BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW

North Carolina Judicial Elections
Updated 03/16/04

1. Editorial argues that the North Carolina legislature, "despite political pressures and views to the contrary, should address the possibility of a constitutional change to a [judicial] appointive system." The editorial points to the announcements made by two retiring state court of appeals judges -- Joseph John and John Lewis Jr. -- as indicative of the problems associated with judicial elections. Both judges remarked on the difficulty in maintaining "the high standards required by [judicial] duties while attending to the time-consuming demands of a political campaign." The editorial asserts that "those who rule on the most profound legal issues of the time should be measured only by their intellectual qualifications, temperament and experience, not by their political acumen." *Gaps on the Bench*, The News-Observer (Raleigh, N.C.), January 20, 2000.

2. Op-ed advocates a switch from judicial elections to judicial appointments in North Carolina. The op-ed argues that state court decisions exert a powerful influence over the lives of ordinary citizens, "which is why it ought to give us a shiver when competent, experienced, respected judges tell us 1) that [North Carolina's] method of choosing [judges] has popped a gasket, and/or 2) that they no longer want to play the game." The op-ed points to two North Carolina Court of Appeals judges, Joseph R. John and John Lewis Jr., who recently left the bench citing the pressures of an elective system. The op-ed concludes, "the mere thought of judges being chosen on the basis of who can posture most effectively, who can hit the hot buttons most adroitly, who can tap contributors most successfully is poison to our faith that justice is being dished out with an impartial hand." Steve Ford, *Judges on the Stump: Risky Way to Pick, News &*, Observer (Raleigh, N.C.), January 23, 2000.

3. Article reports that, prior to appearing before the North Carolina Supreme Court in a dispute concerning the largest attorney award in state history, class action plaintiffs' attorneys asked their clients to contribute to the re-election campaign of Chief Justice I. Beverly Lake, Jr. Attorneys for Womble, Carlyle, Sandridge, and Rice, representing 200,000 retirees, recovered $799 million in improperly withheld pension funds and earned $64 million in fees. An attorney for Womble joined with a representative of the retirees to send letters to 15,000 clients to solicit decisions for Chief Justice Lake. Lake authored the 1998 decision rejecting the state's argument that the plaintiffs' case was invalid because they did not file protests within the required period of time. While claiming that "if everybody who has participated or been involved in this case recused, we wouldn't have a majority on the court," Chief Justice Lake has also said that he will consider ! recusing himself from the case. Gener R. Nichol, Dean of the University of North

Carolina School of Law, asserts that the attorney's actions point to the need for a merit selection sytem: "We've gotten used to the notion of people purchasing influence in the legislative process. I hope we never get used to people purchasing influence in the judicial process." David Rice, *Donations to Justices Questioned,* Winston-Salem (N. C.), October 21, 2000.

4. Editorial finds that allegations that a North Carolina district judge used his courtroom to ask for campaign support from defendants and an attorney who had appeared before him offer new reasons to support a system of judicial appointments. The editorial asserts that "we're certain that most North Carolina judges don't engage in this sort of conduct and would find it offensive. But the fact is that our state's system of requiring judges to run in contested elections -- and raise the money it takes to conduct a campaign -- creates an unheavenly host of pressures." The editorial concludes that merit selection would be a better alternative. *Judicial Error*, Charlotte (N. C.) Observer, October 23, 2000.

5. Editorial proclaims that recent controversies in the race for North Carolina Supreme Court Chief Justice "taint the candidates and damn the system under which they run." Last week, associate Justice I. Beverly Lake, Jr. heard arguments regarding attorney's fees in a class-action case involving Ira Schwarz, a Raleigh attorney for the plaintiffs who has sent fund-raising letters on Justice Lake's behalf to his 15,000 clients. (See Court Pester, Oct. 31.) In addition, Chief Justice Henry Frye recently heard arguments in a death-penalty case, in which the defense attorney had sent fund-raising letters on behalf of Frye's opponent. The editorial chastises both Justices for not recusing themselves and concludes "the partisan election of judges must end and alternative campaign funding must be found." *Judges and Campaigns*, Winston-Salem (N. C.) Journal, November 1, 2000.

6. Editorial laments that state Supreme Court elections fail to "rise above the worst aspects of politics." For example, a Michigan Republican Party ad criticizes a Supreme Court candidate who upheld a pedophile's purportedly light sentence by flashing the word "pedophile" in large type by the candidate's name. The editorial also finds troubling the trend of "mudslinging, sleazy campaign solicitations and negative advertising masquerading as innocuous 'voter education.'" In North Carolina, a Supreme Court Justice running for the Chief Justice position has solicited donations from retirees who benefited from his ruling in their case. The Alabama Christian Coalition has sent questionnaires to judicial candidates inquiring into their political and social views. Furthermore, Citizens for a Strong Ohio sponsored an advertisement accusing a Supreme Court candidate of corruption. As solutions, the editorial endorses merit selection and, failing that, public financing of judicial elections. *Corrupting Influences Grow in Contests for Judgeships*, USA Today, November 2, 2000.

7. Article reports that lawyers, state court judges and justices convened at the University of Toledo, Ohio to discuss judicial selection methods. North Carolina appellate judge James Wynn, twice nominated by President Clinton to the U.S. Court of Appeals for the Fourth Circuit, contended that judicial elections compromise a judge's integrity. Wisconsin Supreme Court Justice Diane Sykes lamented that "court races are now resembling legislative races, both in terms of their rhetoric and their expense." Michigan Supreme Court Justice Clifford Taylor attributed the rise in campaign spending to the "breathtaking" influx of contributions by trial lawyers. Justice Taylor also questioned the link between elections and accountability: "Campaigning is a humbling experience but [offers] only a token accountability because most voters don't know enough about the candidates to make intelligent decisions." Steven Hantler, assistant general counsel for DaimlerChrysler Corporation, ! defended judicial elections: "Today, we all have so much at stake in how our courts now operate. The very foundation of corporate America hangs in the balance of how courts now operate." Fritz Wenzel, *Judicial Experts at UT Law Forum Divided on Value of Elected Bench*, Toledo Blade, March 31, 2001.

8. Article reports that in North Carolina's 2000 judicial elections, "Democrats outspent Republicans by whopping margins, only to lose two high court races." Democratic incumbent Chief Justice Henry Frye spent nearly $1 million on his campaign, outspending his Republican opponent by four to one. Fellow Democratic incumbent Justice Franklin Freeman spent nearly 67% more than his Republican opponent, who also refused to accept donations from attorneys. Paul Shumaker, a North Carolina political consultant, postulates: "What has happened in the last eight years is that . . . Republicans have a structural advantage. The reason is that judges . . . are viewed as the people who ultimately have to put bad guys behind bars -- and when it comes to doing that, voters think Republicans will be tougher. That tends to make the amount of money spent somewhat irrelevant." Former Chief Justice Frye adds: "public perception [about the crime issue] quite often can become reality. It's difficult, and expensive, to convince a person that his perception is not reality -- especially when you don't have the free and open exchange of views you have in legislative and other races." Freeman's opponent, Justice Bob Edmunds estimated that a judicial campaign needed to spend at least $400,000 to make successful inroads with the electorate. Frye's opponent, Chief Justice I. Beverly Lake, Jr. bemoaned the importance of fundraising: "it's the most distasteful aspect of politics. . . . It's not something I think is good for the judiciary." Ertel Berry, *Party Labels Outweighed War Chests in 2000 High Court Races*, North Carolina Lawyers Weekly, April 1, 2001.

9. Article reports that the North Carolina Senate narrowly approved a proposed constitutional amendment granting the governor the power to appoint appellate

judges, who would then face retention elections for subsequent terms. Sen. Fountain Odom, the bill's sponsor, opines, "This is not taking anything away from the people. . . . This provides for an election to be held next year to decide whether they want a different way to do things." Currently, high court judges are elected. The bill passed 31-17, with 30 votes required for approval. The Senate has twice passed similar bills but both measures were rejected by the House. Last week, the House Judiciary Committee rejected a similar bill but the chamber may still take it up. Gary D. Robertson, *Appointing Judiciary*, Raleigh News and Observer, April 25, 2001.

10. Editorial calls for the appointment of North Carolina's appellate judges: "It's a better, more reasoned system." It asserts that under the current system of judicial elections, "many statewide voters are unfamiliar with judicial candidates and are almost voting blind." Furthermore, judicial campaigns run the risk of sporting "most of the trappings of hard-core politics." The editorial endorses a bill passed by the state Senate pursuant to which judges would be appointed by the Governor, subject to General Assembly confirmation. *The Judge-ment Calls*, (Raleigh, N.C.) News and Observer, April 28, 2001.

11. Editorial calls upon the North Carolina House to follow the Senate in supporting merit selection of appellate judges: "If the House defeats or ignores the bill approved by the Senate, it would keep in place a hybrid system that is, in a word, nutty." According to the editorial, most judges are already seated by gubernatorial appointment, filling vacancies caused by elevation, resignation, or death. However, in such cases, there is no reviewing body and so, "the governor can appoint any political crony with a law degree. . . . North Carolina is fortunate that it has had as many good judges as it does." The editorial praises merit selection as a more reliable method of maintaining the judicial branch's integrity and for giving an opportunity to qualified individuals who do not want to politick for judgeships. If the legislature fails to approve merit selection, the editorial suggests that public funding of judicial elections be adopted. *Appoint Judges*, Charlotte Observer, May 4, 2001.

12. Op-ed by Gene Nichol, Dean of the University of North Carolina, Chapel Hill School of Law, calls for judicial appointments for appellate judgeships. Nichol asserts that due to voter ignorance, voters are unable to make informed choices in judicial races: "even a blind hog occasionally finds an acorn. But starkly uninformed decision-making has little to commend itself." Although restrictions on judicial speech contribute to this problem, Nichol contends that the alternative is worse, citing the example of a Texas judicial candidate who vowed to never reverse a capital murder case and "in over 200 decisions, . . . has kept her word." Furthermore, campaigns compromise judicial integrity because "unpopular decisions shorten careers" and campaign contributions chiefly come from likely

litigants. Gene Nichol, *Better Justice, by Appointment,* Raleigh, N.C. News-Observer, May 10, 2001.

13. Article reports that North Carolina Supreme Court Justice Bob Orr has "jump-started his re-election campaign for 2002." In response to Democratic appellate judge Bob Hunter's announcement of his candidacy, Justice Orr has hired an experienced Republican political consultant and started fund-raising. He regrets that campaigning has begun so early: "It's turned judicial races into an 18-month marathon. That means we'll have to spend more time on the road and raising money, and all the other things we shouldn't be doing." *Justice Cranks Up Campaign,* Raleigh (N.C.) News and Observer, May 31, 2001.

14. Article reports that several states have initiated efforts to "rein in aggressive politicking by judicial candidates, spurred on by last year's judicial elections, which were fiercer and more expensive than ever." Geri Palast, Executive Director of Justice at Stake, opines: "There is an understanding that this situation is going to escalate, so it's a moment when you want to draw a line in the sand." Some states, such as New York, are planning to provide voter guides, monitor interest-group advertising against judicial candidates, and create campaign oversight panels. Wisconsin and North Carolina are considering full public financing of judicial elections. Susan Armacost, Legislative Director of Wisconsin Right to Life, opposes full public financing: "we don't want our state tax dollars going to candidates who don't agree with our positions." In other states, calls for merit selection are growing, with supporters including Gov. Jo! hn Engler (R., Mi.), Gov. Tom Ridge (R., Pa.), and the chief justices of Michigan, Ohio, and Texas. William Glaberson, *States Taking Steps to Rein In Excesses of Judicial Politicking,* The New York Times, June 15, 2001.

15. Article reports that North Carolina is considering public financing of judicial elections. Last year's election rang in "the age of political consultants, big-time fund raising, and TV advertising in statewide judicial races" with $1.1 million being spent on the race for Chief Justice. A proposal by the Center for Voter Education would impose contribution limits and would give candidates who voluntarily agree to spending limits $75,000 and $150,000 for Court of Appeals and Supreme Court campaigns respectively. The funds would come not from taxpayers but from lawyers' license fees. Rob Christensen, *Financing Judicial Elections,* Raleigh (N.C.) News and Observer, July 6, 2001.

16. Editorial hopes that the American Bar Association's report on public financing of judicial elections will spur action in North Carolina. ABA President Martha Barnett recognized "an alarming increase in attempts by special interests to influence judicial elections through financial contributions and attack campaigning." The editorial concludes that given the unpopularity of merit

selection, the state should implement a proposal supported by several legislators for the creation of a Democracy Trust Fund, financed by an increase in lawyers' annual license fees, to give public funds to judicial candidates who agree to spending limits. *Choosing Judges*, Charlotte (N.C.) Observer, July 25, 2001.

17. Editorial proclaims: "a movement appears to be building to provide public financing of the campaigns of appellate court judges" in North Carolina. One proposal would use lawyers' license fees to fund the system. Republicans, who "have long formed the major opposition to public financing," according to the editorial, favor a voluntary tax contribution. Noting that last fall, the justices running for the Chief Justiceship participated in state Supreme Court cases in involving their fund-raisers, the editorial concludes, "fund-raising undermines public confidence in the judiciary." *Judicial Campaigns*, Winston-Salem (N.C.) Journal, August 2, 2001.

18. Paul Carrington, Professor at Duke Law School, supports "current legislative proposals to extend the terms of district judges and to provide for nonpartisan elections of those officers" in North Carolina. While partisan elections may have made sense when North Carolina was a one-party state, "in a two-party system, partisan elections make the trial judges vulnerable to dismissal from office for reasons having almost nothing to do with their performance." Moreover, longer terms "afford[] an appropriate measure of independence from" "the potential political influence of individuals who may appear before them as litigants or lawyers." Paul Carrington, *District Judges' Terms*, Raleigh (N.C.) News and Observer, August 9, 2001.

19. Editorial applauds North Carolina legislators' proposal for public financing of appellate judicial races. The plan would be financed by a $50 increase in attorneys' fees or a $1 taxpayer checkoff option. Candidates would be limited to raising $50,000 in contributions of $100 or less. Supreme Court candidates could receive $172,500, appellate court candidates $82,500. The editorial concludes, "judicial election campaigns . . . have become so expensive that citizens without great wealth cannot hope to run competitive campaigns unless they are willing to ask for -- and take -- big contributions. Those donations may come from those who one day will ask for a favor in return. That's a formula for disaster." *Judges and Money*, Charlotte (N.C.) Observer, August 12, 2001.

20. Article reports that the North Carolina legislature yesterday passed a measure approving nonpartisan elections for state district court judges. The state Senate voted, 32-12, in support of the measure. Gov. Mike Easley (R.) will now consider the legislation. *Legislature Gives Final Approval to Nonpartisan District Judge Races*, Associated Press, August 29, 2001.

21. Article reports that the North Carolina Senate has approved legislation creating a public financing system for state judicial elections. The bill would create a "fair elections fund," composed of voluntary income tax check-offs and contributions from attorneys. It would also create nonpartisan elections for appellate judges and require the distribution of voter guides featuring personal statements by the candidates. Chris Heagarty, director of the North Carolina Center for Voter Education, anticipates success in the House, noting that the state legislature passed a bill establishing nonpartisan district judge elections last year. Andrew Ballard, *North Carolina Judicial Campaign Reform Bill Moves in N.C. General Assembly*, Money and Politics, November 21, 2001.

22. The North Carolina Supreme Court has ruled that three appellate judges appointed to fill newly created seats must stand for election next year and not in 2004, as the state law establishing the judgeships mandated. Republicans challenged the law as an attempt to pack the state courts. The High Court ruled that the law violates the state constitution's stipulation that judicial appointees retain their position until the next election. In response, one judge stated that he would not seek election because campaigning would interfere with the performance of his judicial duties. Wade Rawlins, *3 Judges Must Run in 2002*, Raleigh News and Observer, December 19, 2001.

23. Article reports that the North Carolina Center for Voter Education will be airing 60-second radio advertisements supporting judicial election reform. The advertisements feature an imaginary baseball dispute in which an umpire must decide whether a base runner crossed home plate safely while the runner and the catcher each try to sway the umpire with bribes. The advertisement's narrator then states, "[y]ou can't give money to an umpire to influence a call, but in North Carolina today a small group of insiders can contribute thousands to influence judicial elections." Scheduled to air on nearly 100 stations, the advertisement seeks to strengthen support for pending legislation that would establish public financing for judicial elections. *Radio Spots Aim to Throw Heat to Judges, Lawyers*, Charlotte (N.C.) News & Observer, February 4, 2002.

24. Article reports that three judges from North Carolina's highest courts have issued public statements in support of public financing of judicial elections. State Supreme Court Justice G.K. Butterfield, Jr. and appellate judges Wanda Bryant and Jim Wynn have endorsed a bill that would establish a voluntary public financing system, funded by voluntary tax checkoffs and lawyers' fees. Judge Wynn states, "When you take your case to the courts, you want to feel sure the person who will adjudicate your case is fair and impartial." Judge Bryant, who is running for re-election this year, adds that with caseloads requiring up to 3000 pages of reading each week, judges have little time to both raise funds and fulfill

their duties. Eric Frazier, *3 Judges Endorse Campaign Funding*, Charlotte Observer, March 15, 2002.

25. Article reports that today the Supreme Court will hear oral argument in Republican Party of Minnesota v. Kelly, a challenge concerning Minnesota's prohibitions on judicial campaign speech. Opponents of the state's prohibitions charge that the restrictions violate the First Amendment and prevent voters from making informed choices. Supporters counter that freer speech would accelerate the politicization of judicial elections brought on by the rising cost in campaigns. A report by the Brennan Center for Justice, the National Institute on Money in State Politics, and Justice at Stake, found that campaign fundraising in the nation's 2000 Supreme Court races increased by 61% compared with 1998, and 100% compared with 1994. Stephen Bokat, general counsel of the U.S. Chamber of Commerce, states, "[t]he money has come in from all sides. Increasingly, [court races are] where the action has been." North Carolina appellate judge James Wynn argues that the trends have prompted a lack of voter confidence in elected judges, citing a recent survey by Justice at Stake finding that 76% of voters believe that campaign contributors receive special consideration in court. Richard Willing, *High Court to Weigh Limits on Judicial Races*, USA Today, March 25, 2002.

26. Editorial finds a set of surveys by Justice at Stake to offer good reasons for North Carolina to adopt public financing for judicial elections. According to the surveys, over three-quarters of voters and one-fourth of judges believed that campaign contributions influenced judicial decisions. Furthermore, 60% of voters, including 90% of African-American voters, believe that the wealthy and powerful enjoy a separate system of justice. Thus, it supports a measure approved by the state Senate and now pending in the House that would create a public financing fund for appellate judges from voluntary tax checkoffs and increases in lawyers' fees. The editorial notes, however, the presence of "sticky problems with the bill." First, incumbents may participate without meeting the minimum fundraising requirements taken to be proof of the viability of their candidacy. Second, candidates run in partisan primaries but face a non-partisan general election. *Justice At Stake?*, Charlotte Observer, April 3, 2002.

27. A North Carolina poll finds that "the public is worried about political influence in the judiciary." According to the poll, 84 percent of voters "are concerned that lawyers are the biggest contributors to the campaigns of judges," while 78 percent believe "political donations have some influence over judges' decisions." The survey of 600 likely North Carolina voters also found that 71 percent of voters support creating a system of voluntary public financing for judicial elections and making races for the high court nonpartisan. The survey was paid for by the North

Carolina Center for Voter Education. Rob Christenson, *Politics and the Bench*, Raleigh News & Observer, May 10, 2002.

28. Poll by the North Carolina Center for Voter Education finds that 84 percent of the 600 likely voters surveyed "are concerned about how judges raise money for their elections." Campaign contributions "influence judicial decisions," said 74 percent, though 81 percent still "preferred the election of judges over appointment." J. Barlow Herget, a former member of the Raleigh City Council and a judicial campaign consultant, calls for North Carolina residents to "apply our American genius" and seek alternatives to the current election system, such as nonpartisan elections (favored by 89 percent of respondents) and some level of public financing for Court of Appeals and Supreme Court races. He calls on the General Assembly to pass a bill, already adopted by the Senate, that would implement these reforms. J. Barlow Herget, *It's Time for Judicial Reform*, Charlotte (N.C.) Observer, May 31, 2002.

29. Editorial discusses a report by the North Carolina campaign watchdog group Democracy South that "confirmed what many already suspected - that judges and candidates for the courts raise most of the money [for their campaigns] from lawyers and their families." This means that "judicial candidates seek financial contributions from those who most have a stake in the outcome of what occurs in the state's courtrooms." There is "nothing illegal about this," but "if there is a starker example of a potential conflict of interests, we don't know what that might be." The editorial calls for North Carolina to adopt nonpartisan elections of appellate judges and "a rational system of public financ[ing]" of judicial elections. *Courts and Cash*, Charlotte Observer, June 19, 2002.

30. Editorial calls for passage of the North Carolina Impartial Justice Act to "limit the skyrocketing cost of judicial elections." Because the current financing system, in which judges rely heavily on campaign contributions from lawyers, is "so vulnerable to blatant conflicts of interest," it is a "nearly Herculean task for jurists to appear unbiased." "All parties are victimized in the current campaign finance scheme:" judges who "hate begging for cash" as well as lawyers, "who sometimes feel they must pay protection money just to practice." The Act would lower the campaign contribution limit from $4,000 to $500, "encouraging judges to solicit from a broader base of support." *Time to Bench This Conflict of Interest*, News & Record (Greensboro, S.C.), June 24, 2002.

31. Column discusses the case of North Carolina Supreme Court Justice Robert Orr, who has come under fire for appearing as master of ceremonies at a Republican fund-raiser for U.S. Senate candidate Elizabeth Dole. (See Court Pester, July 16.) The columnist argues that "the crux of the problem [is] North Carolina's expectation that its highest-ranking judges will also be politicians, running for

election under a party label." Justice Orr, who is now campaigning for what he says will be his last term, may have felt that "a modest show of partisan solidarity wouldn't be too far out of line." Furthermore, Justice Orr has argued that "North Carolina would be better off if it didn't force its most powerful judges to run for office in the first place," a more radical proposal than the one now being considered by the state legislature, which would establish nonpartisan, publicly financed judicial elections. Justice Orr asserts that nonpartisan judicial elections, though reducing the! appearance of partisan loyalties, will cause "the special interest aspects of the election system [to] take on a far more influential and dangerous role." Steve Ford, *Sad Ballad of a Judicial 'Partisan'*, Raleigh News-Observer, July 21, 2002.

32. Article reports that a North Carolina House committee has approved a campaign reform bill giving "public money to judges who agree to spending limits." To assure passage, Democrats "brought in three 'floaters' - House members authorized to vote as members of any committee." Republicans oppose the cost of the program, which would be largely funded through voluntary contributions from taxpayers and lawyers. The bill, which passed on a party-line 13-10 vote, now heads to the House Finance Committee. If passed, "a candidate who agrees to participate in the system could raise no more than $500 from at least 350 registered voters" and could spend no more than $69,000 in the primary. The fund would provide $137,500 to appellate court candidates and $201,300 to Supreme Court candidates, as well as 'rescue funds' to candidates outspent by nonparticipating opponents. William L. Holmes, *House Committee Approves Judicial Campaign Reform Bill*, Charlotte Observer, July 24, 2002.

33. Editorial praises a bill recently approved by a North Carolina House committee that would make North Carolina Supreme Court and appellate court races nonpartisan and would provide public funding to candidates who agree to spending limits. (See Court Pester, July 30.) Although the bill "falls well short of perfection," the editorial argues that the partisan split it has engendered is a "shame." The Republican objection that the program is too expensive is "somewhat spurious," because it would be funded by voluntary contributions from taxpayers and lawyers. Since "sitting judges who run for election or re-election live a logistical and financial nightmare" that raises the specter of inappropriate influence, "state legislators should trump politics with a sense of propriety and quickly pass this legislation." *Electing Judges*, Winston-Salem Journal, July 28, 2002.

34. Column reports that Republican Justice Bob Orr of the North Carolina Supreme Court is proposing a series of statewide public forums in which he and the challenger for his seat, Democratic Judge Bob Hunter of the State Court of Appeals, would discuss judicial ethics and their own records. Hunter said that he

might take Orr up on his idea, if he wins the September 10th primary. The columnist says that a series of forums "could prove educational-and interesting," given that both Orr and Hunter are under fire for alleged ethical lapses. The state Judicial Standards Commission is investigating whether Orr broke the Code of Judicial Conduct by acting as the master of ceremonies at a Republican fund-raiser last July for U.S. Senate candidate Elizabeth Dole. Hunter has received criticism for earning more than $400,000 over several years as an estate executor and business director after becoming a judge in 1998. Matthew Eisley, *Judging Judges, Part 2*, Raleigh News Observer, August 23, 2002.

35. Column supports a public financing bill for Supreme Court and Court of Appeals elections in North Carolina. The bill would offer funds to judicial candidates who volunteer to follow strict fund-raising and spending limit guidelines. A coalition of Republican and Democratic state senators approved the bill as a means to counter concerns that judicial independence was being threatened by lawyers' campaign contributions. A recent report by the watchdog group Democracy South studied the campaign finance reports for appellate judgeship campaigns and found that most money did indeed come from lawyers. (See Court Pester, June 20, 2002) The bill has passed the full Senate and the House election law and finance committees, and is now before the full house. Jack Betts, *Lawmakers Get Chance to Clean up Judges' Races*, Charlotte Observer, August 25, 2002.

36. Editorial argues that "by engaging in a financial arms race to elect jurists who might favor their benefactors, … narrow interests are also contributing to a breakdown in public trust in the courts." The editorial cites, for example, "the hustlers at now-discredited Enron Corp.," who "showered more than $134,000 in campaign contributions on members of the Texas Supreme Court in recent years, including $8,600 to the justice who wrote a unanimous decision that saved Enron $15 million in school taxes." The editorial cites an analysis of "the non-partisan reform group Justice at Stake" which "suggests that at least half of all donations [to judicial candidates] come from lawyers and business interests." The editorial praises states such as North Carolina which seek to "rein in the money flow" by providing public financing for judicial races. "Justice can't be blind if judges are tempted to keep an eye out for the people who helped put them in office." *Fundraising Taints Judicial Elections, Impartial Justice*, USA Today, September 18, 2002.

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38. Article reports that, under legislation that recently cleared the North Carolina General Assembly, candidates for the North Carolina Supreme Court and Court of Appeals "would no longer run from parties but would be picked in nonpartisan elections" and "would also be eligible to tap into a publicly financed system for money to run their races." The Senate is likely to approve the measure. "The move to reform the system this year by the Democratic-controlled General Assembly comes after the Democratic leaders saw a Republican majority on the state Supreme Court rule against them in a hard-fought legal battle over new political maps for the legislature." North Carolina Supreme Court Justice I. Beverly Lake (R.) opposes nonpartisan judicial elections, noting that "party identification has helped Republicans win judicial races because voters view them as tougher on crime than Democrats." Lynn Bonner, *Jurists Divided on Idea of Nonpartisan Elections*, Raleigh News-Observer, September 27, 2002.

39. Editorial praises the North Carolina Judicial Reform Act, which provides for non-partisan, publicly financed elections of North Carolina's appellate judges. The bill has passed the North Carolina Legislature and is expected to be signed by the governor. (See Court Pester, October 1.) Because Democrats and Republicans in the Legislature "checked and counter-checked" proposals for a merit selection system for years, North Carolina "has been stuck with a system where judicial candidates must raise hundreds of thousands of dollars or more to finance their campaigns in highly partisan elections." The new system "isn't perfect," particularly since "it's not clear whether the funding mechanism … will produce enough revenue to adequately fund campaigns and finance a voter's guide to judicial elections to be published by the state Board of Elections." *Changing the Courts*, Charlotte Observer, September 27, 2002.

40. Column argues that Isaac Newton, who first postulated that "for every action, there is an equal and opposite reaction," would have "understood exactly what was going on in the [North Carolina] House last week when it passed by a thin margin the Judicial Campaign Reform Act, perhaps the most radical election reform in this state since women got the vote." The bill provides for non-partisan, publicly financed elections for appellate judges. (See Court Pester, October 1.) The columnist asserts that the passage of the act is a direct reaction to the North

Carolina Supreme Court's 5-2 party-line ruling last spring that the legislature's new redistricting plan was unconstitutional. The Supreme Court gave a trial court judge the authority to draw up new plans, and he ultimately drew ones "that may cost a number of veteran Democrats their seats." The cases caused many legislators, "including some Republicans," to conclude that "the courts were playing politics," and that the time for reform had come. Jack Betts, *Newton's Law Comes to Pass*, Charlotte Observer, September 29, 2002.

41. A.P. Carlton Jr., president of the American Bar Association, praises North Carolina for "leading the way in improving ways to elect judges" in its new law providing for publicly financed nonpartisan judicial elections. However, Carlton argues that "215 years of experience with the federal appointive model shows it might be preferable" to electing judges. In order for the public to trust in judges' impartiality, judges "must be viewed by the public as different from other government officials." Therefore, "we are looking for a system or systems of selecting judges that do not allow partisan politics or interest groups to cast the best judiciary in the world in a false light for political gain," a system "that does not explicitly or implicitly impugn our judiciary's integrity or impartiality." A.P. Carlton Jr., *Preserve Public Trust*, News & Observer (Raleigh, N.C.), October 13, 2002.

42. Article reports on the debate over judicial selection methods in North Carolina in the wake of the passage of a new law providing for publicly financed, nonpartisan judicial elections. Veteran trial lawyer Catharine Arrowood said that increasingly difficult, rancorous campaigns mean that "we're missing out on some excellent judges" who are unwilling to undergo the ordeal of running for office. Some have called for an appointive system: lawyer Jack Cozort, for instance, said, "I would tend to favor the politics of an informed governor who has the support of the people and is accountable over the politics of an uninformed electorate." Robert Morgan, a former U.S. senator and the chairman of the North Carolina Center for Voter Education, which pushed for the recent reforms, noted that the new law, while not a "panacea," will "help get some of the politics out of it." Matthew Eisley, *Should Judges Be Elected?*, News & Observer (Raleigh, N.C.), October 13, 2002.

43. Article reports on the races, "marked by impropriety," for two seats on the North Carolina Supreme Court. Incumbent Justice Robert Orr has argued that the controversy over "complimentary remarks" he made about a state Republican leader during a fundraiser for Elizabeth Dole was "pretty minor." (See Court Pester, July 16.) His opponent, Judge Bob Hunter, "has been criticized by Republicans for earning as much as $410,000 settling several private estates after his appointment to the bench in 1998;" he denies wrongdoing. In the other race, incumbent G.K. Butterfield, "the only African-American on the high court," has

criticized campaign literature circulated by his opponent, lawyer and Vietnam War veteran Edward Brady. In it, Brady "describes himself as a conservative Republican running for office out of concern about abortion, gay rights," and other issues. "What's disturbing is he brings a political ideology to the courts," Butterfield said. Eric Frazier, *3 Judges, 1 Lawyer Vie for 2 Seats on State's High Court*, Charlotte Observer, October 27, 2002.

44. Article reports that, "capping a decade-long rise to power in North Carolina's judiciary, Republicans had their best day ever Tuesday in statewide elections for the state's top two courts, winning both Supreme Court seats and at least four of five races for the Court of Appeals." Incumbent Justice Bob Orr (R.) defeated Judge Bob Hunter (D.) after what he termed a "long, hard battle," and incumbent Justice G.K. Butterfield (D.) lost to Edward Brady (R.). Brady "campaigned on what he called a crusade to support a Republican agenda, including banning most abortions - which the state Supreme Court can't do - and upholding law-abiding citizens' right to own guns." However, he said, "I'm not going to inject my views. I just wanted people to know where I stand." Justice Butterfield "criticized Brady for running an ideological campaign," while Brady "faulted" Justice Butterfield, who is black, for "campaigning on race." Matthew Eisely, *GOP Leads Court Races*, News & Observer (Raleigh, N.C.), November 6, 2002.

45. Column praises North Carolina for taking "a step toward a little less corruption in its politics and a little less cynicism among its people" when it passed the Judicial Campaign Reform act, "which makes public funding available to candidates for the state Supreme Court and Court of Appeals." Public financing removes "corrupt money from the electoral process" and allows "regular people to contend for office again." North Carolina's Act, "the most sweeping judicial reform America has had in years," recognizes that "the problem is not in electing judges but in allowing the elections to be financed by insurance companies, HMOs, trial lawyers, polluters, bankers and others with cases before the judges." Noting that the passage of the Act was "the culmination of thousands of people taking small steps," the columnist calls for "people of any jurisdiction" to pass public financing and "make their elections 'voter owned.' It's percolate-up reform." Jim Hightower, *Free the Judges*, The Nation, November 25, 2002.

46. Column reports that the North Carolina Supreme Court has released a revised Code of Judicial Conduct that represents a "dramatic shift" in the "way judges run for office." The new rules are available at http://www.aoc.state.nc.us/www/public/html/rulesjud.htm.
Under the new code, judicial candidates can directly seek contributions from individuals, and judges can endorse candidates for judicial office. In addition, judicial candidates are no longer prohibited from "making pledges or promises of conduct in office." One state judge who was not involved in the drafting of the

new code said, "The Supreme Court said [in striking down Minnesota's canon limiting judicial speech] that the bridle can come off the horse, but with these rules our court has taken off the saddle, the bridle, the blinders, the straps, the stirrups and left the barn door wide open." Jack Betts, *Judges Face Temptations under New Conduct Code*, Charlotte Observer, April 13, 2003.

47. Article reports that North Carolina Superior Judge Ola Lewis, "one of the only two black female Superior Court judges" in the state, has switched her party affiliation to Republican, "citing lack of support from some Democratic party leaders." Lewis contends that several top-level Democratic officials "spread false rumors" about the race for her seat, in which she "overwhelmingly beat two fellow Democratic opponents." One of her opponents, Judge Bill Gore, "has not spoken to her since the win" and is "locking her out of case management" in the district, according to Lewis. Although blacks are traditionally Democrats in North Carolina, "we need to be represented on both sides of the fence," Lewis said. Millard K. Ives, *Frustrated Superior Court Judge Switches to GOP*, Wilmington Star, April 18, 2003.

48. Editorial argues that North Carolina's revised Code of Judicial Conduct, which "will allow candidates for judge to talk about specific issues and to solicit campaign contributions personally," creates "an opportunity for unscrupulous candidates to signal how they might rule in a case while asking for money." The editorial endorses a switch to a merit selection system. "Because many judges are already first appointed to office, and because the public says in opinion polls it would like to retain elections, the best approach would be a system that includes both features," through gubernatorial appointments and retention elections. *Taking Off the Gag*, Charlotte Observer, April 18, 2003.

49. Article reports on the North Carolina Supreme Court overhaul of the state's Code of Judicial Conduct, making it less restrictive by allowing judges to solicit campaign contributions directly and no longer forbidding candidates from promising to rule in certain ways. State Court of Appeals Judge James Wynn said, "Many of these changes tear down the differences between judges and legislators. If you break us down to be no more than common politicians, I fear that will damage the integrity of the judiciary." However, state Supreme Court Justice Mark Martin cited a recent U.S. Supreme Court decision striking down a Minnesota canon limiting judicial candidate speech. He said, "We could have stood back and said, 'If they want to rule our code unconstitutional, let 'em.' But that would have left our candidates unprotected." Matthew Eisley, *Code Loosens Grip on Judges*, Raleigh News & Observer, September 20, 2003.

50. Editorial argues that the North Carolina Supreme Court "has taken a series of unwise, and potentially dangerous, steps in revising the Code of Judicial

Conduct" to allow judicial candidates to "promise how they will rule on issues" and "participate in partisan political activities and the campaigns of other, non-judicial, candidates." As a result of the change, the editorial argues, "judges, who used to operate on a higher political plane, will now be down in the mud with the rest of the increasingly vitriolic and simplistic electoral process." Likewise, the decision to allow judges to solicit contributions directly "runs 180 degrees contrary to what is best for an independent judiciary." *Courts' Integrity at Stake*, Winston-Salem Journal, September 24, 2003.

51. Editorial argues that the North Carolina Supreme Court "under Chief Justice Beverly Lake Jr. has engaged in the Stealth bomber approach to rewriting the Code of Judicial Conduct. Striking quickly from under the radar of public opinion and without publicly soliciting views from members of the bar, the Lake court adopted some unwise and naïve changes in rules aimed at guiding the conduct of judges and candidates for judicial office," who are now freer to solicit contributions and take part in partisan political activity. "The court's timing also left plenty to be desired," with the new rules being promulgated "just before nonpartisan elections for appellate judgeships take effect." The editorial concludes that "it's not too late for the court to remedy things by restoring parts of the old code that weren't really broken." *Unwise Judgment*, Raleigh News & Observer, September 27, 2003.

52. Article reports on reactions to the North Carolina Supreme Court's "recent overhaul of ethics rules for North Carolina's judges." Under the new rules, judicial candidates can solicit contributions personally, campaign for other candidates, and promise to rule certain ways if elected. Cynthia Gray, director of the American Judicature Society, said, "The North Carolina Supreme Court's decision to eliminate all restrictions on judicial campaign speech, except for intentional and knowing misrepresentations about a candidate's identity or qualifications, goes further than the U.S. Supreme Court's decision in Republican Party of Minnesota v. White, any subsequent federal court decision, or any subsequent code revision by any other state supreme court." North Carolina appeals court Judge James Wynn said, "I don't think this is going to push us to an appointive system. I believe it's going to push us to a bad elective system." Matthew Eisley, *Ethics Rules Panned*, Raleigh News & Observer, October 9, 2003.

53. Article reports that, "responding to a protest from trial judges over recent changes in [North Carolina's] judicial conduct rules," the North Carolina Supreme Court has sent every state judge a memo defending the changes that "allow candidates to directly ask lawyers and others for campaign contributions and dropped a prohibition against promising voters to rule certain ways if elected." The memo argued that there is little difference between a judicial candidate directly soliciting

contributions and getting a representative to do it. It also said that, in place of the promises ban, judges will be required generally to "always promote public confidence in the courts." Chief Justice Beverly Lake said in an interview that, under that standard, judicial candidates would still be unable to promise to rule certain ways on controversial issues. Matthew Eisley, *High Court Defends New Judges' Code*, Raleigh News & Observer, October 16, 2003.

54. William Marshall, a professor at the University of North Carolina School of Law, defends the new rules governing judicial elections promulgated by the North Carolina Supreme Court. Although the changes have attracted considerable criticism, Marshall argues that the U.S. Supreme Court's 2002 decision striking down a Minnesota canon limiting judicial speech necessitated the changes. He predicts that the new rules will nonetheless have "disastrous" effects, including "acrimonious" campaigns, an "influx of money from special interests," and an erosion of public confidence in the courts. "All of these effects, however, are inherent in any system based upon judicial selection by popular election." William Marshall, *A Bow to Reality in Judicial Elections*, Raleigh News & Observer, October 20, 2003.

55. Article reports that "across North Carolina, a growing chorus of judges and lawyers says the state Supreme Court went too far in giving judges and judicial candidates the freedom to act like other politicians" in its revisions of the Code of Judicial Conduct. "To the high court's chagrin, those critics now include many of the state's most senior and respected trial judges." One judge cited the new rules as one of the reasons for his retirement, and "a unanimous resolution this month by the Executive Committee of the Conference of Superior Court Judges urges the Supreme Court to set up a commission of judges and lawyers to consider proposing another revision of the Code of Judicial Conduct, which the high court rewrote out of the blue in April. This time, the judges say, the process should go slower and take public opinion into account." The new rules drop a prohibition on judicial candidates making promises on how they would rule on certain cases or issues if elected, and they also allow judges to solicit campaign funds directly. Matthew Eisley, *Jurists Deplore Relaxed Rules*, Raleigh News & Observer, December 30, 2003.

56. Editorial argues that North Carolina Chief Justice I. Beverly Lake Jr.'s "stubborn streak" has been in evidence since state Supreme Court's decision to revise the state's rules on judicial conduct. The new rules, which give "judges and judicial candidates the freedom to act like other politicians" by directly soliciting contributions and "stating how they might rule on a given issue," have come under fire from North Carolina's lawyers and lower-court judges. While acknowledging the inherent challenges of having an elected judiciary, the editorial argues that "it's simply inappropriate that the [state Supreme Court's]

attitude seems to be: We don't care what other judges say, or what lawyers say, this is how it's going to be because we say so." The editorial asks: "What would be the harm, for example, in convening a group of lawyers and veteran judges to determine what the guidelines for judicial elections ought to be?" *Digging In*, Raleigh News & Observer, January 4, 2004.

57. Article reports that the North Carolina Judicial Response Committee, a committee of judges and lawyers formed under the auspices of Chief Justice Beverly Lake's Committee on Professionalism, "is keeping a close eye on campaigns for judicial offices this year, ready to respond publicly to false or unfair attacks." The committee was formed last year "to respond to criticism of North Carolina's judges by the media, the public or candidates." Most recently, the committee reviewed, but did not respond to, criticisms leveled against incumbent Judge Linda McGee for "three appeals court rulings she participated in but didn't write." Burley Mitchell, the head of the committee and a former state Supreme Court Chief Justice, said, "We're concerned about that approach to campaigning. But we thought it might be a one-time thing that might be exacerbated if we responded." *Judicial Contests Watched*, Raleigh News & Observer, January 9, 2004.

58. Article reports that North Carolina Supreme Court Chief Justice Beverly Lake Jr. has appointed a 36-member Advisory Committee on Permissible Political Conduct that "will advise the state's high court on establishing and enforcing rules on judicial campaigning and other conduct," beginning with specifying "political actions that, in its opinion, are OK or not OK under the state's Code of Judicial Conduct." "The move comes amid growing criticism of the Supreme Court's unexpected overhaul of the judicial code in April," which sparked many of the state's trial judges to urge the high court "to scrap the changes and start over with input from other judges, lawyers and the public." However, "several outspoken critics of the rules are not on the committee," the article reports. Matthew Eisley, *Judicial Politics Get Look*, Raleigh News & Observer, January 14, 2004.

59. Article reports on an effort to remove the "influence of big money" from judicial campaigns. North Carolina taxpayers are urged to "check the small box on their state tax returns to support public financing of nonpartisan elections. Checking the box would send $3 to the public campaign finance fund…for Court of Appeals and Supreme Court candidates. It's painless because the money is not deducted from a refund or added to taxes owed." Candidates interested in receiving funding must agree to limit fund raising to $66,000 in Court of Appeals races or $69,000 for Supreme Court races (candidates can exceed these limits if they run against a candidate that did not receive public financing). There is a single donation cap of $500 and candidates are not allowed to accept out-of-state

funding. Dan Kane, *Judicial Election Funding Backed*, Raleigh News & Observer, January 22, 2004.

60. Article reports that Doug Berger, a candidate for the North Carolina Court of Appeals, "says he's getting a bum rap for criticizing his opponent, Judge Linda McGee." Former state Chief Justice Burley Mitchell, "who heads a committee of judges and lawyers that investigates and responds to public criticism of judges, said the group had reviewed Berger's tactics and was 'concerned about that approach to campaigning.'" Arguing that he's only criticizing Judge McGee's work, Berger asked, "Is it slinging mud to run on somebody's record? How are we supposed to run these races?" He also called Justice Mitchell's committee "a Big Brother monitoring group." Judge McGee said, "The tone of [Berger's criticism] seemed to attack our court. He made it sound like somehow or another there was an agenda here." Matthew Eisley, *Berger Defends His Tactics*, Raleigh News & Observer, January 21, 2004.

61. Editorial reports that former North Carolina governors Jim Holshouser (R.) and Jim Hunt (D.) "are collaborating in a television ad to promote North Carolina's new public funding system for judicial candidates," urging "state taxpayers to support the fund by designating $3 of their taxes for use in the N.C. Public Campaign Financing Fund." "The money would help finance judicial races this year for candidates who voluntarily agree to strict limits on fund raising and spending." While arguing that a merit selection system is preferable to judicial elections, the editorial concludes that "the public funding system gives judicial candidates and the public a positive way to demonstrate their support for an impartial and independent judiciary." *When Jims Agree*, Charlotte Observer, January 23, 2004.

62. Article reports that "this year, North Carolina begins what is being touted as the nation's first full public financing system for appellate judicial campaigns, a voluntary program that promises to fully underwrite general election campaigns for judges who agree to strict fund-raising limits in the primary." Doug Berger, who is participating in the program in his race for a Court of Appeals seat, said, "I can spend more time out on the campaign trail meeting the people and debating the issues." The articles notes that "candidates who follow fund-raising restrictions set by the legislature can receive $137,500 for a Court of Appeals race and $201,300 for a Supreme Court race, for use in the general election." The idea took hold in North Carolina four years ago, when, "in an unsuccessful effort to remain chief justice of North Carolina's highest court, Henry Frye spent an eye-popping $907,491 on his campaign." Gary D. Robertson, *Trial Begins for Appeals Court Campaign Plan*, Charlotte Observer, February 15, 2004.

63. Bob Hall, the research director of Democracy North Carolina, urges North Carolina taxpayers to check off the box on their tax returns to send $3 of their taxes to the new N.C. Public Campaign Fund. The fund, which pays to produce a voter guide about candidates to the state Supreme Court and Court of Appeals and also provides full public financing to candidates who agree to certain restrictions, is "the first real step for 'voter-owned election' in North Carolina." Taxpayers have had difficulty locating the box, and Hall provides voters a number to call if they encounter an online tax program that does not provide the option of checking the box, "an apparent violation of state law." Hall concludes that "saying 'yes' gives judges a chance to use clean funds and be accountable to the public; saying 'no' gives them no choice except to rely on private donors who often want something in return." Bob Hall, *Check This for Cleaner Elections*, Raleigh News & Observer, February 19, 2004.

64. North Carolina Supreme Court Associate Justice Robert Edmunds Jr., who is also the co-chair of the Chief Justice's Advisory Committee on Permissible Legal Conduct, laments the lack of media coverage of the committee's first meeting. The committee, "which consists of judges, practicing lawyers, members of the General Assembly and the public" and which was convened in response to criticism of the new state Code of Judicial Conduct promulgated last year, "was addressed by a panel of experts who discussed constitutional aspects of free speech and judicial conduct." In addition, it heard testimony on "the filing of ethical complaints against candidates as a weapon in judicial elections." Justice Edmunds concludes that "by declining this opportunity both to hear a variety of points of view pertaining to political conduct of judges and judicial officers and to learn of the experiences of judges and academics both here and in other states," the state press "has given the unfortunate impression that it is more interested in editorializing on this issue than in educating the public." Associate Justice Robert H. Edmunds Jr., *A Missed Chance on the Judicial Code*, Raleigh News & Observer, March 3, 2004.

65. Article reports on the announcement of North Carolina Court of Appeals Judge John Tyson's candidacy for the state Supreme Court. Tyson is challenging incumbent Justice Sarah Parker, who is running for another eight-year term. Tyson pointed to his work record half-way through his term, he has filed 350 judicial opinions, "completing them in less than half the time in which judges are required to file." Citing the Supreme Court's rewriting of the judicial conduct rules as justification for divulging his personal opinions on several issues, Tyson stated that he supports the death penalty for "aggravated murder," believes that "marriage is a sacred union between one woman and one man," and that "our constitutions protect citizen's rights to keep and bear arms and the rights of criminals should be no greater than the rights of victims." Associated Press,

Appeals Judge to Seek N.C. High Court Seat, Charlotte Observer, March 10, 2004.