

# MEMORANDUM

Poyner Spruill<sup>LLP</sup>

To: FILE  
From: J. Nicholas Ellis  
Date: November 3, 2017  
Re: Opinion Editorial

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**“North Carolina Judiciary Functions Best When Independent From The Legislative And Executive Branches”**

The General Assembly recently introduced several bills concerning the manner in which North Carolina elects its judges. As we all learned in civics class, we have three branches of government: executive, judicial, and legislative. All three branches are designed to function independently of the others. However, recent actions of our legislative branch seriously threaten the independence of our judicial branch, which in turn undermines the judiciary’s foundation, which is to be subject to the interests of our state’s citizens rather than to another branch of our state government.

Obviously, the legislative branch is designed to be partisan. The same can be said of the executive branch. But for the judiciary to interpret the law honestly and in accordance with applicable legal precedent, it is critical that the judiciary maintain its independence from the legislature. Any legislation exerting undue influence on our judicial branch must be seriously questioned.

Our legislature recently enacted a law that cancels primaries for judicial elections in 2018. This means there can be a number of candidates for judicial positions and, quite simply, the candidate who receives the most votes will be elected to the bench. Can you imagine a race with ten candidates who each receives approximately the same number of votes, resulting in the election of someone to our Supreme Court or Court of Appeals who only received slightly more than ten percent of the votes cast for that position? While that may not inherently mean this candidate is unqualified, the process of narrowing the field down to two candidates for a primary election and then voting between those two candidates in the general election, which is how our judges have historically been elected, seems the method more likely to lead to a well-qualified judge chosen by a better-informed electorate.

Our Senate also recently introduced a bill to elect all judges every two years. This would be a stark change from the current system of electing judges to our Supreme Court, Court of Appeals, and Superior Court to eight-year terms, and judges to our District Court to four-year terms. Many bar associations in North Carolina, including the NC Bar Association, are on record as favoring judicial appointments through an independent commission rather than judicial elections. And while reasonable minds may differ on whether it is better to elect judges instead of having them appointed by such an independent commission, under either process, the

independence and integrity of the judiciary must be maintained. But requiring our judges to run for re-election every two years will result in them spending more time fundraising and campaigning for votes instead of administering justice, which should be their main function. It is believed this bill's purpose is to lump judges in with the election of partisan executive and legislative branch officials, and while the governor and members of the legislature should honor the will and voice of their constituents, the main constituent of the judiciary is the law itself. The fair and neutral administration of justice is the reason we have a judicial branch. The parties who rely on our courts for relief must have confidence in our judges to make unbiased decisions based solely on the law rather than an attempt to curry favor with a political party or another branch of government.

The American Board of Trial Advocates exists to promote improvement in the ethical and technical standards of practice in the field of advocacy to the end that individual litigants may receive more effective representation and the general public be benefited by more efficient administration of justice consistent with time-tested and traditional principles of litigation. Our Eastern NC Chapter consists of attorneys representing both plaintiffs and defendants in civil litigation and we strive to have our clients – and the general public - have their cases decided fairly and impartially by our judges, which is a bedrock principle that must exist in our courts. Eliminating primaries in judicial elections and requiring judges to run for office every two years in partisan elections does nothing but undermine those principles. These bills undercut the reality and maybe more importantly, the perception that the judicial branch issues decisions based on the law rather than following the playbook from a political party. Going forward, we hope the General Assembly will eschew any desire to infringe on the independence and integrity of our state's judiciary. North Carolina is known as the "Good Roads State," and we should strive to also be known as the "Good Judges State."



J. Nicholas Ellis

President, Eastern North Carolina Chapter of the American Board of Trial Advocates