

**STATEMENT BY RETIRED JUSTICES OF THE NEW JERSEY SUPREME COURT:**

**ROBERT L. CLIFFORD, JAMES H. COLEMAN, JR., MARIE L. GARIBALDI,**

**ALAN B. HANDLER, STEWART G. POLLOCK, DEBORAH T. PORITZ,**

**GARY S. STEIN AND JAMES R. ZAZZALI**

New Jersey's modern constitution was drafted by a remarkable group of men and women. Our "founders" met at the Constitutional Convention of 1947 to replace an antiquated framework for state governance with a simplified and balanced structure that became a model for other State Constitutions. In the Judicial Article, the members of the Committee on the Judiciary turned to the Federal Constitution for guidance as they sought to transform a system of multiple courts with overlapping jurisdiction into the streamlined, yet flexible, structure we have today, and to ensure, through the judicial appointment process, the independence built into the federal system. Indeed, judges' independence was the "litmus test" for each point of discussion, as the Committee members considered such issues as lifetime tenure, appointment and reappointment. Governor Driscoll, at the close of the Judiciary Committee debates, sounded that theme:

It is, as you know, the courts that have traditionally been the guardians of our constitutions, to whom the meanest citizen may appeal for protection against a wayward executive or a capricious legislature. Without independent courts, the whole republican system must surely fail. Our primary, our basic purpose in the drafting of a new Constitution is to secure beyond any question a strong, competent, easily functioning, but always independent, judiciary, and, therefore, in a position to curb any tendency on the part of the other two branches of government to exceed their constitutional authority.

On the appointment of judges, the Committee heard testimony and discussed the pros and cons of a probationary period for judges, whether ten years, seven years, or some other period. There was concern that judges who were not reappointed would not be able to reestablish their legal practices, a concern the Committee weighed against the positive value in removing judges "who [were] appointed but didn't work out." As one member put it, "Mistakes do happen." The

members worried about misuse of the tenure appointment process, and, whether judges would be influenced by their desire to be reappointed.

The convention proceedings reveal with unmistakable clarity how the seven-year initial appointment for Supreme Court Justices became part of our Constitution. As initially drafted by the Committee on the Judiciary, the Constitution provided for a seven-year term for trial judges but immediate lifetime tenure for Supreme Court Justices. Arthur Vanderbilt, the first Chief Justice after adoption of the Constitution, wrote to the Committee on July 29, 1947 and recommended initial seven-year terms for Supreme Court Justices as well in order to provide “assurance of the appointee’s fitness for a life appointment.” An amendment reflecting that proposal was offered on August 19, 1947, and briefly debated. During the debate, Senator Frank “Hap” Farley supported the amendment with these words: “[I]t is only fair that any new [judicial] appointments under the new Constitution should go through the trial period of one term. If they are qualified, they have no fear of not being reappointed.” There is simply no question about the intent of the framers of our Constitution: reappointment would be denied only when a judge was deemed unfit, a standard that ensured the independence of the State’s judiciary under the Constitution. That standard, embraced and followed for more than sixty years, is imbued with constitutional value.

The concern for judicial independence that shaped the discussion has been a hallmark of our judicial system since 1947. By unwritten rule, Governors have maintained a four/three party affiliation split on the New Jersey Supreme Court, a balance seen as a powerful restraint on court “packing” or other means of exerting political pressure on an independent judiciary. Even lower court appointments are balanced between the parties. For over sixty years, Governors have nominated judges for reappointment unless there has been a determination that the judge has not

capably performed his or her duties. There has been no “political test” for reappointment because the independence of the judiciary has been a bedrock principle followed by every Governor. When those who disagreed with the decisions of Chief Justice Wilentz tried to prevent the Senate from exercising its consent power, Governor Kean spoke out, recognizing the importance of independent judges even though he as well sometimes disagreed with the Wilentz Court.

No Governor before now has sought to control the Third Branch of government through the reappointment process. Judicial decisions must be made without fear of retaliation: competence, integrity, impartiality -- those qualities have been fostered by law and by tradition. Every litigant before the court has known that his or her case would be decided fairly, without undue political influence, by impartial, independent judges. Our court system has been an exemplar for other states; our courts’ opinions are cited and followed by other state courts. Not everyone agrees with every decision, nor should unanimity be expected in a free society.

No one, not even the Governor, suggests that Justice Wallace is not qualified to serve. He has demonstrated, as a trial judge, as an appellate judge, and as an Associate Justice of the New Jersey Supreme Court for almost seven years, integrity, thoughtfulness, scholarship, compassion and adherence to the rule of law. We can ask no more of any judge. That he is the second African American to serve on our State’s highest court, and that the Court has benefitted from his understanding of our diverse society, in addition to his exemplary record, argue powerfully in favor of his reappointment.

We regret the Governor’s decision not to reappoint Justice Wallace and urge the Governor to reconsider the effect of such a decision on judicial independence.

May 13, 2010