

## Rice boasts experience in re-election bid

John S. Adams 10:24 p.m. MDT September 27, 2014



(Photo: Larry Beckner)

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HELENA – Justice Jim Rice has served on the Montana Supreme Court since 2001. He was appointed to the position by former Republican Gov. Judy Martz and was re-elected to a full eight-year term on the court in 2006.

Prior to that, Rice served three terms in the Montana House of Representatives, serving as majority whip in the 1993 session.

Rice is running his first competitive election since his last House race in 1992. He's being challenged by

Billings attorney W. David Herbert.

Incumbent Justice Mike Wheat is being challenged by former Montana Solicitor General Lawrence VanDyke.

Montana Supreme Court races are nonpartisan affairs.

"I can't remember a time when two Supreme Court incumbents were challenged in the same election," Rice said.

Rice said that while every individual who runs for a judicial office in the state brings their own set of experiences, biases and legal philosophies with them to the race, the most-qualified candidates are the ones who are able to put the law above all else.

"I think that is a challenge every person who comes to the bench must deal with," Rice said. "One of the ways the public decides who the best person is to sit on the Supreme Court is by deciding whether that person can set aside those beliefs and fulfill an oath to uphold the law."

Rice's opponent, Herbert, is a staunch advocate for jury nullification, or the idea that juries should be able to ignore or overrule laws they believe are unjust or unfair.

Rice says that idea undermines the foundations of our system of government.

"That concept (jury nullification) has not been a part of our history here in Montana. If there were to be a change affected in this area, it would have to come from the people, through elected representatives, not the courts," Rice said. "A judge sitting on the court is not the place to attempt that reform. We judges take an oath to enforce the law. We are bound by the law. If the changes are going to come, it has to come from the legislative arena. He (Herbert) wants to get elected so that he can tear apart the law."

Herbert has also attacked Rice over Rice's majority opinion in the Barry Beach case that sent Beach back to prison after 18 months of freedom.

Beach, who was convicted of a murder he says he didn't commit, was granted a new trial in 2012 by a lower court judge based on new evidence that surfaced since his original 1983 conviction. After a three-day evidentiary hearing in which multiple witnesses gave testimony that supported Beach's claims of innocence, a Lewistown judge granted a new trial and ordered Beach released after nearly 30 years behind bars.

The state appealed the ruling, and, in a 4-3 decision, the Supreme Court overruled the lower court's ruling, sending Beach back to prison for the rest of his life. Rice wrote the majority opinion.

Herbert, a criminal defense attorney, has written letters to the editor throughout the state lambasting Rice for violating the Supreme Court's own rules in the Beach case

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by ruling on the credibility of witnesses.

“This fundamentally flawed and essentially illegal decision rendered by Justice Rice result in an egregious miscarriage of justice,” Herbert wrote.

Herbert has also said Rice should have recused himself from the case because he grew up in Glasgow, where Beach’s original 1983 trial took place.

Rice called that latest charge “irresponsible and reckless.”

“Not only is he personally attacking my character, but he’s needlessly undermining people’s trust in the judiciary,” Rice said. “He’s inflaming a controversial case and I think that is irresponsible and unfair. If Mr. Herbert can no better conduct himself as a candidate, how can he be expected to conduct himself appropriately as a Supreme Court justice?”

Rice said the high court took direction from the U.S. Supreme Court in how it applied post-conviction relief in the Beach case.

“They set the bar very, very high in terms of situations like this where you’re coming back years later and attempting to overturn a jury’s verdict,” Rice said. “The Supreme Court has said, in that situation, you have to be very, very careful about setting aside verdicts because there is new information. You need certain kinds of information, certain kinds of credibility, and certain kinds of proof to set aside jury verdicts.”

While on the campaign trail, Rice has also been an outspoken critic of Citizens United and the negative effect outside spending can have on judicial races. Recently he was one of six sitting Montana Supreme Court justices who signed on to a brief in support of a Montana court rule banning judicial candidates from seeking or accepting partisan endorsements.

Though Rice previously served in a partisan office and was appointed by a partisan governor, he said it’s important to leave partisan politics out of judicial races.

“I think the partisan bickering illustrates really well my concern about politics entering the judicial realm,” Rice said.

Rice said electing judges works well only if the races retain their nonpartisan status and don’t succumb to the “greater political party system” where Republicans and Democrats are “fighting it out on a partisan basis.”

“I believe that would be greatly detrimental to the judiciary,” Rice said. “When (the Supreme Court is) in conference, we don’t sit one group on one side and one group on the other. That is so key to rendering decisions that are based on the law. No system is perfect, but it certainly starts the day on the right page when we come together not on the basis of what party we are, but on our analysis of the law. We will lose that nonpartisanship if we allow politics to elect judges.”



