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Justice Under Attack: A Call to Defend Judicial Independence

BY JOHN R. WESTER

“The greatest scourge an angry Heaven ever inflicted upon an ungrateful and sinning people was an ignorant, a corrupt, or a dependent Judiciary.” —Chief Justice John Marshall, 1829

In the spring of 1776, Congressman William Hooper was leaving Philadelphia on his way home to North Carolina, where he would write a new constitution for our state. Hooper asked fellow Congressman John Adams, who had drafted the Constitution of Massachusetts, for his ideas on this endeavor.

Adams’ response is known today as *Thoughts on Government*. Pulitzer Prize winner David McCullough describes the parameters of Adams’ thinking: “The structure of government was a subject of passionate interest that raised fundamental questions about the realities of human nature, political power, and the good society.” In Adams’ own words, he could hardly believe his good fortune:

It has been the will of Heaven that we should be thrown into existence at a period when the greatest philosophers and lawgivers of antiquity would have wished to live....How few of the human race have ever had an opportunity of choosing a system of government for themselves and their children? How few have ever had anything more of choice in government than in climate?

Much as Adams foresaw trying days ahead in the war for independence, he carried deep optimism for what independence would provide. Central to Adams’ vision of government was “an able and impartial administration of justice,” separate and



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wholly independent from the legislative and executive. “Men of experience on the laws,” Adams writes of the judiciary he has in mind, “of exemplary morals, invincible patience, and unruffled calmness...should be *subservient to none*.”

Declining Public Trust in the Judicial System

Regrettably, like many American institutions, public trust in the judicial system is suffering. According to *The Economist*,

Americans’ trust in institutions has sunk to the lowest levels of any of the G7 countries.¹ As recently as 2000, trust in the judiciary sat at 75%. By 2022, that figure had sunk to 47%.² A 2024 Gallup poll shows that Americans’ confidence in the nation’s judicial system has dropped further to 35%.³

If we do not take steps to restore this trust, social cohesion in America will decline. When citizens lose trust in our courts, they are more open to placing constraints on those courts, and in the most

extreme cases, resorting to threats and violence against judges and other elected officials. What remains essential for the courts to maintain their authority is the public's willingness to adhere to the courts' rulings. Critical to securing the public's trust is the public's perception of the fairness and impartiality of the courts.

As members of the bar, lawyers are sworn to uphold the US and North Carolina constitutions. The first comment in the Preamble to the North Carolina Rules of Professional Conduct reminds each lawyer that "as a member of the legal profession, [a lawyer is]...an officer of the legal system, and a public citizen having special responsibility for the quality of justice."⁴ The last comment to the Preamble adds, "[l]awyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system."⁵ Lawyers are professionally obligated to support and defend the judiciary and the judicial system. We share the ideal that judges reach the bench based on their qualifications and their commitment to upholding the rule of law.

What can lawyers do to defend judicial independence and improve our fellow citizens' perceptions of the fairness and impartiality of the judicial branch of government? Please consider supporting the following: improved civics education on the critical role of the judicial branch and on candidate qualifications; nonpartisan judicial elections; public funding for judicial elections; legislation to protect the physical safety of our judges; and improved funding for the judicial branch.

Civics Education on the Judicial Branch

The Preamble of the North Carolina Rules of Professional Conduct admonishes that "[a] lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority."⁶ In an era of declining trust in government institutions, lawyers can take an active part in educating citizens about the role of the judicial branch in a constitutional democracy. This can be done individually or through bar organizations, working with traditional media or on social media, to post articles that explain the judicial system, judicial independence, and

the value of the rule of law. In addition, lawyers can participate in programs to provide civic education to help all citizens understand the judicial system and their role in voting for qualified candidates.

To aid our voters, our bar could put in place a judicial candidate evaluation program—patterned after the ABA's format put in place during the Eisenhower administration. Lawyers from across the state would volunteer to review the records and writings of statewide judicial candidates, interview candidates willing to be interviewed, and develop a rating for each candidate—well-qualified, qualified, and less-qualified. Developing such a process would inform our fellow citizens in a manner inspiring higher confidence than the media advertisements on which they depend today. And our profession would be leading the way. The lawyers who evaluate the candidates willing to be evaluated would provide their service *pro bono publico*.

Nonpartisan Judicial Elections

Before the Civil War, the General Assembly appointed all of our judges. The Constitution of 1868, readmitting North Carolina to the Union, required judges to stand for popular elections. These elections were partisan for well over a century.

In 1998, the General Assembly changed superior court elections to nonpartisan. District court and appellate court elections became nonpartisan in 2002 and 2004, respectively. Although these revisions did not remove politics from judicial campaigns, removing partisan labels from the ballot diminished the impact of politics on judicial selection.

On the ballot, the election of the judiciary stood apart from the election of legislative and executive officials. For the next 12 years, voters could learn the partisan affiliation of judicial candidates from public records, but the absence of party designation on the ballot eliminated the facial implication of partisan allegiance on the part of a candidate for the bench. Superior Court Judge James Ammons spoke in favor of no labels: "I think it lends more to people having to learn about us," Ammons said. "I get to tell voters the things I've done with my life."

In late 2016 and early 2017, legislation restored partisan elections to all divisions of the North Carolina court system, including the appellate, superior, and district courts. In each election, party affiliation now appears

alongside the name of each candidate for the bench. In addition to heightening the public perception that judges are partisan instead of impartial, partisan elections add to the influx of money into judicial elections with the concomitant public perception—whether true or not—that financial contributions to a judicial candidate's campaign will subsequently influence the elected judge's rulings.

Public Funding for Judicial Elections


In 2002, North Carolina began a public policy experiment on judicial funding for state Supreme Court and court of appeals candidates. From 2002 to 2013, legislation created a judicial election fund from a \$50 annual assessment on all active members of the State Bar and a voluntary \$3 donation that taxpayers could select on state income tax forms. A judicial candidate could choose whether to use the public fund instead of private donations. A 2015 study ("Does Public Financing Affect Judicial Behavior?") showed that judicial candidates who used the public funds to campaign were subsequently 60% less likely to vote in favor of donors who contributed to their campaigns.⁷ In 2002, the last year without public financing, attorneys and special interest groups funded 73% of judicial candidates' campaigns. In 2004, that number plummeted to 14%.⁸

Judge Wanda Bryant, who served on our court of appeals from 2002 to 2020, relied on the public funding. "Our country's judicial system exists so those appearing before the court are able to receive a fair and impartial hearing, with decisions being decided based solely on the evidence and the law. However, with millions of dollars flowing into judicial races—and those giving money often appearing in front of those judges—one begins to wonder about the independence of an elected judiciary."

The public funding program was expanded to include the elections for commissioner of insurance, state auditor, and superintendent of public instruction. A significant drop in contributions to judicial races followed. This effort to make judicial races less beholden to financial contributions brought positive results for NC citizens, at least in the appearance of independence.

Public financing for North Carolina judicial elections ended in 2013. In the absence of a public funding option, spending from special interest groups can dominate judicial elections. In the 2021-22 judicial races, state court elec-


Colleagues admire Chief Justice Beasley for her “deep knowledge of the law and judicial process” and her “understanding of key issues,” and say she is “well-prepared, thorough, reasonable and a rock-solid judge.”



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Hon. Cheri Beasley (Ret.)

A distinguished former jurist, private practitioner and seasoned ADR professional, Chief Justice Beasley made history as the first African American woman to serve as chief justice of the North Carolina Supreme Court. She served on the supreme court for a decade and, prior to that, on the North Carolina Court of Appeals and the 12th Judicial District Court. At JAMS, she will focus on resolving disputes involving **appellate, business/ commercial, employment, personal injury, product liability, insurance, family and real estate matters.**



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tions broke numerous records for spending. North Carolina was one of four states that saw their most expensive election cycles ever.⁹

Threats and Violence Against Judges

In recent years, violent, indeed tragic, attacks on state and federal judges have risen significantly. According to the American Bar Association, threats of physical harm or death against judges, their staff, and their families have doubled since 2019. In 2023, there were 457 credible threats targeting federal judges across the country.

In July 2020, the son of New Jersey Federal District Court Judge Esther Salas was shot dead, and her husband was shot three times at their family home. The gunman was an attorney who had argued a case before her.

State court judges have not escaped violence. Andrew Wilkerson, a Maryland county circuit court judge, was shot to death in his driveway in October 2023. The suspect had lost custody of his children in a case that Wilkerson had presided over.

In 2015, Judge Julie Kocurek, a Texas

county district court judge, was shot in her car while her son watched from the back seat.

On September 19, 2024, Kentucky District Court Judge Kevin Mullins was shot dead inside the judge’s chambers by one of the sheriffs charged with his protection.

In Chief Justice Roberts’ year-end report for 2024, he warned that threats of violence, disinformation, and defiance of court orders have risen significantly.

During the 118th Congress that just ended, the Senate passed a bill titled “Countering Threats and Attacks on Our Judges Act.” The bill did not pass the House prior to the end of the session. If revived in the current session, the legislation will create a new center to conduct research, monitor activity, and provide training aimed at ensuring the physical safety of the judiciary. The question remains as to whether it will be sufficient to counter the threats and real violence now being directed at the judiciary.

Increased Funding for the Judicial Branch

In the pending North Carolina budget

(FY 2025-26), total appropriations for the Justice Department are set to decrease (from \$71m to \$67m), as is spending as a percentage of the budget (from 2.96% to 2.2%). There has been no meaningful increase in the allocation to the judicial branch over the last three years. The state’s population and attendant demands on the courts have risen significantly, and the funding must rise accordingly.

Independence Is Paramount

There is no single answer for protecting the independence of the courts, but we can encourage our state representatives and officials to pass meaningful judicial protection laws, return to nonpartisan judicial elections, restore the public funding option for judicial elections, and provide adequate funding for the operation of our courts. Moreover, lawyers play a critical role in educating fellow citizens on the role and the importance of the judicial branch and of judicial independence.

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Someone who has graduated from an accredited law school and met the character requirements might work for a couple of years under the supervision of a licensed lawyer. Licensure would result after several years. To tell you the truth, North Carolina kind of has that now through the third-year law student practice rule. You can petition as a third-year law student to be permitted to practice law under the supervision of a licensed lawyer. Once the student graduates, third-year practice is no longer an option. Some have asked that if a third-year law student can be authorized to practice, what sense does it make once the person has graduated from law school for the supervision option not to be available. Something to think about.

Dickson: Has the treatment of women lawyers changed over your career?

Timmons-Goodson: Absolutely! There very definitely have been changes, and the biggest change is greater acceptance of women in the practice of law. Acceptance has come because women lawyers have demonstrated that we can do the legal work. It's just whether folks are willing to give us the opportunity to do it. I am grateful for the women who came before me and performed their work in such a way that the bar was more receptive to other women coming along.

When I arrived in Fayetteville, North Carolina, in 1979, there were five women lawyers in the entire town. Unbelievable! The late Virginia Fox, Sylvia X. Allen,

Maxine Best, Nary Ann Tally, and Beth Keever. Jocelyn Breece Davis and Beth Fleishman had recently moved from Fayetteville. These women lawyers were my heroines. Judge Beth Keever was our first female judge in the former 12th Judicial District. Now, it appears that about half of the Cumberland County Bar are women. How far we have come!

Dickson: What is the breakdown of men and women in the law school?

Timmons-Goodson: Approximately 60% of the law school population are women. In fact, NCCU School of Law was recently recognized by ENJURIS Magazine as one of the top ten law schools in the nation for female enrollment. This ranking highlights the law school's commitment to gender diversity.

Dickson: You have been in this job for more than a year now, and you have settled in. What is the best part of your job, the part you enjoy the most, the part that is the most fun?

Timmons-Goodson: The best part of the job is the opportunity to interact with students and to share my experiences and for them to share their experiences. In many of them, I see myself. Many are the first in their family to attend law school. They don't know what they don't know, and there is no one in the family to advise them. I see in more instances than I wish, students who lack the confidence now that they will have in years to come. I welcome the opportuni-

ties to speak with them and say, "Look, it's going to be all right. You're going to be just fine. You just need to do the same things that you had to do to get to this point. Keep moving forward. Continue to work hard and maintain a positive attitude. There are people out there—more than you can even imagine—who want you to succeed and are willing to invest in you."

When I need to brighten my day, I find students and ask what their day looks like.

The best part of the job? I'm not sure how to articulate this, but the students understand that becoming a lawyer is not just about them. They understand that their success is significant to the family—mama, daddy, aunt, uncle, grandparents. All will take pride in the student's achievement. In many cases it has taken generations to produce a lawyer in the family.

Dickson: Is there anything else you would like to say?

Timmons-Goodson: I wish to publicly say that I have been so blessed in my life. How many unique opportunities does one individual get to serve her state and nation? Assistant district attorney, legal services lawyer, district court judge, court of appeals judge, justice on the Supreme Court of North Carolina, commissioner, United States Commission on Civil Rights, dean of North Carolina Central University School of Law—leading one of the six remaining historically black law schools in the nation. It just doesn't get any better. Praise God. ■

Justice Under Attack (cont.)

Supreme Court Justice Sandra Day O'Connor spoke to the goal and the reality of independence, including that it is not self-sustaining: "Judicial independence does not happen all by itself. It is very hard to create, and it's easier than most people imagine to destroy."

In clear view today is the need to defend the very foundations of our justice system. Safeguarding our judicial system fulfills our duty as lawyers. It cannot be postponed. ■

John "Buddy" Wester is a business litigator with Robinson Bradshaw in Charlotte. He serves on the Leadership Council of the Bolch

Judicial Institute and attended the conference on Defending the Judiciary featured in the accompanying article. A long-time fellow of the American College of Trial Lawyers, he was recently chosen to serve as the inaugural chair of its General Committee for Judicial Independence, which will lead the college's efforts in defending the judiciary from attacks and threats and promoting its independence. "Essential to our democracy is our citizens' abiding trust in the fair, impartial administration of justice," Wester said. "Our committee looks forward to reinforcing that trust in the days ahead."

Endnotes

1. *America's Trust in its Institutions Has Collapsed,*

Economist, 4/17/2024.

2. *Trust in Federal Government Branches Continues to Falter*, Gallup, 10/11/2022.

3. *Americans Pass Judgment on Their Courts*, Gallup (Vigus & Saad), 12/17/2024.

4. NC Rules of Prof'l Conduct, 27 NCAC 2.0.1, Cmt. [1].

5. NC Rules of Prof'l Conduct, 27 NCAC 2.0.1, Cmt. [17].

6. NC Rules of Prof'l Conduct, 27 NCAC 2.0.1, Cmt. [6].

7. *Does Public Financing Affect Judicial Behavior? Evidence from the North Carolina Supreme Court* (Hazelton, Montgomery, & Nyhan), 9/2/2015.

8. *A Profile of the Judicial Public Financing Program, 2004-2006*, 6/2006 Democracy North Carolina.

9. *The Politics of Judicial Elections*, Brennan Center for Justice, 1/29/2024.