

SENATE RESOLUTION NO. 207

BY SENATOR MURRAY

A RESOLUTION

To urge and request the Louisiana Supreme Court to take all action necessary to protect the importance of the judicial branch as a separate branch of government and the independence of the judiciary in performing powers and duties pursuant to the federal and state constitutions.

WHEREAS, Article II of the Constitution of Louisiana states in Section 1 that, "The powers of government of the state are divided into three separate branches: legislative, executive, and judicial", and states in Section 2 that, "Except as otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others"; and

WHEREAS, as a separate branch of government the judicial branch has inherent powers and also powers vested in it by the federal and state constitutions; and

WHEREAS, Article V of the Constitution of Louisiana states in Section 1 that "The judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by this Article"; and

WHEREAS, Article V of the Constitution of Louisiana further states in part in Section 5 that "The supreme court has general supervisory jurisdiction over all other courts", and that the supreme court "has exclusive original jurisdiction of disciplinary proceedings against a member of the bar"; and

WHEREAS, Article V of the Constitution of Louisiana further states in part in Section 25 concerning the Judiciary Commission that upon:

"recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the

supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings", and also states that "Action against a judge under this Section shall not preclude disciplinary action against him concerning his license to practice law"; and

WHEREAS, in accordance with these powers, functions, and duties the Louisiana Supreme Court has adopted rules governing the conduct of judges, including the disclosure of certain personal financial information, and further maintains on its website a list of delinquent persons who have failed to file, failed to timely file, failed to provide omitted information or failed to provide accurate information as required by court rules concerning personal financial statements; and

WHEREAS, in addition to the separate powers and functions of the judicial branch, it has been recognized that even in an elected judiciary the role of the judge is separate and distinct from the role of a politician and public official in the executive and legislative branches; and

WHEREAS, it has been pointed out that the judiciary, unlike the executive or the legislature, "has no influence over either the sword or the purse; . . . neither force nor will but merely judgment." (The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered)); and

WHEREAS, as further noted in one case:

"Two principles are in conflict and must, to the extent possible, be reconciled. Candidates for public office should be free to express their views on all matters of interest to the electorate. Judges should decide cases in accordance with law rather than with any express or implied commitments that they may have made to their campaign supporters or to others. The roots of both principles lie deep in our constitutional heritage. Justice under law is as fundamental a part of the Western political tradition as democratic self-government and is historically more deeply rooted, having been essentially uncontested within the mainstream of the tradition since at least Cicero's time. Whatever their respective pedigrees, only a fanatic would suppose that one of the principles should give way completely to the other—that the principle of freedom of speech should be held to entitle a candidate for judicial office to promise to vote for one side or another in a particular case or class of cases or that the principle of impartial legal justice should be held to prevent a candidate for such office from furnishing any information or opinion to the electorate beyond his name, rank, and serial number"; and

WHEREAS, any direct or implied portrayal of judges as merely "politicians" like those of other branches does a disservice both to judicial independence and to the proper role of the judiciary in a representative democracy; and

WHEREAS, it has been pointed out that, "the public has a right to have judges function differently from other elected officials in order to preserve the role of the judiciary in our system of checks and balances"; and

WHEREAS, it has been further pointed out that:

"Communication between nonjudicial candidates and the public occurs, during campaigns and all the rest of the time, via the same media and messages. Communication to or from judges—except during campaigns—occurs in highly structured and controlled ways—in trials and hearings, via evidence, testimony, arguments, and brief" and that "judges' communications outside the courtroom—except during campaigns—are almost entirely free of the self-promotion and kinds of advocacy that is garden-variety when other elected officials address the public"; and

WHEREAS, the Louisiana Supreme Court should seek to maintain the independence of the judiciary, including the role of judge as distinct from politicians in the executive and legislative branches; and

WHEREAS, the Louisiana Supreme Court should be encouraged to take all action necessary to protect the importance of the judicial branch as a separate branch of government and the independence of the judiciary in performing powers and duties pursuant to the federal and state constitutions.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana Supreme Court to take all action necessary to protect the importance of the judicial branch as a separate branch of government and the independence of the judiciary in performing powers and duties pursuant to the federal and state constitutions.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the chief justice of the Louisiana Supreme Court.

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PRESIDENT OF THE SENATE