

Wm. LACY CLAY
1ST DISTRICT, MISSOURI

COMMITTEES:
FINANCIAL SERVICES
OVERSIGHT AND
GOVERNMENT REFORM

Chairman,
SUBCOMMITTEE ON
INFORMATION POLICY, CENSUS,
AND NATIONAL ARCHIVES

Web Site: www.lacyclay.house.gov/

2418 Rayburn House Office Building
Washington, DC 20515
(202) 225-2406
(202) 226-3717 Fax

625 North Euclid, Suite 326
St. Louis, MO 63108
(314) 367-1970
(314) 367-1341 Fax

8021 West Florissant, Suite F
Jennings, MO 63136
(314) 383-5240
(314) 383-8020 Fax

Congress of the United States
House of Representatives
Washington, DC 20515-2501

December 6, 2010

The White House
1600 Pennsylvania Avenue N.W., Room 130
Washington, DC 20500

Dear President Obama,

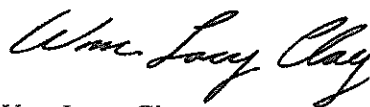
I am writing this letter to you to express my strong opposition to the nomination of Judge John A. Ross as United States District Court Judge in the Eastern District of Missouri and to call for the withdrawal of his nomination for this post. It has come to my attention that Judge Ross has jeopardized the integrity of our judicial system while substituting his own political opinions for the applicable law. I have attached a letter sent to Missouri Senator Claire McCaskill from a group of elected officials in St. Louis that lays out the facts and context of the controversial decisions of Judge Ross.

Specifically, in the ongoing matter involving Kevin Buchek v. Robert Edwards, Judge Ross, through his judicial activism and blatant unfairness, has deprived the Board of Directors elected to serve the Northeast Ambulance and Fire Protection District in Normandy, Missouri of their rights to manage the district as well as disenfranchised the voters of the district by substituting his political decisions in place of the priorities of the elected officials in this majority black fire district.

He has presumed authority over all executive and budget decisions. Without statutory or constitutional authority, he has prevented officials from exercising powers granted to them by Missouri law, thus, engaging in racial and discriminatory practices in a district that consists of 85% African American population.

Based on Judge Ross' judicial activism, history of racial and gender discrimination against black elected officials and employees of the fire district, I urge you to withdraw any consideration of appointing Judge John A. Ross as the United States District Court Judge of the Eastern District of Missouri.

Sincerely,



Wm. Lacy Clay
Member of Congress

Enclosure(s)

Citizens for Fairness in the Appointment of Judges
2320 Chambers Rd
St. Louis, MO 63136
314-388-3400

November 20, 2010

Hon. Claire McCaskill
U.S. Senate
Hart Senate Office Building, Ste. 717
Washington, D.C. 20510

Re: Recommendation of Successor to U.S. District Court Judge Charles Shaw

Dear Senator McCaskill:

We the undersigned would like to express our vehement opposition to the recommendation of Judge John A. Ross for U.S. District Court Judge. It has been reported that you intend to recommend that President Obama nominate St. Louis County Circuit Judge John Ross to succeed U.S. District Court Judge Charles Shaw, who has taken senior status on the U.S. District Court for the Eastern District of Missouri. We would like to take this opportunity to express our total opposition to such a recommendation. Judge Ross is a judicial activist who has not only deprived the persons who have been either elected or appointed to serve as Directors of the Northeast Ambulance and Fire Protection District of their right to manage the district, but has effectively disenfranchised the voters of the district by usurping the powers of the individuals that the voters elected to manage the district.

Judge Ross, by his judicial activism, has unlawfully substituted his judgment for that of the duly elected and appointed officials of the district. His judicial activism has been directed against a duly elected board of directors of black elected officials. There is no precedence in the state of Missouri in which a state court has taken the position that it has the power to supervise duly elected public officials in the performance of their statutory duties. The only elected body in the state of Missouri that has found itself in this position is a board of black elected officials. Judge Ross thus has also engaged in a racially discriminatory practice as well.

Judge Ross has engaged in this judicial activism in presiding over the case of *Kevin Buchek vs. Joseph L. Washington, et. al.*, Cause No 09SL-CC04530,

pending in the Circuit Court of St. Louis County. This is a case in which a resident of the district, without any standing to sue, brought an injunctive action to prevent the expenditure of funds by district officials pending the filling of a vacancy on the board of directors of the district. The court issued a temporary restraining order and preliminary injunction in the case, and, based on Missouri civil procedure, such interlocutory orders issued by the circuit court were not appealable to the appellate courts. Instead, the defendants have to await a final judgment in the case before seeking appellate review. Judge Ross has used that procedural barrier to retain jurisdiction over the case now for over one year and well after the filing of the vacancy on the district's board of directors.

The vacancy on the board of directors was filled in November, 2009.¹ Once the vacancy was filled, Judge Ross had no good cause to continue to exercise jurisdiction over the case. He should have immediately dismissed the case or issued a final judgment in the case, instead he has actively continued to exercise jurisdiction over the board of directors and actively supervised the expenditure of funds by the district, totally contrary to law of Missouri. He has even presumed to direct the district directors as to whom they can hire, how much they can pay, what they can buy, and thus has usurped their statutory powers to manage the district. He effectively ordered the board to discriminate against the district's female fire chief when he prevented the board from paying that female fire chief the same pay it had given to a male fire chief, in violation of the federal equal pay act. Thus, he has not only engaged in judicial activism, he has engaged in both racial and sexual discrimination as well.

In summary, without any statutory or constitutional authority at all, he has deprived duly elected and appointed executive and legislative officials from performing duties and exercising powers granted to those officials by Missouri law.

In *Harkey v. Mobley*, 552 S.W.2d 79 (Mo. App., 1977), the court held:

Sans express statutory authority and absent, as here, allegations of fraud, courts of equity have no jurisdiction to remove directors or officers of a private corporation on the ground of mismanagement of the affairs of the corporation, neglect or other causes. The only power of amotion is in the corporation itself.
Neither do courts have authority, absent statutory

power, to grant injunctions restraining officers from performing their corporate duties since this would have the same effect as their removal. *Griffin v. St. Louis Vine & Fruit Growers' Association*, 4 Mo.App. 595, 596(1) (1877); *Feldman v. Pennroad Corporation*, 60 F.Supp. 716, 719(9) (D.C.Del.1945), aff'd, 155 F.2d 773 (3rd Cir. 1946); 2 Fletcher Cyclopedia Corporations (Perm.Ed.) § 358, pp. 170-174; 19 C.J.S. Corporations § 738 b., pp. 74-75; 19 Am.Jur.2d, Corporations, § 1111, pp. 550-551; Annot., 124 A.L.R. 364-373. (Emphasis ours)

The case of *Massey v. Howard, et. al.*, 240 S.W.2d 743, is instructive. It was a case in which a judgment creditor sought to have a political subdivision of the state, i.e., a drainage district, placed in receivership. The Missouri Court of Appeals, citing authority from Louisiana, stated:

"In Depew v. Venice Drainage District, 158 La. 1099, 105 So. 78, the trial court, upon petition of a holder of improvement bonds issued by the drainage district, appointed a receiver to hold, manage and dispose of all the property and income of the corporation and to receive the taxes levied by it, and to distribute it under the supervision of the court to the persons entitled to receive the same. On appeal the court held that neither the provisions of the constitution of that state authorizing drainage districts and declaring them to be political subdivisions of the state, nor the statutes giving district courts 'unlimited' jurisdiction in matters of receiverships of corporations, vested any power in such courts to appoint a receiver of a public corporation. The court said, 105 So. page 79: **'If this court should hold that the judiciary may take over and control the agencies of government and substitute its judgment for the discretion vested in legally constituted authorities, the legislative and executive branches of government might as well cease to function. The contemplation of such a monstrosity is repugnant to common sense.'**

Whatever legal or other remedies may be available to appellant, if any, it appears to us certain that the remedy he seeks in the present proceedings, namely the appointment of a receiver to take over a part of the statutory functions of the members of the Board of Supervisors of the Drainage District, such as to determine the amount of a necessary levy, to make the same, and to take steps to collect and disburse it, is not authorized by law." (Emphasis ours)

Judge Ross has totally ignored that holding and has through judicial activism taken over control of the Northeast Ambulance and Fire Protection District. We can expect the same out of Judge Ross if he becomes a federal judge, with vast judicial power not only over state executive and legislative branch elected and appointed officials but over federal executive and legislative elected and appointed officers as well. Based on Judge Ross' judicial activism in the *Buchek* case, if he is appointed a federal judge and presented with a court case in which litigants request that the court take control over a federal public agency, board or commission, we can certainly expect Judge Ross to seize control of those federal boards and commissions and to supervise them and substitute his judgment for those of duly elected or appointed federal officials.

Moreover, during the pendency of the *Buchek* case, Judge Ross issued an order prohibiting the board of directors from paying two of the defendants', a black fire chief and a black board member, attorneys' fees and out of pocket expenses out of district funds which thus prevented those attorney's from being able to fully litigate the matter and to challenge Judge Ross's actions. In fact, Judge Ross even issued an order barring those two defendants' attorneys from being able to present evidence before a master that Judge Ross had appointed while allowing all other litigants to present evidence and arguments to that master. That of course denied those litigants due process of law. At the same time Judge Ross ordered the payment of attorney's fees to the white litigants in the case from fire district funds. He has even allowed the special master fees running well in excess of \$3,000 per month over the past year at taxpayer cost.

Finally, Judge Ross has refused, now for over a year, to hold a speedy trial on the merits of the case so that a final judgment could be entered in the case, and the question of his judicial activism could be presented to the court of appeals. When specifically requested by the black fire chief and black board members' attorneys that he set the matter for trial, back in

November, 2009, Judge Ross denied the request, and the matter has now languished in his court for well over a year with no trial setting in sight.

Finally, apart from Judge Ross' judicial activism, we also take exception to your failure to consider the many sitting black state circuit and appellate court judges, as well as a sitting black U.S. Bankruptcy Court judge, and the many highly qualified black attorneys who reside in the Eastern District for appointment to the U.S. District Court, particularly considering that Judge Shaw is black. It is ironic that a Republican U.S. Senator, Christopher Bond, despite the fact that he did not receive the support of black voters, when he sought election and re-election to the U.S. Senate, when given the opportunity, recommended two black judges for appointment to the U.S. District Court; while you, a Democratic U.S. Senator, who received over 95% of the black vote, when you sought election to the U.S. Senate, have not seen fit to recommend a black person to the office of U.S. District Court Judge. That has become even more glaring of an oversight with the nomination of a black state appellate court judge, the Honorable Nanette Baker, to become a U.S. Magistrate Judge - thus confirming that Judge Baker was well qualified to be appointed a U.S. District Court Judge, and certainly is more qualified than Judge Ross.

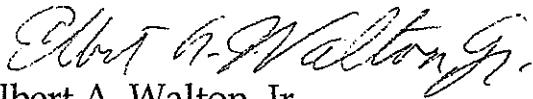
Since you are one of the persons who support the Missouri non-partisan court plan, you could at least submit three names to President Obama for nomination as a successor to Judge Shaw and include among that number at least one black candidate for appointment. Moreover, you could convene a commission and allow it to receive applications for said appointment and to vet those applicants so that you could then submit the names of the three most qualified individuals to the President for appointment. Instead, it appears that you have elected to pass over highly qualified black attorneys and jurist for recommendation to the President for appointment to the U.S. District Court for the Eastern District of Missouri.

Based on Judge Ross' judicial activism, and history of unlawful discrimination against black and female elected and appointed officials and employees of the fire district, we urge you to withdraw any consideration of recommending Judge Ross as a U.S. District Court Judge.

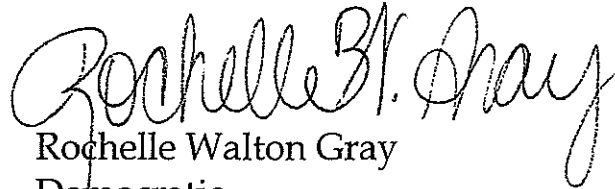
We trust that you will consider the above and also the footnote below, in your deliberations on this matter, and withdraw Judge Ross from consideration as a U. S. District Court Judge; and, that you will thus submit

a panel of at least three names of candidates for appointment as a judge to President Obama that includes at least one black candidate for appointment to the federal bench.

Sincerely,
Citizens for Fairness in the Appointment of Judges
Executive Board



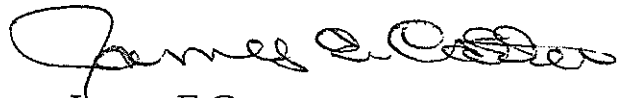
Elbert A. Walton, Jr.
Chairperson
Democratic State Representative-
Retired
Former Democratic Committeeman
Halls Ferry Township



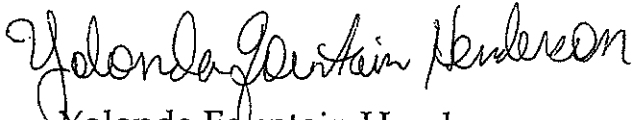
Rochelle Walton Gray
Democratic
State Representative
81st District



Anthony Weaver
Democratic Committeeman
Spanish Lake Township



James E Cotter
Democratic Committeeman
University Township



Yolonda Fountain Henderson
Councilperson, City of Jennings
Member, Jennings School Board
Democratic Committeewoman,
Norwood Township

Cc:

President Barack Obama
U.S. Senator-Elect Roy Blunt
U.S. Congressman William Lacy Clay, Jr.
U.S. Congressman Russ Carnahan
U.S. Senator Patrick Leahy
U.S. Senator Jeff Sessions

¹The fire district has an 85% black population. It has a three member publicly elected board of directors. Its board of directors became all black in 2007 when a third black board member, defeated a white incumbent and was elected to the board. Two of those black board members vacated their positions on the board in 2009. In the event of a vacancy on the board, prior to the end of a director's term, Missouri law provided that the vacancy would be filled by appointment. The first vacancy would be filled by the remaining members of the board, while any subsequent concurrent vacancy, would be filled by the circuit court. The first vacancy on the board was filled by the remaining directors on the board with the appointment of the first female to the board who was also black. The second concurrent vacancy was submitted to the circuit court to be filled by the court. Judge Ross, as presiding judge of the district, did not refer the second vacancy to the court en banc for appointment by a majority vote of the court en banc, but instead determined to make the appointment personally, on his own. In making said appointment, he elected to appoint a white female to fill the vacancy despite the fact that the district is over 85% black and the resigning member was black and had defeated a white board member when he was elected to the board. Furthermore, this white female was the sister of the former white male board member who had been defeated for re-election to the board by a black candidate. In fact, that same female had been a member of a city council, located within the fire district, and she too had been defeated for office when she sought re-election to said city council. It thus appears that Judge Ross made a political decision that he was going to overturn or reverse the will of the voters of the district in appointing a defeated candidate's sister to the board. Since the district is overwhelmingly black and the voters in the district had elected black candidates to the board over white candidates, Judge Ross should have, consistently with the demonstrated past will of a majority of the voters of the district, appointed a black person to succeed the resigning black member of the board. Moreover, even if he determined to appoint a white person to the board, it certainly should not have been a lady who not only had been personally rejected by voters of the district, but whose brother had been rejected as well.