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Alabama Ground Zero

Alabama being described as "ground zero" is a sobering thought. What could that mean? The October 9, 2006 issue of *The National Law Journal* reported that:

In Alabama, elections are to be held for five Supreme Court seats. . . . Alabama attracts the most expensive campaigns because its judges are affiliated with political parties and have no fundraising limits.

Historically, it has been ground zero for campaign fundraising and negative TV ads in judicial campaigns.

Recently, a local radio talk show host suggested that the best way to decide how to vote in the judicial races is to look at the source of the campaign contributions for each candidate, that this will tell you how they will vote on cases. What has happened to the *perception* of fairness and impartiality in our judicial system?

During the decade ending with the 2004 elections, Alabama was first in money spent for supreme court elections. In those ten years, candidates for the Alabama Supreme Court spent \$41 million. Texas came in a distant second at \$17.5 million. With the November elections now behind us, the campaign financing numbers are in for the 2006 judicial races—and they are astounding. In our supreme court races alone, a total of \$11.5 million was raised, which again ranks Alabama number one for the most expensive judicial races in the United States. A total of \$10.6 million was spent by the candidates, of which more than half was spent by the candidates for chief justice. The day after the elections *The Birmingham News* reported that the Alabama chief justice race was the most expensive in the

nation, with Nabers raising \$4.4 million and Cobb raising \$1.9 million. In the other supreme court races, Lyn Stuart and Albert Johnson had the second most expensive judicial race in the country, raising a combined \$1.9 million, with Stuart ranking third nationally for raising \$1.8 million alone. Glenn Murdock ranked fifth in the nation for raising \$1.5 million, with his and John England Jr.'s contributions totaling \$1.8 million, making their race the fourth most expensive in the country.

A watchdog group, Justice at Stake, keeps track of campaign financing in judicial races. It observed that Alabama's judicial races have become a testing ground for multi-million dollar attack ad campaigns. Bert Brandenburg, executive director of Justice at Stake, recently stated that "[w]ith hardball TV ads flooding judicial campaigns, every state that elects judges needs to consider serious reforms to keep their courts fair and impartial." Television ads in Alabama, some of which (during the primary races) have been funded by The Alabama Taxpayers Alliance which does not have to disclose its funding sources, often deal with issues likely to come before the court. Tom Scarritt, editor of *The Birmingham News*, described the situation of political contributions in Alabama where groups invest in campaigns with the hope of influencing policy to benefit them financially. He wrote:

The most visible example of that in Alabama has been the battle between the trial lawyers and the business interests for control of the State Supreme Court. The Court decides a wide range of issues that are important to citizens. Campaign funding, though, hinges on the narrow



questions of whether the candidates are seen as friendly to plaintiffs or defendants in civil lawsuits. That makes the public very cynical about court races. It diminishes the stature of the Court. Candidates should never have agreed to play that game.

I agree with most of what Tom says, but we should not blame the candidates—it is our system that needs to change. The candidates are good, honest judges and lawyers, but are caught up in the current system. In a recent article, **Dr. David Bronner**, unquestionably one of the brightest and most able leaders in Alabama, made the following statement about our current system:

I personally believe the Alabama Supreme Court should be placed on a pedestal—beyond reproach. It must be “The Institution” that Alabama’s citizens have total confidence in for fairness and justice. The Alabama Supreme Court must simply be above politics.

Alabamians understand that elections make good people do and say almost anything to become elected. It is for this reason that most states do not elect their appellate court judges and justices. Alabamians should not want their judges and justices to receive campaign funds, as that practice only fosters the image of “politics” as usual. Maybe someday Alabama will correct that shortcoming, but perhaps not.

Alabama’s current selection system is flawed especially in the perception it gives the public. Even though we are fortunate to have excellent appellate judges—and objective ones—the public simply does not believe it. Hardly anyone believes that a judge who has received large sums of money from a special interest group will not try to please that group with his or her decisions.

Justice Sandra Day O’Connor stated it well:

“The elective system, where judges [run] . . . in partisan elections, ultimately result[s] in a lot of

fundraising. And where do you get the money? You get it from the lawyers. And what lawyers? The lawyers who are active in court. And the campaigns of people running for office tended to be ‘I’ll be tougher on criminals than my opponent.’ It [is] very unattractive. If you look broadly at the results of [this] kind of system, we [don’t] have . . . anything like as splendid a judiciary as we have . . . under a merit selection plan.”

Over the past month, leading up to the elections, I received numerous calls from lawyers and non-lawyers who want a change in our system. Perhaps these recent elections and the large sums of money spent may help us change the way we currently select our appellate judges. For the last three years the ASB has promoted the merit selection of appellate judges, with past presidents **Bill Clark** and **Bobby**

Segall working on this. We are continuing this effort. Former Supreme Court Justice **Gorman Houston** has agreed to continue to serve as chair of this task force. We will work to keep this issue in front of Alabama’s citizens and leaders.

The way we currently elect appellate judges in Alabama is bad for the judiciary and the citizens of Alabama. It is also harmful to **our profession**—it tends to divide our bar into camps and that is unacceptable. Our courts should be a place where *neutrality* and *impartiality* are valued above all, *not* extraneous matters such as partisan politics. Unfortunately, this is what we face under our current system. Alabama is one of only seven remaining states to hold partisan elections of appellate court judges. Please join us in our efforts to make that number become six and help Alabama change its reputation as “ground zero” for judicial campaigns. ■

JUDICIAL AWARD OF MERIT

The Board of Bar Commissioners of the Alabama State Bar will receive nominations for the state bar’s Judicial Award of Merit through March 15, 2007. Nominations should be prepared and mailed to:

Keith B. Norman
Secretary
Board of Bar Commissioners
P.O. Box 671
Montgomery, AL 36101-0671

The Judicial Award of Merit was established in 1987. The award is not necessarily an annual award. It must be presented to a judge who is not retired, whether state or federal court, trial or appellate, who is determined to have contributed significantly to the administration of justice in Alabama. The recipient is presented with a crystal gavel bearing the state bar seal and the year of presentation.

Nominations are considered by a three-member committee appointed by the president of the state bar which then makes a recommendation to the board of bar commissioners with respect to a nominee or whether the award should be presented in any given year.

Nominations should include a detailed biographical profile of the nominee and a narrative outlining the significant contribution(s) the nominee has made to the administration of justice. Nominations may be supported with letters of endorsement.