THE INDEPENDENCE AND
DEMOCRATIC ACCOUNTABILITY OF
THE SUPREME COURT OF OHIO

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I. INTRODUCTION

The Supreme Court of Ohio, like many highest state courts, is in a crisis resulting from an unseemly flood of money into statewide judicial election campaigns.1 We address that crisis in this article.

Most judges around the world are not elected. And, of course, our federal judges are not. We hope it will not try the patience of readers if we first explain why those who sit on the state courts in Ohio are elected. That hope is nourished by the fact that the best published justification for electing judges was written in Chillicothe, Ohio, in 1848 in a work we will briefly review.

The reasons why Ohioans chose in the nineteenth century to elect their judges are still present and perhaps greater even than they were in 1848, but the impediments to such elections are now much greater. The question we propose to answer is whether there are steps that might be taken that would ease the present crisis without abandoning the aims of the state constitution. We believe there are.

II. WHY DOES OHIO ELECT ITS JUSTICES?

The provisions of the Ohio constitution bearing on the Supreme Court of the state were crafted by Ohioans known to their political adversaries as Barnburners.2 Barnburners derived their politics from two texts they deemed sacred: Thomas Jefferson’s Declaration of Independence and

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1 These problems are, indeed, the object of national concern. They have recently been examined by the Century Fund. See UNCERTAIN JUSTICE: POLITICS AND AMERICA’S COURTS: THE REPORTS OF THE TASK FORCES OF CITIZENS FOR INDEPENDENT COURTS (2000) [hereinafter UNCERTAIN JUSTICE]. The American Bar Association has recently staged several conferences pertaining to the general subject. The papers for the conference held in Philadelphia in December 1998 are published in colloquy, Judicial Independence and Accountability, 61 LAW & CONTEMP. PROBS. (Winter 1999), and at its 2001 meeting made specific recommendations bearing on the problem that are reflected in the proposal advanced in the second part of this article.

2 The name Barnburners was meant to suggest that they were the sort of folks who would burn their barns to drive the rats out.