

November 2009

# NomineeAlert



## Wynn's Background

Associate Justice, North Carolina Supreme Court

Judge, North Carolina Court of Appeals

Attorney, Fitch, Butterfield & Wynn

North Carolina Assistant Appellate Defender

U.S. Navy JAG Corps, Naval Service Office

Certified Military Trial Judge, U.S. Navy Reserves

### EDUCATION

B.A., University of North Carolina-Chapel Hill

J.D., Marquette University School of Law

L.L.M., University of Virginia School of Law

## this issue:

James A. Wynn, Nominee for Judge on the U.S. Court of Appeals for the 4th Circuit

## Who is James A. Wynn?

On November 4, 2009 President Obama nominated James A. Wynn to be a judge on the U.S. Court of Appeals for the 4th Circuit. Wynn is currently a judge on the North Carolina Court of Appeals.

Wynn is the vice-chairman of the Justice at Stake Campaign, a left-wing group which is bent on weakening the influence of conservatives on the courts. He is obsessed with race, class, and gender and has been endorsed by virtually every liberal group and paper in his state.

The Justice at Stake Campaign vehemently opposes cultural conservatism and has been funded by George Soros' Open Society Institute. Since 2004 Soros has given nearly \$3 million either directly or indirectly to the organization. The Joyce Foundation, on whose board Obama's friend Valerie Jarrett sat for six years, is also a

major contributor. Since 2003 The Joyce Foundation has given over \$1.1 million to the organization. For perspective, the organization's income was less than \$1.5 million in 2006.

**"Wynn is another Obama nominee who appears to be more concerned about the color of one's skin than their ability to perform on the job."**

***-Don Todd,  
Director of Research,  
Americans for Limited  
Government***

Of the judicial elections Wynn has won, two were close and one was uncontested. In 1990 Wynn barely beat his opponent. In 2000 Wynn narrowly prevailed over an opponent who raised only \$2,300. In 2008 Wynn beat his woefully underfunded opponent by less than 9%. North Carolina voters have twice rejected Wynn for the state supreme court, first in 1998 and again in 2004.

Conveniently, Justice at Stake opposes judicial elections. Fn.1.

Like many of Obama's nominees, Wynn appears to obsess about race, class, and gender. In a 2004 law review article Wynn made the following statement, "It is clear, however, that efforts to obtain a diverse bench, whether in a

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# What you really need know about Wynn

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system of merit selection or popular election, foster the complementary interests of judicial independence and judicial accountability." Fn.2. He complains about the skin color of the members of the bench:

Indeed, the American judiciary is disproportionately white and male. These white men disproportionately make judgments affecting African-Americans, women, and other minorities. Scholars have detailed how this disparity between the judges and the judged creates a crisis of legitimacy because our courts are perceived by much of the public as biased "instruments of oppression." More important than a perception of bias, however, is that the absence of diversity creates (in fact) a judicial partiality to the values and stories of the groups overrepresented - white men - in its midst. Although the vast majority of white male judges are not repositories of racial animus, one commentator notes that they are, nevertheless, "steeped in and bound by narratives which appear not to be narratives at all because they are cloaked in the transparency of whiteness." *Id.* at 782.

He states further:

The life experiences of judges are overwhelmingly white, male, and affluent. This homogeneity poses a significant challenge for a judicial system that disproportionately passes judgment on issues affecting African-Americans, women, and other minorities. Ultimately, "the finding and evaluation of facts [as well as legal predispositions, are] affected by our judges' lack of connection with the judged." Without diversity, affluent white males have an onerous and lonely challenge to articulate the stories and life narratives of African-Americans alleging police brutality, women claiming sexual harassment, and Native Americans demanding greater autonomy, just to name a few.

If impartiality is the heart and soul of the merit-selection movement, then proponents of judicial appointment must address the enduring home-field advantage of affluence, whiteness, and manhood in the American judiciary. Fn.2. at 785-6.

Applying these views to his own situation, Wynn ran an explicitly racial campaign to win a judicial election in North Carolina. While Wynn refused to take positions on the burning issues of the day, he did tout his race as a reason to vote for him:

This election year is the 50th anniversary of the Brown vs. Board of Education decision that ended segregation in America's education system. And ironically, here in North Carolina, we still have a segregated Supreme Court. There are no African-Americans on the state's highest court. But with your help, we will change that on November 2nd, 2004.

Fn.3.

Apparently his racial appeals fell flat, and Wynn lost the election by over 74,000 votes.

## Sources for further reading:

**Fn.1.** *Data-Net*, The Program on Public Life, Center for the Study of the American South, University of North Carolina, Issue 44, July 2007. Available online at: <http://southnow.org/southnow-publications/nc-datanet/ncdn44.pdf>. (Accessed November 30, 2009.)

Open Society Institute's search page for grants. Available online at: <http://www.soros.org/grants/research>. (Accessed November 30, 2009.)

The Joyce Foundation Annual Reports for 2003, 2005, and 2007. Available online at: [http://www.joycefdn.org/pdf/03\\_AnnualReport.pdf](http://www.joycefdn.org/pdf/03_AnnualReport.pdf), [http://www.joycefdn.org/pdf/JF\\_05AR.pdf](http://www.joycefdn.org/pdf/JF_05AR.pdf), and [http://www.joycefdn.org/pdf/07\\_AnnualReport.pdf](http://www.joycefdn.org/pdf/07_AnnualReport.pdf). (Accessed November 30, 2009.)

See also, Bert Brandenburg and Amy Kay, *Crusading Against the Courts, The New Mission to Weaken the Role of the Courts in Protecting Our Religious Liberties*, Justice at Stake Campaign, May 2007. Available online at: <http://www.gavelgrab.org/wp-content/resources/CrusadingAgainstCourts.pdf>. (Accessed November 30, 2009.)

**Fn.2.** James Andrew Wynn, Jr. and Eli Paul Mazur, *Perspectives: Judicial Elections Versus Merit Selection: Judicial Diversity: Where Independence and Accountability Meet*, 67 ALB. L. REV. 775, 776 (2004).

**Fn.3.** Tavis Smiley and Charles Edwards, *Two African-American judges seeking re-election in their states' supreme courts*, National Public Radio, November 1, 2004. (Excerpt from radio political ad.)

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