Logan B. Arked

JUDICIAL SELECTION

AS YOU MAY KNOW, I AM A CANDIDATE FOR THE KENTUCKY COURT OF APPEALS. THE VOTERS OF THE 24 COUNTIES COMPRISING THE FIRST JUDICIAL DISTRICT, WILL DETERMINE IF I SHOULD BE ENTRUSTED WITH THIS OFFICE.

THE PROSPECT OF CAMPAIGNING IN SUCH A LARGE DISTRICT IS DAUNTING - NOT ONLY BECAUSE OF THE TIME COMMITMENT TO CAMPAIGN - BUT THE JUDICIAL CAMPAIGN RULES WHICH HAVE SEEN MONUMENTAL CHANGES AS RECENTLY AS TWO WEEKS AGO.

BECAUSE OF MY CANDIDACY, I HAVE WATCHED WITH GREATER INTEREST THE RECENT SENATE JUDICIARY COMMITTEE CONFIRMATION HEARINGS OF CHIEF JUSTICE JOHN ROBERTS AND JUSTICE SAMUEL ALITO. THE SELECTION OF JUDGES RARELY GETS MUCH ATTENTION EXCEPT DURING CONSIDERATION OF NOMINEES FOR THE UNITED STATES SUPREME COURT. SUCH ATTENTION IS UNDERSTANDABLE SINCE JUDGE ALITO IS ONLY THE 110th JUSTICE TO EVER SERVE ON THE SUPREME COURT, AND CHIEF JUSTICE JOHN ROBERTS IS ONLY THE 15TH CHIEF JUSTICE IN OUR HISTORY.

WITH LIFETIME APPOINTMENTS, THESE FEDERAL JUDGESHIPS ARE SOME OF THE MOST IMPORTANT POSITIONS IN OUR GOVERNMENT AND SOCIETY. WE SHOULD EXPECT THE BEST AND BRIGHTEST TO FILL

THESE POSITIONS - AS WE EXPECT INTELLIGENCE, IMPARTIALITY AND INDEPENDENCE IN THESE POSITIONS.

IN FEDERALIST PAPER 78, ALEXANDER HAMILTON, ARGUING IN FAVOR OF LIFETIME APPOINTMENTS TO ENSURE THE QUALITY OF THE JUDICIARY UNDER THE PROPOSED CONSTITUTION, WROTE:

THERE IS YET A FURTHER AND A WEIGHTIER REASON FOR THE PERMANENCY OF THE JUDICIAL OFFICES, WHICH IS DEDUCIBLE FROM THE NATURE OF THE QUALIFICATIONS THEY REQUIRE. IT HAS BEEN FREQUENTLY REMARKED, WITH GREAT PROPRIETY, THAT A VOLUMINOUS CODE OF LAWS IS ONE OF THE INCONVENIENCES NECESSARILY CONNECTED WITH THE ADVANTAGES OF A FREE GOVERNMENT. TO AVOID AN ARBITRARY DISCRETION IN THE COURTS, IT IS INDISPENSABLE THAT THEY SHOULD BE BOUND DOWN BY STRICT RULES AND PRECEDENTS, WHICH SERVE TO DEFINE AND POINT OUT THEIR DUTY IN EVERY PARTICULAR CASE THAT COMES BEFORE THEM; AND IT WILL READILY BE CONCEIVED FROM THE VARIETY OF CONTROVERSIES WHICH GROW OUT OF THE FOLLY AND WICKEDNESS OF MANKIND, THAT THE RECORDS OF THOSE PRECEDENTS MUST UNAVOIDABLY SWELL TO A VERY CONSIDERABLE BULK, AND MUST DEMAND LONG AND LABORIOUS STUDY TO ACQUIRE A COMPETENT KNOWLEDGE OF THEM. HENCE IT IS, THAT THERE CAN BE BUT FEW MEN IN THE SOCIETY WHO WILL HAVE SUFFICIENT SKILL IN THE LAWS TO QUALIFY THEM FOR THE STATIONS OF JUDGES. AND MAKING

THE PROPER DEDUCTIONS FOR THE ORDINARY DEPRAVITY OF HUMAN NATURE, THE NUMBER MUST BE STILL SMALLER OF THOSE WHO UNITE THE REQUISITE INTEGRITY WITH THE REQUISITE KNOWLEDGE. THESE CONSIDERATIONS APPRISE US, THAT THE GOVERNMENT CAN HAVE NO GREAT OPTION BETWEEN FIT CHARACTER; AND THAT A TEMPORARY DURATION IN OFFICE, WHICH WOULD NATURALLY DISCOURAGE SUCH CHARACTERS FROM QUITTING A LUCRATIVE LINE OF PRACTICE TO ACCEPT A SEAT ON THE BENCH, WOULD HAVE A TENDENCY TO THROW THE ADMINISTRATION OF JUSTICE INTO HANDS LESS ABLE, AND LESS WELL QUALIFIED, TO CONDUCT IT WITH UTILITY AND DIGNITY. IN THE PRESENT CIRCUMSTANCES OF THIS COUNTRY, AND IN THOSE IN WHICH IT IS LIKELY TO BE FOR A LONG TIME TO COME, THE DISADVANTAGES ON THIS SCORE WOULD BE GREATER THAN THEY MAY AT FIRST SIGHT APPEAR; BUT IT MUST BE CONFESSED, THAT THEY ARE FAR INFERIOR TO THOSE WHICH PRESENT THEMSELVES UNDER THE OTHER ASPECTS OF THE SUBJECT.

THESE WORDS ARE TRULY PROPHETIC IN THE DESCRIPTION OF AMERICAN LAWS NOW. MOREOVER, IT IS HARD TO DISAGREE WITH HAMILTON'S ASSESSMENT CONCERNING JUDICIAL QUALITY, I THINK, SINCE WE ARE HOPING TO ATTRACT OUR BEST LEGAL MINDS WITH THE HIGHEST INTEGRITY TO FILL FEDERAL JUDGESHIPS. IN WATCHING THE RECENT HEARINGS, I WONDER, THOUGH, WHETHER THAT IS WHAT WE, THROUGH OUR ELECTED REPRESENTATIVES, ARE

DEMANDING FROM OUR PROSPECTIVE NOMINEES. INSTEAD OF AN INDEPENDENT JUDICIARY, IT APPEARS THAT THE VARIOUS POLITICAL INTERESTS ARE SEEKING JUDGES WHO ARE ALIGNED WITH A PARTICULAR POSITION ON CERTAIN ISSUES. THIS IS CERTAINLY NOT WHAT THE FRAMERS INTENDED, AS EVIDENCED BY HAMILTON'S ARGUMENT.

NOW, EVERY WRITTEN AND RECORDED SPOKEN WORD OF A PROSPECTIVE NOMINEE IS REVIEWED TO DETERMINE HOW A NOMINEE WOULD RULE ON CERTAIN ISSUES - MAINLY CONTROVERSIAL ISSUES, LIKE ABORTION AND THE EXTENT OF EXECUTIVE AUTHORITY. MUCH OF THE TIME, THESE POSITIONS ARE BEING USED PRIMARILY TO SUPPORT OR OPPOSE A NOMINEE ON INTEGRITY AND CHARACTER ISSUES - RARELY THEIR LEGAL QUALIFICATIONS. FOR EXAMPLE, JUDGE ALITO'S MEMBERSHIP IN A PRINCETON ALUMNI GROUP WHICH ALLEGEDLY OPPOSED THE ADMISSION OF WOMEN AND MINORITIES WERE OF PARTICULAR INTEREST TO HIS DETRACTORS. THE HYPERBOLE FROM BOTH PARTIES' IS DISCONCERTING.

AS HISTORY HAS TAUGHT US REPEATEDLY, IT IS DIFFICULT, IF NOT IMPOSSIBLE, TO PREDICT HOW A FEDERAL JUDGE WILL RULE IN A PARTICULAR CASE. I FIND IT AMUSING THAT SOME OF THE JUDICIAL OPINIONS AGAINST WHICH MANY SPECIAL INTEREST AND POLITICAL GROUPS RAIL WERE DECIDED BY JUDGES NOMINATED BY PRESIDENTS WHOM THEY SUPPORT.

JUDGES SHOULD NOT BE HANDCUFFED BY ANY PARTICULAR PHILOSOPHY OR POLITICAL BENT. WHEN WE HEAR ABOUT JUDICIAL DECISIONS IN THE MEDIA, IT USUALLY FOCUSES ON THE HOLDING OF A CASE - WITH AMPLE SPECULATION ABOUT THE IMPACT OF THE RULING ON A VARIETY OF POTENTIAL FACT SITUATIONS. WE SELDOM HEAR ABOUT THE SPECIFIC FACTS OF A CASE TO WHICH THE LAW IS BEING APPLIED.

IN ANY EVENT, THE UNCERTAINTY OF LEGAL DECISIONS IS HOW THE FRAMERS EXPECTED THE PROCESS TO WORK. IF ALL LEGAL DECISIONS WERE BLACK AND WHITE, THERE WOULD BE LITTLE NEED FOR A SUPREME COURT OR APPELLATE COURTS. TRIAL COURT JUDGES WOULD ALWAYS GET IT RIGHT BECAUSE DIFFERING INTERPRETATIONS WOULD NOT BE POSSIBLE. BUT, THAT IS IMPOSSIBLE, PARTICULARLY WITH A CONSTITUTION OVER 200 YEARS OLD AND COMPRISED OF FEWER PAGES THAN THIS PAPER, AND A HUGE AMOUNT OF LAWS.

SO WHY ALL OF THE FUSS ABOUT THESE SUPREME COURT NOMINATIONS?? ARE WE GETTING THE TYPE JUDGES ENVISIONED BY HAMILTON IN 78? IS THE CONFIRMATION PROCESS WORKING AS INTENDED?

IN A RECENT ARTICLE, WASHINGTON POST WRITER RUTH MARCUS CRITICIZED JOHN ROBERTS AND SAM ALITO FOR SUGGESTING THAT A

GOOD JUDGE COULD THINK THROUGH ANY CASE, AND ARRIVE AT THE CORRECT ANSWER. THESE GENTLEMEN SEEMED TO BE PROGRAMMED BY POLITICAL CONSULTANTS TO STAY AWAY FROM ANYTHING OTHER THAN BEING STRICT CONSTRUCTIONISTS. THIS HAS BECOME AS MUCH OF A CATCH PHRASE AS ACTIVIST JUDGES, THOSE WHO, IT IS ALLEGED, DO NOT FOLLOW THE LAW BUT SOME PERSONAL AGENDA. APPARENTLY, JUDGES ARE IN ONE OF THOSE TWO CAMPS ACCORDING TO WHAT THE POLITICIANS AND POLITICAL INTEREST GROUPS ARE TELLING US.

I DO NOT BELIEVE THAT IS WHAT OUR JUDGES ARE LIKE - REGARDLESS OF THEIR PARTY AFFILIATION, THE PRESIDENT THAT APPOINTED THEM, OR THE PARTY IN CONTROL OF THE SENATE. UNFORTUNATELY, OUR SOCIETY HAS BOUGHT INTO THESE CATCH PHRASES AT THE INSISTENCE OF POLITICIANS, WHO HAVE LED AN ASSAULT ON THE INTEGRITY OF THE JUDICIARY.

IN HER ARTICLE, MARCUS EXPRESSES FRUSTRATION AT THE NOMINEES' RELUCTANCE TO DISCUSS ANYTHING OTHER THAN ROBOTIC APPLICATIONS OF THE LAW, AND THE SENATORS FAILURE TO DELVE INTO THEIR MAKE UP. SHE CITES THE GREAT JUSTICE BENJAMIN CARDOZO, WHO USED AN ANALOGY OF A PAINTER TOUCHING UP A ROOM: *THEIR NOTION OF THEIR DUTY IS TO MATCH THE COLORS OF THE CASE AT HAND AGAINST THE COLORS OF THE MANY SAMPLE CASES SPREAD UPON THEIR DESK. THE SAMPLE NEAREST IN SHADE SUPPLIES THE APPLICABLE RULE. BUT OF COURSE, NO SYSTEM OF*

LIVING LAW CAN BE EVOLVED BY SUCH A PROCESS, AND NO JUDGE OF A HIGH COURT, WORTHY OF HIS OFFICE, VIEWS THE FUNCTION OF HIS PLACE SO NARROWLY. . .IT IS WHEN THE COLORS DO NOT MATCH . . .WHEN THERE IS NO DECISIVE PRECEDENT, THAT THE SERIOUS BUSINESS OF THE JUDGE BEGINS.

IT SEEMS THAT THOSE WORDS, WRITTEN IN 1921, APPLY TO WHAT WE ARE WITNESSING IN OUR SUPREME COURT JUDICIAL SELECTION PROCESS TODAY. JUDGES ARE TO SIMPLY MATCH THE PAINT, AS THAT IS ALL THAT IS REALLY REQUIRED IN ANY CASE. UNFORTUNATELY, I THINK MANY IN OUR SOCIETY ARE ACCEPTING THIS RIDICULOUS NOTION. DO YOU WANT AN ACTIVIST OR A STRICT CONSTRUCTIONIST??

MARCUS ALSO QUOTES GERALD POSNER, A REAGAN APPEALS COURT APPOINTEE, WHO OBSERVES THAT THE SUPREME COURT IS OFTEN FACED WITH ISSUES TO WHICH: *THE CONSTITUTIONAL TEXT AND HISTORY, AND THE PRONOUNCEMENTS IN THE PAST OPINIONS, DO NOT SPEAK CLEARLY.* IN THAT *BROAD OPEN AREA WHERE THE CONVENTIONAL LEGAL MATERIALS OF DECISION RUN OUT, AND THE JUSTICES, DEPRIVED OF THOSE CRUTCHES, HAVE TO MAKE A DISCRETIONARY CALL.* IN THOSE CASES, THE ABILITY OF A JUDGE TO BALANCE THE COMPETING INTERESTS AT STAKE IS CRITICAL.

THIS IS WHAT MAKES A JUDGE EFFECTIVE - THE ABILITY TO MAKE A REASONED AND FAIR MINDED DISCRETIONARY CALL. A GOOD JUDGE DOES NOT MAKE DECISIONS THAT ARE REPUBLICAN OR DEMOCRAT, OR COURT THE FAVOR OF THOSE IN POWER.

OF COURSE, THE FEDERAL JUDGES HAVE A TOUGH ROAD GOING THROUGH A GRUELING CONFIRMATION PROCESS, WHERE THEIR LIVES ARE AN OPEN BOOK. BUT, THE APPOINTMENT OF JUDGES IS LOOKING MUCH BETTER TO ME NOW AS I EMBARK ON A CAMPAIGN. MY OPPONENT, FROM PADUCAH, ISSUED AN INTERESTING PRESS RELEASE ANNOUNCING HIS CANDIDACY, IN WHICH HE REFERENCED BEING AN EAGLE SCOUT, BEING MARRIED BY JERRY FALWELL, AND HAVING RELEASED HIS FIRST CHRISTIAN MUSIC RECORDING IN 1994.

NOT BEING AN EAGLE SCOUT, OR HAVING BEEN MARRIED BY JERRY FALWELL, OR HAVING RELEASED A RECORDING OF ANY KIND OF MUSIC, LET ALONE CHRISTIAN MUSIC, THIS HAS MADE ME A BIT NERVOUS. IN MY VIEW, NONE OF THESE THINGS HAVE ANY BEARING ON THE TYPE OF JUDGE MY OPPONENT WILL BE.

I KNOW THAT MANY OF YOU ARE ALREADY WRITING ME OFF IN MY CAMPAIGN, BUT, YOU WILL BE PLEASED TO KNOW THAT ATHENAEUM MEMBER, THE REVEREND DOCTOR HOWARD WILLEN, IS IN THE BULLPEN WARM AND READY TO GO SHOULD JERRY FALWELL MAKE AN APPEARANCE ON BEHALF OF MY OPPONENT IN THE CAMPAIGN.

MOREOVER, ATHENAEUM MEMBER JOHN TILLEY AND I HAVE DISCUSSED JOINING OUR CHURCH CHOIR IN ORDER TO MATCH THIS CRITICAL CREDENTIAL OF MY OPPONENT IN OUR RESPECTIVE RACES.

UNTIL 2004, THE 14 STATES THAT ELECT JUDGES ON A NON-PARTISAN BASIS, INCLUDING KENTUCKY, ALL HAD RULES WHICH CLOSELY GOVERN JUDICIAL CAMPAIGNS. AS AN ASIDE, 7 STATES PROVIDE FOR THE ELECTION OF JUDGES BY POLITICAL PARTY, THE REMAINDER PROVIDE FOR SOME TYPE OF APPOINTIVE PROCESS.

IN KENTUCKY, A JUDICIAL CANDIDATE COULD DISCUSS ONLY HIS OR HER QUALIFICATIONS, AND WAYS TO MAKE ADMINISTRATIVE CHANGES IN THE COURT SYSTEM.

A JUDICIAL NOMINEE, THE REPUBLICAN PARTY OF MINNESOTA AND VARIOUS INTEREST GROUPS, INCLUDING THE ACLU, CHALLENGED THESE RULES. IN A 2002 SUPREME COURT CASE, THE COURT HELD THAT MINNESOTA'S RULES LIMITING JUDICIAL CANDIDATE'S SPEECH WAS A VIOLATION OF THE FIRST AMENDMENT. ESSENTIALLY, THE COURT HELD THAT IF A STATE WAS TO HAVE JUDICIAL ELECTIONS, THE STATE COULD NOT MUZZLE A JUDICIAL CANDIDATE'S ANNOUNCEMENT OF OPINION ON POLITICAL AND LEGAL ISSUES WHICH WAS GUARANTEED BY THE FIRST AMENDMENT, BUT DID NOT ADDRESS THE ISSUE OF THE COMMITMENT TO A POSITION.

THE COURT HELD THAT THE STATE'S INTEREST OF PRESERVING THE

IMPARTIALITY OF THE JUDICIAL SYSTEM BY REMOVING BIAS AGAINST A PARTY, WAS NOT SERVED BY THE RULE. A LITIGANT IS NOT BIASED BY AN ANNOUNCED POSITION WHICH ADDRESSES AN ISSUE.

SIMILARLY, THE PRESERVATION OF IMPARTIALITY BY REMOVING PRECONCEPTIONS ON ISSUES WAS NOT SERVED EITHER. THE COURT REJECTED THIS AS AN ESSENTIAL COMPONENT OF EQUAL JUSTICE IN THAT *IT IS VIRTUALLY IMPOSSIBLE TO FIND A JUDGE WHO DOES NOT HAVE PRECONCEPTIONS ABOUT THE LAW* AND *[P]ROOF THAT A JUSTICE'S MIND AT THE TIME HE JOINED THE COURT WAS A COMPLETE TABULA RASA IN THE AREA OF CONSTITUTIONAL ADJUDICATION WOULD BE EVIDENCE OF A LACK OF QUALIFICATION, NOT A LACK OF BIAS.*

SOON AFTER THIS DECISION, THE FAMILY TRUST FOUNDATION OF KENTUCKY SENT OUT A QUESTIONNAIRE TO STATE JUDICIAL CANDIDATES REQUESTING THE CANDIDATES TO RESPOND TO SEVEN QUESTIONS:

1. WHICH OF THE FOLLOWING FORMER U.S. PRESIDENTS BEST REPRESENTS YOUR POLITICAL PHILOSOPHY?

JOHN F. KENNEDY/JIMMY CARTER/RONALD REAGAN/GEORGE BUSH (FORMER) (CIRCLE ONE)

2. WHICH OF THE CURRENT JUSTICES OF THE U.S. SUPREME COURT MOST REFLECTS YOUR JUDICIAL PHILOSOPHY?

REHNQUIST/STEVENS/O'CONNOR/SCALIA/KENNEDY/THOMAS/SOUTER/ GINSBURG/BREYER (CIRCLE ONE)

3. RATE YOUR JUDICIAL PHILOSOPHY ON A SCALE OF 1-10 WITH STRICT CONSTRUCTIONIST BEING A 10 AND A LIVING DOCUMENT APPROACH BEING A 1: _____

MARRIAGE

4. IN BAKER V. STATE, 170 VT. 194, 744 A.2D 864 (1999), THE VERMONT SUPREME COURT HELD THAT THE VERMONT CONSTITUTION REQUIRED THAT SAME-SEX COUPLES BE PERMITTED TO ENTER INTO CIVIL UNIONS THAT ENCOMPASS STATE RIGHTS THAT ATTACH TO LEGAL MARRIAGE.

I BELIEVE THAT THE KENTUCKY CONSTITUTION DOES NOT REQUIRE THAT SAME-SEX COUPLES BE PERMITTED TO ENTER INTO CIVIL UNIONS THAT ENCOMPASS THOSE STATE RIGHTS THAT ATTACH TO LEGAL MARRIAGE.

__AGREE__DISAGREE___UNDECIDED___DECLINE TO RESPOND

BIOETHICS

5. SOME HAVE SUGGESTED THAT DESTRUCTIVE HUMAN EMBRYO RESEARCH AND HUMAN CLONING ARE CONSTITUTIONALLY PROTECTED

FORMS OF SCIENTIFIC ACTIVITIES IN THEMSELVES OR AS INCIDENTS OF HUMAN REPRODUCTION.

I BELIEVE THAT THE KENTUCKY CONSTITUTION DOES NOT RECOGNIZE ANY RIGHT TO DESTRUCTIVE HUMAN EMBRYO RESEARCH OR HUMAN CLONING.

__AGREE__DISAGREE__UNDECIDED__DECLINE TO RESPOND

RELIGIOUS FREEDOM

6. SEVERAL STATES ARE ATTEMPTING TO DECIDE IF IT IS LAWFUL TO DISPLAY THE TEN COMMANDMENTS ALONG WITH OTHER HISTORICALLY SIGNIFICANT DOCUMENTS FROM PUBLIC BUILDINGS.

I BELIEVE THAT THE KENTUCKY CONSTITUTION DOES NOT REQUIRE THE REMOVAL OF THE TEN COMMANDMENTS DISPLAYED WITH OTHER HISTORICALLY SIGNIFICANT DOCUMENTS FROM PUBLIC BUILDINGS.

___AGREE__DISAGREE__UNDECIDED__DECLINE TO RESPOND

INDECENCY/PORNOGRAPHY

7. MISSOURI HAS TRIED TO RAISE THE MINIMUM AGE FOR WORKING AS A DANCER IN A STRIP CLUB FROM AGE 18 TO AGE 19 IN ORDER TO LIMIT THE NUMBER OF HIGH SCHOOL AGED GIRLS FROM WORKING IN THESE CLUBS.

I BELIEVE THAT NEITHER THE U.S. NOR THE KENTUCKY CONSTITUTION IS VIOLATED BY LEGISLATION THAT RAISES THE AGE FOR WORKING AS STRIPPERS IN STRIP CLUBS FROM 18 TO 19

*YEARS OF AGE IN ORDER TO LIMIT THE NUMBER OF HIGH *680 SCHOOL AGED GIRLS WORKING AS STRIPPERS IN SUCH CLUBS.*

__AGREE__DISAGREE _UNDECIDED_DECLINE TO RESPOND

NO JUDICIAL CANDIDATE FULLY RESPONDED TO EACH QUESTION, AND MANY DECLINED ALTOGETHER CITING STATE JUDICIAL CANONS.

THE FAMILY TRUST FOUNDATION SUED THE STATE IN FEDERAL COURT. AN INJUNCTION WAS GRANTED WHICH ENJOINED THE STATE FROM ENFORCING ITS PROHIBITION AGAINST JUDICIAL CANDIDATES EXPRESSING THEIR POLITICAL AND LEGAL VIEWS BASED ON THE MINNESOTA DECISION.

IN RESPONSE, KENTUCKY ADOPTED A NEW RULE WHICH SIMPLY STATES: *A JUDGE OR CANDIDATE FOR ELECTION TO A JUDICIAL OFFICE SHALL NOT INTENTIONALLY OR RECKLESSLY MAKE A STATEMENT THAT A REASONABLE PERSON WOULD PERCEIVE AS COMMITTING THE JUDGE OR CANDIDATE TO RULE A CERTAIN WAY ON A CASE, CONTROVERSY OR ISSUE LIKELY TO COME BEFORE THE COURT; AND SHALL NOT MISREPRESENT ANY CANDIDATE'S IDENTITY, QUALIFICATIONS, PRESENT POSITION, OR OTHER FACTS.*

IN ADDITION, KENTUCKY HAS OTHER RULES WHICH PROHIBIT A JUDICIAL CANDIDATE FROM PERSONALLY SOLICITING CAMPAIGN DONATIONS, AND APPEARING AT POLITICALLY PARTISAN EVENTS IN

SUPPORT OF CANDIDATES, OR EVEN STATING PARTY AFFILIATION UNLESS ASKED.

AFTER THE MINNESOTA CASE WAS DECIDED BY THE SUPREME COURT, OTHER CHALLENGES WERE MADE. THE COURT OF APPEALS STUCK DOWN THE RESTRICTIONS AGAINST A JUDICIAL CANDIDATE PERSONALLY SOLICITING CAMPAIGN DONATIONS, IDENTIFYING PARTY AFFILIATION AND SOLICITING PARTY AND OTHER PARTISAN GROUP'S ENDORSEMENTS. LAST MONTH, THE SUPREME COURT DECLINED TO CONSIDER THIS DECISION, WHICH ALLOWS IT TO STAND. WITH THIS DECISION, IT APPEARS THAT THERE ARE FEW, IF ANY, ENFORCEABLE RULES WHICH NOW APPLY TO JUDICIAL CANDIDATES. PANDORA'S BOX IS WIDE OPEN.

AS JUSTICE SANDRA DAY O'CONNOR STATED IN THE MINNESOTA CASE: *"THE VERY PRACTICE OF ELECTING JUDGES UNDERMINES [AN] INTEREST" IN AN ACTUAL AND PERCEIVED IMPARTIAL JUDICIARY.* THIS IS CERTAINLY TRUE. OR, EVEN MORE ILLUSTRATIVE: SHE SAID: MINNESOTA CANNOT IGNORE THE *CROCODILE [IT HAS CHOSEN TO PLACE] IN [ITS] BATHTUB.*

AGAIN, HAMILTON'S WORDS ARE INSTRUCTIVE:

THAT INFLEXIBLE AND UNIFORM ADHERENCE TO THE RIGHTS OF THE CONSTITUTION, AND OF INDIVIDUALS, WHICH WE PERCEIVE TO BE INDISPENSABLE IN THE COURTS OF JUSTICE, CAN CERTAINLY NOT

BE EXPECTED FROM JUDGES WHO HOLD THEIR OFFICES BY A TEMPORARY COMMISSION. PERIODICAL APPOINTMENTS, HOWEVER REGULATED, OR BY WHOSOEVER MADE, WOULD, IN SOME WAY OR OTHER, BE FATAL TO THEIR NECESSARY INDEPENDENCE. IF THE POWER OF MAKING THEM WAS COMMITTED EITHER TO THE EXECUTIVE OR LEGISLATURE, THERE WOULD BE DANGER OF AN IMPROPER COMPLAISANCE TO THE BRANCH WHICH POSSESSED IT; IF TO BOTH, THERE WOULD BE AN UNWILLINGNESS TO HAZARD THE DISPLEASURE OF EITHER; IF TO THE PEOPLE, OR TO PERSONS CHOSEN BY THEM FOR THE SPECIAL PURPOSE, THERE WOULD BE TOO GREAT A DISPOSITION TO CONSULT POPULARITY, TO JUSTIFY A RELIANCE THAT NOTHING WOULD BE CONSULTED BUT THE CONSTITUTION AND THE LAWS.

I SUPPOSE THAT OLD PHRASE: "BE CAREFUL WHAT YOU WISH FOR" APPLIES IN THE CASE OF JUDICIAL ELECTIONS. WHILE THE ELECTION OF JUDGES HAS SOME ATTRACTIVE FEATURES, IT IS FRAUGHT WITH PROBLEMS AS HAMILTON AND O'CONNOR ACCURATELY NOTE.

PERHAPS, MY APPREHENSION ABOUT CAMPAIGNING IS MORE UNDERSTANDABLE. MY HOPE IS THAT THE PUBLIC WILL BE MINDFUL OF THE ADMONITION I RECENTLY READ IN A COURIER JOURNAL EDITORIAL: *NOT EVERY CANDIDATE MAY HEED THE WARNING [JUDICIAL CANON]. IT'S GOING TO BE UP TO THE ELECTORATE TO*

BE AWARE OF THOSE WHO DO NOT, AND TO REJECT THEIR BLANDISHMENTS AT THE BALLOT BOX.

MY HOPE IS THAT THE PUBLIC WILL REJECT BLANDISHMENTS BY ANY JUDICIAL CANDIDATE. WHEN I AM NOT IN THE RECORDING STUDIO OR IN THE CHURCH CHOIR, HOWARD AND I LOOK FORWARD TO SEEING YOU ON THE CAMPAIGN TRAIL.