



State Should Move to Non-Partisan Supreme Court Elections

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By mid-April, 2004, we will again be in the throes of hotly contested partisan judicial elections for three seats on the Alabama Supreme Court. If history is instructive, these races will show us clearly why the state needs to move after the 2004 election cycle to non-partisan election of Supreme Court judges. This change is needed in order to preserve the independence and integrity of the highest court in the state. It is vitally important for the proper functioning of state government for the highest court of the judicial branch to be completely fair and impartial and beyond even the hint of partisanship or favoritism. Though our Supreme Court is comprised of honorable and respected men and women, most were elected in elections shaped and tainted by partisan politics and special interest money. Those deciding the basic and fundamental rights of its citizens must be above even a glimmer of suspicion of political persuasion.

The last 15 years has seen a fierce partisan, ideological battle take place over the complexion of Alabama's Supreme Court. These elections have become so highly partisan, exceeding negative and excessively expensive that in 2000, our races earned the distinction of being the most expensive races in the nation with the candidates raising and spending a little over \$13 million. Then, in 2002, two candidates for one seat each raised respectively \$1.5 million and \$1.3 million. Since 1994, judicial campaign financing in multi-seat races have increased 150% from \$5.2 million in 1994 to \$13 million in 2000. The great bulk of this campaign money has come from the two political parties, business interests, and lawyers. The battle developed initially over tort reform, with the main opponents being business and trial lawyers. It did not take long for the Republicans and Democrats to choose sides and take up the battle.

One would hope that financial contributions to Supreme Court candidates would not have an impact on how a successful candidate would rule on a case coming before the Court. But, we all know that money speaks in politics and our judicial elections for the Supreme Court have become highly politicized. Though it is not easy to document a correlation between campaign financing in judicial races and later judicial decisions, a report published last year suggest that our suspicions may be correct and that, at the very least, a large number of parties and attorneys appearing before the Supreme Court are campaign contributors. This report by the National Institute for Money in State Politics shows that during the period from 1994 through 1998, contributors were involved as a party, an attorney or a third-party, amicus litigant in 63% of the courts 1,424 cases. That equates to contributors being involved in 904 actual cases during the report period. These contributors numbered 622 persons or entities, out of a total of 8,374 named contributors. Although the study's findings were not conclusive that particular contributions equated to particular case outcomes, the study did show that in cases involving a contributor, 30% (or 274 case) of the cases involved contributions only from the parties on the winning side and 25% (or 227 cases) of the cases involved contributions only from the parties on the losing

side. At the very least these findings would suggest that more than a majority of the litigants before the Supreme Court may have been motivated by self-interest and hopes for judicial favoritism in making a campaign contribution.

It is time for change in the way we elect our Supreme Court justices. Change will not come in time for the 2004 elections, but we citizens would be wise to begin to call for change now that would go into effect by 2006. A call that all candidates for the Supreme Court stand for election on a separate ballot without party designation would be a step in the right direction. It would likewise make sense for candidates for the courts of appeal and for the district and circuit courts to be elected on a non-partisan basis. In an ideal world, selection of Supreme Court justices on the basis of background and experience by a non-partisan Merit Selection Commission would be the best method to assure a highly qualified and completely impartial court. But, the electoral process is so ingrained in Alabama that non-partisan elections appear to be the only realistic option. The state should move in that direction now to assure that access to justice before the Supreme Court is available to all and not to just the politically motivated and the special interests groups. In the last analysis this is an issue of guaranteeing to all the even-handed, unbiased administration of justice.

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