

October 12, 2022

Richard Nelson
Executive Director
Commonwealth Policy Center

Mr. Nelson:

I'm writing to express my appreciation for CPC's endorsement in the upcoming election for Division One of the Franklin Circuit Court. I am encouraged to have your organization's support.

Most judicial elections in Kentucky are decided on the basis of the candidates' relative name identification strength (which, in turn, often depends on having the same last name as another judge who is remembered in the community). My context with Phil Shepherd is different. In this race, the candidates are offering to the voters two very different visions of what a judge should be.

As a constitutional conservative, I believe a judge should always follow the law. This belief is grounded in common sense; after all, if every other citizen is expected to follow the law or face adverse consequences, why should it be any different for the judge? But the reasoning goes beyond that. Under the separation of powers that forms the bedrock for our constitutional order, each of the three branches of government has a certain set of responsibilities that it, and only it, may be permitted to exercise. The responsibility for setting the public policy of the Commonwealth rests in the hands of the voters and the senators and representatives they elect to serve in our General Assembly. The role of the Governor and other officials within the Executive Branch is to use whatever funds and other resources have been appropriated by the General Assembly to carry out the General Assembly's public policy pronouncements (usually in the form of statutes) to the best of their ability.

The role of the judiciary is a modest one: to take the law as it actually exists (rather than as the judge might wish it to be), apply it to the facts of a specific case, and deliver the outcome that the law requires. It's that simple. In our constitutional order, judges are not free to violate or disregard laws that they personally disagree with, or to invent clever ways to circumvent those laws in order to reach a result that the judge believes to be better than the one the law requires.

My opponent has a different view. He follows the law in those instances when doing so seems right to him. When it doesn't, he acts as though fidelity to the law is merely optional. He may think he's doing the right thing when he deviates from what the law requires, but he's wrong for at least two reasons. One, because a judge is not omniscient, his personal view of "what is best" may not turn out to be best—or even good—at all. Second, when a judge deviates from what the law requires, he is stepping beyond the constitutionally assigned role that is appropriate for the judiciary and treading, contrary to the constitutional design of government, into matters that fall within the province of the legislature (whose duty is to enunciate public policy through the enactment of laws of general applicability) and/or the executive (whose duty is to implement those laws). In practice, Phil Shepherd's mistaken view of a judge's role can lead to rulings that have no basis in law and cause real harm to the community.

The contrast between my view and Phil Shepherd's view is stark. I welcome the opportunity to place a meaningful choice before the voters in this election, and I am hopeful that the better view will prevail when the votes are tallied in November. Thank you again for your support.

Respectfully,

Joe Bilby
Candidate, Franklin Circuit Court