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## Roosevelt Randolph: Speaker's attack on Court is wrong

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In his opening remarks to the organizational session of the Legislature on Nov. 16, incoming House Speaker Dean Cannon unfairly attacked "five unelected justices of the Florida Supreme Court" whom he said caused "threats to freedom" and "threats to our liberties" when they took constitutional amendments off the ballot and "demolished" the work of the Legislature.

Speaker Cannon further alleged that the "five unelected justices" had "no express authority in the Florida Constitution for doing so," but rather decided the case improperly on personal politically biased grounds. By failing to practice judicial restraint in deciding this political question, Cannon concluded, these "five unelected justices" had endangered the Supreme Court's "reputation for impartiality."

The canons of judicial ethics prohibit justices from responding to public criticism of their rulings and themselves personally. Cannon is a lawyer and knows that he can make unfair "ad hominem" attacks on justices who cannot publicly challenge his remarks because their hands are ethically tied.

However, Cannon's off-base attack must not go unrefuted. The Florida Chapters of the American Board of Trial Advocates (ABOTA) are part of a national association made up equally of plaintiff and defense lawyers who represent all segments of society, including major corporations, insurance companies, governmental entities, small businesses and individual citizens of all walks of life.

The common goals of ABOTA are to promote the independence of the judiciary and preserve the Constitution. When these rights are trampled upon unfairly in public remarks like those made by Speaker Cannon, it is incumbent upon someone to defend them. This response is intended to do just that.

Initially, Speaker Cannon's contention that the Florida Constitution "grants the Legislature the unlimited right to place questions before the voters"

is clearly erroneous. While it is true that the Florida Constitution in Article XI, Section 1, gives the Legislature authority to propose amendments for submission to the electorate, it is also true that such authority is not boundless. The constitution imposes strict minimum requirements that the proposed amendment be accurately represented on the ballot.

Cannon is well aware that the Legislature itself imposed the explicit additional statutory limitation in Florida Statutes Section 101.161 (1) that the proposed amendment be printed on the ballot in "clear and unambiguous language." Furthermore, the Florida Supreme Court has been recognized as the proper forum in which to litigate the validity of such amendments for nearly 100 years, in cases dating to 1912. In rendering its decisions on these constitutional amendments, the Florida Supreme Court has enforced the express provisions of the constitution and the express statutory will of the legislature. Rather than "demolish" legislative intent, it was enforced.

Second, Cannon's veiled inference is that, since justices are not elected, their decisions are based improperly on personal politically biased grounds. This attack is also meritless. In its history, Florida has determined that the best way to foster an independent Supreme Court is by appointment rather than by elections. Potential candidates are carefully screened and evaluated by committees made up of both lawyers and lay citizens. The governor makes appointments to the Supreme Court bench from the list of those who are found to be most qualified. Thereafter, the electors vote in a

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public election to retain or not to retain the sitting justices.

As we have seen recently, it is far too easy to sway elections by the influence of those who are hugely popular and hugely rich. It is far more likely that Supreme Court justices will decide cases fairly and impartially if they are not subjected to the pressures of special interest groups and potential corruption presented by modern-day, big-money elections. Cannon's ad hominem attack on the integrity of the "five unelected justices" is reckless and unwarranted.


Finally, as a lawyer, Cannon is well aware that the highest ethical practice requires that a lawyer never publicly criticize the individual judge for his or her ruling, but reserve such criticism for appellate court briefs. Under our system, respect for the "rule of law" requires that when the highest court has ruled, we obey that law as announced. Lawyers should maintain respect due to courts of justice and judicial officers. The sore spot for Speaker Cannon seems to be that, as a lawyer, he personally argued one of the proposed amendments before the Supreme Court, which ruled against his client. Cannon's unfair attack on the justices who ruled against him does nothing to promote the independence of the judiciary or preserve the constitution. As a leader of the Florida Legislature, he can and must do better for all our sakes.




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