

Questions for the Record to Michael Boggs
Submitted by Senator Chris Coons
May 20, 2014

1. **In your 2011 application to be a Court of Appeals Judge, you stated that, “the judiciary continues to endure criticism, fairly earned in some cases, of abrogating their constitutionally created authority by issuing decisions that venture into policy making.”**

- a. **To what cases were you referring when you submitted your application in 2011?**

Response: I do not recall any specific cases to which I may have been referring when I made that statement in 2011. I was probably generally referring to judges who decide cases based on their own personal public policy preferences or who decide cases without regard to strict compliance with the law and precedent. As I think back, my comments were intended simply to convey my understanding and appreciation for the limited role of judges to be faithful to the rule of law and the doctrine of *stare decisis*, and that judges should not be policy makers.

- b. **For each case or decision, has your opinion changed with respect to whether the judiciary has abrogated its constitutional authority?**

Response: I do not recall any specific cases to which I may have been referring to when I made that statement in 2011.

2. **Canon 7A of the Georgia Code of Judicial Conduct forbids judges to “make a contribution to a political organization.” Georgia Conservatives in Action (“GCIA”) endorses candidates for elective office and, therefore, may qualify as a political organization under the Code of Judicial Conduct. In September 2012, your campaign committee contributed \$1500 to GCIA. During your May 13, 2014 nomination hearing, you testified that you had been unaware of GCIA’s political activities at the time that you made that donation. According to an Atlanta Journal-Constitution blog posting (<http://politics.blog.ajc.com/2014/05/19/john-lewis-i-would-vote-against-the-confirmation-of-michael-boggs/> accessed on May 19, 2014), however, you attended an October 2010 GCIA event attended by Nathan Deal (then running for Governor), Gary Black (then running for Agricultural Commissioner), and Lt. Gov. Casey Cagle. Nathan Deal had been endorsed for Governor by GCIA on August 7, 2010. At photos of the event, campaign signs appear prominently.**

- a. **Do you maintain that you were unaware in 2012 that Georgia Conservatives in Action endorsed candidates for elective office?**

Response: Yes. I am very respectful and mindful of the obligations of judges pursuant to the Georgia Code of Judicial Conduct. And, throughout my ten-year judicial career, I have endeavored to be faithful to and exceed my legal obligations pursuant thereto. As a judge, I have never made a contribution to a political organization as that term is defined by the Georgia Code of Judicial Conduct.

- b. Did the presence of campaign signs and multiple candidates for statewide office at the October 2010 Georgia Conservatives in Action event in Waycross, GA give rise to a reasonable inference that Georgia Conservatives in Action endorsed any candidates for elective office?**

Response: To my knowledge, I have attended two GCIA events. Elected state and local officials and candidates – sometimes competing candidates – were present at both events. I did not consider their presence, particularly since competing candidates were present, or their campaign signs at one of the events, to be reflective of any “endorsement” by GCIA.

- c. Do you consider Georgia Conservatives in Action to be a political organization under Canon 7A of the Georgia Code of Judicial Conduct?**

Response: No. The Georgia Code of Judicial Conduct defines a “political organization” to be “a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.” GCIA was organized and incorporated as a social welfare organization under section 501(c)(4) of the Internal Revenue Code. By definition under the regulations of the Internal Revenue Service a social welfare organization is an entity that is “primarily engaged in promoting in some way the common good and general welfare of the people of the community.” See 26 C.F.R. section 1.501(c)(4)-1(a)(2). Inasmuch as election activity and social welfare are different things, an organization can not have the principal purpose of furthering the election or appointment of candidates to political office (the definition of a “political organization” under the Code) and also have the primary purpose of promoting social welfare (the definition of a 501(c)(4)).

Inasmuch as GCIA is a 501 (c)(4), it cannot be a political organization under the Code. This is true notwithstanding the fact that GCIA has apparently endorsed candidates for political office. Under the tax code, a 501 (c)(4) may endorse candidates. So long as its election-related activities do not become its principal or primary purpose, the entity remains a (c)(4), and it cannot be a “political organization” under the Code.

- d. Do you believe it would be appropriate for a judge to financially support the political activities of an organization like Georgia Conservatives in Action?**

Response: I do not believe it would be appropriate for a judge to financially support any “political organization,” as defined by the Georgia Code of Judicial Conduct, and as a judge, I have never done so.

- e. Prior to making any contribution to Georgia Conservatives in Action, what steps did you take to ascertain whether contributions to that organization would be permitted under the Georgia Code of Judicial Conduct?**

Response: In exercising due diligence prior to my former campaign committee’s donations, I reviewed the pertinent section of the Code of Judicial Conduct defining “political organization” and reviewed Georgia statutory authority regarding the disposition of campaign contributions, paying particular attention to O.C.G.A. § 21-5-33 (b)(1)(a), which expressly permitted contributions to a nonprofit organization. I also spoke personally with the representative of the organization who solicited the contributions and verified that the organization was duly incorporated as a nonprofit organization. I was also familiar with the organization’s tax status at the time, as evidenced by my notation of “501 C 4 Donation” on the April 6, 2012 check and my notation of “nonprofit contribution per: O.C.G.A. § 21-5-33(b)(1)(A)” on the September 27, 2012 check.

- 3. Canon 7A of the Georgia Code of Judicial Conduct also provides that a judge shall not “publicly endorse a candidate for public office.” According to an Atlanta Journal-Constitution blog posting (<http://politics.blog.ajc.com/2014/05/19/john-lewis-i-would-vote-against-the-confirmation-of-michael-boggs/> accessed on May 19, 2014), you attended a 2012 fundraiser for a candidate for Georgia State Senate.**

- a. Please describe your participation in fundraisers, speeches, and other events associated with candidates for public office, since 2004.**

Response: In January of 2012, I attended a fundraiser for State Senator-elect Tyler Harper. At the time I attended, I fully intended to run for re-election to the Court of Appeals. Therefore, I was authorized to attend this event or any fundraiser for any other partisan or nonpartisan political candidate and did so with a full understanding that the attendance was authorized by the Code of Judicial Conduct and the Advisory Opinions stated herein.

Specifically, Canon 7(A)(2) of the Georgia Code of Judicial Conduct provides that “[j]udges holding an office filled by public election between

competing candidates, or candidates for such office, may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election.” Relying in part on this provision, the Judicial Qualifications Commission has ruled in a number of Advisory Opinions that elected judges and judicial candidates may attend fundraisers for partisan candidates. See, e.g., Opinion No. 90 (October 24, 1986) (judicial candidate may attend fundraisers for partisan candidates); Opinion No. 124 (July 29, 1988) (if a judge has made the decision to run for election or re-election to office, he is a candidate and thus may attend a fundraising event for a partisan, non-judicial candidate if he is acting on his own behalf and the purpose of his attendance is to encourage individuals to vote for him in a future election); Opinion No. 203 (Dec. 15, 1995) (in attending a fundraising event for another candidate, a judge is not making a prohibited public endorsement) adding that “[t]he Commission makes this determination in recognition of the fact that most judges in this state must themselves periodically seek election to public office, and any other conclusion might be viewed as an unreasonable and unnecessary burden on the political process.”

Since my election as a Judge in 2004, I have attended some fundraisers of local and state partisan and nonpartisan candidates for public office. I have done so on a very limited basis and always in strict compliance with the Georgia Code of Judicial Conduct and the Advisory Opinions issued by them relative to such activities.

- b. For each, please state whether you believe your participation to have constituted a public endorsement of a candidate for public office in violation of Canon 7A.**

Response: I am confident that my participation in attending fundraisers for any candidate while I have been a judge does not constitute a public endorsement of a candidate for public office in violation of Canon 7A. This conclusion is expressly supported by the provisions of Canon 7A(2) of the Georgia Code of Judicial Conduct and Advisory Opinion No. 203 (Dec. 15, 1995) which states that “in attending a fundraising event for another candidate, a judge is not making a prohibited public endorsement” adding that “[t]he Commission makes this determination in recognition of the fact that most judges in this state must themselves periodically seek election to public office, and any other conclusion might be viewed as an unreasonable and unnecessary burden on the political process.”

- c. For each, please describe the steps you took to ascertain whether your participation would be permitted under the Georgia Code of Judicial Conduct.**

Response: In each and every instance where I may have attended a fundraiser for any candidate, I would have based my decisions on the provisions of Canon 7A(2) of the Georgia Code of Judicial Conduct and the Advisory Opinions of the Georgia Judicial Qualifications Commission related specifically to this issue.