

August 10, 2007

UNFAIR CRITICISM

Citizens of Missouri are not pleased these days with the Governor and his staff, and for good reason. The Governor's attacks on our Constitutional Non-Partisan Court Plan are unfounded, and inconsistent with the duty and oath to uphold and enforce the Constitution. These latest attacks on the Non-Partisan Court Plan are attempts to intimidate Missouri judges, to chip away at our constitutional separation of powers, and to try to weaken perceived obstacles to a radical political agenda seeking executive control over the courts. The Non-Partisan Court Plan has been part of the Missouri Constitution for over 65 years, Mo. Const., Article V, sections 25(a)-(g), and has served the citizens well over that time, during both Republican and Democratic administrations. Missouri has not seen the multi-million dollar election campaigns and corruption issues that exist in other states where judges have to campaign for office. Reasonable legislators, and the citizens, know that radical plans to abolish or cripple the Non-Partisan Court Plan are very bad ideas. And they can see that this is exactly what is really behind the Governor's unfair criticism of the judicial selection process provided in our Constitution.

The idea of politicizing the selection of appellate judges (and trial judges in our urban areas) by dismantling the Non-Partisan Court Plan is a bad idea on the merits, but it is also a symptom of a more dangerous threat to undermine the impartiality and independence of the judiciary. The Governor's criticism of the Non-Partisan Court Plan reflects a feigned distrust of the courts, but really reflects a power grab intended to erode the Constitutional Separation of Powers that protects the citizens from governmental excess.

Various attempts over the last 200 years of our nation's history to make the courts subservient to the executive and legislative branches have failed because the citizens want, expect and are entitled to fair and impartial courts which are not beholden to the current political regime. An impartial judiciary has been an important factor in fostering economic growth, protection of civil rights and private property, predictability in commercial dealings, and respect for the rule of law. Efforts underway in Jefferson City to try to make our Missouri courts an

inferior, political arm of the executive branch—efforts evidenced starkly by the recent spew of unfair criticism and explicit threats from some lawmakers to abolish the Non-Partisan Court Plan-- represent a radical departure from our traditions and history. And in the end, the citizens will not stand for it.

The current attacks from the Governor's office on the judges and the Constitutional Non-Partisan Court Plan, and the underlying agenda to undermine the separation of powers, will fail because citizens understand what is at stake. Citizens understand how a group of anti-court, anti-rule of law extremists want to remove (or at least weaken) any constitutional constraints on their political agenda. Citizens understand that these partisans want to be able to intimidate any judge who upholds the law and the Constitution in a way that interferes with that agenda. The citizens will in the end see through the sophomoric rhetoric decrying "activist judges," and will insist that the Constitutional Non-Partisan Court Plan continue to guide the selection and appointment of Missouri judges.