

SEPTEMBER 27, 2004

EDITORIALS

Getting Politics Out Of The Courts

The moral authority of the judiciary is giving way to special interests

The poisonous polarization that has infected America's political system is now undermining the one branch of government that is supposed to be impartial -- the judiciary. The constitutional role of the courts as a check on the power of the elective branches of government is being eroded. Traditions of civility, decorum, and respect for the rule of law that give the judiciary its moral authority are giving way to special interests, political litmus tests, and money politics.

Public trust in the judiciary is nearing an all-time low. The partisanship must end before American society is left without any checks and balances and the expectation of a fair trial is a memory of a bygone era.

Conservatives and liberals, of course, have been battling over the federal judiciary for much of the country's history. President Franklin D. Roosevelt threatened to pack the Supreme Court in the 1930s when it opposed the Social Security Act and other New Deal legislation. In the end, Roosevelt triumphed. President Ronald Reagan appointed conservative Supreme Court judges in the 1980s to roll back liberal Supreme Court decisions made in previous decades.

But past political conflict was mostly over broad philosophical principles: the role of government in the lives of individuals, the interpretation of the Constitution in modern life, federal vs. state power. Distinguished federal judges were appointed who saw themselves representing the law, not specific policies, and varied their opinions on the bench.

Today judges are increasingly vetted on their positions on abortion, tort reform, affirmative action, and gay marriage before they're even considered for federal positions. And where conservatives and liberals once battled over Supreme Court appointments, they now fight over lower appeals court positions as well. Congressional Democrats filibuster to block candidates while the President appoints them during Senate recesses.

It's worse at the state level, where 38 states elect judges. There, judicial candidates run TV attack ads and take big campaign gifts from special interests. In a poll of 894 elected judges conducted in 2001 and 2002 by a nonpartisan watchdog group, 46% said donations influenced their judicial decisions. This threatens the core of our justice system.

So bad is the situation that the American Bar Assn. is pushing for publicly funded campaigns for state judges. North Carolina is the first to agree. Other state bar associations are creating bipartisan watchdog panels to monitor misleading ads and overtly partisan rhetoric. Making public all campaign contributions in judicial races is also important. But much more must be done, especially at the federal level. There's still time to stop the undermining of the judiciary -- but not much.