The North Carolina Supreme Court in 2010: Is It Time for Reform?

By Scott W. Gaylord

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North Carolina courts, like state courts across the country, decide hundreds of cases each year that affect the lives, property, and businesses of its citizens in myriad ways—criminal cases, domestic violence actions, contract claims, business disputes, challenges to education funding, violations of the free speech and religion clauses, and everything in between. North Carolina, along with thirty-eight states, uses judicial elections to provide a "check" on the judiciary, making its judges directly accountable to its citizens. In the upcoming election, voters will be called on to elect one justice to the North Carolina Supreme Court and five judges to our Court of Appeals. But instead of focusing on these important races, much of the recent discussion about North Carolina's judicial branch has centered on claims that contested judicial elections threaten judicial independence and therefore should be replaced. Echoing calls by retired Justice Sandra Day O'Connor and others to end judicial elections, the North Carolina Bar Association has created a Judicial Independence Committee to explore shifting to a method of judicial selection modeled after the Missouri Plan.

Although discussions concerning different methods of selecting judges are important and deserve continued attention, they should not overshadow efforts to improve North Carolina's current system. The calls to change to a Missouri Plan system have drawn attention away from another important issue concerning the North Carolina Supreme Court that has received virtually no attention: the relatively few number of cases the Court decides each year. Over the last decade, our Supreme Court has been deciding fewer and fewer cases, leaving the legal community, entrepreneurs, business owners, and others with few guidelines to follow. As a result, the decisions of the Court of Appeals frequently have provided the highest authority on a wide range of issues that directly impact North Carolinians—from simple traffic cases to criminal murder cases to contract and corporate disputes.

Obviously, one needs to be careful about urging a court to do too much, by taking cases that it should not or does not have to in order to address issues beyond its ken. This may well be a problem elsewhere, but not in North Carolina. The purpose of this White Paper is to focus attention on both sides of the judicial selection debate as well as the diminishing productivity of our Supreme Court, in an effort to promote a more robust and informed debate on both issues.

I. Judicial Productivity and the North Carolina Supreme Court

As the highest court in our state judicial system, the North Carolina Supreme Court has the power to serve as the final authority on the meaning of state legislation and our state constitution. But, in recent years, the Court appears to have declined to exercise that power. In fact, the Court has, in comparison to the vast majority of states, not taken or decided many cases. According to a 2008 University of Chicago Law School Study (the "UCLS Study"), North Carolina's Supreme Court is ranked fiftieth (out of fifty-two state court systems) in terms of the number of cases it decided from 1998-2000.[1] To place that ranking in perspective, North Carolina is the tenth-most-populated state in the country, with roughly 9.4 million people,[2] and serves as the domicile for a relatively large number and variety of commercial centers.

In the three-year period evaluated in the study, our Supreme Court published only 262 decisions (not including short, per curiam type decisions), which translates into 12.5 opinions per justice per year. While our Supreme Court's productivity ranked near the very bottom from 1990-2000, a review of the Court's recently published decisions shows that the Court's productivity actually has gone down significantly since 1998-2000. Based on my calculations, from 2007 through 2009, the North Carolina Supreme Court

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has issued approximately 115 non-per curiam type decisions, which translates into an average of only 5.5 published decisions per justice each year. Moreover, unlike some state high courts across the country, our highest court cannot issue unpublished opinions. As a result, whereas many of the courts ranked in the UCLS Study may have decided more cases through unpublished opinions, the published opinions of our Supreme Court reflect the actual number of cases resolved each year. North Carolina, therefore, actually may be deciding even fewer cases in relation to other state courts than the ranking suggests.

These findings raise a number of important questions that the legal community, the press, opinion leaders, and public officials should address. First, does the absence of well-established Supreme Court case law create an environment of uncertainty for those who may be looking to operate in, or bring jobs to, North Carolina? The North Carolina General Assembly has given some indication of how it believes this question should be answered. In the mid-1990's, the legislature created the North Carolina Business Court, a specialized forum of the North Carolina State Courts' trial division, to hear cases involving complex and significant issues of corporate and commercial law. The purpose of the Business Court was "to help create a legal environment that would attract businesses to the State of North Carolina and provide businesses the flexibility and support they need to operate successfully."[3] But as every law student learns, it is the written opinions of a supreme court that provide guidance to the lower courts and ultimately create a body of case law upon which citizens and corporate entities like schools, hospitals, and businesses can rely. Given the small number of cases that our Supreme Court is deciding, though, some believe that our business courts are being forced to look to other jurisdictions for guidance in developing North Carolina's corporate law. For example, in *State v. Custard*, which involved the fiduciary obligations of directors of a North Carolina insurance company, the Business Court decided four previously unresolved points of North Carolina corporate law by drawing on case law from other jurisdictions, especially Delaware.[4] Thus, to those who believe that the North Carolina Supreme Court's decisions could impact the state's ability to attract new businesses and entrepreneurs, the probability that the North Carolina Supreme Court is unlikely to create a developed body of business or corporate law in the near future is troubling.

Second, are there institutional problems within our judiciary that are limiting the productivity of our Supreme Court? While some might contend that the limited number of decisions provides a reason for moving away from judicial elections, there does not seem to be a direct correlation between a court's low productivity and its method of selection. In fact, according to the UCLS Study, the opposite appears to be true—elected judges generally are more productive than their appointed counterparts.[5] Accordingly, the legislature, legal community, and electorate should take a closer look at our judiciary to address any problems that might be interfering with the Court's ability to hear and resolve cases. Although a co-equal branch of government, our courts receive less than three percent of the annual state budget. Is insufficient funding related to diminished productivity and, if so, what level of funding is required to make sure that our courts are functioning properly?

Third, because North Carolina elects its judges, is it even more important that its Supreme Court take cases and publish opinions? Published opinions are the most reliable and easily accessed public record of a justice's reasoning, and they provide a basis by which citizens can evaluate the judges that appear on the ballot in judicial election cycles. Under our current system of judicial selection, judges are directly accountable to voters. Thus, if one agrees that judicial philosophy and quality of opinions are legitimate criteria by which to evaluate judges, then one could also argue that a court's low productivity hinders the public's ability to learn more about the judges on our courts and, consequently, to provide the requisite check on the judiciary.

Of course, the North Carolina Supreme Court does more than just issue published opinions. Among other things, it also resolves hundreds of petitions for discretionary review each year, hears appeals from State Bar disciplinary hearings, and undertakes important administrative responsibilities related to the court system as a whole. But, as the UCLS Study indicates, the Supreme Court's published opinions provide an

important measure of how the Court is carrying out a core function—to decide cases between and among parties. If that function is its primary function, a court that is deciding more cases is (by this measure, at least) the better court, all other things being equal.[6]

II. Judicial Elections and Judicial Independence

At the time of the founding of the United States, the North Carolina legislature appointed our judges for lifetime terms. In 1868, North Carolina adopted its post-Civil War Constitution, which changed our system of judicial selection from appointments to a system of direct, partisan elections. Since 2004, our appellate court elections have been nonpartisan, i.e., the political affiliation of the judicial candidates has not been shown on the ballot.[7] Though the shift to judicial elections is often presented as little more than an expression of Jacksonian democracy, historical records indicate that proponents of elections were seeking to eliminate "the corrosive effects of politics and . . . to restrain legislative power."[8] In their view, for the system of checks and balances to function properly, the judiciary needed to be free from the other coordinate branches of government so that judicial candidates would not be dependent on members of the other branches for their jobs.

Recent calls to replace judicial elections with a Missouri Plan system stem in large measure from the perception that judicial independence now faces a different threat: campaign contributions and expenditures. Critics of judicial elections contend that judges are compelled to solicit large amounts of money from individuals, businesses, unions, or other associations that might eventually appear in their courtrooms. Regardless of whether such campaign funds actually influence a judge's decision in a particular case, they argue that the funds create the appearance of bias, which undermines the integrity of the system. As Justice O'Connor, who has become one of the leading critics of judicial elections since her retirement from the Supreme Court, recently stated, "Left unaddressed, the perception that justice is for sale will undermine the rule of law that the courts are supposed to uphold."[9]

Moreover, two recent developments also have drawn attention to judicial elections in North Carolina and across the country: (i) an August 2010 study by the Justice at Stake Campaign, showing a dramatic increase in campaign spending in judicial elections, and (ii) the United States Supreme Court's recent decisions in *Caperton v. A.T. Massey Coal Co.*[10] and *Citizens United v. FEC*.[11] In its recent study, the Justice at Stake Campaign argued that overall spending on judicial elections has increased significantly in the last decade. From 2000 through 2009, state supreme court candidates across the United States spent $206.9 million, which is roughly 2.5 times the amount spent from 1990 through 1999.[12] In the 2007-08 election cycles alone, candidates in Pennsylvania spent more than $10 million, while Wisconsin saw candidates spend $8.5 million, and Texas and Alabama each surpassed the $5 million mark.[13] According to Justice O'Connor and others, as the cost of judicial elections continues to increase, the threat that judges will (at least subconsciously) consider the political ramifications of their decisions and that judicial campaign contributions will influence—or at least appear to influence—judicial decision-making also increases.[14]

But some disagree with Justice O'Connor and the Justice at Stake Campaign, going so far as to question their use of potentially misleading funding figures. For instance, Ric Simmons, a professor at the Ohio State University Moritz College of Law, recently responded by writing:

> Opponents of judicial elections now have the $206.9 million figure as their latest weapon in this debate. But this number reflects an aggregate, national number over a 10-year period. In the last election cycle (2007-08), Supreme Court elections across the country generated $45 million in campaign spending. This was spread out over 40 elections in 21 states—for an average of about $1 million per Supreme Court election.
>
> Is this too much money to spend on judicial elections? After all, these are important positions in state government—arguably comparable to a congressional seat or a Senate seat. One million dollars spent over a two-year period to explain to the voters of an entire state about who you are, what kind of judge you will be and how you differ from your opponent is not an extraordinary

> amount of money. The average Senate election in 2007-08 cost over $12 million, and the average House election cost over $1.6 million. During that same period, McDonald's averaged $34 million per state on advertising to persuade us to buy its hamburgers.
>
> In fact, the amount of money spent in real terms has been falling substantially since the beginning of the decade. Using 2008 dollars, the amount of money spent in the 1999-00 election-year cycle was $57 million; in 2003-04, it was $52 million; and by 2007-08, it had dropped to $45 million, a 21 percent drop from eight years before.[15]

This trend seems to have held true in North Carolina as well. While candidates running for the North Carolina Supreme Court in 2000 raised more than $1 million, in 2007-08 the two candidates running for one seat on our Supreme Court raised only $178,273.[16] And some who disagree with Justice O'Connor and the Justice at Stake Campaign also point out that critics of our current elective system should be wary to complain that voters do not know who the judicial candidates are when so little money is spent on a statewide campaign for such an important judicial position.

But critics of judicial elections also cite the Supreme Court's 2009 decision in *Caperton* as a prime example of campaign expenditures threatening judicial independence. As the Supreme Court repeatedly noted, the facts of *Caperton* were "extreme."[17] The lower court had entered a $50 million verdict against the coal company. While that verdict was on appeal, the CEO of the company made $3 million in personal expenditures against the incumbent running for a seat on the West Virginia Supreme Court.[18] The candidate who benefited from the independent expenditures won the election and ultimately cast the deciding vote overturning the $50 million verdict against the coal company.

The *Caperton* majority found that these expenditures created a "probability of bias" that required the newly elected West Virginia Supreme Court justice to recuse himself under the Due Process Clause of the Fourteenth Amendment. That is, because the CEO "had a significant and disproportionate influence in placing the judge on the case" while the case was pending, "the risk that [the CEO's] influence engendered actual bias is sufficiently substantial that it 'must be forbidden if the guarantee of due process is to be adequately implemented.'"[19] But, although the Court fashioned a new Due Process standard governing recusals, it did not challenge the right of individuals to make independent expenditures—even $3 million worth—in judicial campaigns.[20] Rather, the Court held that judicial independence would be preserved in extreme cases such as *Caperton* through its new "probability of bias" rule and that the State codes of judicial conduct would otherwise "maintain the integrity of the judiciary and the rule of law."[21]

Chief Justice Roberts, joined by Justices Scalia, Thomas, and Alito, dissented. In particular, Chief Justice Roberts questioned the Court's new "probability of bias" rule, contending that it "provides no guidance to judges and litigants about when recusal will be constitutionally required."[22] According to Chief Justice Roberts, the lack of clear guidance, in turn, "will inevitably lead to an increase in allegations that judges are biased, however groundless those charges may be. The end result will do far more to erode public confidence in judicial impartiality than an isolated failure to recuse in a particular case."[23] To emphasize what he viewed as the problem with the majority's reasoning, Chief Justice Roberts provided a list of forty questions left unanswered in the majority's decision, including:

> What level of contribution or expenditure gives rise to a "probability of bias?"
>
> How long does the probability of bias last? Does the probability of bias diminish over time as the election recedes? Does it matter whether the judge plans to run for reelection?
>
> When do we impute a probability of bias from one party to another? Does a contribution from a corporation get imputed to its executives, and vice-versa? Does a contribution or expenditure by one family member get imputed to other family members?
>
> What if the election is nonpartisan? What if the election is just a yes-or-no vote about whether to retain an incumbent?[24]

In addition, Chief Justice Roberts highlighted a problem that some think critics of judicial elections all too frequently ignore—the threat of bias created by legislative or executive appointments. "Does close personal friendship between a judge and a party or lawyer [or an appointment committee member] now give rise to a probability of bias?"[25] Chief Justice Roberts and critics of the Court's *Caperton* opinion emphasize that the majority's decision did not resolve any of these important questions.

Yet concerns over the impact of campaign spending on judicial independence increased earlier this year when the Supreme Court issued its opinion in the *Citizens United* case. In *Citizens United*, the Court held that the First Amendment protects the right of corporations to make independent expenditures from their general treasury funds. Moreover, third parties—individuals or corporations—are free to make such independent expenditures in judicial elections. Absent government-imposed limits, corporate spending could theoretically increase the total spent on judicial elections in states like North Carolina and, so the argument goes, further threaten judicial independence.

In response to calls for reform in states that elect judges, judicial selection scholars Chris Bonneau and Melinda Gann Hall have argued that "appointment schemes are characterized by intense partisanship, cronyism, and elitism. . . . In many ways, the pathologies of appointment systems are worse."[26] For example, critics of the Missouri Plans used in several states contend that such appointment systems rely too heavily on the nominating committees and, in the process, "eliminate[] the requirement that the governor's pick be confirmed by the senate or similar popularly elected body."[27] Other critics argue that appointment-based systems are subject to disproportionate control by certain groups, such as state bar associations. According to Vanderbilt Professor Brian Fitzpatrick, lawyer-dominated committees aggravate, rather than improve, partisan outcomes in Missouri Plan states:

> It is hard to believe that the lawyers who select judges in merit systems care less about the decisional propensities of judicial candidates than do voters or elected officials. Not only do lawyers have opinions about public policy they wish to vindicate as much as non-lawyers do, but the lawyers who sit on these commissions also practice in front of the judges they select. It is hard to believe these lawyers care only about whether the judges who hear their cases issue learned and scholarly opinions; surely these lawyers also care about whether a judicial candidate will be inclined to rule in their favor.[28]

Bonneau, Hall, and others who write in defense of judicial elections, also suggest that the threat to judicial independence created by appointment systems may be more difficult to monitor than campaign expenditures. Disclosure requirements make it relatively easy to determine how much an individual or corporation spent in a campaign, which is how the parties in *Caperton* knew that the coal company CEO had made $3 million in personal expenditures on the campaign. As a practical matter, though, there is no similar way to track the impact of political influence or debts of gratitude on judicial appointees. Thus, it is argued, although *Caperton* made "probability of bias" claims dependent upon the circumstances surrounding the financing of a judge's campaign, there is no good way for courts to measure due process concerns arising out of less visible relationships. For example, how does one measure the impact of "friendship with a party or lawyer, prior employment experience, membership in clubs or associations, prior speeches and writings, religious affiliation, and countless other considerations,"[29] including the role a party or lawyer played in helping to get a judge appointed? To phrase this criticism of appointment or merit-based selection another way: In an appointment or merit-based system, citizens will have to defer to the integrity of the governor, selection committee, and judicial appointee, even though critics of judicial elections are unwilling to grant such deference to an elected judge.

Furthermore, supporters of the current system also argue that it promotes accountability. North Carolina's judges are, quite literally, accountable directly to the people of North Carolina. If the voters believe that a North Carolina judge has failed to exercise the proper judicial restraint or otherwise carry out his constitutional responsibilities, they can elect someone who better reflects their judicial philosophy. That is,

after evaluating the judge's integrity, as reported by colleagues and lawyers who practice in front of that judge, the quality of the writing and reasoning in the judge's decisions, and the relationship of the decisions of the judge to the text and original meaning of the North Carolina and United States Constitutions, the public might determine that a judge has not been faithful to the text and original meaning of the constitution. Accordingly, as discussed above, published opinions are particularly important in North Carolina because they provide a record of the justices' reasoning, which can be evaluated and then responded to during the next election.

Although many critics of judicial elections point to the alleged threat to judicial independence created by an increase in campaign spending across the country, others argue that it is far less clear that abolishing judicial elections is the only or best way to improve the judicial branch. For instance, Professor Fitzpatrick conducted a study of the Missouri Plan systems in Missouri and Tennessee and found that these systems resulted in what some consider to be very partisan results. For instance, according to Professor Fitzpatrick, since 1995 eighty-seven percent of the appellate nominees in Missouri who made any campaign contributions gave more to Democrats than Republicans, and only thirteen percent gave more to Republicans than Democrats. Moreover, only seven percent of the money contributed went to Republican candidates.[30] According to Carrie Severino, a lawyer for an organization that opposes the Missouri Plan, "[t]he failure of the judicial appointment process to produce what its advocates promised—a less 'politicized' judiciary—is leading to backlash in Iowa, Missouri, Colorado, and Kansas, and the movement is spreading to other states."[31]

For more than 140 years, North Carolinians have trusted judicial elections to choose judges, despite repeated efforts to alter our selection system. In 1974 and 1977, the North Carolina General Assembly considered and narrowly defeated legislation supporting a Missouri Plan system, even though the 1977 bill had the support of the chief justice and the North Carolina Bar Association. In 1987, the General Assembly created a judicial selection study commission, which recommended that North Carolina move to an appointment system. And in 1989, 1991, 1995, and 1999, the North Carolina Senate approved legislation to create a hybrid system involving one or more of merit selection, gubernatorial appointment, legislative confirmation, and retention elections, but each such effort ultimately failed in the House.[32] Most recently, in the spring of 2009, the North Carolina House of Representatives passed a bill proposing retention elections, but that too failed to get traction in the Senate. Further, in an effort to avoid the influence of partisan labels, North Carolina began instituting nonpartisan elections in 1998 for superior court judges and extended it to district court and appellate court judges in 2002 and 2004, respectively.

In the wake of *Caperton* and *Citizens United*, much of the current discussion about state courts has focused on judicial elections and the campaign contributions associated with many of those elections. To date, thankfully, there does not seem to be a body of evidence indicating that the integrity of North Carolina's state courts have been compromised by the election process. Moreover, despite frequent attempts to change our system of judicial selection, North Carolinians apparently have not been persuaded that there is a problem that would justify calls for dramatic reform, which would have to include an amendment to our state constitution.

III. Conclusion

This White Paper is intended to (i) begin a dialogue about ways to improve our judicial system (e.g., by taking steps to reverse the marked decrease in judicial productivity over the last decade) without having to amend our state constitution, and (ii) enhance the ongoing discussion about the proper method of selecting judges in North Carolina. With regard to the North Carolina Supreme Court's docket, public officials and leaders in the legal and business sectors should consider whether the state would benefit from a Supreme Court that takes more cases and publishes more opinions. Are specialized lower courts sufficient to create a cohesive and binding body of law in those areas that affect the state's economic climate? Or is there a benefit from having our highest court provide definitive interpretations of our corporate statutes and constitution?

Moreover, with respect to the ongoing discussions about a move to a merit-based system, North Carolinians should engage in a robust public discussion about the strengths and weaknesses of various methods. As part of that dialogue, the public and our civic leaders should ask themselves some challenging questions. Would a Missouri Plan system eliminate the "probability of bias" arising from political connections? If North Carolina adopted a system that required retention elections would judges still be tempted to rule in certain ways in controversial cases? Would such a system jeopardize judicial accountability and subject judges to a new type of political pressure? Given that the ultimate resolution of these questions will have a profound impact on our courts, it is critically important that the debate consider all viewpoints on these issues. After all, as James Madison famously wrote, "[i]n framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."[33] Since 1868, North Carolina has relied on the people to oblige the judiciary to control itself, and before amending our constitution to change that system, North Carolinians should have a thoughtful and informed dialogue that examines whether the alleged problems with campaign expenditures would be replaced by the problems that may flow from political patronage.

Endnotes

1 Stephen J. Choi, Mitu Gulati & Eric A. Posner, Which States Have the Best (and Worst) High Courts?, John M. Olin Law & Economics Working Paper No. 405, at 17 (May 2008) [hereinafter UCLS Study], *available at* http://www.law.uchicago.edu/Lawecon/index.html. Ranking the various state courts across the country based on their productivity, opinion-quality, and independence, the UCLS Study placed North Carolina's courts in the bottom ten performers. *Id.*

2 U.S. Census Bureau, Census Cumulative Estimate (July 1, 2009), *available at* http://www.census.gov/popest/states/NST-pop-chg.html.

3 Chief Justice's Comm'n on the Future of the North Carolina Business Court, Final Report and Recommendation (Oct. 28, 2004), *available at* http://www.ncbusinesscourt.net/ref/Final%20Commission%20Report.htm.

4 State *ex rel.* Comm'r Ins. v. Custard, 2010 NCBC 6 (Mar. 19, 2010).

5 UCLS Study, *supra* note 1, at 4.

6 *Id.* at 10.

7 Superior court and district court elections became nonpartisan in 1998 and 2002, respectively.

8 Kermit L. Hall, *The Judiciary on Trial: State Constitutional Reform and the Rise of an Elected Judiciary, 1846-1860*, 44 Historian 337, 343 (1983).

9 Justice Sandra Day O'Connor, Foreword, The New Politics of Judicial Elections 2000-2009: Decade of Change (Aug. 2010), *available at* http://www.justiceatstake.org/media/cms/JASNPJEDecadeONLINE_8E7FD3FEB83E3.pdf.

10 Caperton v. A.T. Massey Coal Co., 129 S. Ct. 2252 (2009).

11 Citizens United v. Fed. Election Comm'n, 130 S. Ct. 876 (2010).

12 James Sample et al., The New Politics of Judicial Elections 2000-2009: Decade of Change, 2 (Aug. 2010), *available at* http://www.justiceatstake.org/media/cms/JASNPJEDecadeONLINE_8E7FD3FEB83E3.

13 *Id.*

14 *See* J. Christopher Heagarty, *The Changing Face of Judicial Elections*, N.C. St. B.J. 19, 20 (Winter 2002) (quoting an Ohio AFL-CIO official for the proposition that "[w]e figured out a long time ago that it's easier to elect seven judges than to elect 132 legislators").

15 *See* http://www.dispatch.com/live/content/editorials/stories/2010/10/16/cost_judicial_elections.html?sid=101.

16 Sample et al., *supra* note 12, at 20.

17 Caperton v. A.T. Massey Coal Co., 129 S. Ct. 2252, 2265 (2009).

18 In *Caperton*, there was no dispute that A.T. Massey's CEO contributed only the statutorily proscribed $1,000 maximum to the candidate's campaign.

19 *Id.* at 2263-64 (quoting Withrow v. Larkin, 421 U.S. 35, 47 (1975)).

20 *See*, *e.g.*, Buckley v. Valeo, 424 U.S. 1, 47 (1976) ("Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive.").

21 *Caperton*, 129 S. Ct. at 2266.

22 *Id.* at 2267 (Roberts, C.J., dissenting).

23 *Id.*

24 *Id.* at 2269-71.

25 *Id.* at 2270.

26 Chris W. Bonneau & Melinda Gann Hall, In Defense

of Judicial Elections (2009).

27 Stephen J. Ware, *The Missouri Plan in National Perspective*, 74 Mo. L. Rev. 751 (2009).

28 Brian T. Fitzpatrick, *The Politics of Merit Selection*, 74 Mo. L. Rev. 675 (2009).

29 *Caperton*, 129 S. Ct. at 2268 (Roberts, C.J., dissenting).

30 Fitzpatrick, *supra* note 28.

31 *See* http://www/nationalreview.com/bench-memos/245178/less-politicized-judiciary-hardly-carrie-severino.

32 *See* Am. Judicature Soc'y, History of Reform Efforts: North Carolina, *available at* http://www.judicialselection.us/judicial_selection/reform_efforts/failed_reform_efforts.cfm?state=NC (last visited September 10, 2010).

33 The Federalist No. 51 (James Madison).

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