

“Independence means you decide according to the law and the facts. The law and the facts do not include deciding according to campaign contributions. And if that’s what people think, that threatens the institution of the judiciary. To threaten the institution is to threaten fair administration of justice and protection of liberty.”<sup>10</sup>

It is critical for reporters covering the judiciary to understand the concept of judicial independence. An independent judiciary means courts can make impartial decisions and serve to keep the other branches of government in check.

Pressure to raise campaign funds can jeopardize judicial independence. Election behaviors can give the appearance of a judiciary beholden to campaign contributors, many of whom are lawyers or parties who might appear before the judge they helped elect.<sup>11</sup>

## CANDIDATES AND THE MEDIA

It may be hard to find appropriate questions to ask candidates when covering judicial elections. The King County Bar Association in Washington state has a list of potential questions for judicial candidates.<sup>12</sup> Examples include:

- What have been the most effective methods for improving court procedures and efficiency?
- What is your vision for the future of our judicial system? What changes would you advocate and why?
- What do you perceive as the greatest obstacles to justice, if any?

If these are examples of good questions for judicial hopefuls, then what are *bad* questions to ask a candidate? In short, questions about cases pending or about to come before the court are inappropriate.

In covering judicial elections, keep in mind that judges are sometimes called upon to make unpopular decisions, many of which involve complex cases that cannot be easily summarized in a succinct media sound bite. Also, while judges are not immune from criticism for their job performance, criticism *designed to intimidate judges as to future rulings* threatens judicial independence.

Media coverage of judicial elections can be a good thing. By providing thorough, accurate coverage of the

judiciary, the media can help foster public understanding of the judiciary. “Free elections and free speech are a powerful combination: Together they may advance our understanding of the rule of law and further a commitment to its precepts.”<sup>13</sup>

## OUR MISSION



*The Georgia Committee for Ethical Judicial Campaigns is a non-partisan group of Georgia citizens dedicated to preserving the dignity and integrity of Georgia’s judicial system.*

*We believe judicial candidates should aspire to the highest ethical standards to promote public trust and confidence in the fairness and impartiality of the Georgia’s courts. We do not endorse candidates. Instead we strive to educate the candidates, the media, and the public about judicial campaign conduct. We want to keep Georgia’s judicial elections fair and impartial, so that our courts can truly stand for justice for all.*

<sup>1</sup> White v. Republican Party of Minnesota, 536 U.S. 765, 806 (2002). (Dissenting)

<sup>2</sup> For the full text of the Georgia’s Judicial Election canons, go to <http://www.gasupreme.us> and click on New Judicial Election Rules.

<sup>3</sup> See White.

<sup>4</sup> Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002).

<sup>5</sup> The New Politics of Judicial Elections 2004, p. 2.

[www.justiceatstake.org](http://www.justiceatstake.org)

<sup>6</sup> Georgia Judicial Canons 7(B)(1)(c), (d), (e)

<sup>7</sup> Zogby International Poll for Justice at Stake. Conducted March 17-19, 2004.

<sup>8</sup> The New Politics of Judicial Elections 2004, p. 8.

[www.justiceatstake.org](http://www.justiceatstake.org)

<sup>9</sup> Zogby International Poll for Justice at Stake. Question 28.

<sup>10</sup> Interview for PBS Frontline: Justice For Sale.

<sup>11</sup> [www.constitutionproject.org](http://www.constitutionproject.org), Newsroom Guide, Introduction

<sup>12</sup> See full list of questions at: [www.constitutionproject.org/ci/newsroom\\_guide/questions.htm](http://www.constitutionproject.org/ci/newsroom_guide/questions.htm)

<sup>13</sup> White v. Republican Party of Minnesota, 536 U.S. 765, 795 (2002). Justice Kennedy concurrence.

# GEORGIA COMMITTEE FOR ETHICAL JUDICIAL CAMPAIGNS

2006 ELECTIONS



JUSTICE FOR ALL  
OF GEORGIA



CONTACT INFO

## JUDGES ARE NOT POLITICIANS

Judicial elections are different than other elections because the job of a judge differs from that of other elected officials. As Justice Ruth Bader Ginsberg puts it, “Judges ... are not political actors. They do not sit as representatives of particular persons, communities, or parties; they serve no faction or constituency.”<sup>1</sup> Judges do not advocate for anyone like politicians do. Their job is to rule impartially based upon the facts and law of each case.

## JUDICIAL ELECTIONS HAVE DIFFERENT RULES

Canon 7 of the Georgia Code of Judicial Conduct<sup>2</sup> states, “Judges shall refrain from political activity inappropriate to their judicial office.” A judicial candidate is not allowed to act as a leader or hold office in a political organization, make speeches for a political organization or candidate, or publicly endorse a candidate for public office. He or she cannot raise money for or contribute to political parties. In addition, judicial candidates may not make pledges or commitments on issues likely to come before the court.

## RECENT RULINGS

In 2002, the U.S. Supreme Court held in *Republican Party of Minnesota v. White (White)*<sup>3</sup> that part of Minnesota’s judicial canons violated judicial candidates’ First Amendment rights. The Court found the state could not deny judicial candidates the right to announce their personal positions on disputed legal and political issues.

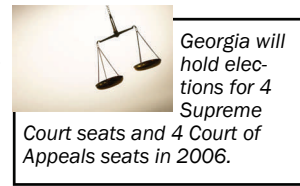
That same year, the Eleventh Circuit Court of Appeals held in *Weaver v. Bonner*<sup>4</sup> that Georgia’s judicial code contained a prohibited clause similar to Minnesota’s. In addition, the court also struck down Georgia’s canon

prohibiting judicial candidates from directly soliciting campaign funds. Previously, Georgia required judicial candidates to use fundraising committees



There were a total of 453 airings of television ads for Georgia Supreme Court races in 2004.<sup>5</sup>

and prohibited candidates from directly soliciting campaign funds. The Eleventh Circuit’s ruling means judicial candidates, including incumbent judges, can directly solicit campaign funds.



## NO MORE RULES? NOT EXACTLY.

These recent changes do *not* give candidates free rein to say anything they like. Georgia Judicial Canon 7(B)(1)(b) states: “Candidates, including an incumbent judge for any judicial office that is filled by public election between competing candidates: ... shall not make statements that commit the candidate with respect to issues likely to come before the court...”

In addition, candidates and their campaign committees may not knowingly or recklessly make false statements about themselves or opposing candidates. Candidates are responsible for reviewing and approving their statements and advertisements, as well as approving those made by their campaign committee.<sup>6</sup>

## A HIGHER STANDARD

We believe Georgia’s judicial candidates should aspire to a higher standard rather than just following the mandatory guidelines. While judges may be able to state their personal opinions on disputed issues, we urge candidates to use caution and restraint when stating their views. No one wants a judge who appears biased and had made up his or her mind before an issue comes before the court.

Voters nationwide have expressed concern about the results of *White*. A 2004 Zogby Poll<sup>7</sup> showed 82% of the nation’s voters were either very or somewhat concerned about interest groups pressuring candidates to take positions on controversial issues such as abortion and gun control in exchange for support in their election campaigns.

## INTEREST GROUP INVOLVEMENT

Zogby’s 2004 poll also showed 71% of voters thought campaign contributions from interest groups have at least some influence on judges’ decisions in the court-

room.

Third party interest groups can have a negative impact on the judiciary when they use questionnaires and “report cards” to demand that candidates take positions on controversial issues. **Such pressure undermines public trust in the judiciary.**

Another way third party interest groups are getting involved in judicial elections is through advertising. In several states, advocacy groups have attacked incumbent judges in television ads, often with misleading reports on decisions in which the judge participated.

The most common example seems to be the ad attacking a judge for reversing a conviction for child molestation—even though the law required the reversal, and several other judges concurred in the decision.

The groups running these ads tend to use names like “And For the Sake of the Kids” and are dedicated to issues completely unrelated to criminal justice, such as tort reform (pro or con). In 2004, 30% of the money spent on ads for state Supreme Court races came from interest groups.<sup>8</sup> To see examples of third party ads, go to: [www.brennancenter.org/programs/buyingtime\\_2004/index.html](http://www.brennancenter.org/programs/buyingtime_2004/index.html)

It is important to note that Georgia’s judicial canons do not hold candidates accountable for the content of third party ads on their behalf. Such groups are not required at the state level to disclose their list of donors to the public. In a national poll, eighty-two percent of voters supported the idea of a state law requiring disclosure of donors so the public can learn who paid for TV ads supporting or opposing judicial candidates.<sup>9</sup>



In 2004, 24 of 133 races for Superior Court were contested in Georgia.

## IMPORTANCE OF INDEPENDENCE

“Judicial independence” means judges should reach legal decisions free from outside pressures. Judicial independence does *not* mean judges make decisions based on their own opinions. U.S. Supreme Court Justice Stephen Breyer explains it this way: