

CHICAGO SUN-TIMES

Grilling by interest groups puts judges on the hot seat Chicago Sun Times January 27, 2006 Friday

Copyright 2006 Chicago Sun-Times, Inc.
All Rights Reserved
Chicago Sun Times

January 27, 2006 Friday
Final Edition

SECTION: EDITORIALS; Pg. 39

LENGTH: 721 words

HEADLINE: Grilling by interest groups puts judges on the hot seat

BYLINE: Cynthia Canary and Bert Brandenburg, Special to The Chicago Sun-Times

BODY:

Would-be judges in Cook County are now being served with subpoenas of their own. The Independent Voters of Illinois-Independent Precinct Organization has submitted election-year questionnaires to local judicial candidates, demanding to know their "positions" on a series of hot-button issues. Such pressure tactics threaten the fairness and impartiality of our courts of law.

Until a few years ago, judicial candidates could safely toss out pushy campaign questionnaires. State judicial ethics codes have traditionally prevented judicial candidates around the country from having to campaign like ordinary politicians, so that their impartiality on the bench won't be compromised by wedge issue pressure. But a 2002 Supreme Court decision, Republican Party of Minnesota vs. White, forced states to loosen their rules. By a 5-4 vote, the court struck down a rule barring a candidate from "announc[ing] his or her views on disputed legal or political issues."

"This opens a Pandora's box," warned the president of the American Bar Association when White came down, and he was right. Interest groups of all stripes immediately used the decision to begin demanding public answers from reluctant judges. The problem is not so much in the questions, but rather the interest groups' insistence that judges take stands on issues that they might be asked to hear in their courts. Judges are supposed to be fair and impartial, without regard to campaign trail politics.

There's no doubt that special interests view campaign questionnaires as a tool to pressure courts to rule "their" way. Would-be judges know that their answers could trigger significant money, political ads and grass-roots campaigns for or against their candidacy.

For example, just weeks after the Supreme Court's decision, Indiana Right to Life

sent questionnaires to all state judge candidates, seeking their positions on abortion rights, assisted suicide and in vitro fertilization. "Candidates not responding," the group warned, "will be identified as 'Refused to Respond' on our voter education materials." ("Refused to Respond," of course, is the kiss of death from an interest group.)

Last year, Idaho's Christian Coalition pressed would-be judges to agree with their statement that "God's Laws or Natural Laws have a high[er] authority than laws enacted by the United States Congress or the Idaho Legislature," that "the United States Constitution is Christian-based," and to agree to display the Ten Commandments in their courtrooms.

Ask yourself this: Is there any way judges can reasonably respond to such questions without appearing to take sides on issues that could come before them in court?

Our judicial system is supposed to produce fair and unbiased decisions, based only on the facts and the law. But when judges respond to interest group pressure by declaring their personal views on issues such as abortion -- and when those positions trigger campaign cash that helps judges get elected -- it clouds the public's confidence that judges will rule impartially when these issues are heard in court.

Does this mean that we shouldn't ask questions of judicial candidates? Not at all. A candidate in a judicial election is essentially applying for a job. All of the questions that are relevant in a job interview are fair to ask lawyers who would like to be a judge.

We should be concerned with the candidate's ability to perform the job, run a courtroom, make good decisions, and effectively manage their time. We should also want to know if they have won awards, are well-spoken, reasonable, thoughtful, and respected by their peers and clients. However, as in a job interview, questions about a candidate's personal views on abortion and religion ought to be beyond the scope of the job description.

We pay legislators and executives to sort out interest group demands; to make the right promises and stick to them if they're elected. But courts are supposed to decide cases one at a time, based only on the facts and the law before them, instead of being held hostage to political ultimatums. The people of Cook County deserve thoughtful, well-qualified judges who aren't pressured to decide cases before they even hear them.

Cynthia Canary is director of the Illinois Campaign for Political Reform. Bert Brandenburg is director of Justice at Stake in Washington.