

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

March 17, 1995

The Judicial Inquiry Commission* has considered your request for an opinion concerning whether your disqualification is required in Roe v. Boggan, Case No. 1940461, the case of the certified question from the Eleventh Circuit United States Court of Appeals regarding Alabama law on the counting of absentee ballots in the 1994 general election in which the election of Alabama's Chief Justice is at issue. You specifically asked whether an associate justice's "impartiality might reasonably be questioned", thus requiring disqualification under Canon 3C(l), due to any of the following circumstances:

1. You were a candidate for the position of Associate Justice in the election at issue and were elected;
2. You appeared on platforms with the incumbent Chief Justice at the same political forums, where you and he sought and received political endorsements from the same groups;
3. You and the incumbent Chief Justice shared and used some of the same advertising and media consultants, polling data, and other campaign personnel;
4. You and the incumbent Chief Justice are members of the same political party;
5. You received a campaign contribution from the incumbent Chief Justice's attorney son;
6. You received a campaign contribution from the law firm in which the incumbent Chief Justice's son is a partner;
7. You received campaign contributions from law firms that are representing a class of plaintiffs in a lawsuit closely related to Roe v. Boggan. These firms also contributed to the incumbent Chief Justice's campaign; and
8. The ruling on the certified question, and the effect it may have on the disposition of Roe v. Boggan, could affect the final vote totals in your 1994 election. However, it should not affect the outcome.

While your request for an advisory opinion was under consideration by the Commission, the Supreme Court of Alabama, on March 14, 1995, entered its decision in the above referenced case. In that decision, the Supreme Court ruled that disqualification was not required. However, since further proceedings may occur in this case, your request is not moot.

It is the opinion of the Commission, in response to your request, that based upon the decision of the Supreme Court, on March 14, 1995, you are not disqualified. However, it is the recommendation of this Commission that you should recuse yourself from any future participation in the above referenced case. The Commission bases its recommendation on the totality of the circumstances with special focus on the apparent interrelationship of your campaign with that of the incumbent Chief Justice. The Commission views recusal as especially appropriate not only due to the above factors but also because of the climate surrounding the 1994 Alabama elections. See Canons 1, 2A, 2C, 3C(l)(a), (c), and (d), and 7A(l).

The Commission does not suggest that you are actually biased, nor does it question your representation that you are able to render impartial judgment in the case at issue. However, the reasonable person/appearance of impropriety standard in Canon 3C(l), along with the other canons, provides a basis for this recommendation. As the Supreme Court of Alabama has stated previously:

The appearance of fairness is virtually as important as is fairness itself. One of the essential ingredients of an effective judiciary is the high level of respect accorded it by the citizenry. Except for the impartiality of those who occupy the role of judge, both in act and appearance, the level of respect necessary to a strong and effective judiciary will fail. It is the essence of the system that any position of interest or bias is sufficient cause for disqualification of the judge, and the right to raise and insist upon the causes of disqualification must be zealously guarded.

Morgan County Commission v. Powell, 293 So. 2d 830, 840 (Ala. 1974).

Sincerely,

*Justice Kennedy did not participate in the rendition of this opinion.