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11th Circuit is not a laboratory

Political activism on the bench risks decisions that would test constitutional jurisprudence

By Shannon L. Goessling, Special to the Daily Report

It's federal court judicial nomination time again, so buyer beware. The 11th U.S. Circuit Court of Appeals' vacancy is on the target list, and the American Bar Association (ABA) is reviewing specific candidates at the request of the White House and seeking input from Georgia attorneys.

At the top of the ABA's inquiry list is Daisy Hurst Floyd, former dean of Mercer University's Walter F. George School of Law (2004–2010). Floyd's consideration has the legal and business communities buzzing. Given that the potential candidate's background is being reviewed by the legal powers-that-be, it's worthwhile for the American people to consider Floyd's career and qualifications for the second highest court in the land.

Educated in Georgia, Floyd spent one year in private practice at an Atlanta law firm. From there, she began a career as a law school instructor, paralegal studies program director, and then law professor at Texas Tech University School of Law. In 2000, Floyd and her husband published an article opposing prayer at the Texas Tech graduation, arguing that a privately held event would be more appropriate.¹

As a law school dean, Floyd oversaw the decline in national rankings of Mercer's law school. In 2006, the U.S. News & World Report ranked the school 87th in the nation; by 2010, the school dropped off the top 100 list of law schools in the U.S. One month after the 2009 rankings were released, Floyd resigned as dean at Mercer. Floyd has no judicial experience.

Despite her views opposing ceremonial prayer at a college graduation, Floyd was a founding member of "The Project for Integrating Spirituality, Law and Politics."² The organization's founders describe themselves as "Spiritual/Political legal activists."³ Of particular focus to the project is the development of "empathy" in law as a "precondition to the prevention of widespread and perhaps catastrophic ecological destruction."⁴

The goal of the project is to "develop a legal theory and practice that unites the spiritual and political ... to bring about a transformation of legal culture. ..." ⁵ Floyd wrote in a 2007 law review article, "Perhaps law school should help teach students how to integrate their personal ... standards rather than perpetuating a system that expects the judge's role in administering the law will be at odds with personal moral or religious values."⁶

At a 2008 Mercer symposium, Floyd emphasized the need for "social justice" as a driving force in the administration of law, saying, "I think part of it is being explicit about addressing [social justice] but also trying to correct the places where that gets devalued in law school."⁷ In her legal worldview, "social justice" is "devalued" when it is not specifically raised and integrated into an area of law.

Routinely coming before the 11th Circuit are cases involving civil and criminal procedure, property and estate law, taxation, and constitutional Commerce Clause analysis, for example—areas of the law that do not lend themselves to "personal standards" or "empathy" as the basis for a rule-of-law court decision.

In fact, it is inevitable that the 11th Circuit will be asked to consider significant constitutional cases involving national health care policy, climate change regulations, and issues related to the financial crisis involving mortgages and investments.

The forced application of "social justice" standards in these complex cases by a prospective nominee with no judicial experience and a well-documented history as a "spiritual/political legal activist" risks unprecedented decisions that would test the fabric of constitutional jurisprudence. The 11th Circuit is not a laboratory.

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Footnotes

¹ *Lubbock Avalanche-Journal*, "Prayer at Graduation," Daisy Hurst Floyd and Tim Floyd, May 4, 2000, http://lubbockonline.com/stories/050400/let_050400051.shtml.

² www.spiritlawpolitics.org

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Daisy Hurst Floyd, "Lost Opportunity: Legal Education and the Development of Professional Identity," 20 *HAMLIN L. REV.* 555 at 559 (2007).

⁷ Symposium: "The Opportunity for Legal Education," 59 *MERCER L. REV.* 859 (2008).