Judicial District. He was appointed to the Court of Appeals in 2006 where he served until his appointment to the Iowa Supreme Court in 2008.

**Professional and Community Activities:** Since his appointment to the bench he has been a lecturer for the Iowa Bar Review School and is currently the co-chairman of the Bench/Bar Committee. He is currently a member of Mason Ladd Inn of Court.

Both as a judge and an attorney, Justice Baker has been a frequent lecturer at continuing legal education programs. He has also been a participant at educational activities for law students at both the University of Iowa and Drake law schools. Justice Baker continues to be a member of the Linn County, Iowa State and American Bar Associations.

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"Although it may be appropriate for politicians to consider public opinion and the views of special interest groups when drafting laws and regulations, it is never appropriate for judges to do so when deciding cases. Judges are accountable to the Constitution and the law, and in this way judges are always accountable to the people."

former Chief Justice Louis A. Lavorato, Iowa Supreme Court

# Supreme Court Justices

## Justice Baker

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Justice Baker is also involved in community non-legal activities. He is currently a member of the Cedar Rapids West Rotary Club where he is a past president and was chairman of the local seven-club Rotary Centennial Project Committee which built a bike trail in Cedar Rapids. He was a past president and treasurer of the Witwer Senior Center. He has been a member of various school committees and a board member of the local United Way. He was president of Elmcrest Country Club. He has been involved in competitive youth swimming. He has been a YMCA volunteer swim coach and he is currently serving as chairman of the board of review for Iowa Swimming Inc., the local swimming committee of USA Swimming.

Justice Baker is married and has two daughters and currently lives in Cedar Rapids.

"Judges have to be careful not to inject their own views into the interpretation of the Constitution and, for that matter, into the interpretation of statutes. That's not the job that we are given."

Justice Samuel Alito, U. S. Supreme Court,