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OBSERVATIONS AND RECOMMENDATIONS REGARDING JUDICIAL SELECTION

Chief Justice Edwin Lloyd Pittman

The manner in which the state of Mississippi selects its judges has been a subject of debate for years. The discussions have taken on new urgency as the result of the tone and content of candidate advertising and the hundreds of thousands of dollars of campaign contributions that flowed into appellate court elections in the year 2000. Judicial elections are scheduled again for November 2002.

Special interest groups were significant contributors to both the 1996 and 2000 elections. Judicial campaign spending, particularly for Supreme Court and Court of Appeals positions, broke previous records.

My own first election contest for the Supreme Court in 1988 cost about \$33,000. In 1996, my re-election campaign spending was nearly 10 times higher -- almost \$300,000. Last year, one candidate for the Supreme Court spent more than \$900,000 on the campaign, and special interests spent hundreds of thousands of dollars. Those are shocking figures for a judicial election.

We simply must safeguard in all ways justice for all. We must take steps to insulate the judiciary from any outside influence. We have to guard against judges representing any viewpoint other than fair and equal application of the law. A judge must have no constituency other than the law. Judges must not favor defendants nor plaintiffs, but favor fairness to all people and faithfulness to the Constitution and laws of Mississippi. We must serve without attention to organizations or special interests.

The Supreme Court on April 4, 2002, adopted revisions to the Code of Judicial Conduct to address elections and other issues. The revisions were made after much study by the Court and consideration of comments from members of the bench, the bar and the public. Among the revisions are canon provisions:

- Establishing a special committee to respond to election complaints;
- Allowing a party in litigation to seek recusal of a judge in a case in which the opposing party or counsel for the opposing party is a major donor to the judge's campaign.

Canon 3 E (2) says, a party may file a motion to recuse a judge based on the fact that an opposing party or counsel of record for that party is a major donor to the election campaign of such judge. Such motions will be filed, considered and subject to appellate review as provided for other motions for recusal.

The revised code defines a major donor as a donor who or which has, in the judge's most recent election campaign, made a contribution to the judge's campaign of (a) more than \$2,000 if the judge is a justice of the Supreme Court or judge of the Court of Appeals, or (b) more than \$1,000 if the judge is a judge of a court other than the Supreme Court or the Court of Appeals.

The code added a cross-reference to the Uniform Rules of Circuit and County Court Practice and the Uniform Chancery Court Rules. The rules state that if a hearing is held on a motion to recuse a judge, the hearing must be conducted in open court.

Addressing campaign misconduct, the canons call for the creation of a five-member Special Committee on Judicial Election Campaign Intervention during a

judicial election year. This special committee would be a rapid response team which could deal with campaign tactics which sometimes present themselves within days of the election. The due process requirements of the Commission on Judicial Performance hinder that body from acting quickly. In any campaign, timely action is essential to promote fairness and preserve the rights of candidates and the rights of the public.

This special committee would ask candidates to be bound by ethical conduct and campaign practices. This special committee would have the power to ask any candidate to desist from unethical and unfair campaign practices. If the candidate did not comply, the committee could make its findings public to the news media and refer the matter to the Commission on Judicial Performance for later action. Other states have successfully utilized such a rapid response team. The increasingly caustic tone of judicial campaigning, and the use of sometimes misleading campaign advertising, evinces the need for such a safeguard in the election process of this state.

The revised code also requires a two-hour course for judicial candidates in campaign practices, finance and ethics. The Special Committee on Judicial Election Campaign Intervention will conduct the course. Candidates for judicial office, their election committee chairpersons or the chairperson's designees are required to complete the two-hour course no later than 20 days after the qualifying deadline for candidates.

Other changes that I believe would help insulate our judiciary are extending the terms of trial judges and moving the qualifying deadlines for elections to shorten the time period of campaigns. The Judicial Advisory Study Committee and the Study Commission on the Mississippi Judicial System have recommended eight-year terms for circuit, chancery and county judges.

Proposed bills to extend trial judges' terms to eight years and to move qualifying deadlines from May to August failed to gain approval during the 2001 Legislative Session.

During the 2002 Legislative Session, Senate Bill 2606, which would increase the terms of chancery, circuit and county court judges from four to six years, won legislative approval. Gov. Ronnie Musgrove has signed Senate Bill 2606. It awaits U.S. Department of Justice approval. Senate Concurrent Resolution 543, which authorizes a constitutional amendment to extend trial judges terms to six years, also passed the Legislature. At the time of the writing of this article, it was awaiting preclearance by the Department of Justice and submission to the voters.

Legislation to eliminate the need for some special elections also won lawmakers approval. Senate Bill 2289 would eliminate special elections and allow gubernatorial appointees to serve out the term in cases in which a vacancy occurred on the Supreme Court or Court of Appeals with less than half of the term remaining. Senate Bill 2289 was signed by the Governor. It must be submitted to the Department of Justice for preclearance.

Judges appointed to vacancies sometimes find themselves having to raise money and campaign to keep the office almost from the moment they take the oath of office. When the time remaining on the term is short, the judge, if inter-

ested in keeping the position, would have to raise money and campaign again within a short period of time. This means that a judge's time has to be divided between tending to judicial business and campaigning. Allowing appointees to serve out the term without necessity of a special election would allow judges to focus their attentions on doing the job rather than keeping the job.

Fewer and shorter campaigns and longer judicial terms might reduce campaign fund-raising and relieve some of the pressure on candidates. Longer terms could potentially enhance the commitment to public service, and could create more opportunities for appointments to the bench, since some judges might not serve out an entire term. Appointments would foster diversity on the bench by opening opportunities for highly qualified people who might not be willing to wage an election campaign. The Supreme Court, which has eight-year terms, currently has four justices who got to the court by appointment and five who were elected. Two of the appointees later won election.

Big campaign contributions have kindled public debate over whether the State should consider appointing judges rather than electing them. Many of the editorial pages of our state's newspapers have expressed the opinion that an appointed judiciary would solve problems that attend big dollar campaign fund-raising. I, however, don't see such a drastic switch as a panacea.

I believe that our citizens like the idea of having a say about the selection of their judges. I don't want to ever take away voters' input. I want the people to have a voice.

However, longer terms of office will reduce the number of judicial elections. Further, if an appointed judge can serve out the term, this, too, will reduce judicial elections without seriously reducing the influence of Mississippi voters.

