

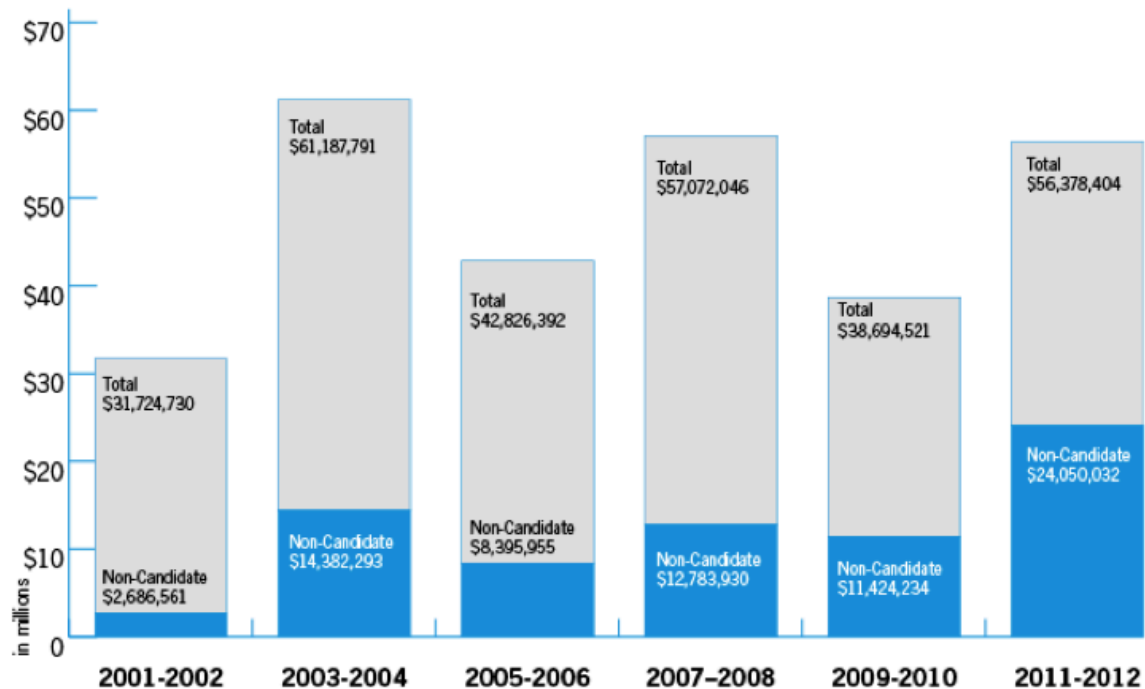
The New Politics of Judicial Elections 2011-2012: A Fact Sheet

In 2011-12 election cycle, many judicial races seemed alarmingly indistinguishable from ordinary political campaigns—featuring everything from Super PACs and mudslinging attack ads to millions of dollars of candidate fundraising and independent spending. This fact sheet, based on [The New Politics of Judicial Elections 2011-2012](#), documents how the boundaries that keep money and political pressure from interfering with the rule of law have become increasingly blurred.

Special interest groups and political parties made unprecedented levels of independent expenditures in 2011-12 judicial elections in an effort to influence who becomes a judge.

- Total spending in 2011–12 high court state races **reached an estimated \$56.4 million.**
- Special-interest groups and political parties spent an astonishing 43% of that total, **a record \$24.1 million.**
- States saw record levels of spending on television advertising in high court races, an estimated **\$33.7 million in TV spending**, far exceeding the previous two-year record of \$26.6 million in 2007-08.
- The most expensive 2011-12 high-court elections occurred in **Michigan, Wisconsin, Florida, and North Carolina**, states where deep-pocketed groups pour millions in independent spending.

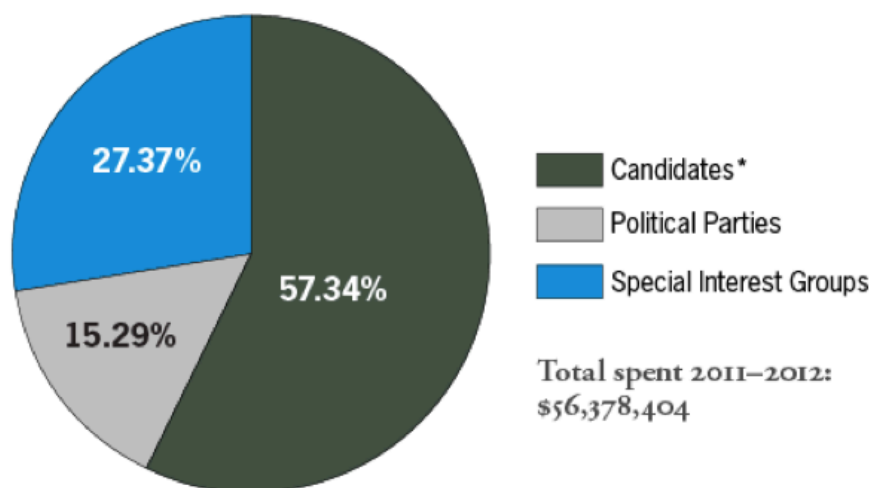
NON-CANDIDATE SPENDING AS A PORTION OF TOTAL SPENDING



Unprecedented spending by special interest groups raises concerns about the impartiality of judges—judges who are constitutionally obliged to ensure justice for all who appear before them.

- Special interest groups **alone** spent a record **\$15.4 million** on judicial races in 2011-12 (50% higher than in 2007-08 when at \$9.8 million).
- Business and conservative groups accounted for **7 of the top 10 spenders** in 2011–12.
- The top 10 spenders were responsible for approximately **\$19.6 million** of total spending in 2011-12, compared with just \$12.3 million in 2007-08.

2011-2012 SUPREME COURT RACES SPENDING BREAKDOWN



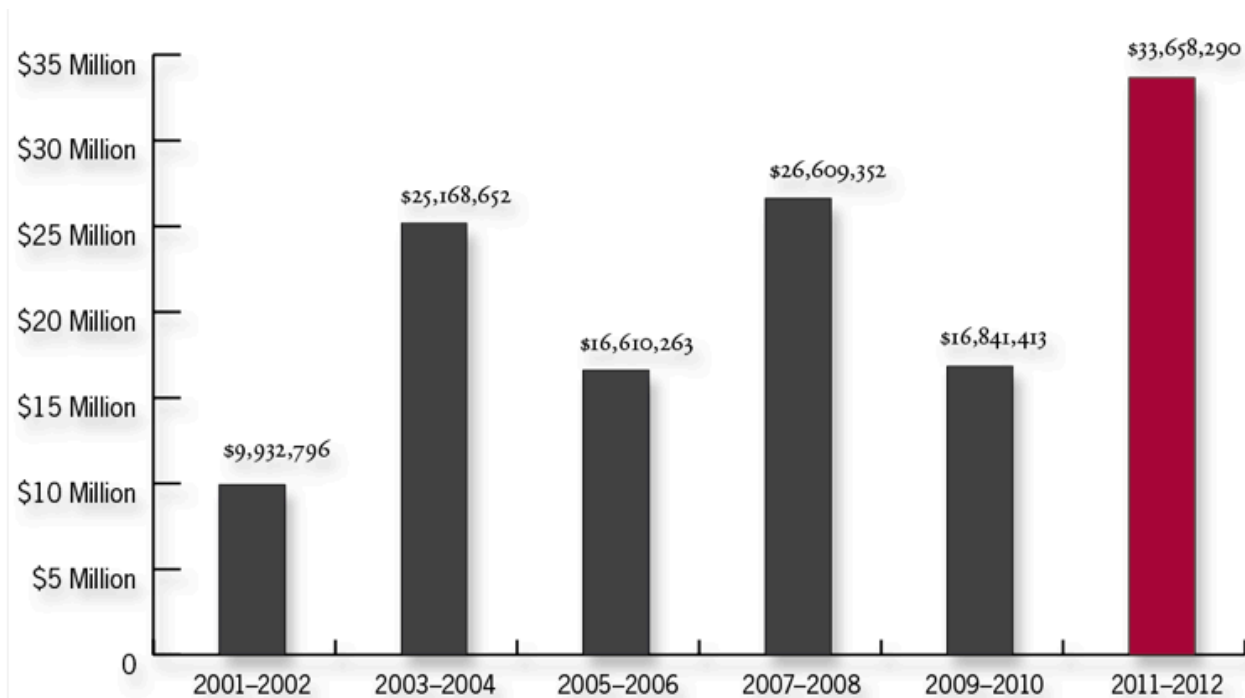
*Candidate spending includes candidate fundraising and public funds.

Data provided by Kantar Media/CMAG

Special interest groups and political parties spent a record \$20.7 million (out of \$33.7 million total) on TV advertisements in 2011-12 judicial elections, often injecting negativity into races.

- **10 of the 17 states** with TV ads in 2011–12 had at least one negative advertisement:
 - In **Michigan**, an ad by the Republican Party described Bridget McCormack as having “fought to protect sexual predators.”
 - In **Ohio**, a state Republican Party ad accused Supreme Court candidate Bill O’Neill of being “sympathetic to rapists.”
 - In **Wisconsin**, the progressive Greater Wisconsin Committee accused incumbent Justice David Prosser of covering up molestation by a priest when he was distraction attorney.

TOTAL TV SPENDING BY YEAR, 2001-2012



In addition to negative ads, outside groups used national wedge issues in efforts to remove sitting judges based on their previous rulings:

- In **Iowa**, the conservative National Organization for Marriage **spent more than \$130,000 on television ads** opposing the retention of Iowa Supreme Court Justice David Wiggins. Justice Wiggins participated in a unanimous decision determining that the Iowa Constitution's Equal Protection Clause did not allow the denial of marriage for same-sex couples. The Human Rights Campaign **contributed \$135,000** to Justice Not Politics Action in Iowa to retain Justice Wiggins.
- In **Florida**, Americans for Prosperity spent an estimated **\$155,000 targeting three justices** who previously rejected a ballot proposal resisting mandates imposed by the federal Affordable Care Act. America Votes, a progressive advocacy organization, **contributed \$300,000** to the Florida pro-retention group Defend Justice from Politics, which spent more than \$3 million on ads supporting the retention of three Florida justices.

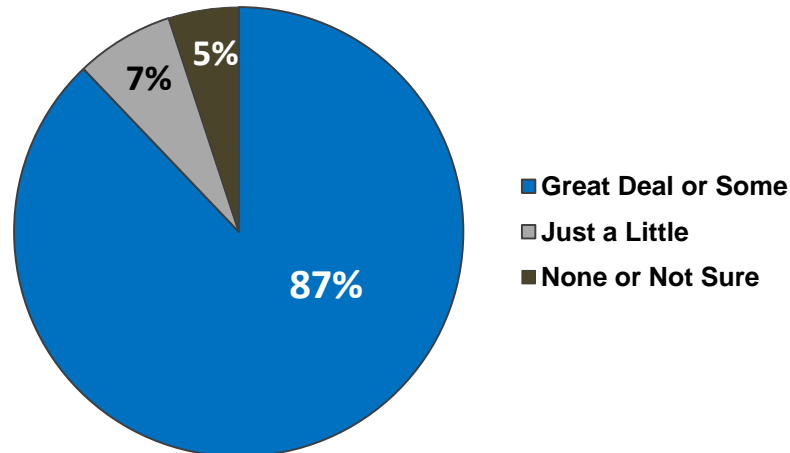
Legislators in some states also tried to weaken reforms that keep our courts fair and unbiased:

- Ballot measures in Arizona, Florida, and Missouri sought to **politicize merit selection**, a system that uses a non-partisan nominating commission to recruit, vet, and winnow down applicants for judges.
- In Wisconsin, Supreme Court candidates opted to receive public financing, but outside groups **poured more than \$3.7 million** into races supporting both sides.

A new October 2013 [poll](#) finds that outside spending on judicial campaigns troubles a majority of Americans, many of whom believe that campaign cash tilts the scales of justice.

- In a 2013 national poll of 1,200 voters, **87% of respondents** said they believed that campaign donations made directly to judges' campaigns have either "some" or "a great deal" of influence over a judge's decisions.
- The same poll found that **87% percent of respondents** believed that independent expenditures (TV ads and other electioneering) on behalf of a judge's campaign also have either "some" or a "great deal" of influence over a judge's decisions.
- **92% of respondents** believe that a judge should step aside when one party in a court case has either donated directly to a judge's campaign or spent significantly on elections materials to help elect the judge.

POLL: Do Independent Expenditures Influence Judge's Decisions?



Justice at Stake/Brennan Center National Poll, 10/22-10/24, 2013

Margin of Error: +/- 2.8% at 95% Confidence Level

America needs **STRONG** reforms to ensure citizens feel confident that judges are accountable to the law, not special interests.

- **Strong disclosure laws and recusal rules** promote **accountability** and help ensure that special interests cannot buy justice.
- **Public financing** can provide judicial candidates with an alternative path to running a competitive race without needing to rely on contributions from lawyers and litigants seeking to influence judicial decision-making.
- Voters should **reject efforts to politicize reform measures** and help insulate them from political pressures.
- We need **voter guides and judicial performance evaluations** to give ordinary citizens the information they need to assess judges based on their experience and qualifications — and not on misleading attack ads.