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# A SECOND OPINION FOR DR. WOODS

Grant Woods' prescription for helping judges ward off grassroots political opposition ("Vote for Me, Counsel!" The Last Word, Dec. 2004) is a breeding ground for innumerable maladies. A Hippocratic reminder to first do no harm is in order. Woods wants the bar or a group of independent lawyers to "raise money and on its own respond to campaigns against individual judges."

Many questions are raised by this elitist proposal wrapped in the clothes of ethical salvation.

- What's an "independent" lawyer?
- How would a judge access the fund without personally soliciting aid?
- Could all judges count on the bar's munificence irrespective of their political stripe?

Complications abound.

Our judiciary is largely entrusted to guard its own henhouse, as the Commission on Judicial Conduct is the usual remover of judges. In a state where the governor does not directly appoint, the Senate does not confirm and the House rarely impeaches, the only purely exterior check on judicial power is

performed by the public through retention elections, where voters in larger counties are confronted with a mammoth list of Supreme Court, appellate and trial judges. Because only two judges have been unseated since retention began in 1974, it can hardly be deemed an imposing ejector mechanism.

Against this backdrop of futility, Woods conjures the specter of the rabble rising up, armed with torches, pitchforks and "very narrow" viewpoints, and pulling judges down from their ivory towers with their ignorant ideas. This "very narrow view" is the belief that the lives of the unborn deserve legal protection. The prospect of pro-lifers exercising their First Amendment rights so alarms Woods that he calls for the formation of a special panel to drown out their voices.

Woods argues that judges should be inoculated from ouster by popular disaffection. Notwithstanding the admiration we have for certain judges, their service does not entitle them to avoid scrutiny outside the confines of our profession. In a representative democracy, an independent judiciary cannot operate in a vacuum, and it should not be

hermetically insulated from public debate.

Ethical considerations for a judge facing retention aren't as problematic as Woods suggests. Under the Code of Judicial Conduct, judges cannot personally solicit contributions, but nothing prevents the creation of a committee to raise funds on the judge's behalf. This option is available to those marked for retirement by the politically myopic.

Woods may not agree with what pro-lifers have to say. But rather than defend their right to say it, he advocates deputizing the bar to raise and spend money to counteract their speech! Frankly, this seems a far slipperier slope than the one he decries in his article, and his cure appears much worse than the disease.

—Frank J. Conti, Esq