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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/03/11

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

SHORT TITLE Judicial Candidate Free Speech Rights SB 576

ANALYST Aledo

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Judicial Standards Commission (JSC)

Attorney General's Office (AGO)

Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 576 adds a new section to the Election Code specifically stating that candidates for judicial office have free speech rights during an election “notwithstanding any provision of the code of judicial conduct to the contrary.”

### SIGNIFICANT ISSUES

The Attorney General's Office notes that the US Supreme Court in Republican Party v. White, 536 US 765 (2002), upheld that candidates for judicial office have free speech rights and that the state cannot prohibit them from announcing their political views during an election.

Currently, NMRA 21-700 prohibits judges from (a) acting as a leader or holding office in a political organization; publicly endorsing or publicly opposing a candidate for public office through the news media or in campaign literature; making speeches on behalf of a political organization; or soliciting funds for a political organization or candidate. The Secretary of State adds that these types of canons have been successfully challenged in other states on constitutional grounds.

Conversely, the Judicial Standards Commission is concerned that the proposed legislation may, at least in part, violate the separation of powers provisions of the New Mexico Constitution and may violate established federal and state law under the First Amendments to the United States and New Mexico Constitutions. The Judicial Branch has inherent power in regulating judicial conduct to preserve the State's interest in the integrity, independence, and impartiality of the Judiciary. To this end, the Supreme Court has established rules governing judicial conduct and ethics, which under established federal and state law, may lawfully restrict some speech by incumbents and judicial candidates to the extent such speech may violate or undermine the integrity, independence, and impartiality of the Judiciary. The proposed legislation would override or contradict some of those provisions. Additionally, the proposed legislation may contradict or violate established federal and state law concerning this issue under the First Amendments to the United States and New Mexico Constitutions.

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