

THE NEW POLITICS OF JUDICIAL ELECTIONS 2004

**How Special Interest Pressure on
Our Courts Has Reached A “Tipping Point”—
and How to Keep Our Courts Fair and Impartial**

by

Deborah Goldberg and Sarah Samis

Brennan Center for Justice at NYU School of Law

Edwin Bender and Rachel Weiss

Institute on Money in State Politics

Jesse Rutledge, Editor

Justice at Stake Campaign



Justice at Stake
c a m p a i g n

About the Brennan Center For Justice



The Brennan Center for Justice at NYU School of Law unites thinkers and advocates in pursuit of a vision of inclusive and effective democracy. Its mission is to develop and implement an innovative, nonpartisan agenda of scholarship, public education, and legal action that promotes equality and human dignity, while safeguarding fundamental freedoms. Through its Campaign Finance Reform and Fair Courts Projects, the Center has been seeking to reduce the influence of money on politics, including both judicial and non-judicial elections. Using television advertising data obtained from TNS Media Intelligence/CMAG, the Center's superb Research Associate Sarah Samis created a comprehensive database and produced the quantitative analyses presented in Part 1 of this report.

About the Institute on Money in State Politics



The Institute on Money in State Politics has been collecting, publishing, and analyzing data on money in state legislative and gubernatorial elections for more than 13 years. The Institute has also compiled a summary of state Supreme Court contribution data from 1989 through the present and has compiled complete detailed databases of campaign contributions for all high-court judicial races beginning with the 2000 elections. The Institute on Money in State Politics has done an in-depth study of fundraising and spending in Supreme Court elections in seven states and how often money comes from attorneys or litigants who appear before the justices to whom they have contributed. The analysis of candidate fundraising and spending in Part 2 of this report uses data compiled by the Institute.

About the Justice at Stake Campaign



The Justice at Stake Campaign is a nonpartisan national partnership working to keep our courts fair, impartial and independent. In states across America, Campaign partners work to protect our courts through public education, grass-roots organizing and reform. The Campaign provides strategic coordination and brings unique organizational, communications and research resources to the work of its partners and allies at the national, state and local levels. The Campaign's Sarah Pope provided substantial research support for this report.

This report was prepared by two Justice at Stake Campaign partners, the Brennan Center for Justice and the Institute on Money in State Politics. It represents their research and viewpoints, and does not necessarily reflect those of other Justice at Stake Campaign partners or their funders. Publication of this report was supported by grants from Carnegie Corporation, Deer Creek Foundation, Joyce Foundation, and Open Society Institute.

THE NEW POLITICS OF JUDICIAL ELECTIONS 2004

**How Special Interest Pressure on
Our Courts Has Reached A “Tipping Point”—
and How to Keep Our Courts Fair and Impartial**



Justice at Stake
c a m p a i g n

717 D Street, NW, Suite 203
Washington, D.C. 20004
Phone (202) 588-9700 • Fax (202) 588-9485
info@justiceatstake.org
www.justiceatstake.org

by

Deborah Goldberg and Sarah Samis
Brennan Center for Justice at NYU School of Law

Edwin Bender and Rachel Weiss
Institute on Money in State Politics

Jesse Rutledge, Editor
Justice at Stake Campaign

Table of Contents

List of Figures	<i>page iv</i>
------------------------	----------------

Executive Summary	<i>page vi</i>
--------------------------	----------------

Part 1

TV Ads Are Now a Staple of Supreme Court Elections	<i>page 1</i>
---	---------------

TV Ads Appear in Supreme Court Races in 4 of 5 States with Contested Elections	<i>page 3</i>
---	---------------

STATE IN FOCUS: WEST VIRGINIA	<i>page 4</i>
-------------------------------	---------------

Spending on Airtime Smashes Record	<i>page 6</i>
------------------------------------	---------------

Ads Are Appearing Earlier in the Campaign Cycle	<i>page 7</i>
---	---------------

More Special Interest Money Underwrites More TV Ads	<i>page 7</i>
---	---------------

Political Parties Inject Themselves into Court Campaigns	<i>page 8</i>
--	---------------

Advertising Content: More Promises, More Attacks	<i>page 9</i>
--	---------------

Part 2

Big Money Court Campaigns Are Spreading Across the Country	<i>page 13</i>
---	----------------

More Fundraising in More States	<i>page 13</i>
---------------------------------	----------------

Average Cost of Winning Jumps 40 Percent in Two Years	<i>page 13</i>
---	----------------

STATE IN FOCUS: ILLINOIS	<i>page 18</i>
--------------------------	----------------

In North Carolina, Public Financing Offers Relief	<i>page 21</i>
---	----------------

What You Raise Depends on Where You Sit	<i>page 22</i>
---	----------------

Part 3

Judicial Elections Are Now Interest Group Battlefields *page 23*

The Battle Over Tort Liability Draws Millions to Judicial Races *page 24*

The Culture Wars Spread to Judicial Elections *page 28*

STATE IN FOCUS: ALABAMA *page 32*

Part 4

Countering the Threats to Our Courts: Reforms at Work in the States *page 35*

Disclosure: Sunshine Laws Are an Obvious First Step *page 36*

Merit Selection and Retention Elections *page 37*

Public Financing of Judicial Elections:
Getting Judicial Candidates Out of the Fundraising Game *page 37*

STATE IN FOCUS: NORTH CAROLINA *page 38*

Voter Guides: Helping Voters Dilute the Power of Special Interests *page 40*

Conduct Committees: Helping Candidates Campaign Cleanly *page 41*

Judges as Leaders for Reform *page 42*

Appendix

Supreme Court TV Advertisements, 2004 *page 44*

Part 1

TV Ads Are Now a Staple of Supreme Court Elections

1. The Growth of Television Advertising in
Supreme Court Elections, 2000-2004 *page 2*
2. Number of Television Ad Airings
by State and Election Cycle, 2000-2004 *page 2*
3. Cumulative Airtime Spending Comparison,
2002 & 2004 Supreme Court Elections *page 3*
4. AND FOR THE SAKE OF THE KIDS
Television Advertisement, West Virginia *page 4*
5. Airtime Summary,
2004 Supreme Court Elections *page 6*
6. Non-Candidate Airtime Spending,
2004 Supreme Court Elections *page 8*
7. Sponsors of Attack Ads, 2004 Supreme Court Elections *page 10*
8. Topics of Ads, 2004 Supreme Court Elections *page 11*

Part 2

Big Money Court Campaigns Are Spreading Across the Country

9. Total Candidate Fundraising, 2004 Supreme Court Elections *page 14*
10. Big Money Court Campaigns Spread Across the Country *page 15*
11. Average Candidate Fundraising, 1993-2004 Supreme Court Elections *page 16*
12. ILLINOIS CIVIL JUSTICE LEAGUE
Television Advertisement, Illinois *page 17*
13. JUSTICE FOR ALL PAC
Television Advertisement, Illinois *page 18*
14. Sources of Contributions to Candidates,
2004 Supreme Court Elections *page 20*
15. Sources of Contributions to
North Carolina Supreme Court Candidates, 2002 & 2004 *page 21*

Part 3

Judicial Elections Are Now Interest Group Battlefields

16. *Wall Street Journal*:
Chamber of Commerce Targets State Races *page 24*
17. Illinois Campaign Finance Reporting:
Business and Medical Interests *page 26*
18. Illinois Campaign Finance Reporting:
Lawyers and Law Firms *page 27*
19. AND FOR THE SAKE OF THE KIDS
Direct Mail Sample, West Virginia *page 28*
20. AND FOR THE SAKE OF THE KIDS
Disclosure Form Filed with the Internal Revenue Service *page 29*
21. 2004 Georgia Primary Election Judicial Voter Guide
Issued by the GEORGIA CHRISTIAN COALITION *page 30*
22. Tom Parker for Alabama Supreme Court
Television Advertisement *page 33*

Part 4

Countering the Threats to Our Courts: Reforms at Work in the States

23. Photograph of Judge James Wynn, North Carolina *page 39*
24. 2004 Judicial Voter Guide: A Guide to Voting and Judicial Elections in
North Carolina *page 40*
25. Effective Judicial Campaign Conduct Committees:
A How-To Handbook *page 42*
26. Photograph of Former Chief Justice Tom Phillips, Texas *page 43*

Executive Summary

The first two editions of “The New Politics of Judicial Elections” documented a rising tide of television advertising, big money and special interest pressure in state Supreme Court elections across America. As feared, 2000 proved to be an ominous turning point, as special interests began to exert significant influence in key Supreme Court elections. **In our third and most complete edition yet, we show how 2004 marks a “tipping point.”** A perfect storm of hardball TV ads, millions in campaign contributions and bare-knuckled special interest politics is descending on a growing number of Supreme Court campaigns. The stakes involve nothing less than the fairness, impartiality and independence of courts in the 38 states that elect their high court judges.[◇]

As this report illustrates, Supreme Court campaigns attracted network television ads in four times as many states in 2004 as in 2000. Two candidates in a southern Illinois contest broke a national record for candidate fundraising in a single contested Supreme Court race, combining to raise \$9.3 million, a figure that outpaced candidates in 18 U.S. Senate races. Supreme Court elections are becoming epic battlegrounds in the tort liability wars, the culture wars, and other contests where powerful groups and wealthy donors seek to install judges who will rule in their interest, not the public interest.

There is also good news to report. In a number of states, far-sighted citizens, judges, legislators and bar leaders are banding together as never before to address the threat and reform their judicial selection systems. In 2004, a new public financing system debuted in North Carolina; judicial candidates there had an alternative to raising money from interested parties who appear before them in court. In several states, nonpartisan voter guides offered a tool to dilute the power of special interests, which count on apathy and low turnout to tip judicial contests.

But now is no time for complacency: interest groups are bragging about their victories, and promising more of the same. In 2006, 17 states will hold contested elections for their state Supreme Courts. In 14 of those states, more than one seat will be on the ballot—an irresistible temptation for interest groups seeking to pack the courts. The time for warnings has come and gone: every state that elects judges needs to act, quickly, before the new politics of judicial elections undermines the impartiality and independence of their courts.

[◇] In 18 of these states—AL, AR, GA, ID, KY, LA, MI, MN, MS, NV, NC, ND, OH, OR, TX, WA, WV, & WI—seats are filled solely through contested elections between competing candidates. In 16 others—AK, AZ, CA, CO, FL, IN, IA, KS, MD, MO, NE, OK, SD, TN, UT & WY—justices are initially appointed, then face uncontested “retention elections” at the end of their terms. They must win at least a majority of the “yes” votes to stay in office. Four other states—IL, PA, NM & MT—use a mix of both systems. Although contested elections are far more likely to attract expensive special interest campaigns, retention races have occasionally been targeted by interest groups. Given that interest group activity shows no signs of abating, any state that elects judges in any fashion is vulnerable.

TV Ads Are Now a Staple of Supreme Court Elections

TV Ads Appear in Supreme Court Races in 4 of 5 States with Contested Elections. In 2004, candidates, political parties and special interest groups took to the airwaves in 4 of every 5 states where candidates ran head-to-head. Since 2000, only two states with contested Supreme Court elections—Minnesota and North Dakota—have remained free of TV ads.

Spending on Airtime Smashes Record. A total of \$24.4 million was spent on TV ads in high court races, obliterating the previous record of \$10.6 million set in 2000. In 2004, 1 in 4 dollars raised by candidates covered airtime costs.

Ads Are Appearing Earlier in the Campaign Cycle. The number of states experiencing TV ads during their judicial primary elections increased from two states in 2002 to nine states in 2004. Spending on primary election ads skyrocketed from \$96,000 to almost \$4.3 million over that period.

More Special Interest Money Underwrites More TV Ads. In 2004, 17 interest groups in six states spent roughly \$7.4 million on television ads, accounting for about 30 percent of all spending on TV in these races. In Michigan and West Virginia, groups nearly quadrupled the sums candidates spent on airtime.

Political Parties Inject Themselves into Court Campaigns. After sitting out the 2002 state Supreme Court races, political parties spent nearly \$4.6 million financing TV ads for their preferred candidates. The vast majority was spent in one record-setting campaign in Illinois.

Advertising Content: More Promises, More Attacks. Fewer than 1 in 3 ads in the 2004 Supreme Court races focused on the traditional themes of qualifications, experience and integrity. Some candidates came perilously close to making campaign promises about how they would rule from the bench.

Big Money Court Campaigns Are Spreading Across the Country

More Fundraising in More States. In 2003-2004, candidates combined to raise over \$46.8 million. In the past three cycles, candidates have raised \$123 million, compared to \$73.5 million in the three cycles prior. Nine states broke candidate fundraising records in the 2003-2004 cycle.

Average Cost of Winning Jumps 45 Percent in Two Years. In 2004, the average amount raised by winners in the 43 races in which candidates raised any money leapt to \$651,586, from \$450,689 in 2002. Average fundraising among all candidates who raised money climbed to \$434,289.

In North Carolina, Public Financing Offers Relief. In 2004, North Carolina became the first state in the nation to offer full public financing to qualified appellate court candidates. Nearly 64 percent of campaign money in two North Carolina high court races came from the public fund.

What You Raise Depends on Where You Sit. Incumbents and those seeking open seats fared far better with private fundraising than did challengers, underscoring another way in which the line between court races and campaigns for legislative or executive office is increasingly blurring.

Judicial Elections Are Now Interest Group Battlefields

The Battle Over Tort Liability Draws Millions to Judicial Races. Business groups and trial lawyers poured money into state Supreme Court elections at an unprecedented rate in 2004, donating directly to candidates, giving to third-party conduits, and running independent media campaigns.

The Culture Wars Spread to Judicial Elections. Thanks in large part to a U.S. Supreme Court decision in 2002, judicial candidates are now under increasing pressure to announce their views on hot-button issues like abortion, gun control and school choice before they hear the case in court.

Countering the Threats to Our Courts: Reforms at Work in the States

Disclosure: Sunshine Laws Are an Obvious First Step. The days of television campaigns underwritten anonymously by big money may be numbered, as states implement electioneering disclosure regimes in the wake of *McConnell v. FEC*.

Merit Selection and Retention Elections. In some states, a judicial nominating commission screens potential candidates and recommends a short list of potential nominees. After serving an initial term, the appointee must thereafter stand for re-election in uncontested retention elections.

Public Financing of Judicial Elections: Getting Judicial Candidates Out of the Fundraising Game. Many reform groups have recognized that the best way to rein in exploding campaign costs may be to offer public financing to candidates meeting public confidence thresholds and who agree to abide by strict fundraising and spending limits.

Voter Guides: Helping Voters Dilute the Power of Special Interests. A better educated public is one major key to fighting special interest pressure on the courts. Numerous states have produced voter guides in recent years, in print and on the Internet, and others are considering them.

Conduct Committees: Helping Candidates Campaign Cleanly. As referees of judicial elections, conduct committees can speak out when campaign tactics cross the ethical line and can help candidates run campaigns that take the high road.

Judges as Leaders for Reform. Judges are the most respected spokespersons in debates over legal issues. While judges rightly shy from the political limelight, judges ought to be an integral part of the debate about judicial selection.

TV Ads Are Now a Staple of Supreme Court Elections

Television ads are the canary in the coalmine of judicial elections: when they appear, the nasty and costly new politics of judicial elections are not far behind. In the space of four short years, television advertising in state Supreme Court races has migrated from a handful of battleground states to 4 of every 5 states with contested high court races. In these races, television ads are no longer the exception; they are the rule. Candidates increasingly rely on TV ads to reach voters who get little other information about judicial candidates, while interest groups appreciate the “cut-through value” that explosive negative ads can have in an otherwise low-profile election. The information deficit and the low turnout in judicial elections mean that TV ads have considerable power to shape the outcome of the races.

A number of the trends observed in the past two election cycles and documented in previous editions of *The New Politics of Judicial Elections* were evident in the 2004 cycle. These trends reveal that the era of low-budget state Supreme Court campaigns has come to an end, as an increasing number of campaigns are now built around television advertising as a primary means of winning seats on the bench.

- *Big Spenders on TV Usually Win*—A victory usually followed significant spending on TV ads. Of the 34 races that featured TV ads, 29 were won by the candidate who had the most on-air support.¹ And television advertising on behalf of the winning candidate usually cost at least twice the amount spent on advertising benefiting the losing candidate.²
- *Negative Ads Re-Emerge*—More than 1 in 5 TV spots was negative in tone in 2004 compared to less than 1 in 10 in 2002. The number of negative spots that ran in Supreme Court races in 2004 nearly doubled from 2000.³

¹ The estimated costs of airtime in this report are supported by television advertising data from the nation’s 100 largest media markets. The estimates were calculated and supplied by TNS Media Intelligence/CMAG. The calculations do not include either ad agency commissions or the costs of production. The costs reported here therefore understate expenditures, and the estimates are useful principally for purposes of comparison within each state.

² There were 17 races in which more than one candidate benefited from TV advertising support. Of these 17: approximately the same amount was spent on behalf of each candidate in six races; winning candidates benefited from advertising that cost from two to five times as much as that for the losers in eight races. In the remaining three races, winning candidates benefited from advertising that cost nine to 221 times the amount of the losers.

³ Negative spots jumped from 5,771 in 2000 to 9,540 airings in 2004. In 2002, after some of the more notorious ads of 2000 backfired, only 2,143 negative spots aired. Note, however, that data for 2000 are incomplete, see Deborah Goldberg, Craig Holman & Samantha Sanchez, “The New Politics of Judicial Elections,” App. C (Justice at Stake 2002) [hereinafter “The New Politics of Judicial Elections”], and therefore not fully commensurate with data for 2002 and 2004. This caveat governs all comparisons with 2000 TV ad data in this report.

The Growth of Television Advertising in Supreme Court Elections, 2000–2004

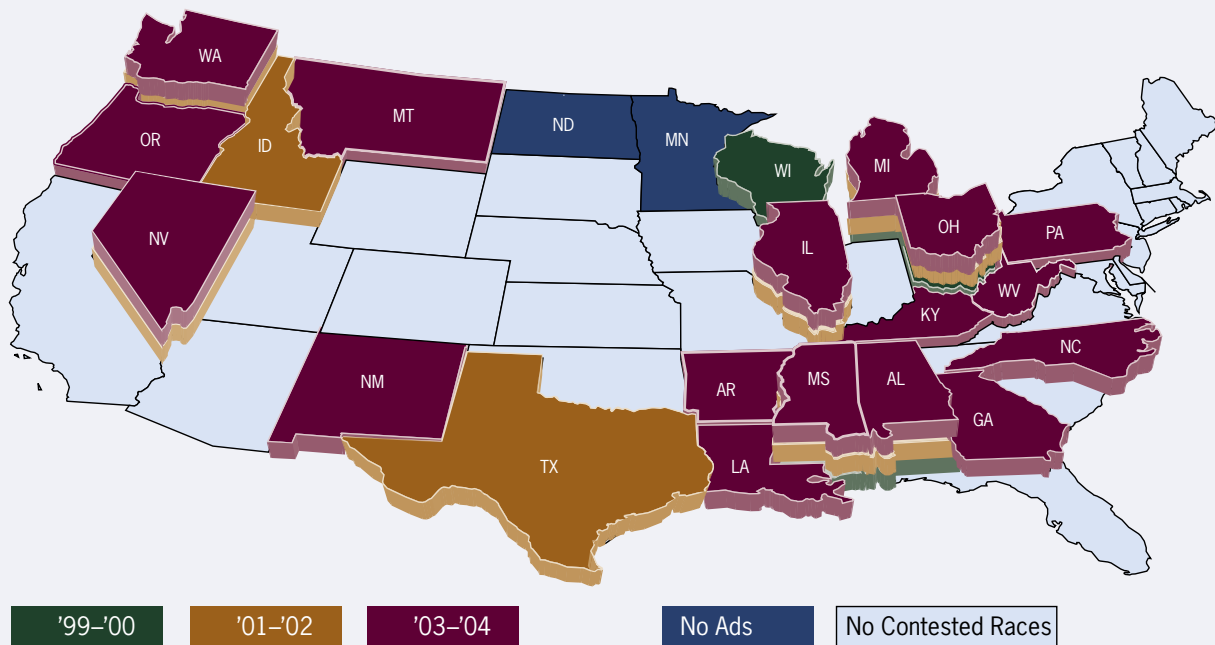


Figure 1

Number of Television Ad Airings by State and Election Cycle, 2000–2004

	AL	AR	GA	ID	IL	KY	LA	MI	MS	NV	NM	NC	OH	OR	TX	WA	WV	TOTAL
2000	4,758	-	-	-	-	-	-	5,763	218	-	-	-	11,907	-	-	-	-	22,646
2002	3,594	-	-	133	1,473	-	-	1,030	1,479	233	-	-	13,105	-	555	37	-	21,639
2004	9,377	242	453	-	7,500	205	315	1,512	1,479	867	326	284	14,139	181	-	273	5,096	42,249
Total	17,729	242	453	133	8,973	205	315	8,305	3,176	1,100	326	284	39,151	181	555	310	5,096	88,595

Figure 2

TV airings data for Pennsylvania and Wisconsin, which hold odd-year elections, have not been analyzed over these three election cycles. Data for Montana are unavailable. See footnote 5 on the facing page for more information.

Cumulative Airtime Spending Comparison, 2002 & 2004 Supreme Court Elections

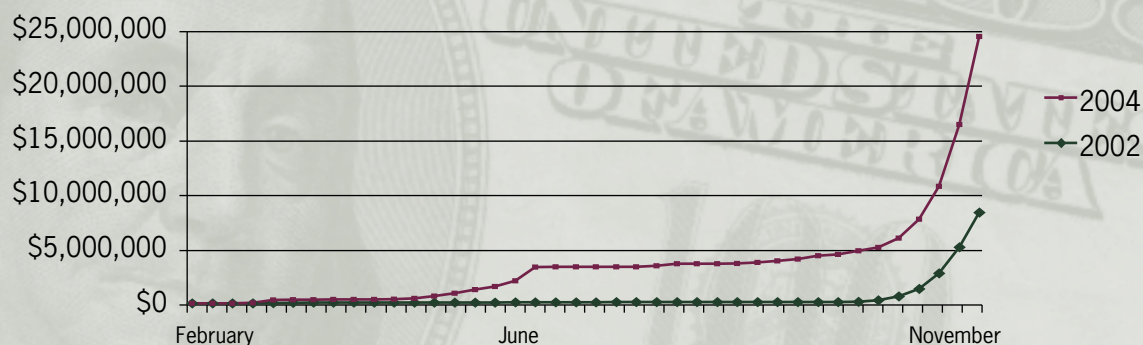


Figure 3

In 2004, television advertising continued past the November 2 general election. A run-off election for one seat in Mississippi on November 16, 2004, prompted 214 airings at a cost of \$71,134. Ads in Ohio and Illinois that were preempted during the election season continued until the end of the year (141 spots worth approximately \$8,436 aired in Ohio and three spots worth approximately \$446 aired in Illinois).

- *Interest Groups and Political Parties Are the Attack Dogs of Judicial Elections*—Nearly 89 percent of attack ads in Supreme Court races were paid for by either an interest group or a political party, up from 76 percent in 2000.⁴

TV Ads Appear in Supreme Court Races in 4 of 5 States with Contested Elections

In the expensive and contentious 2000 Supreme Court elections, only four states saw TV ads. In 2004, candidates, political parties and special interest groups bought TV advertising in 16 states, setting a new national record.⁵ Put differently, in 2000, TV ads aired in 1 in 4 states with contested Supreme Court elections. Four years later, airwaves in 4 out of every 5 such states carried advertising in Supreme Court races. Since nationwide tracking of TV ads began in the 2000 election cycle, only two states have remained free of network television ads in contested Supreme Court races: Minnesota and North Dakota.

⁴ There were 9,540 airings of attack ads in 2004, and 8,453 were paid for by either an interest group or a political party. Candidates preferred to attach their names to the positive promotion spots. (Over 84 percent of candidate-sponsored ads were positive in tone.)

⁵ Charts and graphs in this chapter are based on data gathered from only the top 100 media markets nationally. The analysis thus covers 15 of the 16 states that saw advertising in their Supreme Court races, but TV ads in the 2004 Montana Supreme Court elections could not be included.



West Virginia

In West Virginia, an organization set up expressly to defeat a sitting Supreme Court Justice became a story unto itself in 2004. The group—which named itself AND FOR THE SAKE OF THE KIDS—was largely funded by a single business executive, who donated \$2.4 million to the group.⁶ The group’s campaign was successful—Justice McGraw was defeated.

The tone and content of the television advertising in this race—the cost of which exceeded \$2 million—were among the most negative and vitriolic seen anywhere, with one widely seen ad produced by the group accusing the incumbent, Justice Warren McGraw, of having assigned a known sex-offender to work in a West Virginia high school. The ad set off a political firestorm in the state and thrust the election into the national media spotlight: the race was featured in a front page *New York Times* story less than ten days before the election. A lengthy National Public Radio documentary that ran in January of 2005 cited this race as an example of business and labor squaring off over the courts.

The 2004 Supreme Court race in West Virginia embodies trends developing in judicial elections across America, and exemplifies the ways that television advertising is used as a weapon.



[Announcer]: Supreme Court Justice Warren McGraw voted to release child rapist Tony

Arbaugh from prison. Worse, McGraw agreed

to let this convicted child rapist work as a janitor, in a

West Virginia school. Letting a child rapist go free?

Figure 4

© TNS Media Intelligence/CMAG: WV SOTK Too Dangerous

⁶ Don Blankenship, the head of MASSEY ENERGY, donated \$2.4 million of the \$3.6 million that AND FOR THE SAKE OF THE KIDS reported raising in its filings with the Internal Revenue Service. The other major donor to the front group was an organization called DOCTORS FOR JUSTICE, which contributed \$745,000. See <http://www.publicintegrity.org/527/search.aspx?act=com&orgid=782>.

- *TV ads appear early.* In a hotly contested Democratic primary campaign, Justice McGraw and challenger Judge Jim Rowe, and their allied interest groups, aired 1,608 TV spots at a combined cost of \$677,922. The assault on the airwaves began on March 15.
- *Interest groups attack.* West Virginians were barraged with negativity: more than 4 of every 5 ads in the race were attacks ads, with 83 percent of all attack ads being aired by interest groups. Of the nearly 10,000 attack ads in Supreme Court elections in 15 states, over 43 percent aired in West Virginia alone.⁷
- *Win the air war, win the race.* The balance of airtime in this race tilted considerably against the incumbent, who faced 2 ads against him for every 1 he or his allies sponsored. In raw dollars, the imbalance was even more pronounced, with 72 percent of all airtime costs incurred by McGraw's political opponents.⁸



To work in our schools?
That's radical Supreme
Court

Justice Warren McGraw.
Warren McGraw- too soft
on

crime. Too dangerous for
our kids.

[PFB]: And for the Sake of
the Kids

⁷Of the 9,540 attack ad airings nationally in 2004, 4,158 were shown in West Virginia. Of those 3,481 were sponsored by third-party interest groups including WEST VIRGINIA CONSUMERS FOR JUSTICE, the WEST VIRGINIA CHAMBER OF COMMERCE, and AND FOR THE SAKE OF THE KIDS.

⁸Combining the primary and general elections, Justice McGraw and his allies aired 1,732 ads at a cost of \$583,849, while his opponents and their allied interest groups aired 3,364 spots at a cost of \$1,551,912.

Airtime Summary, 2004 Supreme Court Elections

	Candidate		Group		Party	
	Airings	Cost	Airings	Cost	Airings	Cost
Alabama	7,950	\$2,756,001	1,427	\$568,827	0	\$0
Arkansas	242	\$112,415	0	\$0	0	\$0
Georgia	126	\$105,065	0	\$0	327	\$191,456
Illinois	1,005	\$995,882	1,505	\$1,585,125	4,990	\$4,240,885
Kentucky	205	\$121,688	0	\$0	0	\$0
Louisiana	315	\$153,212	0	\$0	0	\$0
Michigan	316	\$350,324	1,196	\$1,370,013	0	\$0
Mississippi	1,026	\$490,852	453	\$159,680	0	\$0
Nevada	867	\$810,930	0	\$0	0	\$0
New Mexico	326	\$383,023	0	\$0	0	\$0
North Carolina	284	\$142,376	0	\$0	0	\$0
Ohio	11,865	\$5,412,499	2,030	\$2,007,801	244	\$157,976
Oregon	181	\$105,334	0	\$0	0	\$0
Washington	273	\$66,127	0	\$0	0	\$0
West Virginia	1,267	\$433,518	3,829	\$1,702,243	0	\$0
Total	26,248	\$12,439,246	10,440	\$7,393,689	5,561	\$4,590,317

Figure 5

Spending on Airtime Smashes Record

In 2004, total spending on airtime soared to more than \$24 million, shattering the record of \$10.6 million set in 2000. Not only has the amount of campaign cash being spent on TV ads doubled in four years, but the percentage of campaign money that is dedicated to airing TV

ads in state Supreme Court races is escalating at a dramatic pace. In 2000, less than 1 in every 7 dollars raised by candidates was spent to purchase TV time. By 2004, over 1 of every 4 dollars raised by judicial candidates covered airtime costs.⁹ We can safely assume that the amount of money being spent on the production of TV ads is also climbing drastically, because

⁹ In 2000, \$6.4 million of \$46.9 million (14 percent) was spent on TV airtime. See "The New Politics of Judicial Elections," page 14. By 2002, that figure jumped to \$6.0 million of \$29 million (21 percent). In 2004, \$12.4 million of \$46.8 million was spent on TV airtime (26 percent). See Deborah Goldberg & Samantha Sanchez, "The New Politics of Judicial Elections 2002," page 8 (Justice at Stake 2004).

Airtime Summary, continued

Total		
Airings	Cost	
9,377	\$3,324,828	Alabama
242	\$112,415	Arkansas
453	\$296,521	Georgia
7,500	\$6,821,892	Illinois
205	\$121,688	Kentucky
315	\$153,212	Louisiana
1,512	\$1,720,337	Michigan
1,479	\$650,532	Mississippi
867	\$810,930	Nevada
326	\$383,023	New Mexico
284	\$142,376	North Carolina
14,139	\$7,578,276	Ohio
181	\$105,334	Oregon
273	\$66,127	Washington
5,096	\$2,135,761	West Virginia
42,249	\$24,423,252	Total

the number of unique ads airing in 2004 increased 125 percent in two years.¹⁰ As reliance on broadcast advertising intensifies, so will pressure on judicial candidates to become prolific fundraisers, which may include accepting large contributions from well-heeled supporters or interest groups.

Ads Are Appearing Earlier in the Campaign Cycle

As the races become more partisan and more competitive, television advertising has begun appearing earlier in the election cycle (see Figure 3). Candidates now face pressure to raise more money earlier in the election cycle. The number of states experiencing television ads during their primary judicial elections increased from two states in 2002 (Illinois and Idaho) to nine states in 2004 (Alabama, Arkansas, Georgia, Louisiana, Nevada, Ohio, Oregon, Washington, West Virginia).¹¹

Nor is television advertising in primary elections limited to states that use partisan labels on the ballot. In fact, of the nine states that saw TV ads in 2004 primaries, only three (Alabama, Ohio, West Virginia) use partisan primaries; the other six hold officially nonpartisan primaries.

Collectively, these nine states saw almost \$4.3 million spent in their primaries on Supreme Court television ads, a figure that is 44 times the \$96,000 spent on TV ads in 2002's primaries.

More Special Interest Money Underwrites More TV Ads

As is explained in greater detail elsewhere in this report, campaign cash from special interest groups is fast becoming an important fixture in state Supreme Court elections. Both the number of interest groups sponsoring television ads in state Supreme Court elections and the amount spent by these groups continues to grow exponentially. In 2004, 17 interest groups in six states spent roughly \$7.4 million on television ads in the largest 100 network media markets in the country.

¹⁰ In 2004, there were 180 unique television ads targeting state Supreme Court elections; in 2002 there were only 80 ads.

¹¹ Of these nine states, the primary elections were decisive in Georgia, Louisiana and Oregon, which have nonpartisan systems that do not provide for a general election when a primary candidate wins over a fixed percentage of the vote.

Non-Candidate Airtime Spending, 2004 Supreme Court Elections

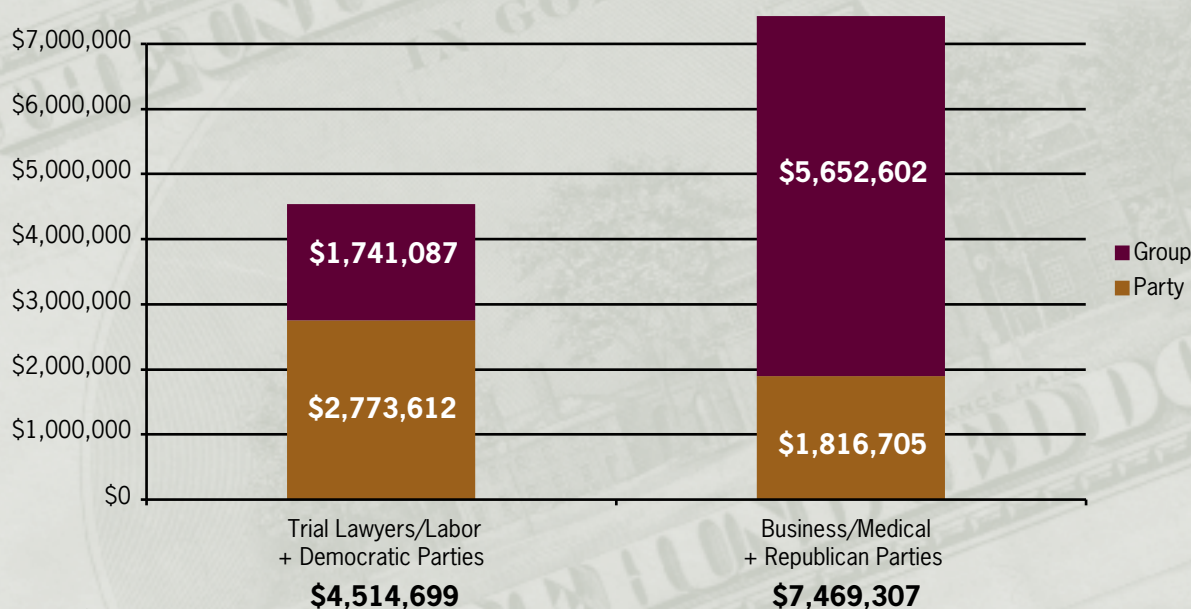


Figure 6

Interest group spending accounted for about 30 percent of all money spent on television advertising in the 2004 state Supreme Court elections, up from approximately 25 percent in 2002. This increase in spending is especially telling given that special interests tend to spend proportionately less, not more, in presidential election years—and given the upsurge in candidate spending on TV ads as well.

Moreover, dueling interest groups continue to spark air wars. Illinois, Michigan, Ohio, and West Virginia each had at least one interest group on each side of the tort reform debate. Interest group spending in these four states constituted 90 percent of all ad buys by special interest groups in all states in 2004. In two of these states, Michigan and West Virginia, interest groups outspent candidates almost 4 to 1 on television advertising.

Political Parties Inject Themselves Into Court Campaigns

State political parties, who refrained from buying TV advertising in the 2002 state Supreme Court elections, jumped back in the fray this year. And as with interest groups, the money spent by political parties on campaign ads continues to increase, in some states overtaking interest group spending. The approximately \$4.2 million spent on TV by the Democratic and Republican parties in Illinois was more than double the amount spent by interest groups in that state, and more than quadruple the amount spent by the candidates themselves.¹² Overall, state Democratic parties spent more than state Republican parties on TV advertising. But, when spending by the parties is combined with their allied interest groups, Republicans and business interests spent about \$7.4 million,

¹² However, political parties in Illinois raised substantial funds from interest groups. See pages 26-27.

almost 65 percent more than the \$4.5 million spent by Democrats, trial lawyers, and labor interests.

This election cycle, advertisements sponsored by political parties appeared for the first time in states with nonpartisan elections. In Georgia, the state Democratic Party spent approximately \$191,500 on campaign ads promoting incumbent Supreme Court Justice Leah Sears. While the state Republican Party did not air any ads in favor of Justice Sears' challenger, Grant Brantley, top Republican officials publicly endorsed Brantley and recorded automated telephone calls on his behalf.¹³ Should this trend continue, it will call into question whether any judicial elections can ever be truly nonpartisan.

Advertising Content: More Promises, More Attacks

The judicial campaign ads of 2004 confirm that the days when judicial advertising focused primarily on candidate qualifications are gone, replaced by advertising that signals how candidates might decide cases and sometimes explicitly states their opinions on controversial issues that demand impartial adjudication in the courtroom. Overall, only 30 percent of all ads sponsored by candidates, interest groups and political parties, were traditional ads. Instead, typical 2004 ads touted judicial candidates' adherence to "family and conservative values;" their protection of victims' rights; and their view that "small businesses and working people deserve a fair shot in the court room."

For example:

- In **Illinois**, Judge Lloyd Karmeier stated that he was "tackling the medical malpractice crisis."
- In **New Mexico**, Justice Edward Chavez said that "Violent criminals don't belong on our streets. To stop violent crime punishment must be swift and certain. . . . That's the kind of justice I believe in."
- In **Mississippi**, Judge Samac Richardson said that he stands for "traditional Mississippi values," including the belief that "the words 'under God' belong in our Pledge of Allegiance" and that "the rights of victims are just as important as the rights of defendants." Similarly, an ad by one interest group, IMPROVE MISSISSIPPI POLITICAL ACTION COMMITTEE, touted Richardson as a man "who believes the words 'In God We Trust' belong on the walls in every classroom," who "will protect the sanctity of marriage between man and woman," and who "believes no punishment is too harsh for those who prey on the most vulnerable among us."

The increasing prevalence of judicial campaign advertising signaling candidates' views is not surprising since the U.S. Supreme Court struck down certain restrictions on judicial campaign speech in 2002.¹⁴ Signals that verge on promises are alarming because judges are not supposed to prejudge cases before they consider the relevant facts and law.

¹³ Georgia's Republican governor, Sonny Perdue, recorded automated phone calls supporting Brantley, saying that he "shares our common sense, conservative values." Bill Rankin, "Decisive Supreme Court Fight Ends in Victory for Sears," *Atlanta Journal-Constitution*, July 21, 2004. Brantley was endorsed by former Georgia Attorney General Mike Bowers, also a Republican. Ben Diamond, "'Nonpartisan' in Name Only," *Creative Loafing*, July 8, 2004.

Sponsors of Attack Ads, 2004 Supreme Court Elections

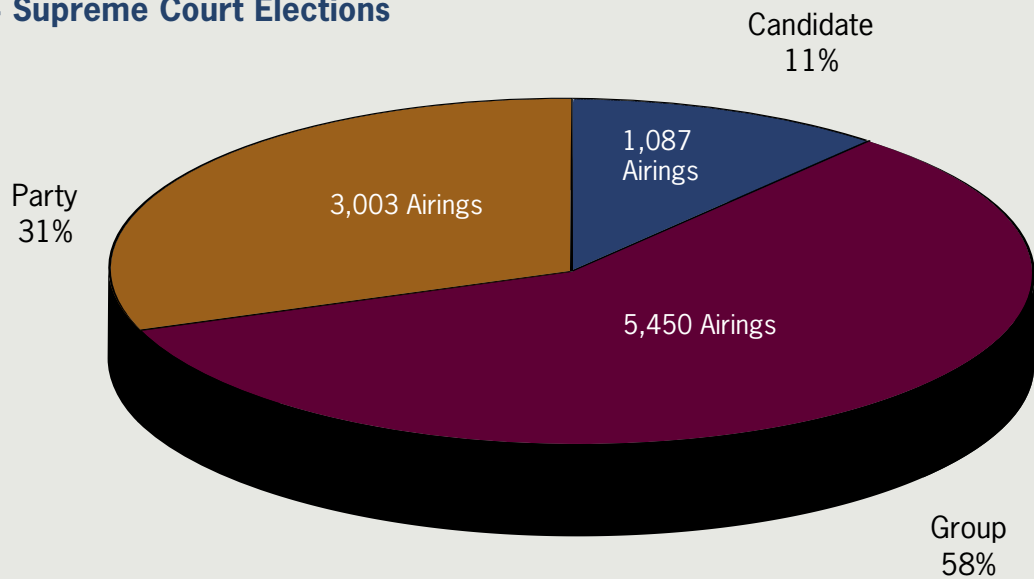


Figure 7

While the percentage of attack ads dropped significantly in 2002, attack campaigns made a resounding comeback this year. Most judicial campaign ads sponsored by interest groups and political parties attacked judicial candidates and judicial decisions.¹⁵ Many of these attack ads used criminal justice themes even though these ads were sponsored by groups invested in the debate over civil justice reform.

- In **Illinois**, the JUSTICE FOR ALL POLITICAL ACTION COMMITTEE, a trial lawyer and labor group, ran an ad criticizing Republican candidate Judge Lloyd Karmeier as “lenient” because he “gave probation to kidnappers who tortured and nearly beat a 92-year-old grandmother to death.” On the other side, an ad by the Illinois Republican Party attacked Democratic candidate Judge Gordon Maag for voting to “overturn the conviction of a man who sexually assaulted a 6-year-old girl,” mentioning in the same ad that “86 percent of Maag’s campaign money came from trial lawyers.”

¹⁴ In its decision, *Republican Party of Minnesota v. White*, the U.S. Supreme Court ruled that the “announce clause” in the State of Minnesota’s Judicial Code, which forbade candidates for judicial office from announcing their views on disputed legal and political issues, violated the First Amendment. For more on the impact of the *White* decision, see page 28.

¹⁵ More than half of all ads paid for by interest groups—52 percent—were negative in tone. Fifty-four percent of political party ads were negative in tone.

- In **Michigan**, an ad by the interest group CITIZENS FOR JUDICIAL REFORM claimed that with Justice Stephen Markman on the Michigan Supreme Court “no woman is safe” after “Markman ruled it was legal for employers to harass women on account of their sex.” The same ad also labeled Justice Markman an “extremist” who was “appointed in secret on orders of the insurance industry and large corporations.”

- In **West Virginia**, an ad by challenger Brent Benjamin opened with a narrator saying: “According to the prosecutors, he sexually molested multiple West Virginia children.” Until halfway through the ad, the impression is given that the sex offender and Benjamin’s opponent, Justice Warren McGraw, are the same person.

Even more disturbing were attack ads featuring criminal defendants that were structured to mislead viewers into thinking that the judicial candidate himself had committed the crimes.

Topics of Ads, 2004 Supreme Court Elections

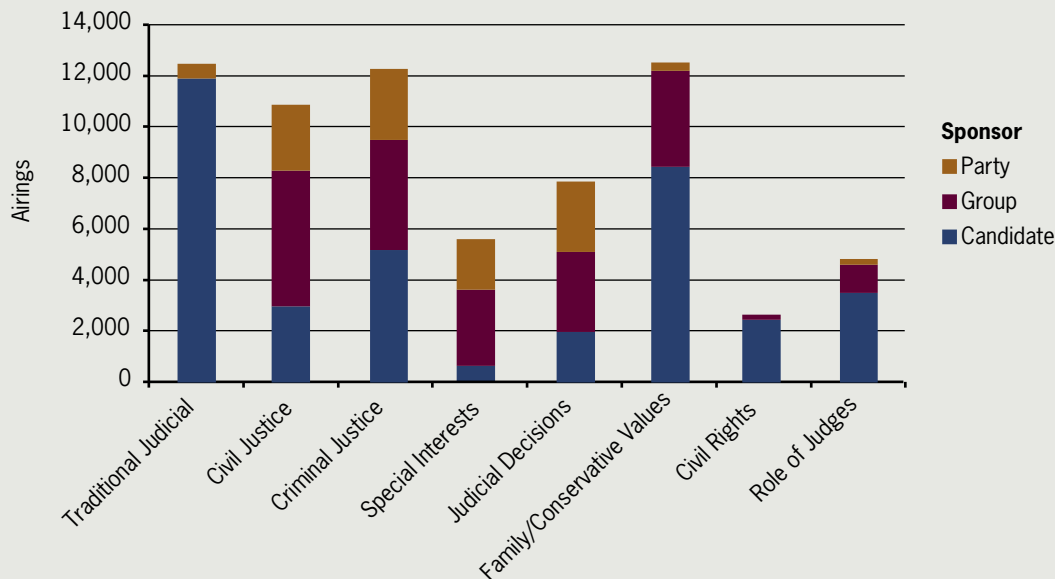


Figure 8

Ads can address more than one topic. Not included in Figure 8 are the ads coded solely as “Attack—No Theme” (22 candidate and 84 group airings) and “Other” (108 candidate airings). These excluded airings account for 0.5 percent of all TV ad spots in 2004.

Interest groups and candidates also directed voters to ask trusted professionals, such as doctors and insurance agents, for advice on which judicial candidate to vote for.

- In **Ohio**, a medical industry interest group, TRI-COUNTY PHYSICIANS FOR PATIENTS RIGHTS, ran an ad telling voters that: “For a second opinion about who to support for the Ohio Supreme Court ask your doctor” because “to keep good physicians from leaving . . . you need to vote for candidates who would support legislation that would help reform our current system of medical malpractice.”
- In **West Virginia**, Democratic primary candidate Jim Rowe urged: “Folks don’t take my word for it, ask your doctor, your insurance agent or your employer about the condition of our state and who’s to blame” for rising insurance rates and unemployment related to decisions by the West Virginia Supreme Court.

Big Money Court Campaigns Are Spreading Across the Country

Candidates for seats on state Supreme Courts are increasingly forced to raise money like professional politicians. In 2004, candidates combined to raise \$46.8 million to finance the many elements of a modern political operation.¹⁶ In the past three cycles, candidates have raised \$123 million, compared to \$73.5 million between 1994 and 1998.

More Fundraising in More States

If the 2000 election cycle was the turning point, when big money began to appear in a handful of states, 2004 may be remembered as the tipping point: over 40 percent of states—9 of 22—that employ contested Supreme Court races broke aggregate candidate fundraising records in this cycle. These nine states are Arkansas, Georgia, Illinois, Montana, New Mexico, Nevada, Ohio, Washington, and West Virginia. Pennsylvania narrowly missed setting a record, with candidates in a 2003 campaign raising \$3,340,872, just shy of the record of \$3,349,857 set in 1997.

Big money court races are no longer confined to a handful of perennial battleground states, like Illinois and Ohio. They are rapidly spreading to states where Supreme Court campaigns had not metastasized into political brawls—until now. Candidates in Nevada—where no single candidate had ever exceeded the \$500,000 fundraising mark—combined to raise nearly \$3.1 million, including three hopefuls who raised over \$600,000 each. Figure 10 shows the spread of record-breaking money in Supreme Court races, as well as the provenance of 11 candidates who raised at least \$1 million in the 2003-2004 cycle.

Average Cost of Winning Jumps 45 Percent in Two Years

In addition to big money campaigns blanketing the country, the cost of winning continues to climb, and the fundraising disparity between winners and losers is also growing. In 2003-2004, the 43 winners who raised money gathered slightly over \$27 million, while the losers (including primary and general election campaigns) raised \$19 million. Among winning candidates who raised funds for

¹⁶ The total 2004 fundraising figure reported here—\$46,805,498—includes funds raised by candidates in 2003 elections in Wisconsin and Pennsylvania. It also includes \$807,080 in public funds distributed to eight candidates in North Carolina and \$54,800 in public funds to one candidate in Wisconsin. Candidate fundraising in 1999–2000 was \$46,068,239, including \$54,077 in public funds to three candidates in Wisconsin. This fundraising figure has been revised upward from a lower figure initially reported in “The New Politics of Judicial Elections”; the adjustment is based on updated fundraising data.

Total Candidate Fundraising, 2004 Supreme Court Elections

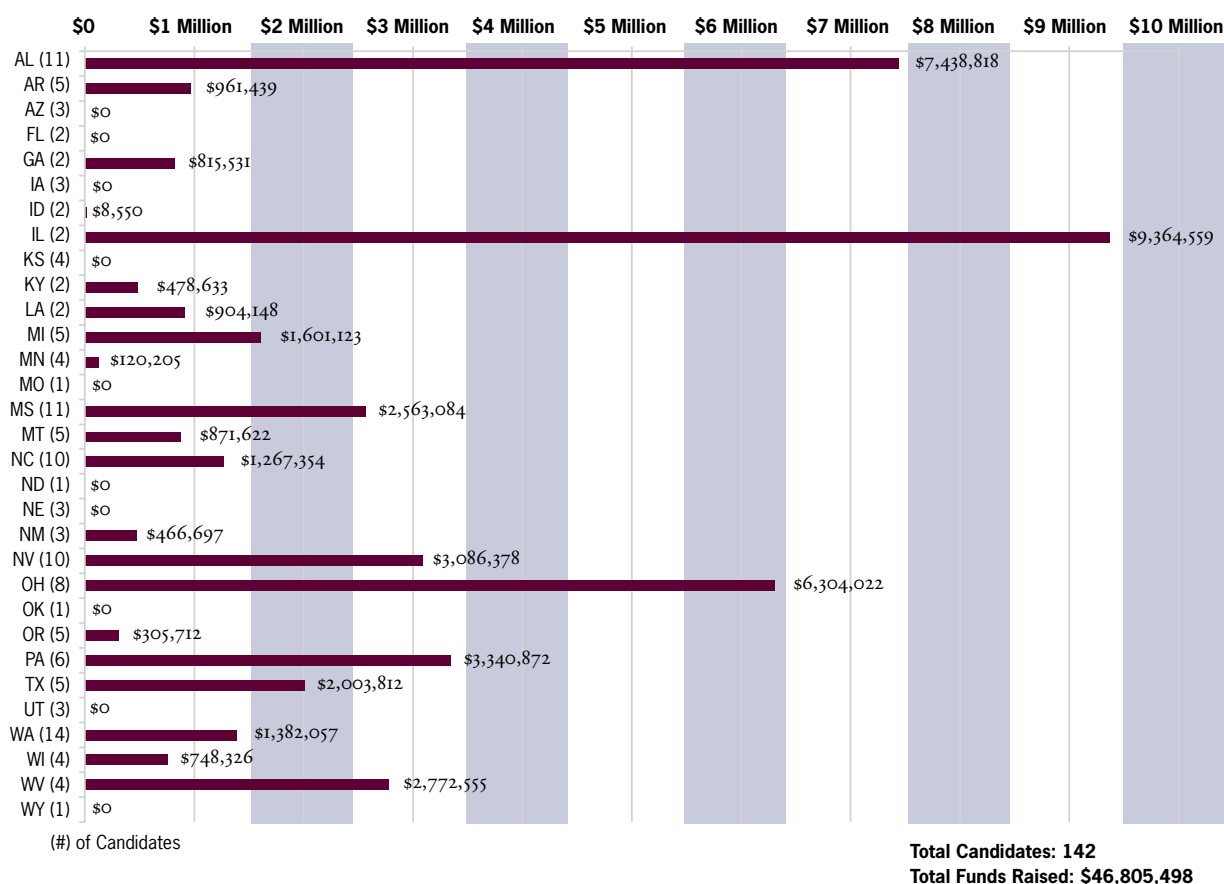


Figure 9

their campaigns, the average amount raised was \$651,586, a whopping 45 percent increase over 2002's \$450,689.¹⁷

For the third successive election cycle, a minimum of 10 candidates raised at least \$1 million for their election campaigns.¹⁸ In fact, in the three most recent election cycles (2000-2004), 37 Supreme Court candidates have crossed this symbolic threshold, nearly double the 19 that broke the seven-figure barrier in the previous three cycles (1994-1998).

The biggest fundraisers all hail from the “legacy” battleground states of the new politics of judicial elections, where big money has long been associated with winning election to the high court:

- In **Illinois**, Justice Lloyd Karmeier and Judge Gordon Maag combined to raise over \$9.3 million (see Illinois feature on pages 18-19),

¹⁷ Average fundraising for all candidates who raised any money increased to \$434,289, up from \$395,158 in 2002 and \$397,140 in 2000. These averages exclude publicly financed candidates from North Carolina, who accepted strict fundraising limits in return for public dollars.

¹⁸ In 2003-2004, 11 candidates raised at least \$1 million, up from 10 candidates in 2001-2002. The record year was 2000, when 16 candidates broke the million-dollar mark.

Big Money Court Campaigns Spread Across the Country

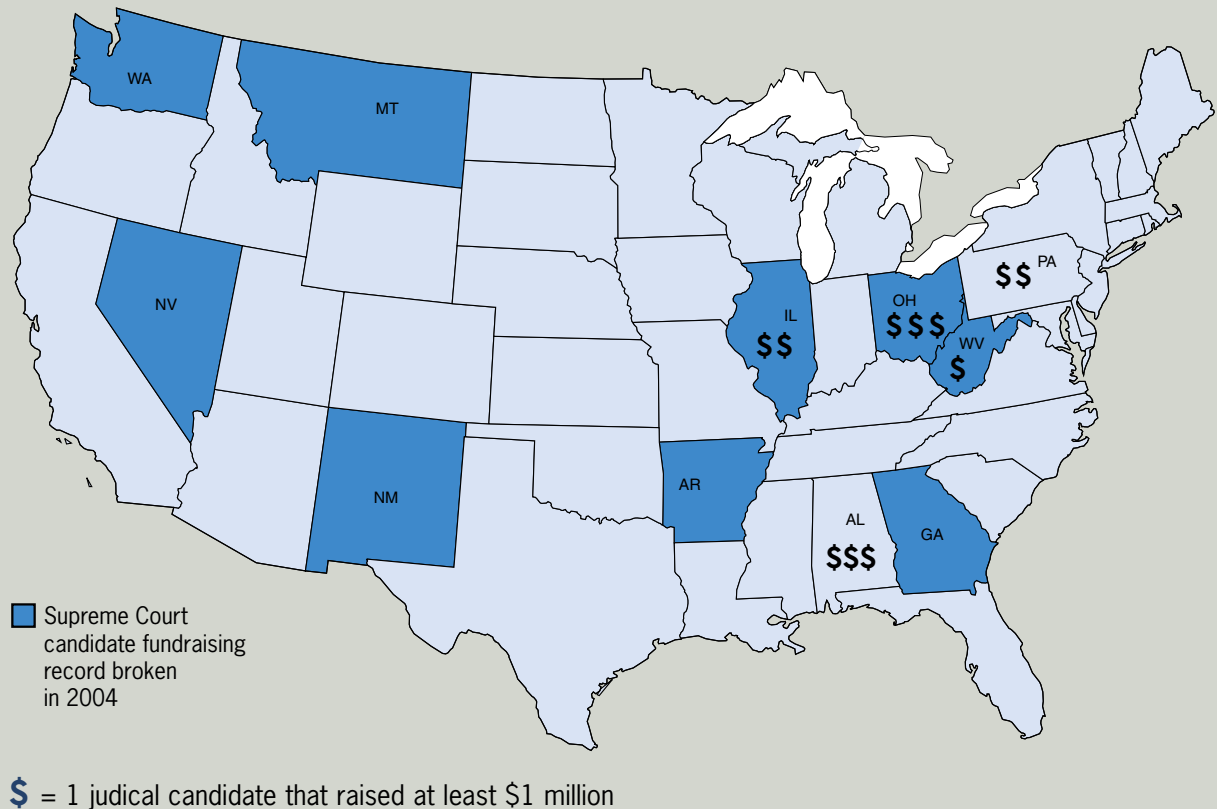


Figure 10

obliterating the national record for a contested state Supreme Court race of \$4.9 million, which was set in Alabama in 2000.

- Eleven candidates combined to raise nearly \$7.5 million in **Alabama**, where a fierce primary over the divisive role of a Ten Commandments display in the state Supreme Court fractured the Alabama Republican Party. Three candidates—Judge Mike Bolin, Judge Patti Smith and Justice Jean Brown—surpassed the million-dollar mark. Alabama Supreme Court elections have generated over \$40 million in campaign fundraising since 1993, making it first in the country over that span.
- In **Ohio**, three of the four winners raised over \$1 million, including incumbent Chief Justice Thomas Moyer, incumbent Justice Terrence O'Donnell, and Judge Judith Lanzinger, who defeated Judge Nancy Fuerst for an open seat.
- An odd-year election in **Pennsylvania** in 2003 was won by Judge Max Baer, who raised over \$1.6 million.

Average Candidate Fundraising, 1993–2004 Supreme Court Elections

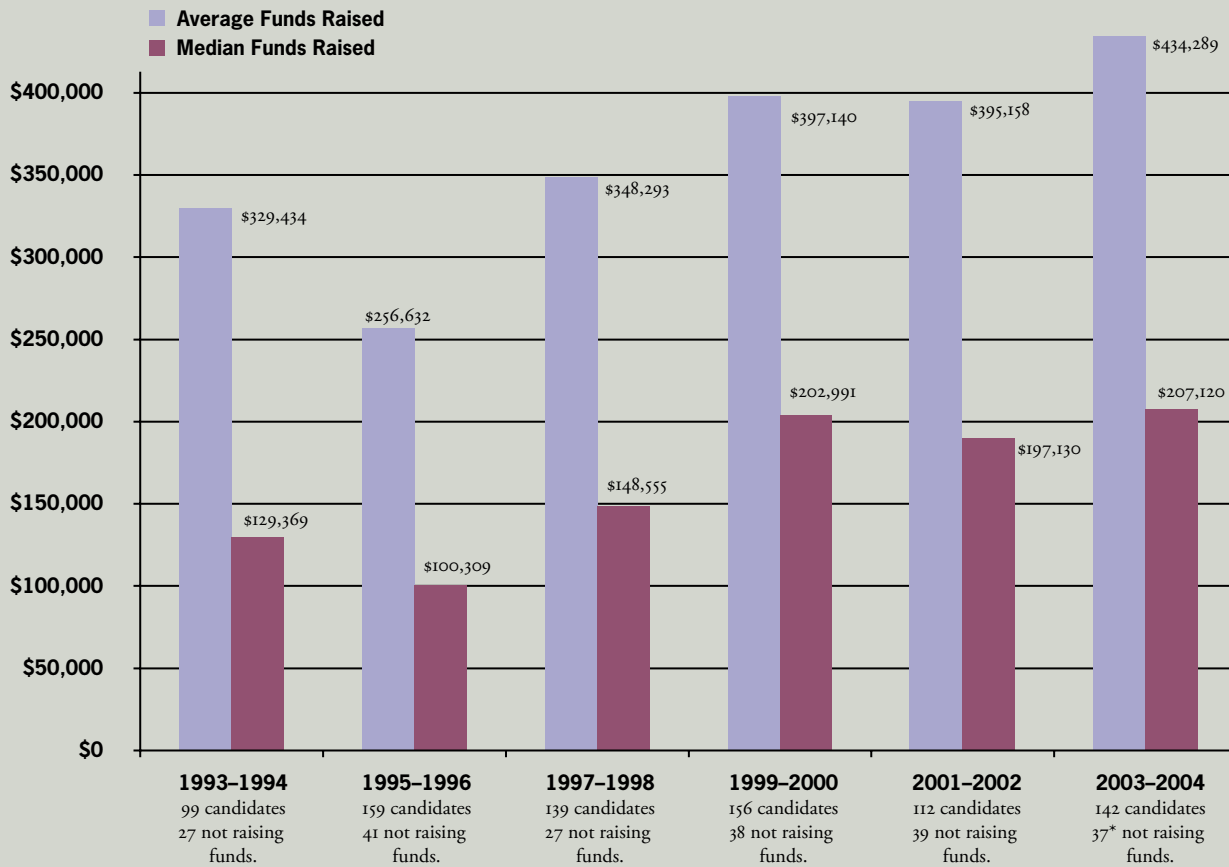


Figure 11

**This number includes seven candidates in North Carolina who did raise basic qualifying contributions for that state's system of public financing, but who agreed not to raise funds privately beyond those needed to qualify for public funds.*

As the rising cost of campaigns for state Supreme Courts spreads nationwide, big fundraising totals are beginning to appear in unfamiliar territory. Justice Warren McGraw raised over \$1.1 million in his unsuccessful bid to keep his seat on **West Virginia's** Supreme Court (see pages 4–5). In **Nevada**, Judge Ron Parraguire won a seat on the Supreme Court by raising \$661,366; he was one of the few winners outspent by his opponent, John Mason, who raised \$885,693.¹⁹ And in **Washington**, James Johnson became

the first candidate in that state's history to raise more than half a million dollars, netting \$529,068 in his successful bid to join the Supreme Court.

Not only does the cost of winning continue to rise, but the correlation between strong fundraising and electoral success persists. In 2003–2004, 35 out of 43 high court races were won by the top fundraisers, a success rate of 81 percent.²⁰

¹⁹ This race was also the most expensive nonpartisan Supreme Court contest in the country in 2003–2004.

²⁰ This figure represents an increase from 80 percent in 2001–2002, and 71 percent in 1999–2000.

Attacks on the Judiciary

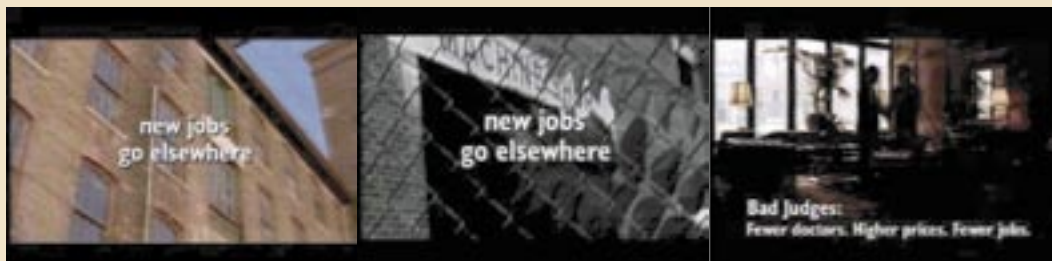
The record-setting Supreme Court race in Illinois, profiled on pages 18–19, included assaults not just on the two candidates, but also on the judiciary itself. This TV ad, sponsored by the Illinois Civil Justice League in Chicago months before Election Day, blames “bad judges” for a litany of woes. Estimates obtained by the Brennan Center for Justice indicate that the 145 airings cost \$317,554.



[Announcer]: Bad judges
are everyone’s problem.
Unfair court rulings

drive away doctors forcing
some patients to travel
out of state for care.

Families pay more for
everything they buy
because



of crazy lawsuits. New
jobs go elsewhere

because companies are
afraid of being sued, all
because of a few

bad judges and their trial
lawyer friends who pocket
up to



half of jury awards.
Change our courts now.
[PFB: Illinois
Civil Justice League]

Figure 12

© TNS Media Intelligence/CMAG:
IL ILCJL Bad Judges



Illinois

On September 27, 2004, *Business Week* magazine ran a cover story with a headline that blared: “The Threat to Justice.” This major national story focused not on bitter federal judicial confirmation politics, nor on an expected vacancy on the U.S. Supreme Court. Instead, the story focused on a state Supreme Court race in a rural district in southern Illinois that was being driven by interest groups. By November 2, 2004, this one race—theoretically run by two candidates, though obviously dominated by the two major political parties and numerous well-funded interest groups—had set a national fundraising record for a single state Supreme Court campaign, with the two candidates raising more than \$9.3 million. This down-ballot race in a rural district attracted more money than did 18 of the 34 United States Senate races decided that day.²¹

The record was not smashed by accident. Illinois’ Fifth Judicial District, site of the campaign, is anchored in Madison County, a jurisdiction that earned a national reputation for large tort awards, including a \$10.1 billion award against tobacco giant PHILIP MORRIS. And while this was not a “balance of the court” race that would tip the overall judicial philosophy of the Illinois Supreme Court for or against tort reform, the considerable power accorded to the district representative on the state Supreme Court to fill lower court vacancies turned this election into a must-win on both sides of the civil justice debate.



[Announcer]: Who is behind Supreme Court candidate Lloyd Karmeier?

Piles of contributions to Lloyd Karmeier from big corporations and

Washington DC lobbyists. Karmeier’s tobacco backers were charged

with racketeering and found guilty of fraud in Illinois. He takes money from

Figure 13

© TNS Media Intelligence/CMAG: IL JFAPAC *Who is Behind Karmeier?*

²¹ The \$9.3 million raised in this race was more than the amount U.S. Senate candidates raised for campaigns in AL, AZ, AR, CT, HI, ID, IN, IA, KS, KY, MD, NV, NH, ND, OH, OR, UT, and VT.

The major players brought their checkbooks:

- TRIAL LAWYERS wrote six-figure checks to the Democratic Party of Illinois, which contributed about \$2.8 million to the campaign of Judge Gordon Maag. Maag received over \$1.2 million from the JUSTICE FOR ALL PAC, an ad hoc coalition of trial lawyers and labor leaders.
- The U.S. CHAMBER OF COMMERCE sent \$2.3 million to Judge Lloyd Karmeier's campaign through the Illinois Republican Party, the ILLINOIS CHAMBER OF COMMERCE and JUSTPAC, the political arm of the ILLINOIS CIVIL JUSTICE LEAGUE. JUSTPAC also received \$415,00 from the AMERICAN TORT REFORM ASSOCIATION (see contribution charts on pages 26–27).

After the results were in, even the winner expressed contempt for the expense of the process. “That’s obscene for a judicial race,” Karmeier said, referring to the six-figure checks that poured into both sides of the campaign. “What does it gain people? How can people have faith in the system?”²²



the asbestos industry
which is responsible for
hundreds of thousands

of deaths. Karmeier. How
can he be on our side if
the big corporate interests

are on his side?
[PFB: Justice for All PAC]

²² Ryan Keith, “Spending for Supreme Court Seat Renews Cry for Finance Reform,” *Associated Press*, November 3, 2004.

Source of Contributions to Candidates, 2004 Supreme Court Elections

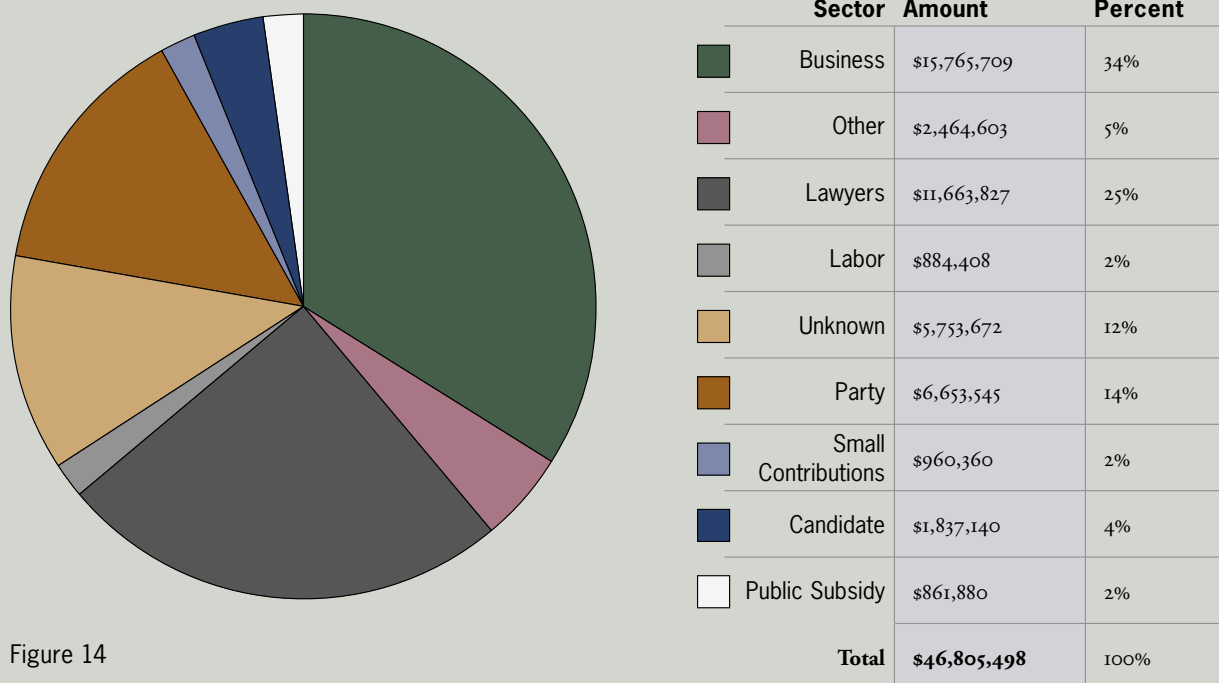


Figure 14

This chart describes total contributions of \$46,805,498 to the 112 candidates in the 2003-2004 state Supreme Court elections who raised funds. The candidates ran in Alabama, Arkansas, Georgia, Idaho, Illinois,* Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, North Carolina, New Mexico, Nevada, Ohio, Oregon, Pennsylvania, Texas, Washington, Wisconsin, and West Virginia. Research by the Institute on Money in State Politics has identified 88 percent of the funds by interest. **For the first time since the Institute's record keeping began in 1989, contributions from business donors outstripped contributions from lawyers. The \$15,765,709 donated from business interests in 2004 is nearly double the amount given in 2002 (about \$8.4 million).** Contributions from lawyers in 2004 stayed about on par with their giving in 2002 (\$11.6 million in 2004 compared to \$10.7 million in 2002), though proportionately their share shrank from about 37 percent to 25 percent. Political parties more than doubled their contributions to Supreme Court office seekers since the last cycle, giving \$6,653,545 in 2004 compared to about \$2.8 million in 2002. The Republican and Democratic parties of Illinois combined to donate \$4,771,645, and ranked first and second nationally on the list of top contributors. Candidates themselves supplied \$1,837,140, or about 4 percent of the total funds, which is down from the 8 percent of funds (about \$2.2 million) they supplied in 2002. John Mason in Nevada was the top self-financed candidate, giving \$429,369 to his own campaign. This election cycle is the first time since 1997–1998 that no self-financed candidate has contributed \$1 million to his or her own campaign.

*Contributions of \$1,221,367 to the JUSTICE FOR ALL PAC, a political action committee established expressly to engage in electioneering in the 2004 Illinois Supreme Court race, have been classified in the “lawyer” category based on the belief that many of the contributions to this committee came from trial lawyers. Because JUSTICE FOR ALL PAC has shielded the names of some of its donors from public view—in defiance of Illinois’ electioneering disclosure law—exact interest identification was not possible at the time of this report’s publication.

In North Carolina, Public Financing Offers Relief

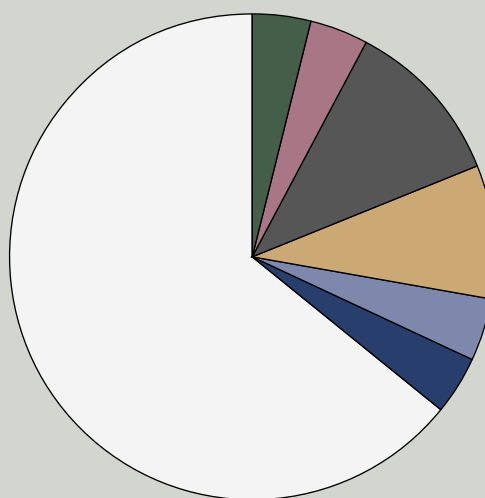
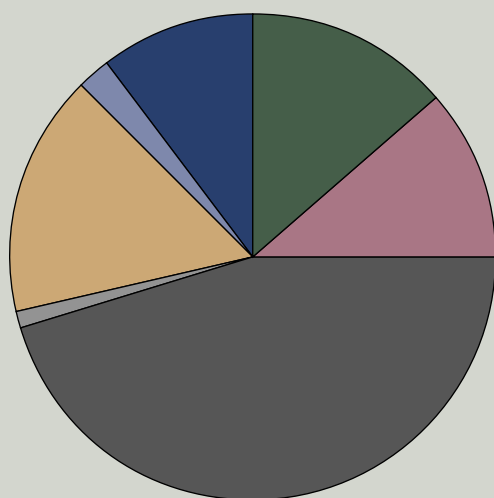
Public financing of elections helps candidates and the public that elects them. Judicial aspirants can spend more time explaining to voters why they deserve election and less time having to raise money. Public funding also removes the unseemly appearance of impropriety

involved when judicial candidates must solicit contributions from lawyers, business groups and others who may have business in the judge's court. In 2004, North Carolina became the first state in the nation to offer full public financing to qualified candidates for its two highest courts, the state Supreme Court and the state Court of Appeals. See pages 38–39 for a complete profile of this system.

Sources of Contributions to North Carolina Supreme Court Candidates, 2002 & 2004

2002: 6 Candidates

2004: 10 Candidates



	2002	Percent	2004	Percent
Business	\$94,860	12%	\$54,979	4%
Other	\$83,154	10%	\$47,648	4%
Lawyers	\$321,284	40%	\$136,153	11%
Labor	\$6,450	1%	\$0	0%
Unknown	\$109,906	14%	\$118,210	9%
Small Contributions	\$20,035	3%	\$47,300	4%
Candidate	\$74,950	9%	\$47,580	4%
Public Subsidy	\$0	0%	\$807,080	64%
Total	\$807,320	100%	\$1,267,354	100%

Figure 15

What You Raise Depends on Where You Sit

Even in the relatively low-profile world of state Supreme Court campaigns, the maxim that holding office provides a fundraising advantage holds true. Simply put, incumbents outperform challengers in collecting checks. Among the nation's 30 top fundraisers, 11 incumbents raised more than \$500,000. Of the 30 candidates who crossed the half-million dollar fundraising threshold, only four were challengers, and no challengers eclipsed the \$1 million mark. Two ran aggressive primary campaigns against controversial Republican incumbents—and won. In **Texas**, Paul Green raised \$839,845 on his way to defeating Justice Steven Wayne Smith, a nationally prominent activist against affirmative action, in that state's March primary. Tom Parker, an aide, political confidant and endorsed candidate of former **Alabama** Chief Justice Roy Moore, raised \$585,205 in his June primary upset of Justice Jean Brown (who raised \$1.1 million). Both Green and Parker went on to easy general election victories in strong Republican states.

Another truism: open seats attract even more money than races featuring incumbents. In fact, 15 of the 30 top fundraisers in 2003-2004 were competing for open seats on their state Supreme Court, including the nation's top five fundraisers. The top five collectively raised \$14.3 million in their quest to reach their state high court, underscoring another way in which the line between court races and campaigns for legislative or executive office is increasingly blurring.

Judicial Elections Are Now Interest Group Battlefields

Over 87 percent of America's state judges face some form of election to reach or stay on the bench. That statistic reflects a widespread judgment that elections are appropriate to keep judges accountable to the public they serve. But elections also make it more difficult to preserve the impartiality and independence of state courts.

To foster those values, states have enacted laws and promulgated rules to preserve the integrity of both the election process and of the courts themselves. Some states have adopted nonpartisan judicial elections, arguing that partisan politics have little to do with judges' jobs. Codes of judicial conduct also set ethical standards for judges, including limits on what candidates can say during campaigns and bans on judges' personal solicitation of campaign contributions, for instance.

The explosion of special interest involvement in campaigns, and recent attacks on judicial canons, threaten the structural safeguards that help to keep courts fair and impartial. If these trends are left unchecked, they may do lasting damage to public trust and confidence in the judiciary. Already, a large majority believes that judges' decisions are influenced by special interest money, and faith may erode further if judges are seen as little more than politicians wearing black robes.²³

In 2004, interest groups mobilized their money and their memberships to shape the outcome of state Supreme Court campaigns on a scale never before seen in judicial elections. Big business and trial lawyers took the tort reform battle to new heights, building massive war chests and continuing their sophisticated, multi-year campaigns to reshape the bench on Election Day. (Almost everywhere, the business groups won.) Groups on both sides of the culture wars have also accelerated their efforts to elect state high court judges with stated commitments to specific political agendas.

More and more, judicial candidates find themselves pressured to play by a new set of rules: take sides on controversial issues that may come before the courts, advertise your political commitments, lower your ethical standards—or an interest group will measure a black robe for someone else who will play that game. The good news is that, so far, such tactics are no guarantee of electoral success. Nonetheless, the trend is ominous.

²³ A March 17-19, 2004 nationwide survey of 1,204 American voters found that 71 percent believe campaign contributions from interest groups affect judges' decisions in the courtroom. Complete results available at <http://faircourts.org/files/ZogbyPollFactSheet.pdf>.

POLITICS & POLICY

Chamber of Commerce Targets State Races

Money Pours Into Ads Challenging Candidates Who Are Seen as Anti-Business

By JOHN R. WILKE

THE U.S. CHAMBER of Commerce's campaign to keep candidates it considers antibusiness from winning state races fell short in its first effort. Despite negative television ads financed by the Chamber, a Democratic attorney general candidate in Washington state won a primary contest.

The Chamber spent \$1.5 million against Deborah Senn, a former state insurance commissioner who beat her primary opponent, a moderate Democrat, on Tuesday. The Chamber had tried to keep its role secret, but a state-election watchdog, the Public Disclosure Commission, forced it into the open with a ruling that the ads were political advocacy and that their funding must be reported.

The effort in Washington state is only the tip of the iceberg. In about 25 states,

the business-advocacy group is targeting candidates for attorney general and supreme-court justice who are seen as opposed to legal overhaul or other business interests. The push shows how important the decisions of these state officials have become for business.

The Chamber's goal is to turn the tide against trial lawyers, who it says have used sympathetic state and local courts in class-action cases that extracted millions of dollars in damages from businesses.

It wants most class-action cases tried in federal court, not state courts, and is pushing for, among other things, a streamlined approach to dealing with asbestos claims, which are pending across the country.

In Illinois, for example, "you can get stuck with some Madison County judge who's close to the trial bar in a national class action, with plaintiffs from 30 states, and corporate defendants from out of

state," said Stan Anderson, the Chamber's chief legal officer. The Chamber plans to get involved in the state's race for supreme-court justices in an effort to educate voters about these issues, he said.

Mr. Anderson said the Chamber would back a legal challenge of the Washington state commission's ruling that the ads attacking Ms. Senn—placed by a local group that concealed its funding—amounted to direct advocacy for or against a specific candidate. The Chamber argues that the local group it funded was acting within its constitutional right to free speech. "We concluded that this woman's record was very liberal and anti-business, and we thought it was important to engage in the process there," Mr. Anderson said. "We didn't ask people to vote against her, we merely informed the public about the things she did as insurance commissioner. The ads weren't express advocacy and didn't re-

quire any kind of disclosure."

Ms. Senn angered businesses with her tough tactics as state insurance commissioner from 1993 through 2001, and one of the ads criticized the way she handled a big insurance settlement in 1997.

Mr. Anderson said none of the insurance firms among his membership were aware of the Chamber's effort.

The negative ads, which saturated the Seattle, Olympia and Yakima markets for weeks, succeeded in narrowing Ms. Senn's early lead and nearly cost her her victory. The Chamber's spending, funneled through a local affiliate called the Voters Education Committee, amounted to more than that of all the other candidates in the race combined.

"We were ahead in the polls by 12 points as recently as three weeks ago, and \$1.5 million later it was neck and neck," said Karen Besserman, a spokeswoman for Ms.

Figure 16

The Battle Over Tort Liability Draws Millions to Judicial Races

For several years, the role of the courts in setting corporate damage payments and medical malpractice liability has been the core issue of many judicial elections. But the controversy drew unprecedented special interest investment in the 2004 cycle. Groups on both sides poured millions of dollars into high court races through contributions to candidates and independent media campaigns.

Business groups, including the U.S. CHAMBER OF COMMERCE and state affiliates, made record-level investments in state judicial elections in

2004. For the first time on record, business donations to Supreme Court candidates exceeded contributions made by attorneys. In fact, more than \$1 of every \$3 raised by state Supreme Court candidates in the most recent cycle—nearly \$15.8 million—came from the business sector. To that, add nearly \$5.7 million of airtime for independent media campaigns run by business in support of their favored candidates, for a total business investment of \$21.5 million.

Lawyers and labor contributed approximately \$11.6 million to judicial candidates. Television spots they financed added more than \$1.7 million in costs, for a total investment of more than \$13.3 million.²⁴

²⁴ The \$11.6 million includes contributions from corporate defense lawyers, so the figure likely overstates the fundraising power of the plaintiffs' bar in the 2004 Supreme Court elections. The figures in this and the previous paragraph may overstate interest group contributions to candidates and total interest group investment, because candidates in some states report interest group expenditures for independent television advertising as in-kind contributions to their campaigns (resulting in double-counting of those sums).

The advertising financed by these millions of dollars reflected the diverse strategies used to elect high court judges:

- *The silent partner.* In 2000, television advertising campaigns run by the U.S. CHAMBER OF COMMERCE in Mississippi and Ohio backfired against ostensibly business-friendly candidates. Recognizing that its high profile was not necessarily a winning strategy, the Chamber has more quietly supported candidates in half a dozen states.²⁵ In **Illinois** (see flow charts, pages 26–27), over \$2 million from the Chamber funded the state Republican Party’s support of Lloyd Karmeier, while funds supporting his opponent, Gordon Maag, were funneled by trial attorneys and labor through a group with the apple-pie name of JUSTICE FOR ALL.
- *The positive force.* In some states, the business community invested openly in positive television, radio, direct mail and internet ads boosting name recognition for business-friendly incumbent judges. In **Ohio**, business and medical groups sponsored TV advertising and extensive websites endorsing all three Republican candidates, Chief Justice Thomas Moyer, Justice Terrence O’Donnell and Judge Judith Ann Lanzinger. Justice Stephen Markman of **Michigan** benefited from advertising

support from the MICHIGAN CHAMBER OF COMMERCE, and in **Mississippi**, the IMPROVE MISSISSIPPI PAC (IMPAC), an affiliate of the BUSINESS AND INDUSTRY POLITICAL EDUCATION COMMITTEE, spent roughly the same amount it received from the AMERICAN TORT REFORM ASSOCIATION (ATRA) on television advertising supporting Republican Justice Mike Randolph and Samac Richardson.²⁶

- *The attack dog.* Finally, in some states, interest groups launched no-holds-barred attacks on the opposition. In **West Virginia**, a group created specifically for the Supreme Court election—called AND FOR THE SAKE OF THE KIDS—ran ads assailing the incumbent. Trial lawyers and other allies of the incumbent organized their own group, WEST VIRGINIA CONSUMERS FOR JUSTICE, but it raised only about half as much as its counterpart.²⁷

What is the result of this massive infusion of corporate and trial lawyer money into Supreme Court campaigns? Not counting funds used by political parties on both sides of the aisle, business outspent the plaintiffs’ bar by about 50 percent. The CHAMBER claimed victory in 12 of the 13 state high court races that it targeted.²⁸

²⁵ Robert Lenzer and Matthew Miller, “Buying Justice,” *Forbes Magazine*, July 21, 2003.

²⁶ See Jim Provance, “Heavy Fundraising Advantage Fuels GOP Sweep of High Court Races,” *Toledo Blade*, November 4, 2004. The Michigan Campaign Finance Network reports that the MICHIGAN CHAMBER OF COMMERCE and its rival, CITIZENS FOR JUDICIAL REFORM, combined to spend \$1.77 million on television ads. In Mississippi, IMPAC received roughly \$300,000 from ATRA and spent roughly \$325,000 on television advertising. Shelia Hardwell Byrd, “Randolph Raises Highest Amount,” *Biloxi Sun Herald*, October 27, 2004; Jimmie E. Gates, “Out-of-State Funds Emerge as Issue in High-Court Race,” *Jackson Clarion-Ledger*, October 28, 2004.

²⁷ See West Virginia profile, pages 4–5.

²⁸ The only loss acknowledged by the CHAMBER was the primary defeat of Justice Jean Brown in Alabama (see Alabama profile, page 32). Lou Jacobson, “Volume of Ads Decisive in Supreme Court Races,” *Roll Call*, November 22, 2004.

Illinois Campaign Finance Reporting: Business and Medical Interests

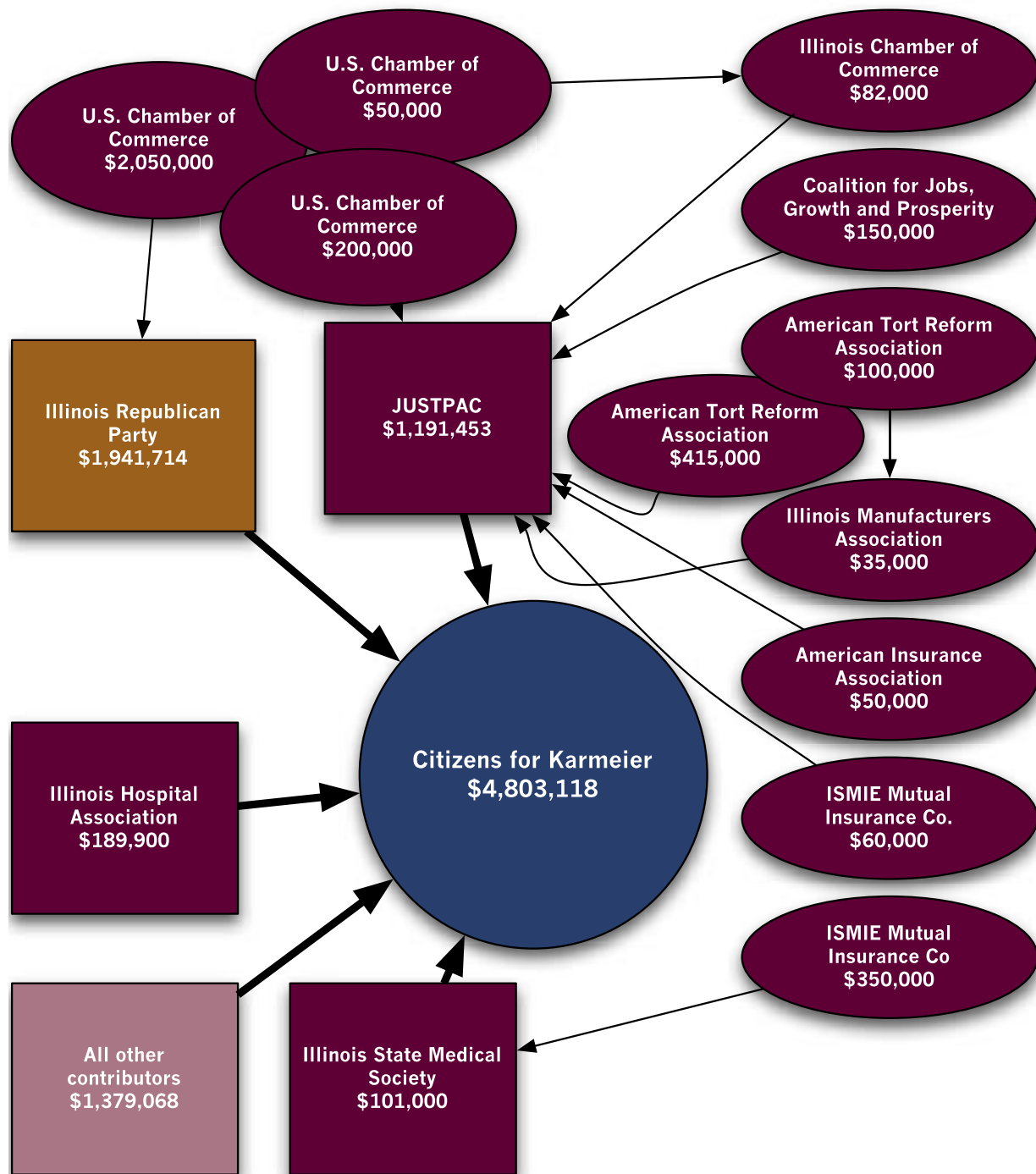


Figure 17

The figure illustrates campaign finance reporting by significant business and medical donors. Entities other than Citizens for Karmeier, including political parties and PACs, may have received contributions in addition to those illustrated here. In addition, amounts contributed to those entities could be spent for purposes other than Karmeier's campaign. Consequently, amounts received by those entities will not necessarily equal amounts contributed to the campaign.

Source: *Illinois Campaign for Political Reform*

Illinois Campaign Finance Reporting: Lawyers and Law Firms

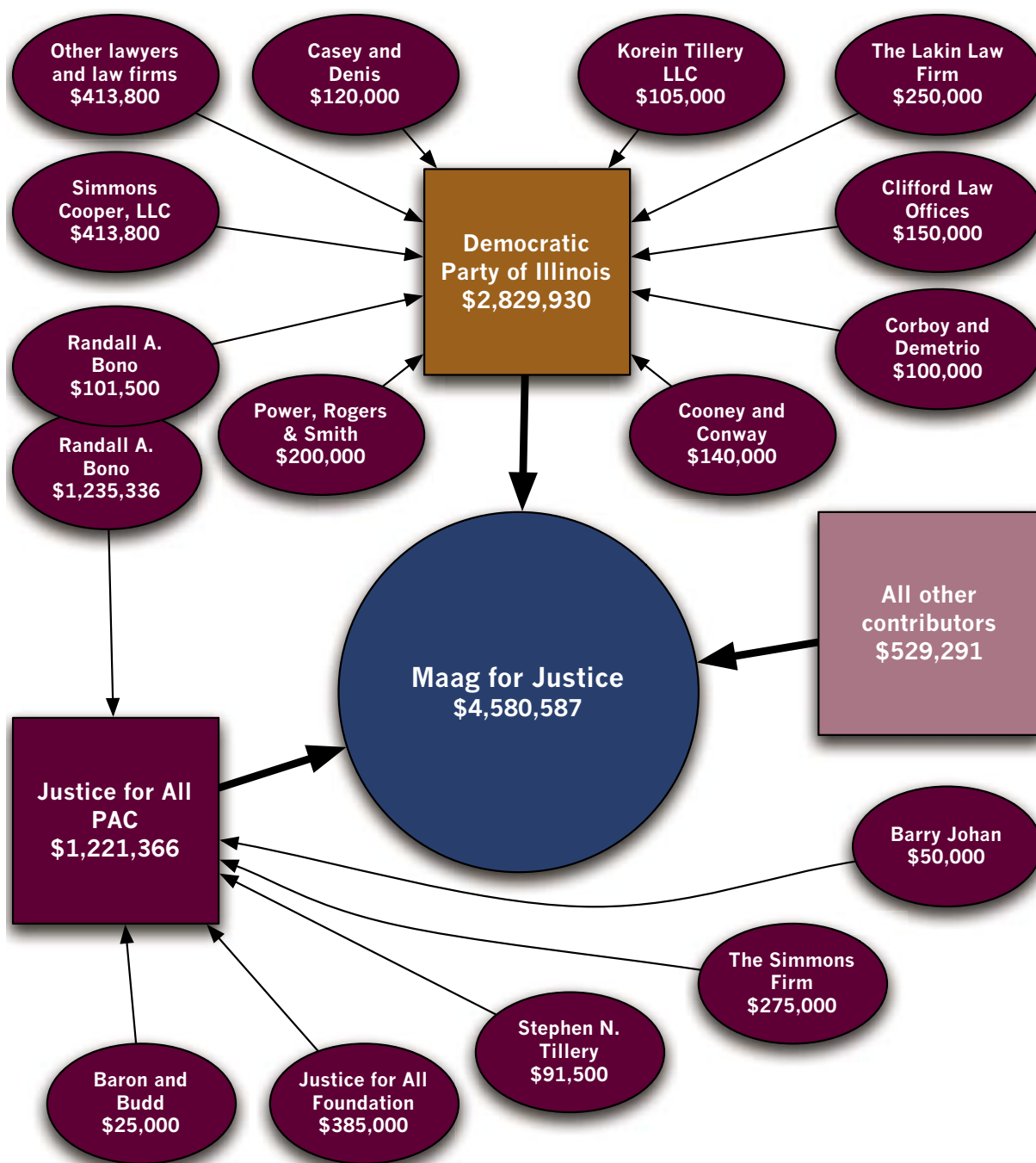
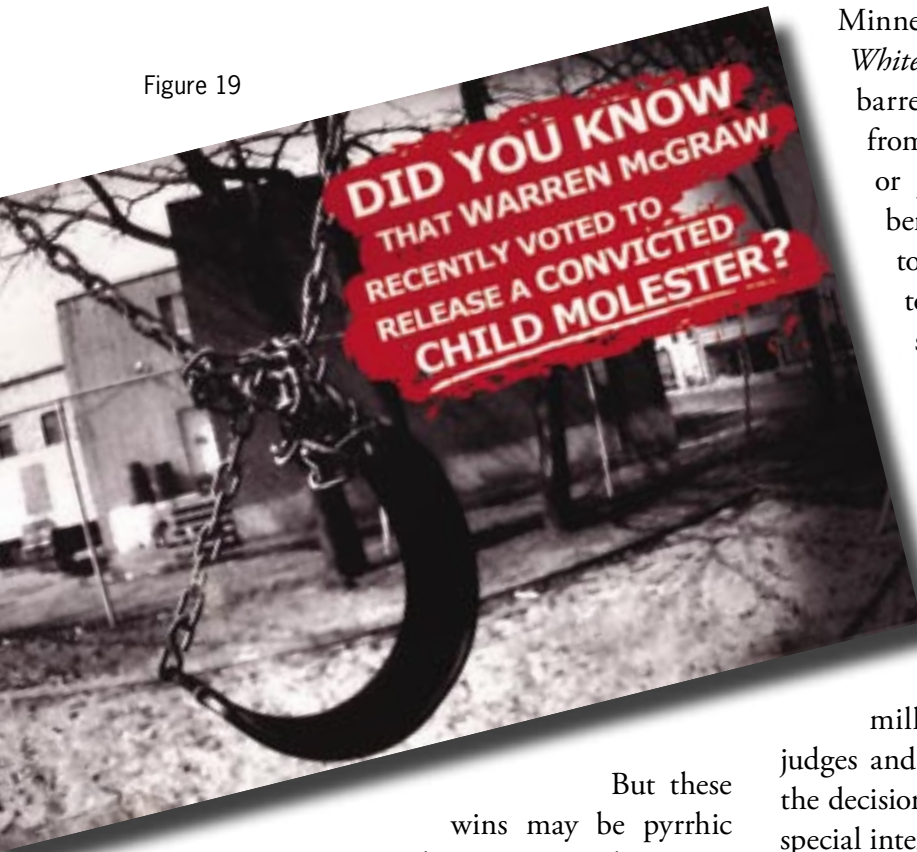


Figure 18

The figure illustrates campaign finance reporting by significant lawyer and law firm donors. Entities other than Maag for Justice, including political parties and PACs, may have received contributions in addition to those illustrated here. In addition, amounts contributed to those entities could be spent for purposes other than Maag's campaign. Consequently, amounts received by those entities will not necessarily equal amounts contributed to the campaign.

Source: *Illinois Campaign for Political Reform*

Figure 19



But these wins may be pyrrhic victories, because special interest battles of the sort seen in 2004 jeopardize our courts' reputation for fairness and impartiality. As the races get more expensive, and monied interests dig themselves deeper into campaigns, even successful judicial candidates express skepticism about the process. As newly elected Justice Karmeier remarked about the "obscene" amount spent on his Illinois race, "How can people have faith in the system?"²⁹

The Culture Wars Spread to Judicial Elections

In June 2002, the U.S. Supreme Court decided *Republican Party of Minnesota v. White*, a First Amendment case challenging a provision of

Minnesota's Code of Judicial Conduct. *White* struck down the provision, which barred candidates for judicial office from announcing their views on legal or political issues. Candidates for the bench now have the choice whether to publicize their political views or to adhere to the traditional ethical standard, which was designed to promote the reality and appearance of impartiality and independence.

The decision came less than 18 months after the record-setting 2000 state Supreme Court campaigns, in which candidates raised more than \$45 million, and interest groups spent millions more. At that time, many judges and court-watchers expressed fears that the decision would increase the expense of, and special interest influence over, judicial elections, as campaign funds became the quid pro quo for candidates' "announcements" of their views on the pet concerns of interest groups.

States began to feel the impact of the *White* decision in the 2003-2004 election cycle. Tremors from the ruling reverberated through a 2003 race in Pennsylvania, when Judge Max Baer openly campaigned as a pro-choice Democrat and won an open seat on the Pennsylvania Supreme Court. But the aftershock of the decision rattled more campaigns in 2004, as more interest groups used questionnaires to pressure candidates for their positions on hot-button issues and targeted specific "bad" judges for removal. Candidates dismayed by the assault on fair and impartial courts could not help but feel pressure to identify

²⁹ Following the \$9.3 million campaign in Illinois, plaintiffs suing STATE FARM INSURANCE asked Justice Karmeier to recuse himself from the consideration of their appeal to the Illinois Supreme Court, because he had received about \$350,000 in campaign contributions from the insurance company. Keith Beyler, a professor at Southern Illinois University in Carbondale observed: "If this is going to be the grounds for disqualification, we're going to have judges disqualified all the time." Kevin McDermott, "Donations to Judge Figure in Court Case," *St. Louis Post-Dispatch*, February 1, 2005.

Figure 20

Form **8872**
(November 2002)
Department of the Treasury
Internal Revenue Service

**Political Organization
Report of Contributions and Expenditures**

OMB No. 1545-1696

A For the period beginning 08/20/2004 and ending 09/30/2004. See separate instructions.

B Check applicable box:
1 Name of organization: And For The Sake Of The Kids
2 Mailing address (P.O. box or number, street, and room or suite number):
PO Box 1716
City or town, state, and ZIP code:
Williamson, WV 25661
3 E-mail address of organization:
andforthesakeofthekids@yahoo.com
4a Name of custodian: _____
4 Date organization: _____

Recipients name, mailing address and ZIP code:
Targeted Communications
P.O. Box 2732
Charleston, WV 25330

Name of recipient's employer:
N/A
Recipients occupation:
N/A

Purpose of expenditure:
Direct Mail Piece #1 (Arbaugh Decision)

Amount of Expenditure:
\$ 219,492
Date of expenditure:
09/09/2004

City or town, state, and ZIP code:
Beckley, WV 25801

8 Type of report (check only one box):

themselves
with powerful interest
groups, which could help to finance
their campaigns and get out the vote.

Most candidates took the high ground. Justice James Nelson of the Montana Supreme Court spoke out against entering the political fray: “If my personal views are going to be irrelevant then [when on the bench], why are they relevant now [during the campaign]?”³⁰ But other candidates openly embraced the new politics of judicial elections ushered in by the *White* decision.

- In **Ohio**, Judge William O’Neill ran the most blatantly outspoken, post-*White* campaign Ohio has yet seen. He challenged the state’s prohibition on identifying himself with a political

party, and throughout his campaign, he stated his positions on disputed issues clearly before the Court—such as school funding.³¹

- In **Montana**, former State House Representative Cindy Younkin ran for a seat on the state’s high court, saying that judicial candidates who failed to disclose their personal views were “cowardly.” She also roundly criticized her opponent as an “activist” judge.³²

³⁰ John Blodgett, “Should Supreme Court Candidates Express Views?” *Daily Inter Lake*, May 10, 2004.

³¹ Andrew Goldstein, “Money Talks,” *Legal Affairs*, January/February 2005.

³² Mike Dennison, “Nelson’s Decisions Draw Fire, Praise,” *Great Falls Tribune*, September 26, 2004.

- Abortion-related questionnaires were also distributed to judicial candidates in **Kentucky**. When some candidates refused to answer surveys and cited fear of violating the state's code of judicial ethics, the FAMILY TRUST FOUNDATION filed a lawsuit challenging a provision that prohibits candidates from making statements that commit or appear to commit them to decisions before cases, controversies or issues reach the judge. A settlement in early 2005 appears to have granted the litigants what they sought: the Kentucky Supreme Court has entered into an agreement not to enforce that portion of the state's judicial code.³³

In 2006, all but five of Kentucky's 266 elected judges are on the ballot. Given the option to complete questionnaires and the pressure to do so, candidates may feel that it is time to sharpen their pencils.³⁴ Kentucky's voters will have to decide whether they want judges who may pre-judge cases without considering the facts and the law.

³³ Beth Musgrave, "Judicial Hopefuls' Speech Limitations Could Be Loosened," *Lexington Herald-Leader*, February 4, 2005.

³⁴ Similar lawsuits, all challenging state judicial ethics codes that shield candidates from the wrath of single-issue groups, have been filed in Alaska, Indiana and North Dakota. For a discussion of the various clauses under attack, see J.J. Gass, "After *White*: Defending and Amending the Canons of Judicial Ethics," (Brennan Center for Justice 2004).



Alabama

The politics of social conservatism is transforming judicial elections in Alabama.³⁵ The 2004 Supreme Court races in that state came on the heels of Chief Justice Roy Moore's removal from office for defiantly maintaining a monument of the Ten Commandments in the state Supreme Court building. In a heavily Republican and conservative state, this controversy practically invited a raucous primary.

THE LEAGUE OF CHRISTIAN VOTERS OF ALABAMA backed a "Roy Moore" slate to compete for two open seats on the state's highest court, and supporting Tom Parker to replace Justice Jean Brown—a Republican, business-backed jurist who had supported removal of the monument. As the LEAGUE noted on its website before the primary: "Alabama Christians are now more concerned than ever about electing bold Christians to these Supreme Court seats. All eight Associate Justices voted to remove the Ten Commandments, and all opposed the stand of Chief Justice Roy Moore. ALL. NONE STOOD WITH HIM, AND NONE STOOD WITH US."

But Parker's acceptance of \$150,000 from plaintiffs' attorneys in the primary so offended business groups that four of them, including the ALABAMA CIVIL JUSTICE REFORM COMMITTEE, refused to endorse the Republican in the general election after his upset of Justice Brown. "When he took the trial lawyer money at the last minute in the primary, that was the line of demarcation," said the committee's chairman, Tom Dart.³⁶

No matter for Parker. He won the general election handily, though he was the only Moore ally to emerge victorious. A *Birmingham News* editorial noted the irony of the outcome: "Roy Moore, darling of the evangelical right, on the same side as trial lawyer king Jere Beasley? Politics makes strange bedfellows, indeed."³⁷

³⁵ Interest groups and big money have long dominated Alabama judicial politics. Since 1993, Supreme Court candidates in Alabama have raised more than \$40 million, the national record over that span, and two of the three most expensive Supreme Court races in American history have been waged here. The 2000 race won by Chief Justice Roy Moore totaled over \$4.8 million, while candidates in the 1996 race won by Justice Harold See raised \$4.4 million.

³⁶ Phil Rawls, "Business Groups Skip GOP Nominee," *Montgomery Advertiser*, September 5, 2004.

³⁷ "Strange Bedfellows," *Birmingham News*, June 3, 2004.

Attacks on the Judiciary

This television ad, which ran the week before the June 1 Alabama primary, features a strong message from a challenger that is notable not for attacking his opponent—who is not even mentioned—but for lambasting the judiciary itself. Estimates obtained by the Brennan Center indicate that the 344 airings cost \$85,262.



[Announcer]: First liberal judges banned school prayer, then they legalized abortion, today they're



destroying marriage and taking God out of our public life. It's created a moral crisis



and judges are on the front lines. That's why your vote for Tom Parker on Tuesday



is so important. Tom Parker is a conservative



Christian and man of principle who served as a top aide to



Chief Justice Roy Moore. Parker is a pro-life leader, fighter for tax payers, and Parker strongly opposes gay marriage.



Tom Parker, Republican for Alabama Supreme Court, standing up for what we believe. [PFB: Tom Parker for Alabama Supreme Court]

Figure 22

© TNS Media Intelligence/CMAG: AL Parker Man of Principle

Countering the Threats to Our Courts: Reforms at Work in the States

What can be done? Interest groups continue to ratchet up pressure on public servants whose job requires fairness, not political pandering. As the cost of running for a seat on the state Supreme Court continues to climb, more candidates must engage in fundraising tactics that blur the line between judicial ethics and backroom politics. But the special interest explosion of the past decade has sparked a new surge of efforts to reform judicial elections in order to insulate our courts from political pressure.

Fortunately, local citizen groups, campaign reformers, judges and bar associations have organized like never before to counter the growing threats to fair, impartial and independent state courts. Defenders of the courts work against tall odds: they lack the financial resources or organizational infrastructure of well-heeled interest groups.

But by working together and learning from each other, Justice at Stake partners and allies across the country have moved reform of state judicial elections onto the agenda of legal organizations and state legislatures.³⁸ The reforms take many shapes and sizes. They represent a mosaic of popular ideas developed by talking with judges, judicial candidates, political leaders, and voters about how best to improve the process for choosing judges.

In some cases, legislative action has been taken to enact these reforms. In other cases, laws are not needed, but more public education and greater civic involvement are imperative. This report does not suggest that all of these reforms will work in every state, but rather that state leaders should examine all the options available to them to improve how judges are chosen in their state. The ideas in this chapter illustrate a number of solutions that have been proposed or adopted in some states.

³⁸ Justice at Stake is a nonpartisan national partnership of more than 40 state and national groups working to keep our courts fair, impartial and independent. Across America, campaign partners help protect our courts through public education, grass-roots organizing, coalition building and reform.

Disclosure: Sunshine Laws Are an Obvious First Step

For years now, interest groups have infected judicial elections by anonymously dumping millions of dollars into campaigns for the bench. Much of this money has financed TV ads designed to support or defeat particular judicial candidates without expressly saying so. Expenditures for such ads have been historically exempt from campaign finance laws in most states, screening the backers of these ads from public view.

The landscape changed, however, with the U.S. Supreme Court's 2003 ruling in *McConnell v. FEC*, which confirmed the constitutionality of most of the Bipartisan Campaign Reform Act (BCRA). The decision upheld mandatory disclosure from interest groups that become active players in federal election campaigns. Under the reasoning of *McConnell*, states are now able to enact "electioneering communications" provisions akin to those in BCRA. Specifically, states can require groups that finance ads referring to a candidate in the pre-election period to disclose their donors.

Both candidates and voters win when sunshine illuminates who is spending large sums of money to influence the selection of judges. However, states have been slow to embrace this proven disinfectant. Few states have, so far, adopted such legislation.

In 2003, the **Illinois** legislature adopted an electioneering communications provision. The provision paid immediate dividends in that state's record-setting 2004 Supreme Court race (see pages 18–19 of this report): coupled with the state's speedy electronic disclosure laws, millions of dollars in contributions from business interests and trial lawyers became available for media and public scrutiny.³⁹

Ohio has long been the poster child for costly and nasty Supreme Court races. In the 2000 election, a group called CITIZENS FOR A STRONG OHIO refused to disclose the names of financial contributors who underwrote a \$4 million campaign against a sitting Ohio Supreme Court Justice. In January 2005, after losing a series of court battles, CITIZENS finally made the donor information public.⁴⁰

In December of 2004, the Ohio legislature adopted major changes to its campaign finance laws. While many of those changes marked a step backward for good government, including higher contribution limits and the legalized use of corporate money for electioneering purposes, Ohio did adopt extremely broad disclosure requirements that could end the days of television campaigns underwritten anonymously by big money. The days of expensive court campaigns in Ohio are not banished to history, but voters in Ohio will get much better information about who is bankrolling judicial candidates when they need it—during the heat of election campaigns.

³⁹ Certain groups, however, have attempted to circumvent Illinois' disclosure laws and avoid revealing their contributors by setting up conduit organizations through which they funnel money to candidates and political committees. The Illinois Campaign for Political Reform and the Sunshine Project have filed complaints with the Illinois State Board of Elections against two such groups seeking to force the groups to file as state political committees and disclose their contributors.

⁴⁰ Jon Craig, "Business Group Releases Donors' List From 2000 Ad Campaign," *Columbus Dispatch*, January 28, 2005.

Merit Selection and Retention Elections

Some states appoint judges to their high courts. There are a number of variations of such a system. In some states, the process parallels the federal model: the executive nominates, and the legislature confirms. In others, the governor's nominees need not be approved by the legislature.

A hybrid model combining appointment and elections, often known as the "Missouri Plan" has been adopted by 16 states, with four additional states using a mix of contested elections and the Missouri Plan. Under this system—sometimes called "merit selection" or "merit-based selection"—a judicial nominating commission screens potential candidates and recommends a short list of potential nominees. The Governor consults this list in deciding whom to nominate; in some states he or she must pick from the list. After serving an initial term, the appointee must thereafter stand for re-election in uncontested retention contests, where they must win at least a majority of the yes votes to stay in office. The last state to adopt this plan for its state Supreme Court was Utah, which did so in 1984.

Reform groups in **Pennsylvania** like Pennsylvanians for Modern Courts, a Justice at Stake partner, believe that this hybrid system offers an alternative to the specter of expensive, contentious and highly partisan races. Governors Tom Ridge and Ed Rendell have supported such a reform, which would require an amendment to the state's Constitution.

Public Financing of Judicial Elections: Getting Judicial Candidates Out of the Fundraising Game

Many reform groups have recognized that the best way to rein in exploding campaign costs may come in the form of public financing to candidates who meet public confidence thresholds and who agree to abide by strict fundraising and spending limits.

According to public opinion surveys, voters believe that judges are different from politicians and that therefore their campaigns should be different. Voters do not want to see judicial candidates forced to raise money like politicians, and they express great concern that the fundraising process may taint fair and impartial justice. There is also evidence that some ideological opponents of campaign finance systems applicable to executive and legislative officials soften their opposition when public financing for the judiciary is proposed. There is wide spread agreement that public financing can mitigate the worst side-effects of elections for state judges, while still leaving voters with their franchise.

Public financing comes in a variety of shapes and sizes. **Wisconsin** has supplemented private fundraising for its state Supreme Court candidates since the late 1970s, employing a partial public financing system. However that system has been inadequately funded. Full public financing, using a modified model of the systems adopted for legislative and executive branch races in Arizona and Maine, was adopted in **North Carolina** in 2002 and experienced great success in the 2004 elections (see charts on page 21).



North Carolina

In 2000, North Carolina experienced its first million-dollar Supreme Court race, prompting many in the state's legal and legislative ranks to wonder whether the days of low cost, low key judicial races for the state bench were coming to an end. Fostered by a strong movement for campaign finance reform, a talented coalition of citizen advocates, determined legislative leadership, and articulate editorial support, the state's legislative assembly made history in 2002 by adopting the first full public funding system for judicial candidates in the country. The changes were part of the state's comprehensive Judicial Campaign Reform Act.⁴¹

Funding for the plan comes from a variety of sources. By far the largest underwriters of the program are the state's taxpayers, who may voluntarily earmark \$3 for the state's Public Campaign Financing Fund through a check-off on the state income tax form. Through 2003, civic groups worked feverishly to raise the public profile of the North Carolina program to ensure that judicial campaigns would be adequately funded.

The first eligible candidates were those on the 2004 ballot for state Supreme Court and Court of Appeals; there were two seats contested on the Supreme Court and three on the Appeals Court. Under the program, candidates typically become eligible for public funding in the general election by:

- limiting their private fundraising in the year before the race to seed money of no more than \$10,000;
- filing a declaration of intent to participate with the state Board of Elections between January 1 and the date of the state primary;
- collecting at least \$33,000, but not more than \$69,000, in amounts ranging from \$10 to \$500, from at least 350 North Carolina registered voters (no political party money or PAC money is permitted); and
- finishing first or second in the state's primary election, placing them on the ballot for the November general election.

Candidates who meet these criteria become eligible to receive lump sum payments to their campaigns from the state, and are then prohibited from engaging in any further campaign fundraising. Candidates for the Court of Appeals receive \$137,500, while Supreme Court candidates typically receive \$201,300. If a publicly financed candidate is outspent by a privately financed candidate or by third-party independent expenditures, "rescue" matching funds up to two times the original grant are available for the publicly financed candidate.

⁴¹ This legislation also included a switch from a partisan to nonpartisan ballot, the production of a voter's guide for statewide judicial candidates, and lower contribution limits for those candidates who choose to continue to raise private money. The reforms applied only to the state's appellate courts.

“I personally believe that we ought to do all we can to enhance the public’s confidence in the integrity of the judicial system. One way to do that is to try to stem the tide of money coming into judicial campaigns. The experience of this election has taught at least me, and hopefully North Carolina, that this is a very good experiment, and should be replicated.”

—Judges James Wynn of the North Carolina Court of Appeals, who used public financing in his unsuccessful bid for a seat on the North Carolina Supreme Court in 2004.

Figure 23

Photo by David Spratte for North Carolina Center for Voter Education



Participation in the program was strong in 2004. Of the 16 candidates who were eligible to apply for public funds, 14 did so. Of those, 12 ultimately cleared the relevant thresholds and received public funds. Two Justices were elected to the Supreme Court using public financing, and two more won seats on the Court of Appeals using public funds. One Court of Appeals winner enrolled in the program but did not receive public funds, because she was unable to qualify. Because none of the participating candidates was outspent by privately financed opponents, matching funds were not disbursed in any of the races. Winners included incumbents and challengers, men and women, African-Americans and whites, and candidates with a wide range of judicial philosophies.

The surest sign of a well-structured reform is confidence in the new system expressed even by losing candidates. One defeated candidate noted:

With. . . North Carolina Public Campaign Financing, judicial candidates now have a public financing option and do not have to risk falling victim to allegations of undue influence of large campaign or special interest contributors. North Carolina is ahead of other states in terms of offering the option of full public financing for Appellate judicial elections.⁴²

Supporters are now renewing efforts to ensure that adequate funds will be in place for 2006.

⁴² Judge John M. Tyson, “Judicial Election Campaigns: Free Speech, Public Dollars, and the Role of Judges,” page 7 (paper presented at the Conference on Public Service and the Law at the University of Virginia, February 12, 2005).

Voter Guides: Helping Voters Dilute the Power of Special Interests

A better educated public is one major key to fighting special interest pressure on the courts.

Surveys consistently reveal that most voters do not have enough information about judicial candidates, and

as a result voter “drop-off” is high in judicial elections. Low voting rates, in turn, invite special interest groups to try “tipping” elections by filling this information deficit with expensive attack ads. This information gap—widely recognized by voters themselves—is one of the biggest obstacles to restoring public trust and confidence in the election process.

Judicial voter guides are at the forefront of efforts to address these problems, in part because they reach a receptive audience: regular voters who have demonstrated their willingness to go to the polls, but who currently skip over judicial races because they lack basic information on the candidates. Justice at Stake polling shows that more than 67 percent of Americans surveyed said that receiving a nonpartisan voter guide containing background information on judicial candidates would make them more likely to vote in judicial elections.⁴³

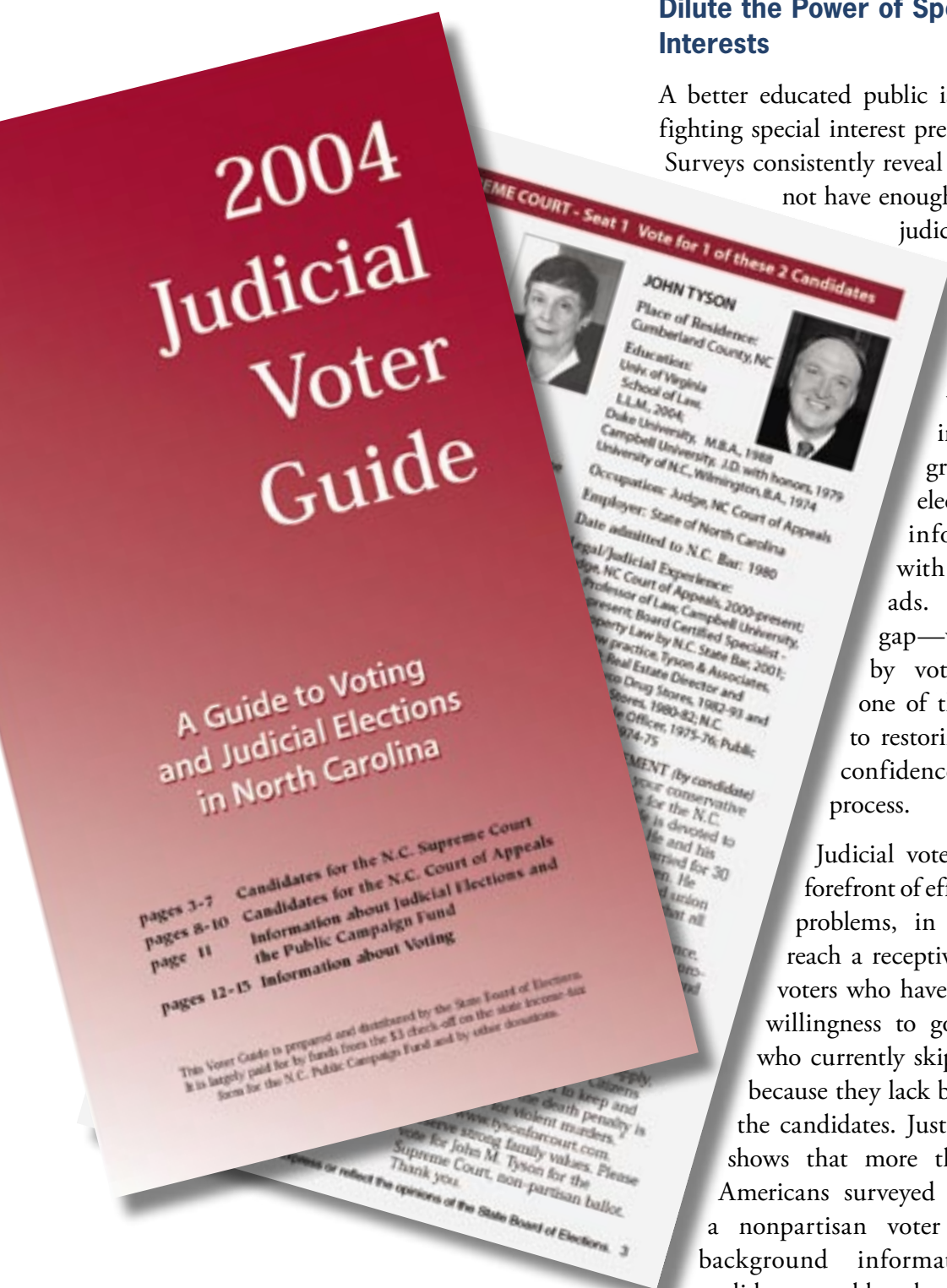


Figure 24

⁴³ Zogby International Survey of 1,204 American voters, commissioned by Justice at Stake and conducted March 17-19, 2004. Complete results available at <http://faircourts.org/files/ZogbyPollFactSheet.pdf>.

The judicial voter guide is a popular, bipartisan reform that many states are exploring, particularly because it is easy and inexpensive to disseminate this information widely on the Internet. The content of the guides typically includes basic biographical information about the candidates, their legal and professional experience, and often a short personal statement from the candidate. In all cases, truly unbiased guides will feature only information prepared directly by the candidate's campaign. Guides provide a clear, unfiltered means by which voters can receive quality information about those who are running, in an easily digestible, side-by-side format. Voter guides do not need to provide a forum for announcing views on hot button issues; they just need to carry basic information about the candidates directly to the voters.

Ohio and **Michigan** have both used public/private partnerships between civic groups (such as the League of Women Voters) and their state election officials to publish online judicial voter guides endorsed with official state seals. Good government groups in other states, such as Illinois and New York, have also taken it upon themselves to post judicial voter guides on special websites immediately before elections. In New York a major policy review commission appointed by the state's Chief Judge recommended an official guide for candidates running for the state's trial courts of general jurisdiction. Illinois adopted an online voter guide for state candidates in 2005.

Ideally, of course, judicial voter guides should be printed and mailed to every voter, and in 2004, **North Carolina** became the first

state to do just that.⁴⁴ The guide received an overwhelmingly positive response from both candidates and voters. An exit poll study of more than 900 voters, conducted by Justice at Stake and the North Carolina Center for Voter Education, found that the guides did indeed help reduce voter drop-off in judicial elections, and that voters who used the guides reported having better information than they received in partisan, non-judicial races where there was no voter guide.⁴⁵

Conduct Committees: Helping Candidates Campaign Cleanly

Judicial campaign conduct committees function as informal referees in judicial elections. They are designed to deter and counter—through public education and negative publicity—conduct that is inappropriate for a judicial campaign. In the long view, “such committees help to create a culture and climate in which the expectations of all involved—candidates, political consultants, the bar, interest groups, the media and the public—promote judicious campaigning.”⁴⁶

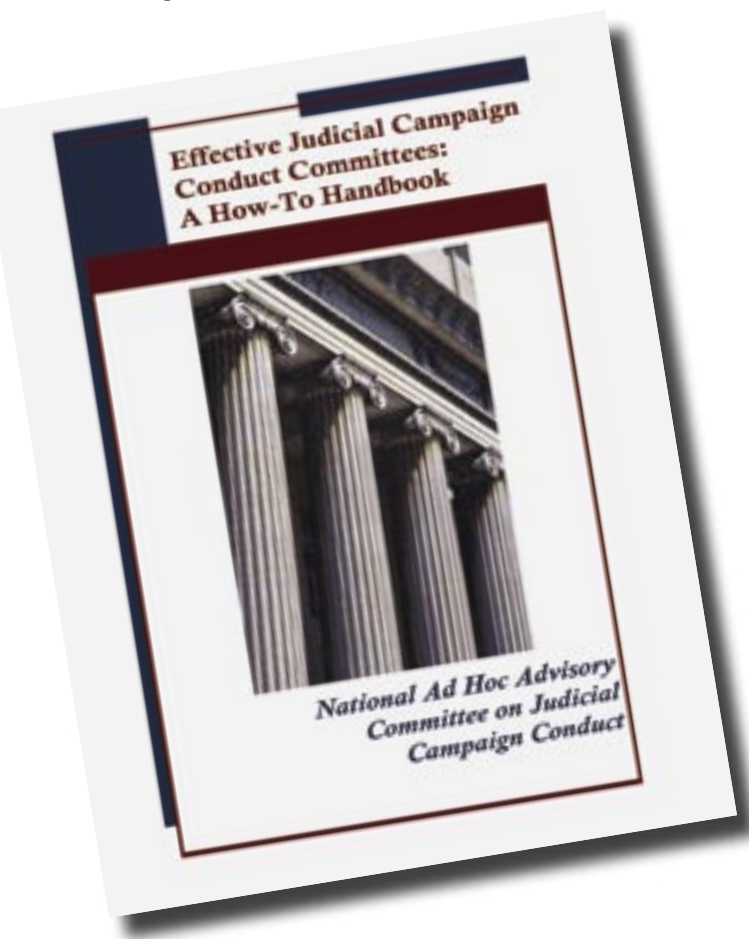
Campaign conduct committees can be both official—that is, established by the state court system or another arm of state or local government—or unofficial, that is, established by a loose alliance of concerned citizens (though they almost always include leading members of the state's legal community). Unofficial committees may represent the preferred method, since they do not involve government in the regulation of speech. The committees do not and should not require much in the way of

⁴⁴ State-sponsored nonpartisan voter guides that include judicial candidates among others are less of a novelty. Alaska, California, Oregon, and Washington include judicial candidates in the guides they mail out before Election Day.

⁴⁵ See Justice at Stake Campaign and North Carolina Center for Voter Education, “Impact of the 2004 North Carolina Judicial Voter Guide” (North Carolina Center for Voter Education 2005.) Also available at <http://www.justiceatstake.org/files/JudicialVoterGuideImpact.pdf>.

⁴⁶ National Ad Hoc Advisory Committee on Judicial Campaign Conduct, “Effective Judicial Campaign Conduct Committees: A How-To Handbook,” page iii (National Center for State Courts 2004).

Figure 25



funding. Effective committees can be staffed by volunteers or retired lawyers or judges, and they can disseminate news releases and recruit local media to report the committee's findings and actions.

One of the most effective campaign conduct committees was established in **Alabama** for its 1998 judicial election. The impetus was the downward spiral in judicial campaign conduct in its 1994 and 1996 Supreme Court elections, which included campaign fundraising that set national records and campaigns taking a harshly negative tone. The 1998 committee consisted of 12 judges, attorneys and private citizens, and

handled more than 350 formal inquiries from candidates regarding permissible conduct.⁴⁷ The committee's lack of formal disciplinary power was offset by its bully pulpit, which most observers agreed played a major role in reversing the fiercely negative campaigns the state had seen in its previous two election cycles.

In the 2004 elections, several states had active campaign conduct committees, including **Florida, Georgia, Illinois** and **Ohio**. More information about judicial campaign conduct committees is available on a special website established by the National Center for State Courts, at www.judicialcampaignconduct.org.

Judges as Leaders for Reform

Too many Americans don't understand the growing challenges to our courts and judges, such as multiplying fundraising demands and special interest pressure in the election process. The public wants courts to punish criminals, resolve disputes fairly and uphold the Constitution. But most don't realize how special interest pressure is making it harder to get on the bench and keep campaign politics out of the courtroom.

Surveys show that judges are the most respected spokespersons in debates over legal issues. Americans trust them to explain that our constitutional freedoms and our rule of law depend on courts that are fair and impartial. But most judges shy from the limelight, in the belief that they best fulfill their duty to uphold fair and impartial justice by staying out of the back-and-forth that accompanies public and political debate.

⁴⁷ Daniel Becker and Malia Reddick, "Judicial Selection Reform: Examples From Six States," page 11 (American Judicature Society 2003).

It's an understandable instinct. But why should citizens care about the courts, if judges will not protect the integrity of the justice system? If more judges don't begin speaking up, soon, the new politics of judicial elections will permanently scar our courts and the public's confidence in the judiciary. State judges and justices ought to be an integral part of the debate about how judges are selected. They know better than anyone the strengths and weakness of each selection system, and how best to insulate the courts from threats to their impartiality. Provided they engage in the discussion in a responsible fashion, and from a position of principle, judges should not fear staking out ground on potential amendments to judicial selection in their state.

In recent years, some far-sighted state court leaders have been doing just that. Now retired, Chief Justice Tom Phillips of **Texas** took a leading role as a spokesman for campaign finance reforms in his state when big money began to infest the judicial selection process, causing confidence among the public (and even lawyers and judges) in the Lone Star State to plummet. In **North Carolina**, a number of judges took public positions either in support of, or in opposition to, the far-reaching reforms that state eventually adopted in 2002. Those judges spoke to civic groups, bar associations and the media about their views, providing critical help building the public support to advance the reforms in the state legislature.⁴⁸ In **Ohio**, Chief Justice Thomas Moyer has voiced support for improvements to that state's problematic judicial elections, speaking to the media and at panel discussions. His office also convened an historic policy review commission to propose changes that would improve Ohio's system for electing judges.



Figure 26
Former Chief Justice Tom Phillips of Texas has called for improvements in how America's state judges are elected.

Photo by Justice at Stake.

⁴⁸ While the North Carolina Bar Association adopted no official position on the reform package, over 1,000 attorneys signed a statement of support for the reforms, and American Bar Association President Alfred P. Carlton, Jr., a North Carolina attorney, testified before the state legislature in favor of the electoral reforms.

Appendix: Supreme Court TV Advertisements, 2004

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
Alabama														
AL Baschab Achievements	Candidate	Promote			•		•						349	\$136,347
AL Baschab What Is Right	Candidate	Promote	•	•									9	\$2,494
AL Bolin Adoption	Candidate	Promote					•						1,328	\$433,409
AL Bolin Experience	Candidate	Promote					•						931	\$401,261
AL Brown Conservative Record	Candidate	Promote					•	•		•			604	\$173,309
AL Brown Conservative Values	Candidate	Promote					•						292	\$88,124
AL Brown Conserve	Candidate	Promote					•		•				633	\$186,844
AL Brown Support	Candidate	Contrast	•										253	\$93,155
AL Givhan Tough On Crime	Candidate	Promote			•								36	\$20,216
AL Parker Liberal Newspapers	Candidate	Contrast		•			•	•					404	\$101,369
AL Parker Man Of Principle	Candidate	Attack		•			•	•		•			344	\$85,262
AL Rochester Only Judge	Candidate	Promote		•	•								163	\$62,559
AL Rochester Small Town	Candidate	Promote					•						268	\$134,415
AL Rochester Unconstitutional	Candidate	Promote		•									89	\$42,392

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
Alabama, continued														
AL Smith Ready	Candidate	Promote						•					1,185	\$383,428
AL Smith Tough	Candidate	Promote			•			•					521	\$205,385
AL Smith Make The Law	Candidate	Promote	•							•			311	\$120,254
AL Stokes Commandments Monument	Candidate	Promote					•	•					87	\$27,839
AL Stokes Moore Endorsements	Candidate	Promote						•					82	\$41,828
AL Stokes Moore Endorsements 2	Candidate	Promote						•					61	\$16,111
AL ALCJR Brown Experienced	ALCJR	Promote			•			•		•			457	\$195,929
AL ALCJR Smith Bolin Newspapers	ALCJR	Promote						•					36	\$13,431
AL ALCJR Trial Lawyer Money	ALCJR	Attack		•		•							55	\$15,303
AL ATA Bolin Smith Families	ATA	Promote						•					879	\$344,164
State Total													9,377	\$3,324,828
Arkansas														
AR Danielson Experience	Candidate	Promote			•			•					35	\$13,039
AR Danielson Tree Farmer	Candidate	Promote	•										20	\$8,103
AR Griffen Experience 15	Candidate	Promote	•										36	\$9,368

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
Arkansas, continued														
AR Gunter Lifetime Of Experience	Candidate	Promote	•										47	\$23,449
AR Hannah Fair And Honest	Candidate	Promote	•										57	\$29,672
AR Kilgore Lake View	Candidate	Promote	•										47	\$28,784
State Total													242	\$112,415
Georgia														
GA Sears Strong Voice	Candidate	Promote		•	•			•					126	\$105,065
GA GADP Compare	Party	Contrast	•										327	\$191,456
State Total													453	\$296,521
Illinois														
IL Karmerier Frivolous Lawsuits	Candidate	Contrast		•		•							179	\$184,982
IL Karmerier Healthcare Crisis	Candidate	Promote		•									254	\$234,172
IL Karmerier Medical Malpractice	Candidate	Promote		•	•			•		•			376	\$378,043
IL Karmerier Police Endorsement	Candidate	Promote			•								2	\$2,459
IL Karmerier Verdict Is In	Candidate	Promote		•									194	\$196,226
IL DPIL Karmerier Children	Party	Attack			•		•						961	\$696,948
IL DPIL Karmerier Let Us Down	Party	Attack			•		•						314	\$239,983
IL DPIL Karmerier Lying	Party	Contrast		•	•		•						213	\$236,853

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
Illinois, continued														
IL DPIL Maag Army Ranger	Party	Promote						•					148	\$142,624
IL DPIL Maag Doctors	Party	Promote		•									715	\$625,290
IL DPIL Maag Helping Children	Party	Promote		•									248	\$226,474
IL DPIL Maag Talk Direct	Party	Contrast		•		•							281	\$256,008
IL ILRP Karmeier Better Choice	Party	Contrast			•		•	•					382	\$368,685
IL ILRP Maag Bad Judgment	Party	Attack		•		•							599	\$573,905
IL ILRP Maag News	Party	Attack		•	•	•	•						1,129	\$874,115
IL JFAPAC Buy A Seat For Karmeier	JFAPAC	Contrast		•		•							123	\$183,829
IL JFAPAC Karmeier Lenient	JFAPAC	Attack			•		•						51	\$58,177
IL JFAPAC Maag Working People	JFAPAC	Contrast		•		•							615	\$547,235
IL JFAPAC Who Is Behind Karmeier	JFAPAC	Attack		•		•							119	\$205,854
IL JUSTPAC Maag Denouncement	JUSTPAC	Contrast		•		•							266	\$303,559
IL JUSTPAC Maag Won't Tell Truth	JUSTPAC	Attack			•		•						331	\$286,471
State Total													7,500	\$6,821,892

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
Kentucky														
KY Scott Bethlehem Steel	Candidate	Promote		•									30	\$21,731
KY Scott Middle School	Candidate	Promote		•									41	\$31,595
KY Scott Stumbo Against	Candidate	Attack		•	•		•						13	\$8,768
KY Scott Stumbo Sides With Criminals	Candidate	Attack			•		•						45	\$34,753
KY Stumbo Beware	Candidate	Contrast										•	14	\$5,240
KY Stumbo Bio	Candidate	Promote	•										7	\$1,776
KY Stumbo Family Name	Candidate	Promote	•										25	\$7,642
KY Stumbo First Woman	Candidate	Promote	•										8	\$2,450
KY Stumbo Jim Hunt	Candidate	Promote	•										2	\$221
KY Stumbo Judicial Sleaze	Candidate	Contrast	•										2	\$333
KY Stumbo Proud Of Record	Candidate	Promote					•			•			6	\$1,739
KY Stumbo Take It To The Bank	Candidate	Promote	•										12	\$5,440
State Total													205	\$121,688
Louisiana														
LA Beasley Crime And Criminals	Candidate	Promote			•								30	\$13,869
LA Beasley Dirty Politics 15	Candidate	Attack										•	8	\$4,410
LA Beasley Fair Justice	Candidate	Promote		•						•			21	\$12,065

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
Louisiana, continued														
LA Beasley Principles	Candidate	Promote						•					53	\$23,071
LA Victory Conservative Conscience	Candidate	Contrast		•	•	•							26	\$12,631
LA Victory Friend To Law Enforcement	Candidate	Promote			•								38	\$21,314
LA Victory McCrery Endorsement	Candidate	Promote			•								32	\$16,471
LA Victory People's Judge	Candidate	Promote						•					38	\$16,138
LA Victory Set The Standard	Candidate	Promote		•	•			•					69	\$33,243
State Total													315	\$153,212
Michigan														
MI Kelly Times In Life	Candidate	Promote			•				•				316	\$350,324
MI CFJR Markman Extremist	CFJR	Attack			•	•	•						386	\$369,581
MI CFJR Markman Grandparents	CFJR	Attack					•	•					4	\$2,513
MI COC Markman Date Rape	MICC	Promote			•			•					806	\$997,919
State Total													1,512	\$1,720,337

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
Mississippi														
MS Carlson Play By Play	Candidate	Promote									•		108	\$88,562
MS Graves About Our Values	Candidate	Promote						•					131	\$57,375
MS Graves Bill Cosby	Candidate	Promote	•										141	\$68,305
MS Graves Parent's Responsibility	Candidate	Promote	•										209	\$84,525
MS Richardson Helen Barnes	Candidate	Promote	•										39	\$16,886
MS Richardson Law Enforcement	Candidate	Promote			•								56	\$33,005
MS Richardson One Of Us	Candidate	Promote			•			•					20	\$9,587
MS Richardson One Of Us 2	Candidate	Promote						•	•				39	\$16,008
MS Richardson Tarnished Image	Candidate	Promote						•					25	\$9,855
MS Skinner Enforced Law 15	Candidate	Promote			•								5	\$813
MS Skinner Family 15	Candidate	Promote	•										5	\$1,182
MS Skinner For Sale 15	Candidate	Promote		•		•							16	\$2,437
MS Waller Campaign Overview	Candidate	Promote			•			•					76	\$33,757
MS Waller Court Reform	Candidate	Promote		•	•					•			81	\$37,155
MS Waller Soldier	Candidate	Promote	•										75	\$31,400

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
Mississippi, continued														
MS IMSPAC Randolph Good Day	IMPAC	Promote						•					146	\$54,611
MS IMSPAC Richardson Quiet Man	IMPAC	Promote			•			•					203	\$77,129
MS IMSPAC Richardson Runoff	IMPAC	Promote						•					104	\$27,940
State Total													1,479	\$650,532
Nevada														
NV Hardesty Attorney For 25 Years	Candidate	Promote	•										204	\$184,718
NV Hardesty What Kind Of Judge	Candidate	Promote			•								121	\$93,401
NV Mason Endorsements	Candidate	Promote	•										124	\$130,162
NV Mason Hard Work Matters	Candidate	Promote	•							•			53	\$33,978
NV Mason Son Of A Butcher	Candidate	Promote	•										71	\$82,027
NV Parraguirre Approval Ratings	Candidate	Promote	•										96	\$93,962
NV Parraguirre Miller Endorsement	Candidate	Promote	•										42	\$44,978
NV Parraguirre Police Endorsement	Candidate	Promote			•								71	\$64,926
NV Smith Family Endorsement	Candidate	Promote			•			•					85	\$82,778
State Total													867	\$810,930

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
New Mexico														
NM Chavez Bio 60	Candidate	Promote		•	•			•		•			64	\$96,781
NM Chavez DUI Loopholes	Candidate	Promote			•								92	\$107,496
NM Chavez Integrity	Candidate	Promote							•	•			53	\$57,915
NM Chavez Violent Crime	Candidate	Promote			•								117	\$120,831
State Total													326	\$383,023
North Carolina														
NC Morrison Integrity	Candidate	Promote	•										38	\$14,458
NC Parker Trust	Candidate	Promote	•							•			246	\$127,918
State Total													284	\$142,376
Ohio														
OH Fuerst Excellent 15	Candidate	Contrast	•										180	\$130,023
OH Fuerst Priorities	Candidate	Promote			•				•				157	\$135,463
OH Fuerst Rights 15	Candidate	Promote			•				•				615	\$385,912
OH Fuerst Whose Rights	Candidate	Promote			•				•				421	\$69,916
OH Fuerst Whose Safety	Candidate	Promote			•				•				553	\$98,172
OH Gwin Supporters	Candidate	Promote	•										220	\$171,589
OH Lanzinger Legal Experience 15	Candidate	Promote	•										612	\$225,924

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
Ohio, continued														
OH Lanzinger Ready 10	Candidate	Promote	•										997	\$320,517
OH Lanzinger Recommended 15	Candidate	Contrast	•										1,006	\$482,292
OH Lanzinger You Be The Judge 15	Candidate	Contrast	•										984	\$569,638
OH O'Donnell Experience 10	Candidate	Promote	•										897	\$296,541
OH O'Donnell Integrity 15	Candidate	Promote	•										1,140	\$510,966
OH O'Donnell Jim Petro 15	Candidate	Promote	•										284	\$344,327
OH O'Donnell Newspapers 15	Candidate	Promote	•									•	688	\$245,452
OH O'Donnell Uphold 15	Candidate	Promote	•										616	\$204,718
OH Moyer Around Ohio	Candidate	Promote	•										167	\$131,086
OH Moyer Ethical Standards 15	Candidate	Promote	•										247	\$107,296
OH Moyer Intimidating	Candidate	Promote	•										149	\$121,299
OH Moyer Meets Here	Candidate	Promote	•										263	\$233,498
OH Moyer Newspapers 15	Candidate	Promote	•										784	\$335,619
OH Moyer Works For You 10	Candidate	Promote	•										885	\$292,251
OH OHDP Connally New Choice 15	Party	Promote	•										226	\$151,426

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
Ohio, continued														
OH OHDP O'Neill Brings 15	Party	Promote	•										8	\$2,002
OH CFSOH O'Donnell Lanzinger Safety	CSO	Promote		•	•					•			499	\$554,258
OH Lanzinger Best About Ohio	CSO	Promote			•			•					484	\$458,891
OH EEC Connally Fuerst O'Neill Elect	EEC	Promote							•				24	\$12,362
OH OHA Malpractice Insurance	OHA	Attack		•									897	\$941,910
OH WDIH Ask Your Doctor	WDIH	Attack		•									126	\$40,380
State Total													14,139	\$7,578,276
Oregon														
OR Kistler Highest Standards	Candidate	Contrast	•										62	\$39,608
OR Kistler Qualified Choice	Candidate	Promote	•										119	\$65,726
State Total													181	\$105,334
Washington														
WA Johnson Campaign Overview	Candidate	Promote							•				68	\$15,864
WA Johnson Courage	Candidate	Promote							•				205	\$50,263
State Total													273	\$66,127

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
West Virginia														
WV Benjamin Kids Safety	Candidate	Promote			•								189	\$75,277
WV Benjamin McGraw Denouncement	Candidate	Attack			•		•						245	\$65,428
WV McGraw Grandad	Candidate	Promote	•										165	\$58,088
WV McGraw Leader	Candidate	Promote	•										124	\$49,234
WV McGraw Lies	Candidate	Attack		•		•	•	•					206	\$50,408
WV McGraw Stand Up	Candidate	Attack		•		•							204	\$64,583
WV Rowe Better For Families	Candidate	Attack		•	•								22	\$14,035
WV Rowe Bio	Candidate	Promote	•										33	\$15,286
WV Rowe Dead Last	Candidate	Contrast	•										14	\$7,023
WV Rowe Fairness	Candidate	Promote		•									23	\$8,098
WV Rowe Future Generations	Candidate	Promote	•										28	\$16,919
WV Rowe Jobs	Candidate	Promote		•									14	\$9,139
WV CALA Afford McGraw	CALA	Attack		•		•	•						91	\$43,862
WV CQH McGraw Medical Liability	CQH	Attack		•		•	•						92	\$34,899
WV SOTK Brothers McGraw	SOTK	Attack					•	•					182	\$64,588
WV SOTK McGraw Ads A Lie	SOTK	Attack				•							86	\$28,312

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
West Virginia, continued														
WV SOTK McGraw Clear Differences	SOTK	Contrast		•			•	•					57	\$17,140
WV SOTK McGraw Misleading Ads	SOTK	Attack			•		•						229	\$89,471
WV SOTK McGraw Powerful Family	SOTK	Attack										•	6	\$598
WV SOTK McGraw Tired	SOTK	Attack		•	•								71	\$35,881
WV SOTK McGraw Too Dangerous	SOTK	Attack			•		•						378	\$286,574
WV SOTK Radical McGraw	SOTK	Attack		•	•		•						126	\$44,069
WV SOTK Radical McGraw 2	SOTK	Attack			•		•						44	\$13,287
WV WESPAC Rowe Right Prescription	WESPAC	Promote		•			•						36	\$9,904
WV WVCJ Deck Of Cards	WVCJ	Attack		•		•							258	\$119,270
WV WVCJ McGraw Lifetime Republican	WVCJ	Attack		•		•		•					159	\$54,459
WV WVCJ Out Of State Interests	WVCJ	Attack		•		•							121	\$51,439
WV WVCJ Rowe Wouldn't It Be Nice	WVCJ	Attack										•	78	\$17,866
WV WVCJ Who Is Benjamin	WVCJ	Attack		•		•							310	\$93,017

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism For Decisions	Family/Conservative Values	Civil Rights	Role Of Judges*	Other	Attack (No Theme)	Airings	Estimated Cost
West Virginia, continued														
WV WVCOC Bad For Jobs	WVCOC	Attack		•			•						334	\$144,579
WV WVCOC Bad For Your Health	WVCOC	Attack		•			•						255	\$118,464
WV WVCOC Benjamin Fights	WVCOC	Promote						•	•	•			163	\$111,399
WV WVCOC McGraw Drunk Drivers	WVCOC	Attack			•		•						186	\$108,431
WV WVCOC WV Suffering	WVCOC	Attack		•			•						394	\$165,967
State Total													5,096	\$2,135,761

* Ads with the “role of judges” topic were considered traditional judicial ads if they did not mention other issues.

Abbreviations

ALCJR	Alabama Civil Justice Reform Committee	JUSTPAC	Illinois Civil Justice League PAC
ATA	American Taxpayers Alliance	ODP	Ohio Democratic Party
CALA	West Virginia Citizens Against Lawsuit Abuse	OHA	Ohio Hospital Association
CFJR	Citizens for Judicial Reform	SOTK	And For the Sake of the Kids
COC	Michigan Chamber of Commerce	WDIH	Where Does It Hurt? (Tri-County Physicians for Patients Rights)
CQH	Citizens for Quality Health Care	WESPAC	West Virginia State Medical Association PAC
CSO	Citizens for a Strong Ohio (Ohio Chamber of Commerce)	WVCJ	West Virginia Consumers for Justice
DPIL	Democratic Party of Illinois	WVCOC	West Virginia Chamber of Commerce
EEC	Elk & Elk Co. (law firm)		
GADP	Democratic Party of Georgia		
ILRP	Illinois Republican Party		
IMPAC	Improve Mississippi PAC		
JFAPAC	Justice for All PAC		



Justice at Stake
c a m p a i g n

717 D Street, NW, Suite 203
Washington, D.C. 20004
Phone (202) 588-9700 • Fax (202) 588-9485
info@justiceatstake.org • www.justiceatstake.org

The Justice at Stake Campaign is a nonpartisan national partnership working to keep our courts fair and impartial. Across America, Campaign partners help protect our courts through public education, grass-roots organizing, coalition building and reform. The Campaign provides strategic coordination and brings unique organizational, communications and research resources to the work of its partners and allies at the national, state and local levels.

The New Politics of Judicial Elections 2004: June 2005

Visit us at www.justiceatstake.org