

## **Negative Campaigning Takes a Break with Court Race** chuck Malloy/Idaho Politics Weekly

Chief Justice Jim Jones, who is retiring at the end of the year, has never been one to bow to conventional thinking.

During his days as Idaho's attorney general, he took on the oil companies, not through litigation, but through press releases. When gas prices started creeping too high, he'd send out a press release threatening to investigate collusion.

Magically, prices would go down. In 1990, the political establishment told him he shouldn't run for the U.S. Senate, and that it was Larry Craig's turn to serve. Of course, Jones didn't listen. He lost the race, but ran a spirited campaign and gave Idaho voters a legitimate choice.

So it would have been out of character for Jones to resign early from the Supreme Court and allow the governor to make an appointment. He thought it was only right for the most important judicial position to be placed in the hands of the voters, and for candidates to make their case to the public. Now, after a hotly-contested primary, it's down to two – Curt McKenzie of Nampa and Robyn Brody of Rupert.

It's a pretty dull campaign compared to the mess we see on the presidential level. Neither McKenzie nor Brody are resorting to insults and negative ads, or suggesting their opponent is "unqualified" or "unfit" to hold the job. They're simply telling voters why they think they should be sitting on the Supreme Court.

Arguably, this is the most important election in Idaho, next to the presidential election. Congressional races don't appear to be competitive, and many of the legislative races were decided in the primary. So that leaves the Idaho Supreme Court, which should not be confused with the U.S. Supreme Court. Presidential candidates and party wags talk about how the Supreme Court is hanging in the balance with this election. They are not referring to the Idaho Supreme Court.

Brody describes the Idaho Supreme Court as "the court of the ordinary." Water law, planning and zoning laws, easements, divorce law and child support guidelines are some of the items that appear on the court document. "These are things that have a big impact on people, and sometimes they don't even realize it," she said.

McKenzie is well known for his seven terms as an Idaho state senator, but he has a deep law background. He received his law degree from Georgetown University, and one of his heroes is the late Justice Antonin Scalia, who once spoke at one of McKenzie's classes.

"That gave me the dream of serving in the judiciary," McKenzie said. "Since then, I've studied hundreds of pages of his opinions and decisions, and I believe the philosophy he articulated was the correct one. He called it textualism, which applies to the text of the document."

That's a fancy way of saying McKenzie will interpret laws as written, and not try to make new laws, as "activist" judges do.

Brody, a graduate of the University of Denver, has been practicing law for nearly 20 years in the Magic Valley.

“I have a diverse civil practice with one foot in the business world and one foot in the litigation world, representing farmers, ranchers, local hospitals and school districts,” she said. “The kinds of issues that are brought before the Supreme Court are in my wheelhouse – things I deal with every day.”

Background isn't the only area of contrast between the two candidates. McKenzie's long list of endorsements includes many Republicans in the Idaho Legislature. Other supporters include the National Rifle Association, Idaho Chooses Life, and the Idaho Farm Bureau – organizations that typically support Republican candidates. Brody's endorsements include a couple of legislators, some trial lawyers, but not a lot of household names.

Jones says he's neutral in the race, but says, “I don't think the special interests should be involved.” Impartiality, or at least the appearance of impartiality, is paramount to serving as a Supreme Court justice.

But this is a political race, and Idaho is a Republican state, so McKenzie can't be blamed for using GOP connections to his advantage. If he wins, chalk it up to “smart politics.” If Brody wins, we can conclude that high-profile endorsements don't carry much weight in a Supreme Court race.

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