

Center for Judicial Accountability, Inc. (CJA)**From:** Brennan Center [brennancenter@nyu.edu]**Sent:** Tuesday, July 05, 2011 3:47 PM**To:** Elena Sassower**Subject:** Fair Courts E-let, July 5, 2011

BRENNAN CENTER FOR JUSTICE

at New York University School of Law

The Brennan Center Fair Courts E-let summarizes news stories and editorials related to the independence of judges and the courts, including material attacking, defending, and concerning the judiciary.

Fair Courts E-let
July 5, 2011

Court Resources

1. While many judges remain on the bench until retirement or death, the growing pay gap between judges and other legal professionals has led many judges in New York to resign their seats on the bench. The *New York Times* reports that New York judges have not had a raise in 12 years, and that judicial turnover in the state has risen dramatically—almost 1 in 10 judges leave the bench annually, many to return to private practice where they can earn many times their judicial salaries. Although some critics claim that judges are overpaid to begin with, the *Times* notes that in New York City, even some law clerks earn more than the judges for whom they work. Courts across the nation are facing a number of challenges as they struggle to keep their doors open amidst budget shortfalls—reducing hours, raising fees, and laying off court personnel—but Georgetown Law Professor emeritus Roy Schotland believes that stagnant pay is “the single most important problem for our courts.”

William Glaberson, *Pay Frozen, More New York Judges Leave Bench*, *New York Times*, July 4, 2011.

2. As last week’s E-Lert reported, courthouses in Jefferson County, Alabama, are on the brink of shutdown. Court officials are actively searching for funds to maintain required security personnel necessary to keep the courthouses open, but that is not the only challenge facing Scott Vowell, presiding Judge for Jefferson County. Judge Vowell is also soliciting funds from the Birmingham Bar Foundation to help pay jurors. According to the *Birmingham News*, Judge Vowell has received assurance from the Alabama Judicial Inquiry Commission that he may raise money from private sources through the charitable arm of the Birmingham Bar Association. Although donors to the fund will remain anonymous to avoid any appearance of impropriety, Judge Vowell

expressed his dismay at what he considers a “terrible, terrible, way to have to run the courts.”

Kent Faulk, *Jefferson County Chief Judge Seeks Private Donations To Help Pay Jurors*, The Birmingham News, June 28, 2011.

3. Ruling that “[r]ights such as protection of life, liberty and property trump a state constitutional provision that says only the Legislature can appropriate state funds,” retired Judge Bruce Christopherson ordered the continued funding of the Minnesota judiciary despite a shut-down of most of the rest of Minnesota’s government. After Republican legislative leaders and Democratic Governor Mark Dayton were unable to reach a budget agreement by their midnight deadline last Friday, other state government functions were suspended, but the courts remained open. Several Republican senators had argued that it would be unconstitutional to fund the courts without legislative authorization, but Judge Christopherson ordered that “[t]he Minnesota judicial branch shall continue to perform the functions of that branch necessary to fulfill its obligations and to ensure citizens’ rights” irrespective of the government shutdown.

Don Davis, *Minnesota Courts Will Stay Open In Shutdown, Judge Rules*, *Duluth News Tribune*, June 28, 2011; Baird Helgeson, Mike Kaszuba, Eric Roper And Rachel E. Stassen-Berger, *Broken Deals, Bitter Words And A State Shuts Down*, *Star Tribune*, July 1, 2011; Tom Scheck, *Judge Considers Whether Wheels Of Justice Should Shut Down*, MPR, June 27, 2011.

State Judicial Selection

4. As he prepares to end his term as Chief Justice of the Missouri Supreme Court, William Ray Price Jr. warned that judicial belt-tightening and national trends of “political challenges” to the judiciary that “seem to be growing more intense” could threaten the impartiality of the state’s courts. Last year, separate proposals to revise and replace Missouri’s merit selection system were defeated, but critics have vowed to continue their efforts. Meanwhile, a *StLtoday* editorial cites the state’s merit selection system as the reason that Missouri avoided the multi-million dollar judicial elections and partisan rancor that have cast doubt on the impartiality of other state courts. Meanwhile, an *American Judicature Society* editorial points out that as public concern over court impartiality has risen in recent years, legislative proposals seeking to alter the judicial landscape—by limiting court budgets, changing the method of judicial selection, and reconfiguring the court system structure—have simultaneously increased. Noting that the most recent legislative session saw many politically-motivated proposals to alter judicial selection, the editorial echoes Chief Justice Price in stressing the necessary balance between judicial independence and judicial accountability.

David A. Lieb, *Mo. Judge: Courts Face Money, Political Pressures*, Associated Press, June 30, 2011; *Editorial: Grownups — Missouri Supreme Court Continues Nonpartisan Tradition*, *StLtoday*, July 1, 2011; *Courts Under Attack*, AJS, June 29, 2011.

5. “Alabama appellate court judges should be selected either on merit and retained or rejected by a vote of all the people, or at least campaign without the added political emphasis of party labels.” So argued Alabama Chief Justice Sue Bell Cobb in a statement last week announcing her

intent to resign. Chief Justice Cobb cited the soaring costs of a judicial campaign as one of her top reasons for not pursuing another term; Alabama is the state with the most expensive high court elections over the last 10 years, according to a decade-in-review analysis of judicial campaign spending released last summer. Justice Cobb stated that her lack of success in getting legislators to adopt judicial selection reform was “one of my keenest disappointments,” while she also lamented the disproportionate increase in the judiciary’s costs compared to its funding. In response to Justice Cobb’s resignation, the *Anniston Star* urged that “[t]his is a system [of judicial selection] in need of change. Partisan judicial races where the seats on the state’s highest court are up for bid to special interests are no basis for gaining the public’s trust. Justice ought not to be for sale.”

A Fighter Steps Down: Alabama Should Listen To Cobb’s Calls For Judicial Campaign Reform, Anniston Star Editorial Board, June 30, 2011; *Cobb: No Decision On Alabama Governor’s Race In 2014*, The Associated Press, June 30, 2011; Brian Lyman, *Chief Justice Cobb Quits; No Timetable For New Appointment*, Montgomery Advisor, June 30, 2011.

5. As public concern over infighting on the Wisconsin Supreme Court reached new levels last week, Governor Scott Walker stated, “Whether you’re Republican, Democrat, liberal or conservative, there’s got to be confidence that the people on the court can rationally discuss and debate.” . According to the *Associated Press*, after Justice Ann Walsh Bradley alleged that Justice David Prosser placed her in a chokehold during a disagreement in her office, Governor Walker suggested that it is “worth looking at” the possibility of replacing Wisconsin’s often bitterly contested, expensive, and highly partisan supreme court elections with a system of merit selection. Similarly, the *Wisconsin State Journal* called the altercation “another reason for reform.” A bipartisan proposal in the state senate would create a judicial selection commission to recommend judicial candidates to the governor. The proposal’s sponsors point to exploding special-interest spending in judicial elections—outside groups spent more than \$3.5 million on television ads in Wisconsin’s April 2011 Supreme Court race, breaking state and national records for television spending by non-candidate groups in judicial elections—and deepening partisan rancor as evidence that reform is needed. The *Milwaukee Journal Sentinel* editorial board agrees, suggesting it’s time for to “start thinking seriously” about appointing justices, rather than electing them.

Clay Barbour and Mary Spicuzza, *State Senators Propose Constitutional Amendment To End Supreme Court Elections*, Wisconsin State Journal, July 1, 2011; *Supreme Court Fracas Unacceptable, Another Reason For Reform*, Wisconsin State Journal, June 28, 2011; *Argument Between Wisconsin Supreme Court Justices Leads To Investigation, Governor’s Rebuke*, Associated Press, June 27, 2011; Mary Spicuzza And Clay Barbour, *Justices Split By Politics, Personality*, Wisconsin State Journal, June 30, 2011; *Alleged Wisconsin Supreme Court ‘Chokehold’ Incident Could Be Decided By...Wisconsin Supreme Court*, Eric Kleefeld, TPM Muckraker, June 28, 2011; Patrick Marley And Emma Roller, *Justice Prosser Was Asked To Get Help For Anger, Sources Say*, Milwaukee Journal Sentinel, June 28, 2011; Justices should explain, Milwaukee Journal Sentinel, July 2, 2011.

6. The *Newark Star-Ledger* reported that the New Jersey Senate voted to confirm Governor Chris Christie’s nomination of Anne Patterson to the state Supreme Court last Monday. Patterson’s confirmation ended a year long stale-mate arising from Governor Christie’s decision to not

reappoint to reappoint Justice John Wallace—when the Governor announced his intent last year to not reappoint the sitting justice, the Senate refused to hold a hearing on Patterson’s nomination. The *Ledger* notes that Patterson will take the seat currently held by Justice Roberto Rivera-Soto, when the Justice steps down in September. Meanwhile, Justice Wallace’s seat remains unfilled.

Ginger Gibson, *N.J. Senate Approves Nomination Of Anne Patterson To State Supreme Court*, Newark Star-Ledger, June 27, 2011.

Recusal

7. Last Tuesday the New York Office of Court Administration officially adopted new standards to disqualify judges based on conflicts of interest caused by judicial campaign spending. Under New York’s new Rule §151.1, judges are prohibited from hearing the cases of parties or lawyers if they or their law firms have contributed more than \$2,500 in the last two years (or if, collectively, the parties, lawyers or firms have contributed \$3,500 in the last two years). The rule also prevents manipulation of the judicial system by allowing a non-contributing party to waive a judge’s disqualification if the party believes the judge could be fair and impartial regardless of contributions to his campaign by the other parties. Noting the threats to judicial independence that can arise when those who fund judicial election campaigns appear in court, the Brennan Center for Justice praised New York for its strong leadership in enforcing campaign contribution limits for lawyers and parties appearing before state judges.

New Contribution Rule Limits Assignments to Elected Judges, New York Law Journal, June 29, 2011; Carlyn Kolker, *New Rule Takes Aim At Judges And Their Campaign Supporters*, Thomson Reuters News & Insight, June 28, 2011.

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