

# THE NEW POLITICS OF JUDICIAL ELECTIONS

HOW 2000 WAS A WATERSHED YEAR FOR BIG MONEY,  
SPECIAL INTEREST PRESSURE, AND TV ADVERTISING IN  
STATE SUPREME COURT CAMPAIGNS

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Justice at Stake  
campaign



## 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 Judicial Independence Projects, the Center has been seeking to reduce the influence of money on politics, including both judicial and non-judicial elections. The Center has produced two groundbreaking analyses of television advertising in the 1998 and 2000 federal elections, utilizing extensive advertising databases developed under the direction of Professor Kenneth Goldstein of the University of Wisconsin. The studies, funded by The Pew Charitable Trusts, have been instrumental in framing the constitutional debate in Congress on campaign finance reform. The 2000 database also included information about advertising in judicial elections, which is analyzed in Parts II and III of this report, with generous support from the Deer Creek Foundation and the Open Society Institute.

## ABOUT THE NATIONAL INSTITUTE ON MONEY IN STATE POLITICS

The National Institute on Money in State Politics has been collecting, publishing, and analyzing data on money in state legislative and gubernatorial elections for nearly 10 years. The Institute has also compiled a summary of state Supreme Court contribution data from 1989 through the present and has begun compiling complete detailed databases of campaign contributions for all high-court judicial races beginning with the 2000 elections. With generous support from the Joyce Foundation and the Open Society Institute, the Institute is doing 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 I 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 and impartial. 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.

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This report was prepared by two Justice at Stake Campaign partners, the Brennan Center for Justice and the National 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. Publication of this report was supported by a grant from the Program on Law & Society of the Open Society Institute.

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# The New Politics of Judicial Elections

## EXECUTIVE SUMMARY

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**This report explains how the year 2000 signaled a dangerous turning point for America’s courts, documenting the growing, systematic, and unprecedented infusion of big money and special interest pressure into the election of Supreme Court justices across the country.**

Thirty-eight states conduct elections for their Supreme Courts (including partisan and nonpartisan ballots, along with uncontested “retention elections” featuring up-or-down votes on an incumbent). For many years, the vast majority of these contests managed to steer clear of the growing tide of money, negative campaigning, and television “sound-bite” ads that have come to dominate so many other political campaigns in the United States. But in 2000, a new and ominous politics of judicial elections emerged — not yet national, but spreading rapidly.

An analysis of recent contribution, spending, and campaign advertising data, gathered together here for the first time, reveals that 2000 was a turning point for high-stakes campaigning in Supreme Court elections. In several key states, a flood of spending, TV buys, and negative ads suggests that the good old days may have just ended — and that if action is not taken now, most states will have a hard time keeping big money and special interests out of their courtrooms.

The next wave will come this fall, as voters in 33 states elect judges to their highest courts. Already, interest groups are vowing to accelerate their efforts. 2002 could be a decisive year for the struggle to keep courts fair and impartial.

We have compiled the available data about fundraising and spending in the 2000 state Supreme Court elections, along with other analyses reaching as far back as 1989. Part I focuses on fundraising by candidates in the states that elect their highest courts, covering contributions received by all of the justices on the bench in 2000 and their most recent opponents. Part II analyzes television advertising in the 2000 judicial elections, including the estimated costs of airtime and the role of interest groups. Part III discusses a number of informational barriers — both legal and practical — that impair voters’ ability to obtain a full and clear picture of the influence of money in judicial elections.

### THE DAM BREAKS: FUNDRAISING IN 2000

**BIG MONEY IS FLOODING INTO STATE SUPREME COURT CAMPAIGNS:** In the 2000 campaign, state Supreme Court candidates raised \$45.6 million — a 61% increase over 1998, and double the amount they raised in 1994. The average state Supreme Court candidate in 2000 raised \$430,529 — and 16 of them raised more than \$1 million.

**CAMPAIGN DONATIONS ARE DOMINATED BY LAWYERS AND BUSINESS INTERESTS:** Analyses to date suggest that half — and perhaps more — of all donations come from two sectors of society: lawyers and business interests. Political parties rank third.

**MUCH OF THE CAMPAIGN SPENDING IS ON “AIR WARS”:** Advertising, media, and consultants schooled in sound bites and attack ads play an increasing role in judicial campaigns.

**THE MONEY EXPLOSION HASN’T HIT EVERYWHERE YET:** Although total spending is skyrocketing, the money explosion hasn’t reached every state — in some places, Supreme Court candidates still don’t have to raise any money.

**PARTISAN RACES ARE MORE EXPENSIVE:** Judicial candidates typically attract more campaign donations when they are identified by their political party during the election process.

## **THE NEW “AIR WARS” IN JUDICIAL ELECTIONS**

**TV ADS ARE BECOMING THE WEAPON OF CHOICE IN BATTLEGROUND STATES:** In four states that became judicial battlegrounds in 2000, citizens were subjected to unprecedented “air wars.” All told, more than \$10 million was spent on more than 22,000 airings of television advertisements.

**INTEREST GROUPS ARE BECOMING MAJOR PLAYERS IN THE JUDICIAL “AIR WARS”:** Although candidates still bought most of the TV ads run in 2000, political parties and special interests are organizing as never before to elect “their” judges in battleground states.

**OUTSIDE ADS INJECT MORE “POLITICS AS USUAL” INTO JUDICIAL CAMPAIGNS:** The ads of political parties and interest groups are often more hard-hitting and less focused on a candidate’s background and qualifications than traditional candidate ads. Special interest ads in particular are coarsening the tone of judicial campaigns: 80% of them attack judicial candidates, far outstripping negative ads run by candidates and even political parties.

**SUPREME COURT CAMPAIGN ADS STRESSED “HOT BUTTON” ISSUES:** Few of the ads focused on the candidates’ backgrounds and qualifications. Instead, most signaled candidate positions on civil justice (principally tort liability and reform), crime control, and family values.

## **THE GROWING “DATA GAP”**

**ISSUE AD SPONSORS KNOW HOW TO AVOID DISCLOSURE:** Almost 99% of interest groups’ ads avoid disclosure by not using “magic words” — like “elect” and “defeat” — that define them as campaign ads and force sponsors to disclose their source of funding. Now a staple of other kinds of campaigns, such as “sham issue ads” play an increasing role in selecting the judges who interpret our laws.

**INADEQUATE DISCLOSURE LAWS AND ERRATIC RECORD-KEEPING HAMPER ACCOUNTABILITY:** In part because of the patchwork of state laws, research is impeded by records that aren’t released before elections, do not indicate the economic interests of campaign donors, and are too expensive to obtain easily.

## NASTIER, NOISIER, AND COSTLIER

Americans want their judges to be fair and impartial, period. But the new politics of judicial campaigns — “nastier, noisier, and costlier,” as one long-time observer puts it<sup>1</sup> — heightens one of the public’s greatest fears: that the judges who protect their individual rights will be making decisions with one eye on a growing tide of campaign donors, special interests, and attacks ads. In a number of key battleground states, 2000 was clearly a wake-up call. Unless citizens and their leaders come together, the threat to fair and impartial justice will grow, perhaps rapidly. This report is designed to help citizens, journalists, attorneys, judges, legislators, and other leaders understand the problem — and set the stage for further investigation, education, and reform.

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<sup>1</sup> Roy Schotland, Comment, 61 LAW & CONTEMPORARY PROBLEMS 149, 150 (1998).



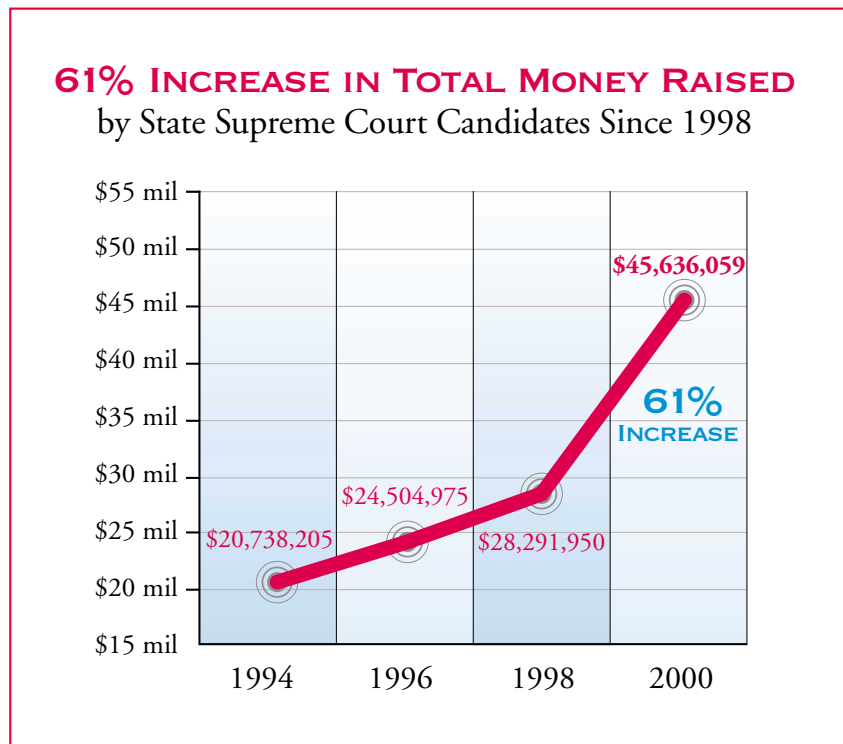
## PART I

# Skyrocketing Fundraising and Spending in State Supreme Court Races

### 2000: THE WATERSHED YEAR

2000 was a watershed year for fundraising and spending in state Supreme Court elections.<sup>2</sup> The clearest warning sign comes from the total money raised: in state Supreme Court campaigns that year, candidates raised \$45.6 million — 61% more than was raised just two years before, and more than double the amount raised in 1994. [See Figure 1]

FIGURE 1



<sup>2</sup>In the 12 states that don't conduct elections for their Supreme Courts, justices are selected by the governor, the legislature, or a selection commission.

On average, state Supreme Court candidates who raised money in 2000 raised \$430,529 — and 16 of them raised more than \$1 million. The average amount raised increased 25% in just two years. Indeed, the average cost of running for office has more than doubled over the last decade, as has the median cost of running.<sup>3</sup> [See Figure 2]

In particular, a few key states — **Alabama, Illinois, Michigan, and Ohio** — became judicial battlegrounds in 2000, as an unprecedented tidal wave of money poured into their Supreme Court campaigns. In Alabama, candidates raised an average of more than \$1.2 million; in Michigan more than \$750,000; and in Illinois and Ohio the average exceeded \$640,000.

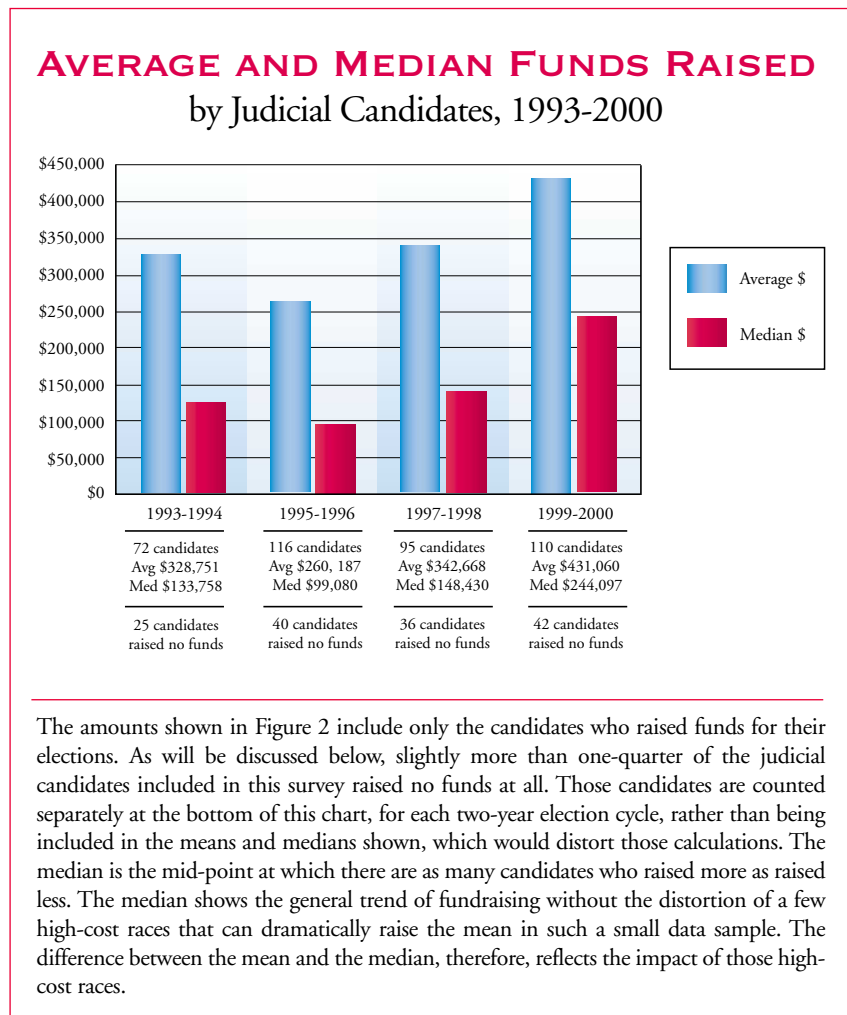
◆ The top four fundraisers in 2000 hailed from **Alabama**. The leader, Ralph Cook, raised \$1,761,990 but still lost. In fact, losing Alabama candidates who raised funds raised slightly more than winners, on average (\$1,274,902 compared to \$1,234,181), and one candidate who lost in the primary raised \$1.5 million.

◆ **Michigan** had the second most expensive judicial races with winners averaging \$1,287,963 compared to \$974,240 for the losing candidates who raised funds. (Three losing candidates raised no funds.)

◆ The two winners in **Ohio** judicial races actually raised considerably less, on average, than the two losers, \$684,409 compared to \$905,797. (In addition, one primary loser raised only \$93,093.)

◆ In **Illinois**, the four winners outspent the losers, averaging \$688,774 to \$440,234. But candidates who lost in the primary, usually the shortest and least costly campaigns in state politics, spent as much as the winners did — \$681,991 on average. Illinois elections are unusual, however, because Supreme Court candidates run by district, rather than statewide, and three of the upstate districts are essentially one-party districts, where the primary decides electoral outcome.

FIGURE 2



<sup>3</sup>An additional seven candidates who ran in 1999 are included in Figure 2.

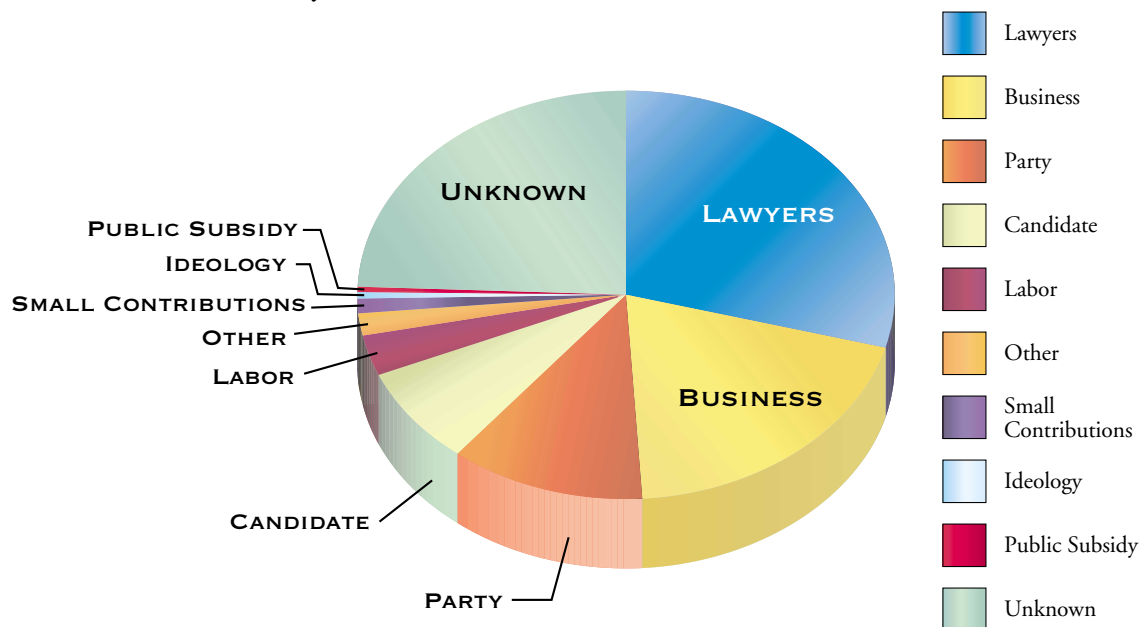
## CAMPAIGN DONATIONS ARE DOMINATED BY LAWYERS AND BUSINESS INTERESTS

Who donates money to elect Supreme Court justices? So far, an ongoing analysis of races in 11 states suggests that half — and perhaps more — of all donations come from two sectors of society: lawyers and business interests. Political parties rank third. In Figure 3, the sources of contributions to Supreme Court candidates are grouped according to the interest of the contributor.

FIGURE 3

### SOURCES OF CONTRIBUTIONS TO SUPREME COURT CANDIDATES

by Contributor Interest, 1989-2000



This analysis reflects total contributions of \$107,940,664 to 278 candidates from Alabama, Idaho, Illinois, Louisiana, Michigan, Montana, Ohio, Oregon, Texas, Wisconsin, and West Virginia, ranging from 1989 through 2000. Research by the National Institute on Money in State Politics, which is still in progress, has currently identified approximately 76% of the funds by interest. Lawyers account for 29.2% of the total contributions. General business, which includes all business and manufacturing interests, accounts for \$21,344,453 or 19.8%. Of that amount, chambers of commerce and other business organizations contributed \$2,998,308. Financial interests, which includes banks, brokers, insurance, and real estate interests, provided just over \$5 million. Funds from political parties, including state party committees and other candidates, account for 11.8% of the total, with \$6,512,722 from Democratic sources and \$6,021,947 from Republicans. Candidates provided 7.8% of their funding, with \$4,096,353 coming from 37 Republican candidates, \$2,069,278 from 59 Democratic candidates, and \$2,073,403 from 62 nonpartisan candidates. The labor category includes PAC contributions from all labor unions, with nearly half coming from public employee unions representing teachers, firefighters, and other government workers. Other contributors are government employees, clergy, retirees, and others who work for non-business entities. Small contributions are those below the reporting threshold, which varies from state to state, and is meant to exempt pass-the-hat collections from detailed reporting requirements. Ideological groups focus on a wide variety of issues such as gun control, abortion, children's programs, and other public policy issues; the top group in this category was Texans for Lawsuit Reform, which contributed \$87,000 in the Texas races. Public subsidy payments to candidates only occurred only in Wisconsin, where 8 candidates received an average of \$56,018 each, and Montana, where 5 candidates received an average of \$1,124 each. (Public subsidies were not available in Montana after the 1992 election.)

**MUCH OF THE CAMPAIGN SPENDING IS ON “AIR WARS”**

Where does the money go? Evidence from the last decade suggests that judicial candidates are spending a substantial portion of their funds on all the tools of a modern political campaign — media, advertising, and consultants. An analysis of expenditure records in eight states from 1989-2000 indicates that a little more than half of all campaign payments were made to campaign consultants.<sup>4</sup> However, since consultants often act as a pass-through for expenditures on advertising, media, and polling, these categories are probably underrepresented in Figure 4. Even without counting extra money that passes through consultants, direct candidate expenditures on media and advertising account for 25% of spending — more than any other campaign activity. Incumbent judges and candidates also report spending campaign money on contributions to other political campaigns, political parties, gifts, tickets, and organization dues.

A separate analysis of television buys during the 2000 campaigns underscores the trend toward judicial air wars: TV ads accounted for more than half of candidate expenditures in Ohio that year, and nearly half of candidate expenditures in Michigan.

**FIGURE 4**

CONSULTANTS	\$28,361,201	51.2%
MEDIA	\$8,297,533	15.0%
ADMINISTRATIVE	\$7,754,265	14.0%
ADVERTISING	\$5,546,249	10.0%
FOOD/TRAVEL	\$1,120,124	2.0%
PYMT TO PARTY	\$1,067,928	1.9%
EVENTS	\$800,936	1.4%
PRINTING	\$785,528	1.4%
FUNDRAISING	\$599,067	1.1%
ELECTION DAY ACTIVITIES	\$297,940	0.5%
GIFTS	\$184,865	0.3%
SMALL EXPENDITURES	\$181,759	0.3%
CAMPAIGN CONTRIBUTIONS	\$128,084	0.2%
CONTRIBUTIONS	\$85,232	0.2%
POLLING	\$77,072	0.1%
TICKETS	\$55,896	0.1%
DUES	\$13,164	0.0%
MAILING LISTS	\$12,444	0.0%
	<b>\$55,369,286</b>	<b>100%</b>

**SUPREME COURT CANDIDATE EXPENDITURES by Category, 1989-2000**

Campaign consultants are the major recipients of funds, accounting for 51.2% of all payments, but those payments, which generally are not itemized, can cover many of the other categories such as advertising, media, and polling. Advertising expenses include the costs of newspaper advertising, pamphlets, mailings, and similar costs that were not specifically attributed to radio or television advertising, which is shown separately as media. Payments to political parties were, in some cases, for advertising or the purchase of mailing labels or banquet tickets, or qualifying fees, but most of the payments were contributions to the party. Note also that candidates contributed over \$128,000 to the political campaigns of other candidates, and made \$85,232 in contributions to non-political organizations such as churches and civic groups. The costs of campaign events include food, rent, and staff costs. Administrative expenses of maintaining a campaign office accounted for 14% of the payments, but that category seems to function as a catch-all for items that don't easily fit elsewhere.

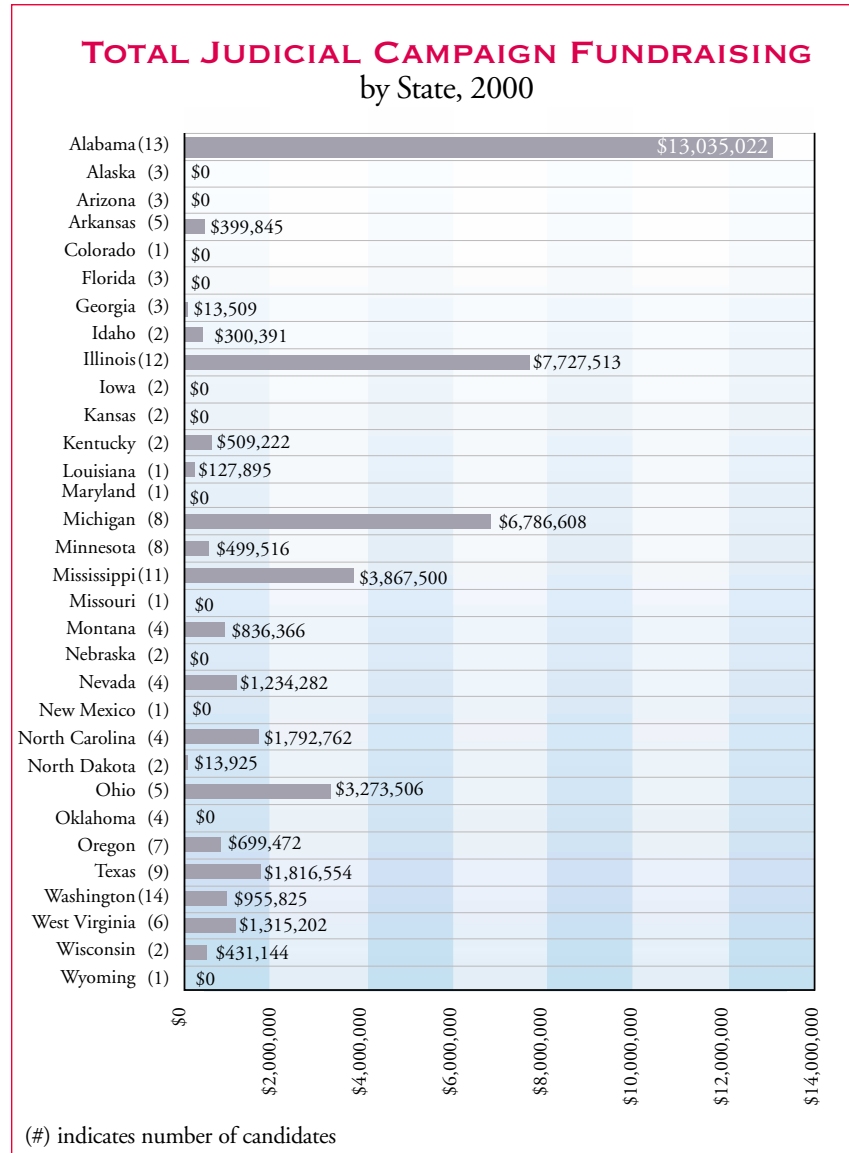
<sup>4</sup>Expenditure records from Supreme Court candidates in eight states (Alabama, Illinois, Louisiana, Michigan, Montana, North Dakota, Pennsylvania, and Wisconsin) totaling \$55,369,286 are analyzed in Figure 4. The categories reflect the stated purposes of the expenditures given in the official campaign filings. The data comes from reports filed from 1989 through 2000.

## THE MONEY EXPLOSION HASN'T HIT EVERYWHERE YET

Although the grand total spent on Supreme Court races is skyrocketing, the money explosion hasn't reached every state and every race: in 2000 the average candidate in Alabama raised more than \$1 million, but only \$4,503 in Georgia.<sup>5</sup> [See Figure 5] And 25% of state Supreme Court candidates reported raising no money in 2000.<sup>6</sup>

Part of this variation is consistent with trends in other elections, where the amount of money in state politics varies greatly from state to state, even when adjusted for population differences. For example, the cost per voter (for legislative and gubernatorial races) in 1998 ranged from \$56 in New York to \$1 in North Dakota, while statehouse candidates raised an average of \$200,000 in California compared to \$206 in New Hampshire. Amounts raised by judicial candidates also varied greatly from state to state, in patterns that often follow the state's other political fundraising patterns. Since national averages are not always useful in studying the elections of any one state, we provide a state-by-state analysis.

FIGURE 5



<sup>5</sup> The significant variations in 2000 reflect differing numbers of candidates and a host of other variables. Differences in population, media costs, political culture, contribution limits, and even public office salaries are among numerous explanations offered for the variability in fundraising, but no one factor seems to offer a comprehensive answer.

<sup>6</sup> These figures reflect a longstanding pattern. The Supreme Court candidates in nine states (Alaska, Arizona, Colorado, Indiana, Iowa, Kansas, Maryland, South Dakota, and Wyoming) reported no contributions for their elections over a 10-year period, and in three more states (Florida, New Mexico, and Oklahoma), only one candidate raised any campaign funds over that period.

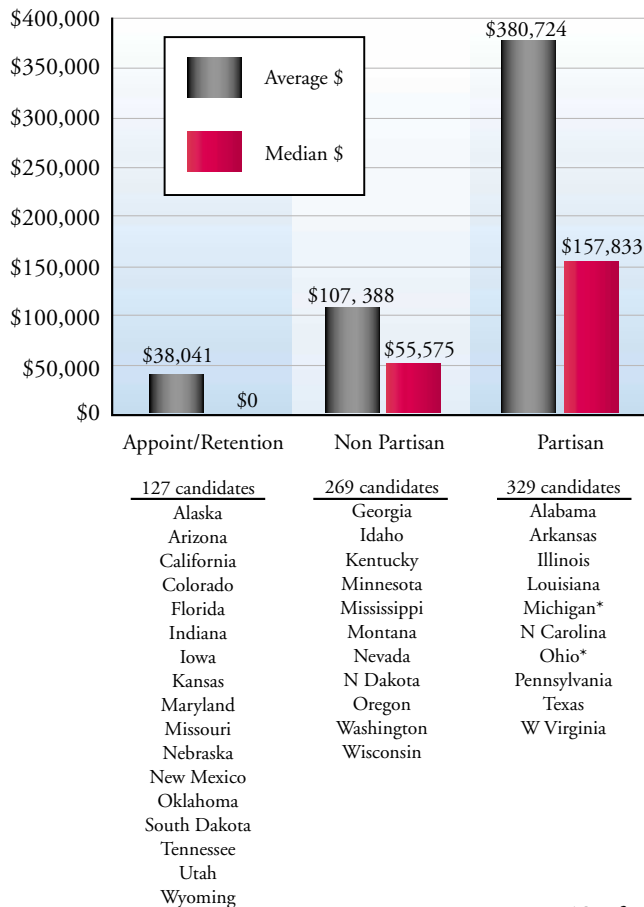
## A STATE'S ELECTORAL SYSTEM ALSO AFFECTS HOW MUCH MONEY IS RAISED

Finally, how a state elects judges appears to affect the amount of money candidates raise, and whether they have to raise money at all. [See Figure 6] Partisan elections — where candidates are identified by their political party — attract the most money.<sup>7</sup> From 1990-2000, candidates who raised money in partisan elections raised an average of \$444,792; in nonpartisan elections, the average was \$122,409.<sup>8</sup>

In merit selection states — where judges have been initially appointed, and must return to office through an up-or-down “retention election” where they face no opponent — only 1 out of every 16 candidates even had to raise money. (Those who did raised an average of \$116,568 — suggesting that the retention elections are less likely to become politicized in the first place, but that if they do, they don't really discourage high campaign spending.)<sup>9</sup>

**FIGURE 6**

### AVERAGE AND MEDIAN FUNDS RAISED BY ALL SUPREME COURT CANDIDATES by Election Type, 1990-2000



\*See footnote 7

<sup>7</sup> Note that while both Ohio and Michigan have elections that are, by law, nonpartisan, candidates are identified by party during the election process. In Michigan, the parties nominate judicial candidates. Those two states are counted as having partisan election systems in this analysis. New Mexico, which has partisan retention elections, was counted with the retention-election states for the purposes of the categories in Figure 6.

<sup>8</sup> Of the 316 candidates in partisan elections, 43 (14%) raised no funds. The 273 candidates who did receive contributions reported a total of \$121,428,268 and an average of \$444,792, with median contributions at \$247,839. Of the 265 candidates in nonpartisan election systems, 34 (13%) did not raise any funds at all. The remaining 231 candidates raised a total of \$28,276,467 and an average of \$122,409, with median contributions at \$73,494.

<sup>9</sup> More specifically, of the 121 candidates in retention election states, only seven (6%) raised any funds at all. Those seven raised a total of \$815,977 and an average of \$116,568, with median contributions at \$82,634. Even in the most recent 2000 elections, none of the states with retention elections reported any fundraising by judicial candidates.

## PART II

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# The Growing Role of Television in Supreme Court Elections

Beyond record spending, 2000 marked another watershed for Supreme Court elections: the unprecedented use of television advertising — especially by political parties and interest groups — that has grown increasingly negative and controversial, and in some cases fallen far beneath the level of dignity most Americans associate with their judicial system.

### “AIR WARS” IN THE BATTLEGROUND STATES

A review of the 75 largest media markets — covering 80% of the U.S. population — reveals at least 22,646 airings of television ads in Supreme Court races in the year 2000, airtime very conservatively estimated to cost approximately \$10.7 million dollars.<sup>10</sup> Nearly all were 30 seconds in length; a handful aired for only 15 seconds.

All of this advertising aired in just four states with hotly contested races: Alabama, Michigan, Mississippi, and Ohio. Indeed, more than half of all the airings ran in one battleground state, Ohio, where viewers saw nearly 12,000 Supreme Court election advertising spots. TV airtime expenditures there topped \$5 million, with more than half coming from interest groups.

There’s no doubt that TV ads have become the weapon of choice in high-stakes Supreme Court races: television stations absorbed more than half of the funds raised by Ohio Supreme Court candidates — and nearly half of Michigan candidates’ funds.

### SIGNALING ISSUE POSITIONS: CIVIL JUSTICE, CRIME, AND FAMILY VALUES

The three issues that appeared most often in the ads that could be analyzed by theme were, in order of frequency: civil justice (principally tort liability and reform), crime control, and family values. Political parties and special interests joined judicial candidates in using television advertising to signal candidates’ positions on those issues. In addition, some third-party ads indicated the party affiliation of candidates in what were supposed to be nonpartisan elections.

Further thematic analysis of the ads reveals several trends. Political parties and interest groups sponsored two-thirds of the ads with civil justice themes. One-third of all the ads using a crime control theme were run by the U.S. Chamber of Commerce — including all five of the ads run by the Chamber in Mississippi. (Two of them also referred to civil justice concerns, but in heavily veiled terms.<sup>11</sup>) Only 12 of the ads reflected a more traditional approach to judicial elections, focusing exclusively on the candidates’ background and qualifications. Of those 12, all but one were run by judicial candidates. [See Appendix B]

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<sup>10</sup>The amounts reported here reflect only the estimated price of airtime. The estimates do not report the actual costs of media buys, which vary considerably and tend to increase as Election Day nears. Nor do the estimates include design or production costs or any other expenses related to the advertising. The dollar figures therefore significantly, but unavoidably, understate the actual cost of the television campaigns. See Part III for additional reasons why these estimates are clear understatements of the advertising costs.

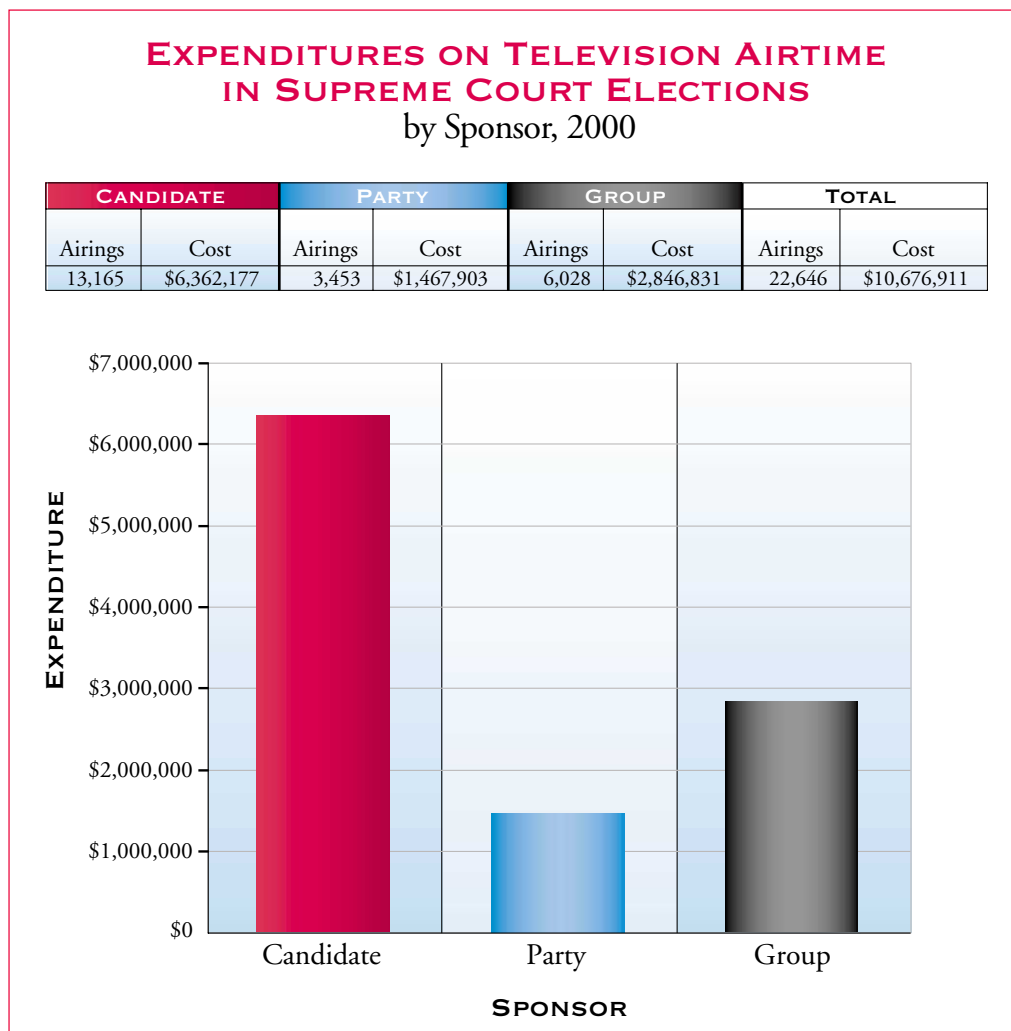
<sup>11</sup>All of the ads referred either to “victims’ rights” or to the prompt trial of death penalty cases. An ad for one judge spoke of his “[upholding] existing laws — instead of trying to make new ones,” while an ad for another referred to her “protecting our Supreme Court from the influence of special interests.” Those phrases, together with the appearance of the website [www.LitigationFairness.org](http://www.LitigationFairness.org), might have signaled to the savvy that these were judges who would not overturn tort reform laws opposed by otherwise influential trial lawyers. One suspects that ordinary viewers would pick up only on the crime theme.

## THE GROWING ROLE OF INTEREST GROUPS IN TV ADS

Consistent with the trends in other kinds of campaigns, candidates bought most of the airtime in judicial races in 2000, spending about \$6.4 million for 42 unique ads that aired 13,165 times.<sup>12</sup>

But the 2000 campaign also demonstrates that when a Supreme Court race is targeted as a high-stakes battle, parties and especially interest groups may well rush in to supplement candidate ads. Indeed, in contrast to the normal pattern in non-judicial campaigns, special interests purchased far more television time for and against judicial candidates than did political parties; interest group expenditures on judicial ads (approximately \$2.8 million) outnumbered party expenditures for such ads (approximately \$1.5 million) by nearly 2-to-1. And interest group ads ran 6,028 times, whereas party ads aired 3,453 times.<sup>13</sup> [See Figures 7 & 8]

FIGURE 7



<sup>12</sup>In other words, of the total \$45.6 million raised by Supreme Court candidates in 2000, see Part I, at least \$6.4 million went to buy television airtime. The list of ads in Appendix B contains four candidate ads for which we have no estimated costs.

<sup>13</sup>For an analysis of television airtime in the non-judicial elections of 2000, including the presidential and congressional primary and general elections, see Craig Holman & Luke McLoughlin, *Buying Time 2000: Television Advertising in the 2000 Federal Elections* (Brennan Center 2001).



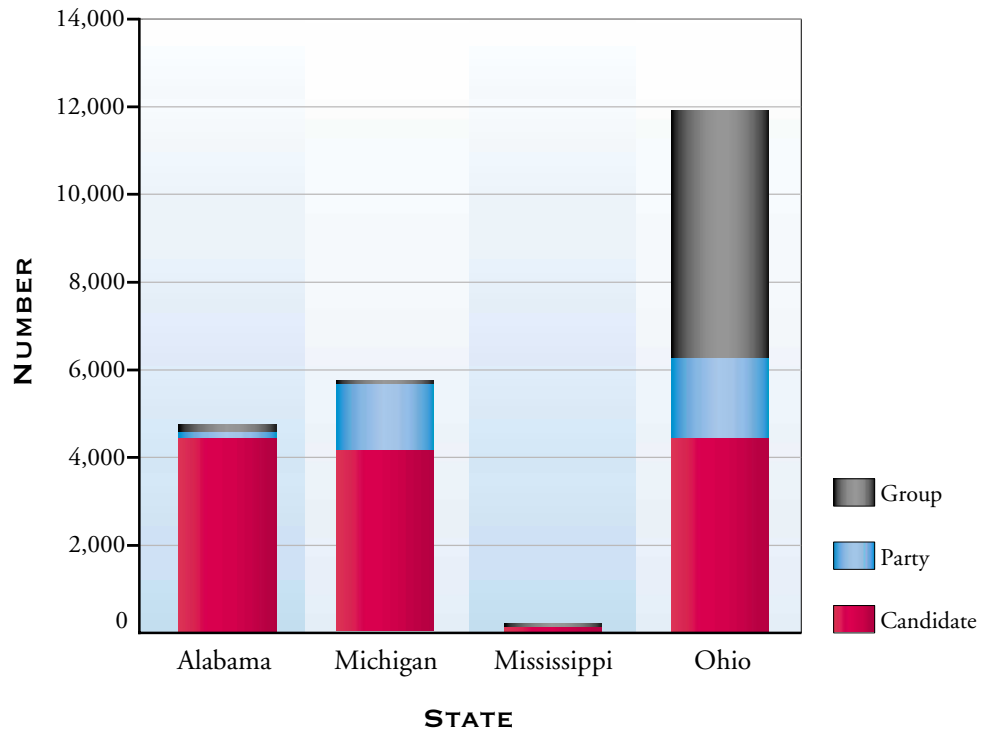
**FIGURE 8**

**SCOPE OF TELEVISION ADVERTISING IN SUPREME COURT ELECTIONS,  
by State and Sponsor, 2000**

	CANDIDATE		PARTY		GROUP	
	Airings	Cost	Airings	Cost	Airings	Cost
Alabama	4,432	\$1,212,412	139	\$34,448	187	\$60,696
Michigan	4,161	\$3,297,790	1,499	\$911,217	103	\$50,710
Mississippi	130	\$71,807	0	\$0	88	\$27,539
Ohio	4,442	\$1,780,168	1,815	\$522,238	5,650	\$2,707,886
Total	13,165	\$6,362,177	3,453	\$1,467,903	6,028	\$2,846,831

	TOTAL	
	Airings	Cost
Alabama	4,758	\$1,307,556
Michigan	5,763	\$4,259,717
Mississippi	218	\$99,346
Ohio	11,907	\$5,010,292
Total	22,646	\$10,676,911

**NUMBER OF AIRINGS**

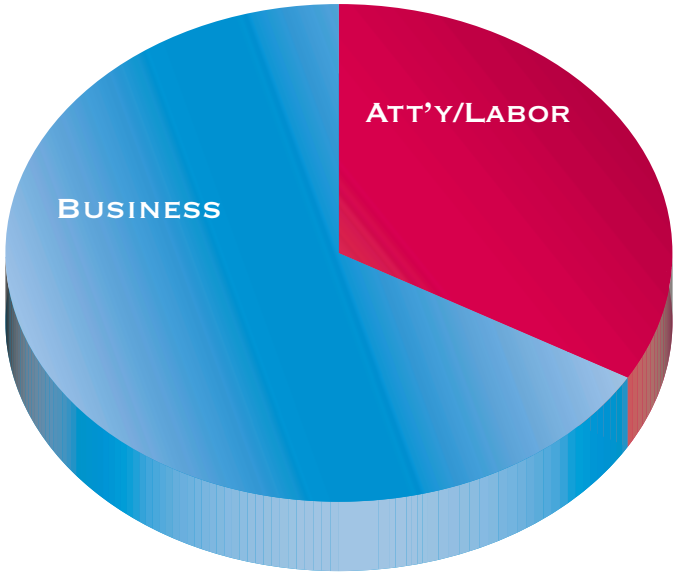


In 2000, at least, special interest advertising was dominated by business interests. Of the 24 unique interest group ads, 18 were run by business interests, and 6 were jointly financed by trial lawyers and labor. [See Figure 9] Fully two-thirds of the expenditures on television airtime were financed by the U.S. Chamber of Commerce and other business-related interests, such as Citizens for a Sound Economy and Citizens for a Strong Ohio.<sup>14</sup> In fact, in three states — Alabama, Mississippi, and Ohio — the only interest groups spending money on television were business interests. But in two of those states, televisions ads sponsored by the Democratic Party competed for voters’ attention. All told, business groups and the Republican Party together ran a total of 22 unique ads; the Democratic Party, trial lawyers, and labor groups ran 15.<sup>15</sup>

**FIGURE 9**

**GROUP EXPENDITURES ON TELEVISION AIRTIME  
IN SUPREME COURT ELECTIONS**  
by Interest, 2000

ATT’Y/LABOR		BUSINESS		TOTAL	
Airings	Cost	Airings	Cost	Airings	Cost
2,832	\$945,872	3,196	\$1,900,959	6,028	\$2,846,831



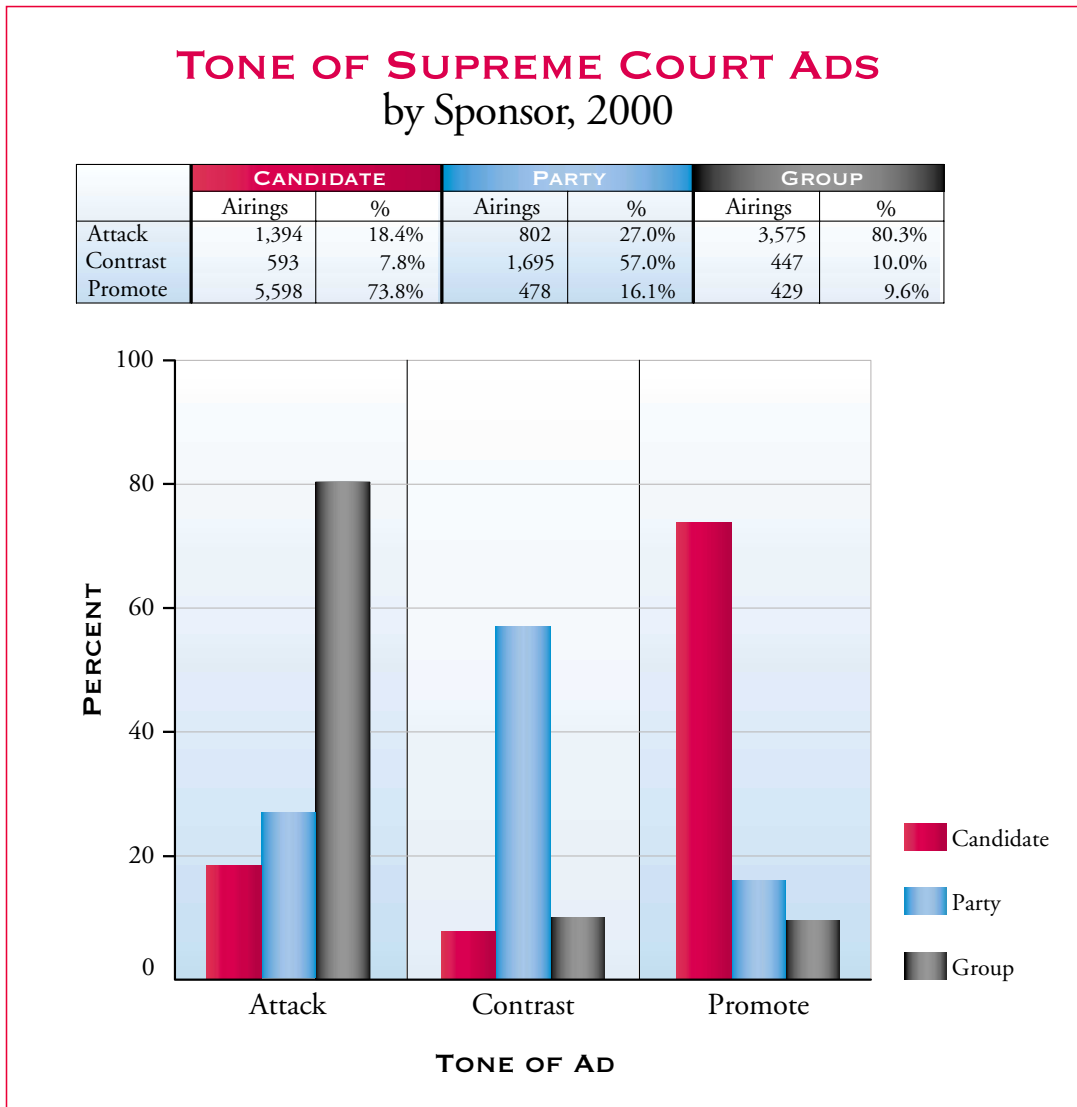
<sup>14</sup> “We’re absolutely committed to being involved in judicial races,” said James Wootton, President of the Chamber of Commerce’s Institute for Legal Reform. Associated Press, “Chamber’s Ad Effort Failed in Ohio, Worked in Other States,” *Commercial Appeal* (Nov. 9, 2000), at D6.

<sup>15</sup> Unfortunately, we do not have estimated costs for many of the Chamber of Commerce ads and some of the political party ads, so a reliable cost comparison cannot be made.

## INTEREST GROUP TV ADS ARE HARsher

The rise of special interest television advertising also signals a rise in the use of attack ads in judicial elections. More than 80% of group ads in the television database attacked judicial candidates, as compared with only 27% of party ads and 18% of candidate ads. Fewer than 10% of group ads had anything nice to say about a judicial candidate. [See Figure 10] More than any other phenomenon, the aggressively negative tone of television ads sponsored by independent groups defines the new style of judicial campaigns. Storyboards with snapshots and text for some typical interest group and party ads appear in Appendix A.

FIGURE 10



## PART III

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# The Growing “Data Gap” and the Effort to Document Special Interest Pressure on Our Courts

Even as wealthy donors and special interests pour growing amounts of money into state Supreme Court races, researchers face major obstacles in compiling complete and accurate summaries of contributions and expenditures in those elections. The reasons are many, but the effect is simple: if the public is not provided with timely information — if a “data gap” is created — special interests can influence elections with no accountability to the voter.

### INTEREST GROUP ADS ARE CRAFTED TO AVOID DISCLOSURE

Among those who believe that sunlight is the best disinfectant, there is widespread concern about political players who manage to keep their finances below the regulatory radar screen. Under the campaign finance laws of most states, candidates, political parties, and political action committees are required to report campaign contributions and expenditures, whether in judicial or non-judicial elections. Even individuals and groups that do not fit into those categories are often subject to reporting requirements when they make independent expenditures expressly advocating the election or defeat of candidates, including candidates for the bench. In these cases, it is possible to determine how much is spent on major advertising campaigns and by whom, although it has so far proven prohibitively expensive to collect this information from agencies throughout the nation.

But the many interest groups that have invested huge sums in judicial elections have avoided disclosing their finances. As a consequence, the public never learns who is really behind the attack ads flooding the television screen or how much the sponsors are paying to put their favored judges on the bench. Interest groups that want to hide their finances do so by exploiting a common loophole in campaign finance laws. In many states, courts will not require disclosure unless a campaign advertiser uses specific words in the ad — words such as “elect,” “defeat,” or their close synonyms.<sup>16</sup> These terms are commonly known as “magic words” because they miraculously transform ads exempt from regulation into electioneering ads subject to campaign finance requirements. Courts holding that “magic words” are essential to trigger reporting requirements have made their decisions without considering factual evidence of how advertising is conducted. In fact, only 1.2% of 4,451 television spots run by interest groups in the 2000 judicial elections used “magic words” [see Figure 11], and the pattern is similar in non-judicial elections.<sup>17</sup>

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<sup>16</sup> The origin of and constitutional response to this loophole is beyond the scope of this report. For more information, see Mark Kozlowski, *Regulating Interest Group Activity in Judicial Elections* (Brennan Center 2001). The use of this loophole is also documented in *Buying Time 2000*, *supra* n.13.

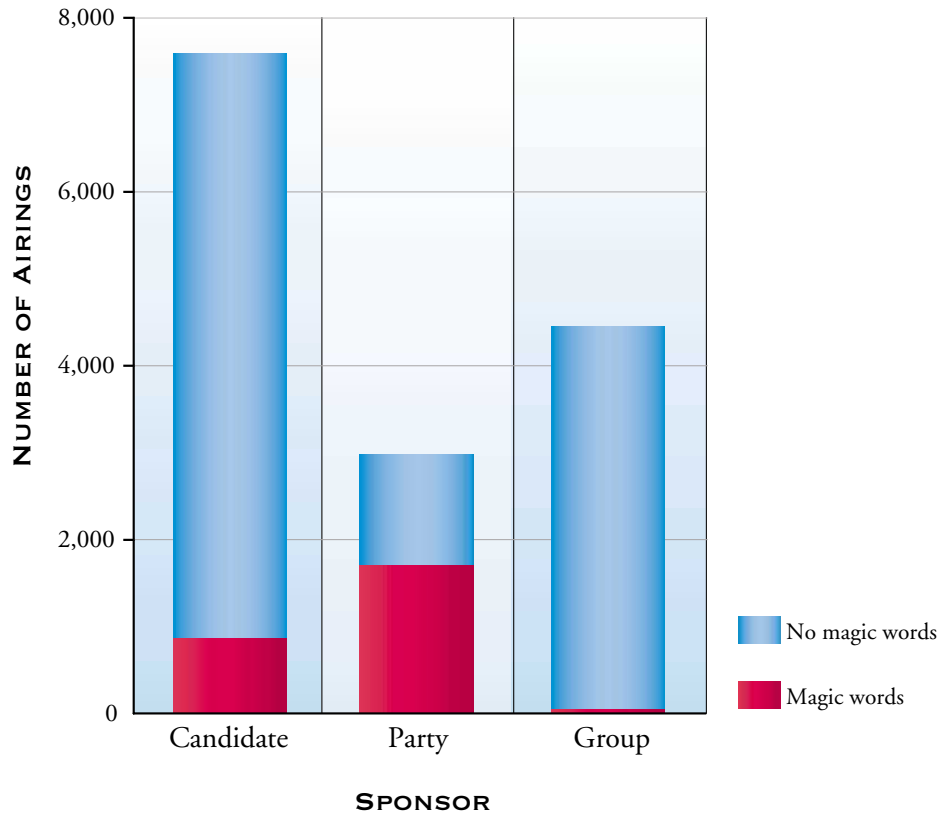
<sup>17</sup> Of the 6,028 airings of group ads in the database, see Appendix C, 4,451 were analyzed to determine whether they used “magic words.” The percentages of judicial ad spots found to contain “magic words” closely mirror the percentages of ad spots with “magic words” in federal presidential and legislative elections. See *Buying Time 2000*, *supra* n.13, at 72 (Figure 8-1).

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FIGURE 11

## THE USE OF “MAGIC WORDS” in Supreme Court Advertisements, 2000

	CANDIDATE		PARTY		GROUP	
	Airings	%	Airings	%	Airings	%
No magic words	6,726	88.7%	1,269	42.7%	4,397	98.8%
Magic words	859	11.3%	1,706	57.3%	54	1.2%



Moreover, one look at the advertising in the 2000 Supreme Court elections makes it palpably clear that the ads were intended without exception to elect or defeat candidates, not to engage in the constitutionally protected discussion of ideas. Unless the law governing interest group advertising is changed, there is every reason to believe that the same disclosure avoidance technique will be used in 2002. Voters will again be forced to rely heavily on aggressive investigative reporting to ferret out information that ought to be readily available in an election.

## INADEQUATE DISCLOSURE LAWS AND ERRATIC RECORD-KEEPING HAMPER ACCOUNTABILITY

Even when disclosure requirements do apply (to candidates, PACs, or political parties), collecting campaign finance information can be a matter of sorting through thousands of pages of campaign finance statements stored in dingy state government offices — an extremely resource-intensive endeavor at best. Sometimes, files have been irretrievably lost. Moreover, disclosure laws vary from state to state, and none of them requires expenditure reporting at a level of specificity that makes it possible to ascertain precisely how money is spent or by whom.

These are logistical hurdles that data analysts such as the National Institute on Money in State Politics routinely negotiate, however, and they are at least more tractable than the legal problems discussed above. State disclosure agencies are steadily progressing toward meaningful public disclosure of the sources of campaign funding for all state offices, but the results are still far from adequate. Timing is the greatest problem, as many states do not release information until after the election is complete. Information as important as the identities of the economic interests that are supporting candidates should be available to the voters prior to voting, when it could have an impact on their decision at the polls and when other hard information about the candidate is generally scarce.

Another major issue is the format in which information is provided. In all too many states, the data can be obtained only by purchasing copies of the candidates' filings from the state at a substantial per-page cost. Complete copies of statements for the cycle can cost thousands of dollars, taking the data out of the definition of "publicly-available information" by most people's standards. The data should be provided to the public in an easily searchable format, such as an interactive web site, that gives voters complete and timely lists of contributors, their addresses, and their employment.

Mere images of the reports posted on web sites do not allow the contents to be searched and are often hard to read and decipher. These scanned images are better than pages stuffed in a file cabinet, but they do not clearly reveal contribution patterns. Electronic filing, although not mandatory in most states where it is available, is speeding the production of the databases but often results in incomplete or partial databases containing the reports only of the candidates who voluntarily chose to file electronically. State agencies need to provide complete information to the voters, not just the information that is easily available.

**APPENDIX A: SELECTED TV STORYBOARDS FROM JUDICIAL ELECTIONS IN 2000**



**Ad Detector**

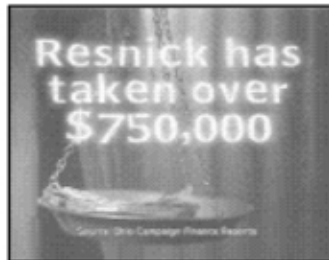
**BRAND:** POL-JUDGE+  
**TITLE:** OH/CFSOH Resnick Is Justice for Sale  
**COMMERCIAL:** OH/CFSOH Resnick Is Justice for Sale 1 of 1  
**LENGTH:** 30  
**FRAMES:** 7



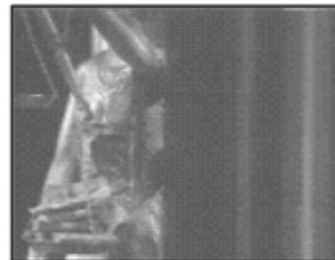
A007SPOZ.ESB



[Announcer]: Is justice for sale in Ohio? You decide. Since 1994, Justice Alice Resnick has taken over \$750,000



from personal injury lawyers. Justice Resnick



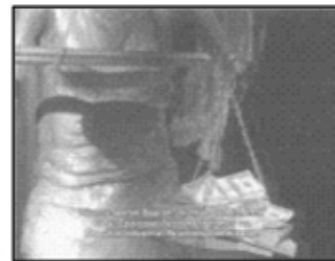
ruled in favor of trial lawyers who had contributed to her campaign nearly



70% of the time. After a union leader and a big contributor



complained about a ruling Resnick made, Resnick became the only Justice



to reverse herself in the case. Alice Resnick. Is justice for sale?



[PFB: Citizens for a strong Ohio]

**Campaign Media Analysis Group**  
 703-683-7110  
[www.politicsontv.com](http://www.politicsontv.com)



# Ad Detector

**BRAND:** POL-SUPREME COURT+  
**TITLE:** MI/DSCC Markman Taylor Young Defective  
**COMMERCIAL:** MI/DSCC Markman Taylor Young Defective 1 of 1  
**LENGTH:** 30  
**FRAMES:** 8

**CMAG REPORTS**

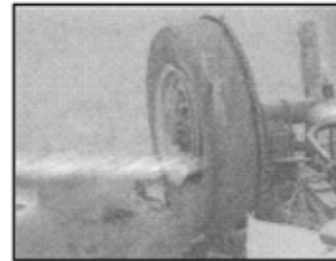
A0071MFB.ESB



[Announcer1]: Should corporations that know they're selling dangerous defective products be held accountable?



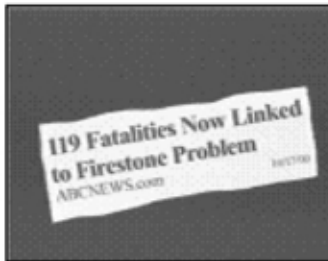
[Announcer]: Michigan Supreme Court Justice's Markman Taylor & Young don't think so.



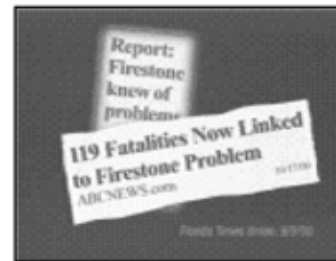
[Announcer1]: They support a law that makes it harder to hold corporations accountable



for dangerous products. [Announcer2]: Markman Taylor & Young. [Announcer1]: A



law that could hurt families who loved ones were killed or injured in accidents with Firestone tires.



[Announcer2]: Markman Taylor & Young. Oh no. [Announcer1]: Republicans



who put big corporations and insurance companies ahead of people.



[PFB: Michigan Democratic State Control Committee. Not Authorized By Any Candidate]

Campaign Media Analysis Group  
 703-683-7110  
[www.politicsonTV.com](http://www.politicsonTV.com)





# Ad Detector

**BRAND:** POL-SUPREME COURT+  
**TITLE:** MI/RSC Fitzgerald Weak on Crime  
**COMMERCIAL:** MI/RSC Fitzgerald Weak on Crime 1 of 1  
**LENGTH:** 30  
**FRAMES:** 7

**CMAG  
REPORTS**

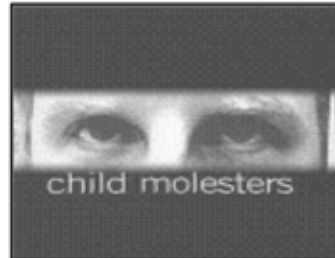
A007RZFF.ESB



[Announcer]: These criminals had their day in court. Murderers, rapists, child molesters, gun dealers.



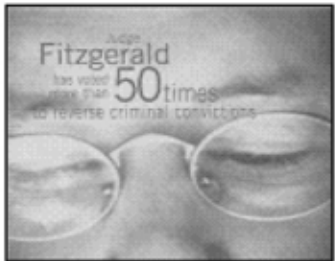
They were convicted and sentenced for their crimes. We thought that



was the end of it and Judge Thomas Fitzgerald voted



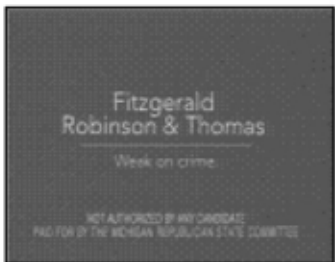
to overturn their convictions again and again. Fitzgerald has voted



to reverse criminal convictions more than 50 times. Now he wants us



to put his team on the court? That's scary. Fitzgerald, Robinson and Thomas. Weak on gun crime, wrong for the court,



and wrong for our kids. [Not authorized by any candidate. PFB Michigan Republican State Committee]

**Campaign Media Analysis Group**  
 703-683-7110  
[www.politicsonTV.com](http://www.politicsonTV.com)



# Ad Detector

**BRAND:** DEMOCRATIC PROMO+  
**TITLE:** AL/ALDP Firestone and Ford  
**COMMERCIAL:** AL/ALDP Firestone and Ford  
**LENGTH:** 30  
**FRAMES:** 7

1 of 2



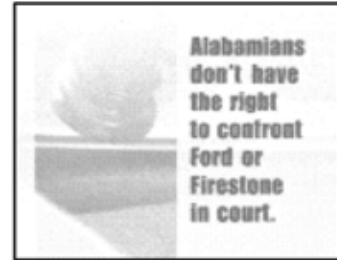
A007V6UC.ESB



[Announcer]: Firestone tires and Ford Explorers. A national tragedy. But it's worse for



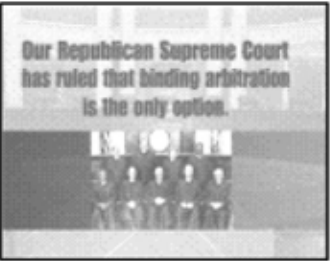
victims in Alabama. We don't even have the right to confront Ford or Firestone in court.



Alabama Firestone victims lost their right to a trial by jury.



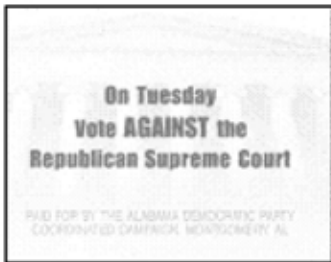
All because our Republican Supreme Court has ruled that binding



arbitration is the only option. Firestone and Ford like it but you shouldn't.



On Tuesday, vote against Alabama's Republican Supreme Court.



[PFB: Alabama Democratic Party]

**Campaign Media Analysis Group**  
 703-683-7110  
 www.politicsonTV.com

## APPENDIX B: SUPREME COURT TV ADVERTISEMENTS

Ad Title	Sponsor	Crime	Civil Justice	Traditional	Family Values	Airings	Cost
<b>ALABAMA</b>							
AL/England 30 Years Experience	Candidate			X		128	\$ 42,623
AL/Woodal Nothing But Fair	Candidate		X			224	\$ 61,045
AL/Stuart FOP Endorse	Candidate	X				304	\$ 86,812
AL/England Remarkable Individual	Candidate			X		322	\$108,293
AL/Harwood Consider This	Candidate			X		326	\$ 85,677
AL/Harwood Father Died	Candidate			X		347	\$ 95,901
AL/Woodal Follow the Law	Candidate			X		376	\$113,379
AL/Cook Here's Why Endorsements	Candidate			X		239	\$ 70,236
AL/Cook Across Party Lines	Candidate			X		334	\$ 71,673
AL/Cook Most Experienced	Candidate	-	-	-	-	571	\$129,281
AL/Harwood Bio	Candidate			X		275	\$ 77,344
AL/Woodal Judicial Philosophy	Candidate	-	-	-	-	266	\$ 75,466
AL/Yates 18 Yrs	Candidate				X	-	-
AL/Yates Most Qualified	Candidate			X		-	-
AL/Yates Religious	Candidate				X	-	-
AL/Moore	Candidate				X	-	-
AL/Stuart Children at Risk	Candidate	-	-	-	-	301	\$ 81,521
AL/Stuart Dear Judge Stuart	Candidate			X		419	\$113,161
AL/Stuart FOP Endorse	AL Dem		X			139	\$ 34,448
AL/Trial Lawyers Are Back	COC		X			109	\$ 34,636
AL/Greedy Trial Lawyers	CSE		X			78	\$ 26,060
<b>MICHIGAN</b>							
MI/Taylor I Work With Taylor Everyday	Candidate	X				90	\$ 67,081
MI/Taylor Markman Young Sheriff Bouchard	Candidate	X				110	\$111,738
MI/Robinson Fighting for MI Families	Candidate		X	X		267	\$223,908
MI/Fitzgerald Protect MI Families	Candidate	-	-	-	-	505	\$375,239
MI/Markman Tough Prosecutor	Candidate	-	-	-	-	338	\$266,962
MI/Robinson Take on HMOs	Candidate	X	X			224	\$208,068
MI/Young Community Involvement	Candidate	X				354	\$265,714
MI/Taylor Victims' Rights	Candidate	X				364	\$256,985
MI/Thomas Worked on Assembly Line	Candidate	X	X			427	\$428,127
MI/Thomas Courtroom is Scary	Candidate	-	-	-	-	76	\$111,712
MI/Robinson Fitzgerald Whose Side	Candidate	-	-	-	-	963	\$762,052
MI/Taylor Markman Young Justice	Candidate	X			X	443	\$220,204
MI/Fitzgerald Frank Kelley Endorsement	MI Dem	X			X	11	\$ 12,949
MI/Where Are My Judges	MI Dem		X		X	148	\$ 75,104
MI/You've Head Them Bragging	MI Dem		X		X	144	\$ 68,167
MI/Oh My	MI Dem		X		X	-	-
MI/Fitzgerald Frank Kelley	MI Dem	X			X	347	\$184,899
MI/Defective Baby Car Seats	MI Dem		X		X	125	\$ 90,968
MI/Markman Taylor Young Defective	MI Dem		X		X	457	\$266,970
MI/Fitzgerald Weak on Crime	MI Rep	X			X	206	\$154,383
MI/Fitzgerald Reversed 50 Convictions	MI Rep	X			X	-	-
MI/Fitzgerald Sex Offender	MI Rep	X			X	61	\$ 57,777
MI/Don Oak	COC		X	X		-	-
MI/Robinson Never Been a Judge 15	COC		X			21	\$ 15,785
MI/Robinson Fitzgerald Reverse 15	COC	X				-	-
MI/Magnum P.I.	COC	X	X		X	-	-
MI/Robinson and Fitzgerald Reverse	COC	X	X			82	\$ 34,925

Ad Title	Sponsor	Crime	Civil Justice	Traditional	Family Values	Airings	Cost
<b>MISSISSIPPI</b>							
MS/Lynchard Talking About One Candidate	Candidate		X			3	\$ 1,254
MS/Lynchard 18 Years Experience	Candidate	-	-	-	-	31	\$ 17,567
MS/Lynchard Cobb Flip Flopped	Candidate	-	-	-	-	36	\$ 24,685
MS/Lynchard Voter Alert	Candidate	X	X			6	\$ 2,646
MS/Easley Not For Sale	Candidate			X		54	\$ 25,655
MS/Cobb Stands Up for Us	COC	X			X	22	\$ 5,243
MS/Cobb Stands Up For Us 15	COC	X			X	66	\$ 22,296
MS/Starrett	COC	X				-	-
MS/Smith	COC	X	X			-	-
MS/Prather	COC	X	X			-	-
<b>OHIO</b>							
OH/Black Judge Husband Leader 2	Candidate	X			X	100	\$ 43,878
OH/Black Rated Number 1	Candidate	X				106	\$ 24,444
OH/O'Donnell Real World Experience 15	Candidate			X		278	\$151,962
OH/Resnick Enforced Our Laws	Candidate	X				430	\$273,138
OH/Black Cincinnati Voice	Candidate	-	-	-	-	125	\$ 55,642
OH/Black Judge Husband Leader	Candidate	-	-	-	-	234	\$190,290
OH/Cook Better Choice 15	Candidate			X		576	\$197,300
OH/O'Donnell Without Fear or Favor	Candidate		X			399	\$ 86,368
OH/Cook 10 Years Experience 15	Candidate	-	-	-	-	1,027	\$309,175
OH/O'Donnell David Liechty Killed	Candidate	-	-	-	-	314	\$148,727
OH/O'Donnell Law Books	Candidate	-	-	-	-	109	\$ 51,584
OH/O'Donnell Without Fear or Favor 2	Candidate		X			578	\$197,714
OH/Resnick Enforced Our Laws 15	Candidate		X			166	\$ 49,946
OH/Resnick Corporate Polluters	OH Dem		X		X	1,695	\$469,935
OH/Cook Fearless and Faithful	OH Rep			X		120	\$ 52,303
OH/Compare Cook and Black	COC	X				220	\$145,375
OH/O'Donnell What's Being Said	COC		X			227	\$187,991
OH/Resnick OH Leading Papers	CSO		X			255	\$177,609
OH/Resnick Took From Injury Lawyers	COC		X			907	\$596,476
OH/Resnick College Law*	CSO					1,159	\$639,106
OH/Resnick Is Justice for Sale	CSO	X				50	\$ 15,457
OH/Resnick and Black Re-Elect	Att'y/Labor	-	-	-	-	335	\$ 33,912
OH/Resnick Black Crush Rights	Att'y/Labor		X			23	\$ 7,656
OH/Resnick Black Important Election	Att'y/Labor		X			54	\$ 22,990
OH/Resnick Black Uncaring Legislature	Att'y/Labor		X			54	\$ 19,957
OH/Resnick Won 1000 Convictions	CIC	-	-	-	-	1,111	\$399,460
OH/Resnick Insurance and Rx	CIC	X	X			1,255	\$461,897

A dash (-) indicates the absence of information.

\* This ad does not fit neatly into the four thematic categories. It addresses a decision on public universities.

**SPONSOR ABBREVIATIONS**

- CIC: Citizens for Independent Courts
- COC: Chamber of Commerce
- CSE: Citizens for a Sound Economy
- CSO: Citizens for a Strong Ohio

## APPENDIX C: RESEARCH METHODS

### Part I: Skyrocketing Fundraising and Spending in State Supreme Court Races

The National Institute on Money in State Politics has collected data on the contributions received by all current state Supreme Court justices who have stood for election and their most recent electoral opponents. Not all sitting justices have yet been in an election (some may be interim appointees in states with contested elections, and others may be appointees whose retention election is still in the future), so the list of candidates is short in some states. In total, 611 judicial candidates are included in this database.

The Institute initially collected the data by identifying the term of Supreme Court office in each state — six, eight, 10, or 12 years — and then obtaining from state officials the total amount of contributions reported by all candidates for that office during the applicable period of time, ending in 1998.<sup>18</sup> After the 2000 elections, the database was updated to include contribution totals for the 2000 election cycle. The summary database therefore contains both a complete profile of fundraising data for existing state Supreme Courts and contribution totals for every candidate in all 38 states from 1994 through 2000.<sup>19</sup> In addition, a detailed database recording every contribution and expenditure was built for a selection of states, as well as a database of court decisions for the purpose of matching contributors with litigation in an ongoing study. The contributors were identified by their economic interests to the extent possible.

### Part II: The Growing Role of Television in Supreme Court Elections

In 2000, the Brennan Center for Justice at NYU School of Law worked with Professor Kenneth Goldstein of the University of Wisconsin to compile a comprehensive database on televised campaign advertising in the nation's 75 largest media markets, which cover about 80% of U.S. residents. To develop the database, researchers examined a “storyboard” for each ad — the full audio and every four seconds of video — which had been recorded by a commercial firm via satellite. The firm also provided the location, dates, frequency, and estimated cost of the airings of each ad, which was then coded to identify its sponsor and to characterize its content.

The television database includes information about 73 unique television ads from the 2000 Supreme Court elections. The analysis and figures in Parts II and III of this report reflect the data coded for only those ads, unless otherwise specifically noted. Independent researchers were able to locate an additional 12 television advertisements for Supreme Court justices, but neither the number of airings nor the estimated costs of those ads could be determined.<sup>20</sup> All 85 of the ads collected for this report are listed in Appendix B. A total of 68 ads have been analyzed by theme, based upon a review of the storyboards for 55 ads and information about the script of an additional 13.<sup>21</sup> We know of no other television ads in the 2000 Supreme Court elections.

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<sup>18</sup> For example, in a state with a six-year term, reported contributions from the 1994 election cycle through the 1998 election cycle are entered in the database.

<sup>19</sup> Five 1992 Mississippi candidates, two of whom won, are not included in the calculations because the state is unable to locate their files.

<sup>20</sup> For his paper, *Television Ads in Judicial Campaigns* (Nov. 2001) (presented at the National Center for State Courts Symposium on “Judicial Campaign Conduct and the First Amendment” (Chicago, IL, Nov. 9-10, 2001)), Professor Anthony Champagne analyzed seven Supreme Court ads not in the television database. Professor Champagne analyzed 55 ads by theme, representing 44 storyboards that were then available and 11 ads found independently of the satellite recording system. Later analysis revealed that three of his newly found ads duplicated ads in the television database (but for which storyboards were unavailable) and that an additional ad did not pertain to a Supreme Court candidate. Five additional non-duplicative ads were located while conducting research for this report, however, so there are now 12 ads described in this report that were not coded for the database. Although neither cost nor airing data were available for those 12 ads, all of them have been analyzed by theme.

<sup>21</sup> Except where explicitly indicated, Appendix B uses a dash to indicate the absence of information.

There are three different measures that are typically used to characterize the scope of advertising. The number of unique ads — ads differing from one another in their content — is less important as an index of scope than it is as a window on advertising techniques. The number of airings offers a more useful measure, by revealing how often television viewers were exposed to the advertising. Finally, the estimated cost of the airings provides a basis for analyzing sponsor investment in the outcome of elections. The figures in Parts II and III of this report therefore focus on the number of airings and estimated costs.

As is explained in Part II, the costs of television advertising reported here reflect only the estimated price of airtime. Actual figures (including design and product costs) are not available because of inadequacies in campaign finance laws — including both a major legal loophole and deficiencies in the design and implementation of reporting requirements. See Part III. The dollar figures therefore significantly, but unavoidably, understate the actual cost of the television campaigns. But for all their limitations the airtime estimates probably offer the most systematic means of assessing interest group spending on judicial elections.

Inquiries in the four states with the most hotly contested Supreme Court races suggest the extent to which the airtime costs reported in the database underestimate total spending of political parties and independent groups. One scholar has estimated that non-candidate spending in Ohio topped \$8 million, of which \$5-6 million financed advertising by the U.S. Chamber and its state affiliates.<sup>24</sup> The same study asserts that non-candidates in Michigan spent more than \$6 million, with the state Chamber accounting for \$2.7 million, and \$4 million evenly divided between the Democratic and Republican parties.<sup>25</sup> Of those sums, the Michigan Democratic committees and caucuses reported less than \$30,000, while the state Republican Party reported \$1.35 million. Political parties and interest groups spent an estimated \$1 million in Alabama and another \$1.3 million in Mississippi.<sup>26</sup> In all, parties and groups spent approximately \$16 million in these four states; more than a quarter of that spending bought time on television even under the most conservative estimates.<sup>27</sup>

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<sup>24</sup> See Roy Schotland, *Financing Judicial Elections 2000: Change and Challenge*, 2001 L. REV. M.S.U.-D.C.L. 1, 25 & n. 103 (forthcoming). This figure presumably includes total advertising expenses, not only the cost of airtime.

<sup>25</sup> See *id.* at 24.

<sup>26</sup> See *id.* at 18, 26. The satellite recording system would not have captured ads aired outside the nation's 75 largest media markets, and that limitation may account, at least in part, for the large discrepancy between Professor Schotland's figures for Alabama and Mississippi and those presented in Figure 8. Design and production costs may also account for a greater percentage of advertising expenses in the southern media markets than in the larger markets of Ohio and Michigan.

<sup>27</sup> See *id.* at 14, 28 n.121 (stating that more than \$16 million was spent in the four states plus Illinois, which accounted for only \$25,000 in interest group spending on newspaper ads).

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**Justice at Stake**  
c a m p a i g n

**Justice at Stake Campaign**  
1717 Massachusetts Avenue, NW, Suite 801  
Washington, D.C. 20036  
Phone (202) 588-9700 • Fax (202) 588-9485  
info@justiceatstake.org • [www.justiceatstake.org](http://www.justiceatstake.org)

The Justice at Stake Campaign is a non-partisan 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: February 2002  
**Visit us at [www.justiceatstake.org](http://www.justiceatstake.org)**