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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/05/11

SPONSOR Adair LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Judicial Candidate Election Changes SB 527

ANALYST Aledo

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 576

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Secretary of State (SOS)

Attorney General's Office (AGO)

#### No Responses Received From

Judicial Standards Commission

### SUMMARY

#### Synopsis of Bill

Senate Bill 527 adds a new section to the Campaign Reporting Act regarding judicial elections. The section prohibits judges or judicial candidates from soliciting or accepting campaign contributions, but allows a judicial candidate to establish a campaign committee which may solicit and accept contributions. The campaign committee however is prohibited from soliciting or accepting contributions from lawyers licensed to practice law in the state. The bill also prohibits lawyers from endorsing judges or candidates for judicial office. This prohibition extends to the use of a lawyer's names, image or quotations in a communications supporting a judge or judicial candidate

### FISCAL IMPLICATIONS

The Secretary of State's office confirms that this bill would require the SOS to oversee these new requirements for judges and judicial candidates. SB 527 is not expected to have any significant fiscal impact on the SOS.

## **SIGNIFICANT ISSUES**

Currently, judges and judicial candidates' political contributions and solicitations are governed by the Code of Judicial Conduct. That rule does not allow judges or judicial candidates to personally accept or solicit campaign funds from attorneys or litigants, but does not completely prohibit the contributions.

The Attorney General's Office notes that the prohibition on lawyers endorsing judges may be unconstitutional. The AGO cites a similar prohibition in California which banned political parties from endorsing judges was struck down by the Ninth Circuit Court of Appeals (Geary v. Renne). The US Supreme Court has repeatedly struck down prohibitions on campaign speech. In Randall v. Sorrell a ban on judicial candidates announcing their legal and political views was struck down.

The AGO also has concerns regarding the ban on all lawyer contributions and its constitutionality. Furthermore, the AGO asserts that an extensive ban on lawyer contributions would prevent judicial candidates from running a competitive election, especially against incumbents.

## **OTHER SUBSTANTIVE ISSUES**

The AGO contends that SB 527 conflicts with the Code of Judicial Conduct which already provides:

F. Contributions by attorneys and litigants. Candidates for judicial office, in both partisan and retention elections, shall not personally solicit or personally accept campaign contributions from any attorney, or from any litigant in a case pending before the candidate. Contributions from attorneys and litigants shall be made only to a campaign committee, and are subject to all the requirements of this rule. Campaign committees may solicit contributions from attorneys. Campaign committees shall not knowingly solicit a contribution from a litigant whose case is then pending before the candidate. Campaign committees shall not disclose to the judge or candidate the identity or source of any funds raised by the committee. If a case is pending before any candidate for the judicial office being contested, restrictions of this subparagraph apply to all candidates for that office.

N.M. Code Judicial Conduct 21-800.