

Judicial Elections

Truth, Justice, All That Stuff



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“Does he still stand for truth, justice, all that stuff?” asked Perry White in last summer’s “Superman Returns.” That latest iteration of the famous declaration cleverly mixes worldly skepticism and childlike hope.

It is with the same mix of skepticism and hope that litigants approach the courts. By and large, Georgia’s courts are committed to fulfilling the hope. Georgia’s appellate judges lead a judicial culture dominated by men and women who would rather lose their offices than allow themselves to become unworthy of them.

In twenty years practicing mostly before those appellate judges, I have suffered many defeats. A few of those defeats have left me disappointed with the judges and justices; a very few have left me bitterly disappointed. But overall, I have seen an appellate judiciary committed to the ideals engraved above their benches: “Upon the Integrity, Wisdom and Independence of the Judiciary Depend the Sacred Rights of Free Men and Women” and “Fiat Justitia, Ruat Caelum” (“Let Justice Be Done Though the Heavens May Fall”).

The cornerstone of justice is impartiality. Until a few years ago, fealty to the ideal of impartiality was an enforceable duty. The Judicial Qualifications Commission could discipline judges and judicial candidates who announced prejudgments of issues likely to come before them.

Now, however, the federal courts have held that such restrictions violate the First Amendment. As a result, candidates for judicial office now have a constitutional right to campaign in such a way as to demonstrate their complete unfitness for judicial office.

Those federal decisions are not wholly indefensible. It is a fair criticism of judicial campaigns that voters often have difficulty getting useful information.

Information about judicial candidates’ predispositions is useful. All judges have predispositions that affect their decisions. No one could become competent to serve as a judge without acquiring such predispositions. Insight into those predispositions can be gleaned from what a judicial candidate has done on the bench or in practice. But careful analysis is necessary. Scorecards should be taken with a shaker of salt.

So the desire to hear judicial candidates expound upon their predispositions is understandable. Judicial candidates can do very little to accommodate that desire, however, unless they are willing to undermine the impartiality of the court on which they

aspire to serve.

The Canons of Judicial Ethics now recognize the right of judicial candidates to talk about their predispositions, but encourage them to emphasize the duty of a judge to uphold the law, regardless of personal predispositions. The difficulty with the revised canons is that there is a slippery slope between talking about one’s predispositions and running on them.

It is one thing for a judge dedicated to fair and impartial application of the law to be influenced by personal predispositions. It is quite another for a judge or candidate for judicial office to give free reign to those predispositions, to willfully subordinate the law to those predispositions, and to build a political campaign around declarations of hostility to certain classes of litigants or announcements of planned rulings in pending cases. Such judges and such judicial candidates are a threat to the rule of law.

Lawyers are uniquely qualified to explain to their clients, friends and family the difference between predispositions and prejudgment and to explain that the preeminent qualifications for judicial office are fairness and impartiality. As this year’s judicial election approaches, it is the duty of every lawyer to do so.



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