

Griffin, Kallman criticize judge-made law

By Tim Richard
staff writer

Michigan Supreme Court justices are making law — and doing it wrong, according to two Republican nominees for the high court.

Robert P. Griffin, better known as a former two-term U.S. senator, said, "I condemn the court for legislating," citing a 1979 decision abolishing the doctrine of contributory negligence.

Griffin, seeking a seat on the non-partisan court for the second time, told an Oakland County audience Tuesday that Michigan's business climate is hurt "largely because of decisions of the Supreme Court."

James Kallman, an Ingham County circuit judge, chided Supreme Court justices for letting Court of Appeals panels issue conflicting opinions that open the door for more lawsuits.

IN THE FINAL week of the campaign, Griffin and Kallman ad-

ressed the 300 Club, a breakfast meeting in Birmingham of Republican contributors.

They are opposed by Democratic Party nominees Dennis Archer, an incumbent justice who was appointed to the court earlier this year by Gov. James Blanchard, and Dean Robb, a Traverse City attorney and civil libertarian. Twenty "independent" candidates are on the ballot, too, by virtue of filing an affidavit. All but a handful have been inactive candidates.

Griffin said that as he travels the state, he sees news stories of "the only doctor in town is packing up and quitting. Leaving town. Or the only baby doctor. We're on the verge of a serious problem."

The cause is high liability insurance rates, he said, and the reason is a Supreme Court decision.

Traditionally, a person guilty of any "contributory negligence" in an accident couldn't sue to collect damages. But, in 1979, Griffin said, "The Michigan Supreme Court abolished



Robert P. Griffin
trial lawyers aggressive

the defense of contributory negligence. You can be 90 or 95 percent at blame, and you have a suit. You can recover what a jury says it's worth. That 5-10 percent can be a

lot.

"It's getting easier and easier to get to a jury and have larger and larger awards approved," said Griffin, adding that such a change in law should have been made only by a two-house Legislature with its structure of committees and public hearings.

HE SAID REFORM in the law of tort (damages for injuries) is resisted by the Michigan Trial Lawyers Association, a group representing 10 percent of the state's 24,000 lawyers that brings liability suits for plaintiffs.

"They have been very aggressive in the last 10 or 20 years, bringing more cases for larger jury verdicts," Griffin said. "They've got good reason to want the system to stay the way it is."

The two Democratic nominees come out of the MTLA, and the group has consistently argued against reform, he said. The soaring liability insurance rates for doctors and others is "exclusively

the creation of big insurance companies," he added.

Griffin said that while the insurance companies were "not squeaky clean," the court decision had more to do with insurance rates.

He said the Supreme Court made law again in the so-called Toussaint case by allowing a person hired for an indefinite term to collect damages when fired. "It's a full employment bill for lawyers. There are firms in this state that do nothing but bring and defend Toussaint cases," he said.

KALLMAN, WHO calls himself a "strict constructionist" and delights in being labeled "a tough law-and-order judge," criticized a Supreme Court opinion in a Shelby Township case that said the word "shall" doesn't mean "mandatory," in defiance of dictionary definitions.

"I've had three lawyers stand in front of me and argue that 'shall' is not 'mandatory.' I threw 'em out of court," Kallman said.

Criticizing the Supreme Court for

allowing conflicting appeals court decisions, Kallman said: "I went one way on a no-fault case and got reversed. So the next time I went the other way — and got reversed."

"The Supreme Court could order the Court of Appeals to sit down and resolve conflicting opinions or else bring them to the Supreme Court."

Attorneys, seeing such conflicts in judge-made law, decide to "take a chance" and file a suit, contributing to the "logjam" in the trial courts, he said.

Kallman, in 1983, was appointed a probate and juvenile court judge by then-Gov. George Romney. Kallman said he was ordering juvenile defendants to be advised of their legal rights and provided with attorneys two years before the U.S. Supreme Court ordered it in the so-called "Miranda" case.

Kallman has been a circuit judge since 1973, a Court of Claims judge since 1978 and a visiting judge on the Court of Appeals on a half-dozen occasions.

Independent challenges Griffin bid

Jerry J. Kaufman, a Huntington Woods lawyer running as an independent for the state Supreme Court, said he wants the attorney general to investigate Robert P. Griffin, the Republican nominee, for ethical violations.



Kaufman
Birmingham.

Kaufman, 32, handed Griffin, 62, a letter asking him to resign as the GOP nominee only a week before the election. The meeting occurred Tuesday after Griffin addressed a GOP gathering in Birmingham.

Kaufman said Griffin filed a registration form as a state lobbyist but failed to list any income, expenditure or lobbying activities.

"What if I didn't do any lobbying?" Griffin asked. "Half the lawyers in my firm registered as lobbyists."

Kaufman said he had "suspensions" Griffin's campaign control buttons from several insurance companies were disguised lobbying fees. He said Griffin's status gave "the appearance of impropriety."

"Absolutely ridiculous," said Griffin, walking off.

Kaufman is one of 20 independent candidates running for the high court under a rule that allowed them to file with the signature of one sup-

porter. He said he is accepting no contributions and doing no advertising.



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