

## Illinois Judicial Elections

*Updated 03/16/04*

1. Editorial lambastes Cook County, Illinois' system of electing judges, stating, "voters are in for another season of political shenanigans. The process is anything but dignified and judicious and offers another reminder why the practice should be replaced by merit selection." The editorial decries the manner in which certain candidates gain unfair advantage in the election - for example, by having an Irish-sounding last name, by being endorsed by the Democratic Party, or by making back-room deals regarding which candidates will run for which vacancies. The editorial calls the process "crass, cynical and haphazard," and asks the state legislature to move towards reform by considering a merit retention system. *Process Has No Merit*, Chicago Sun-Times, January 3, 2000.
2. Letter to the editor by Randall Sherman of the Illinois Committee for Honest Government calls on the media to aid voters in making informed decisions regarding judicial candidates. Sherman dismisses the Chicago Sun-Times' suggestion that the legislature enact a merit-selection system, stating, "Given the recent track record of the General Assembly, one would have a better chance of seeing the Chicago Bulls win their next 40 games than to get any true [judicial] reforms enacted by the current legislature." Sherman suggests that the Sun-Times and other newspapers resume their practice of endorsing judicial candidates, rather than simply printing bar association ratings. Randall Sherman, *Media's Help Needed in Judicial Elections*, Chicago Sun-Times, January 11, 2000.
3. In what will likely become the most expensive judicial contest in Illinois history, three Democratic candidates running for an Illinois Supreme Court vacancy in Cook County (Chicago) have already raised a combined total of \$1.36 million for their campaigns. The three judges are First District Appellate Court Justices Morton Zwick and William Cousins Sr., and Cook County Circuit Court Judge Thomas R. Fitzgerald. Seth Andersen, director of the Hunter Center for Judicial Selection at the American Judicature Society, stated, "Illinois until now hasn't experienced really large dollar amounts like we have seen in other places throughout the country. This race raises the ante for judicial elections in Illinois." The three Democratic candidates announced that they plan to run television, radio and newspaper advertisements in the coming weeks. Reports show that the vast majority of contributors to the campaigns of all three candidates are lawyers and law firms. John Flynn Rooney, *Running for Seat on High Court Getting More Costly*, Chi. Daily L. Bull., February 1, 2000.
4. The race for the Illinois Supreme Court is heating up as Circuit Court Judge Bonnie Wheaton, lambasted her Republican primary opponents for raising

- “obscene amounts of money.” Wheaton has relied largely on her personal savings to finance her campaign, and has vowed to put a \$100 limit on contributions from others. Public records show that Wheaton has lent her campaign \$260,000 and accepted \$10,103 in contributions. One of her opponents, Illinois Appellate Court Justice Bob Thomas, called Wheaton “disingenuous” for relying on her personal wealth to fund her campaign. Thomas did not lend his campaign any personal money, and has raised \$265,696 in contributions. Scott Fornek, *High Court Candidates Spar Over Contributions*, Chicago Sun-Times, February 4, 2000.
5. Op-ed by Former Illinois Gov. Jim Edgar argues that “Illinois residents should take a strong interest in the 2000 elections -- particularly when it comes to selecting men and women to serve as judges.” In this election cycle, Illinois voters will elect four of the seven members of the Illinois Supreme Court, nine members of the Illinois Appellate Court, and more than 150 trial judges. Edgar asserts that “The judicial branch of government is probably the least known and least understood among the three branches of government, but it often is the most powerful and intrusive into our lives.” Edgar recommends that voters take advantage of available resources to make more intelligent decisions regarding judicial candidates, including the web site [www.illinoisjudges2000.com](http://www.illinoisjudges2000.com). Jim Edgar, *Voting for Judges Intelligently*, Chi. Trib., February 23, 2000.
  6. The campaign for three open seats on the Illinois Supreme Court has become the most expensive in the state’s history. So far, the candidates have raised approximately \$2.72 million for the March 21st primary. According to the State Board of Elections, the three top candidates (in terms of contributions) raised more money in 1999 than any other person has ever raised or spent during an entire Illinois Supreme Court campaign. U.S. District Judge and former Illinois Congressman Abner Mikva said that the amount of campaign contributions brings Illinois’ judicial election in line with states such as Texas, where “every special interest in the state -- the insurance, the defense bar, everybody -- is in there with big bucks to promote their candidates.” Mark Schauerte, *Fund-Raising for Supreme Court Primaries Breaks Records*, Chicago Lawyer, February 28, 2000.
  7. Article discusses the upcoming Illinois Supreme Court election, which promises to be the most expensive in the state’s history. Seth Anderson, director of the Hunter Center for Judicial Selection, stated, “Illinois historically has not experienced this type of really big money judicial campaign. Other states like Texas have always kind of led the way in that dubious distinction.” The article also notes that several candidates are using campaign materials formerly thought inappropriate for a judicial campaign. For example, Judge Bonnie Wheaton has passed out buttons saying, “Wheaton for Supreme Court -- Pick the chick.” Judge Morton Zwick, who is also running for a seat on the Supreme Court, has distributed bottles of water labeled “Justice Mort Zwick Water...Clear Thinking

- and Clear Drinking.” Ken Armstrong, *Judicial Races in Money, Limelight Campaign Funds Flood Supreme Court Elections*, Chi. Trib., March 6, 2000.
8. Some Illinois Supreme Court candidates are accused by critics of violating ethical rules that govern judicial races. The judicial code of ethics bars candidates from making statements on issues that might come before the court. Bob Thomas, who is running for a high court seat in a suburban district, advertised his anti-abortion views in a mailer that stated, “Support those who support life. Pro-life leaders endorse Justice Bob Thomas.” In addition, candidates have been criticized for using misleading advertising in the campaign. Morton Zwick, another candidate for a state supreme court seat, aired a TV ad that accuses one of his opponents, Thomas Fitzgerald, the presiding judge of the Cook County Criminal Court, of being responsible for the high number of death penalty convictions that have been overturned recently. Although the ad states that “Courts under Fitzgerald sent innocent men to death row while killers walk the streets,” Judge Fitzgerald was not the presiding judge at any of the trials in question. Due to the uproar over the TV ad, the Chicago Bar Association withdrew its “qualified” rating for Zwick. Janan Hanna, *High Court Candidate Touts “Pro-Life” Stance*, Chicago Trib., March 11, 2000.
  9. Editorial argues that the Illinois Supreme Court Rule 67, which bars candidates from making statements about issues that might appear before the court, “discourages judicial aspirants from letting the public know how they think on relevant matters of public concern -- such as the death penalty, tort reform, [and] racial disparities in sentencing.” The editorial asserts that nothing is gained by preventing judicial candidates from voicing their opinions on key issues. The editorial concludes, “The whole problem could be solved, of course, by junking our elective system in favor of merit selection of judges. But as long as voters are obliged to decide who serves on the bench, they are better off with more information rather than less.” *Free Speech for Judicial Candidates*, Chicago Trib., March 16, 2000.
  10. Article discusses judicial elections in Cook County, Illinois and asks, “Why not switch from a system in which voters must pick 22 names from 83 they don’t know to a so-called merit selection of judges by appointment?” According to the article, some supporters of judicial elections argue that if the power to select judges were transferred from voters to a judicial nominating commission, fewer minority judges would sit on the bench. A recent study by the American Judicature Society, however, shows that minorities fare better under appointive systems at the state appellate level. Illinois government watchdog groups and bar leaders have been calling for merit selection since the 1980s, but state legislators have killed several merit selection bills over the years. Abdon M. Pallasch, *Jury Out on Judicial Elections*, Chicago Sun-Times, March 26, 2000.

11. Article discusses judicial elections in Cook County, Illinois and asks, “Why not switch from a system in which voters must pick 22 names from 83 they don’t know to a so-called merit selection of judges by appointment?” According to the article, some supporters of judicial elections argue that if the power to select judges were transferred from voters to a judicial nominating commission, fewer minority judges would sit on the bench. A recent study by the American Judicature Society, however, shows that minorities fare better under appointive systems at the state appellate level. Illinois government watchdog groups and bar leaders have been calling for merit selection since the 1980s, but state legislators have killed several merit selection bills over the years. Abdon M. Pallasch, *Jury Out on Judicial Elections*, Chicago Sun-Times, March 26, 2000.
12. Editorial argues that a recent race for a seat on the Cook County, Illinois Circuit Court illustrates the need for a merit selection system for state judges. In the race, attorney Joyce Murphy won the Democratic Party nomination -- virtually assuring her a victory in the general election -- even though she is barely five years out of law school and “has filed appearances in only about two dozen cases...mostly small claims and minor contractual disputes.” Murphy had the support of local party officials, which, the article suggests, she received because of personal ties. According to Northwestern law professor Steven Lubet, “Experience should certainly count for something in ascending to the bench and a relatively small handful of court cases would not seem to be the sort of qualifications we hope for.” Robert Becker, *Clout Helps Clear Way for Judicial Candidate*, Chic. Trib., March 28, 2000.
13. Letter to the editor by Robert Loeb, Chair of the Illinois State Bar Association Criminal Justice Selection Council, rails against Illinois Circuit Court candidate Jeffrey Lester for issuing advertisements in which he claimed to have never represented a criminal defendant because “it’s more important...to be an example for his children than it is to profit from defending criminals.” According to Loeb, “This is what judicial elections have sunk to in Illinois.... The process has been infected by the disease of pandering to base, ignorant prejudices.” Loeb argues that other judicial candidates in Illinois have used questionable campaign tactics, including state Supreme Court candidate Morton Zwick, and asks, “What do these extraordinary campaign practices do to public confidence in the legal profession and in the judiciary?” Loeb concludes by calling for merit selection of state judges. Robert Loeb, *Political Excess A Natural Outcome When Judges Are Elected*, Chi. Daily L. Bull., April 4, 2000.
14. Article discusses the increasingly contentious and costly election battles for the state courts. The article reports, “Millions of dollars in campaign contributions are flowing into races for top state judgeships this year, while candidates are testing

- the limits of ethics rules that forbid them to signal how they might vote on cases.” The article discusses campaigns in Ohio, Idaho, Illinois, Michigan and Florida, among other states. According to the article, the divisiveness of judicial elections across the country is causing the courts’ image of impartiality to suffer, as judges “[find] themselves full participants in the same kind of ideological warfare that has affected other branches of government.” William Glaberson, *Fierce Campaigns Signal a New Era for State Courts*, N.Y. Times, June 5, 2000.
15. Article reports that the U.S. Chamber of Commerce is expecting to raise at least \$10 million to help the election efforts of business-friendly judges running for the state Supreme Courts of Alabama, Illinois, Michigan, Mississippi and Ohio. According to Jim Wootton, executive director of the chamber’s Institute for Legal Reform, “Business is now stepping up to the plate to respond to the new political influence of the trial lawyers in the wake of the tobacco settlement.” The article notes that stakes in Ohio are especially high “because one judgeship could determine the makeup of the court.” It is estimated that total campaign spending in Ohio could reach \$12 million. Peter H. Stone, *Jousting Over Judges*, The National Journal, June 24, 2000.
  16. Article reports that Illinois Appellate Court Judge Morton Zwick’s campaign committee received more than \$15,000 in contributions from a law firm that had a case before him at the time the donations were made. In the case, Zwick, who lost a primary election in March for a state Supreme Court seat, ruled in favor of the firm’s client, reversing a lower court. Although the gifts were legal and seemingly did not violate ethical rules, “some in the legal community say the example is, at the very least, further evidence that a closer look is needed at how judicial campaigns are financed.” Attorney Paul Kelly, who lost the case in question, said, “When a judge receives a substantial campaign contribution from an attorney who has a case pending before that judge, both the judge and the attorney should fully disclose this to all other attorneys involved in the case. And the judge should offer to disqualify himself so that his impartiality should not reasonably be questioned.” Michael Sneed et al., *Donor Had Case Before Zwick*, Chicago Sun-Times, June 26, 2000.
  17. Column reports that Illinois Supreme Court Justice Charles E. Freeman, the first African-American to serve on the court, has hired Gerald J. Austin, “a nationally prominent Democratic consultant,” to aid in his effort to win a retention election in November. Justice Freeman must win 60 percent of the vote in order to keep his seat, a figure that, according to the column, “would be a given” were it not for the fact that “last spring ... he was linked to a federal probe of the handling of judicial appointments. A Circuit Court judge appointed by Freeman is under federal indictment in connection with an alleged payoff. Freeman insists that he has done nothing wrong and that he is cooperating with federal investigators.”

- Austin “made his reputation as the Rev. Jesse L. Jackson’s campaign manager in his 1988 run for the White House.” Steve Neal, *Freeman Hires a Winner*, Chicago Sun-Times, July 7, 2000.
18. Article reports that five candidates for the Illinois Supreme Court have spent \$2.7 million in total during the first half of this year. The leader in fundraising is Judge Thomas Fitzgerald, who has received nearly \$500,000 from lawyer groups and spent \$835,733, nearly twice as much as the other candidates. Following Judge Fitzgerald is state Senator Carl Hawkinson, with \$291,404, most of which was transferred from his legislative campaign fund. Ryan Keith, *State Supreme Court Candidates Spent \$2.7 Million in Six Months*, Springfield (Ill.) State Journal-Register, August 1, 2000.
  19. Article reports that a watchdog group, the Constitution Project, will sponsor extensive voter-education efforts for the Ohio Supreme Court election because it is disturbed by the “high-profile efforts by special interests to affect the election.” Tim Kolly, of the Project, states “the only constituency for judges should be the law and the Constitution.” In addition to Ohio, the Constitution Project is launching education campaigns, consisting of newspaper ads and self-published materials, in Alabama, Illinois, and Michigan. James Bradshaw, *Watchdog Group Sets its Sights on Ohio Supreme Court Race*, Columbus (Oh.) Dispatch, September 6, 2000.
  20. Article reports that Citizens for Independent Courts, a bipartisan organization, has initiated a nation-wide effort to restore decorum to state judicial elections. In Alabama, Illinois, Michigan, Ohio, and Texas, the group has asked judicial candidates to pledge to follow the “Higher Ground Standards of Conduct.” The standards require candidates to refrain from voicing opinions on issues that might appear before them if elected, to make public the sources of campaign contributions within five days of donation, and to take responsibility for all advertisements made on their behalf. Virginia E. Sloan, executive director of the Constitution Project, which sponsors Citizens for Independent Courts, states that “We are trying to create an environment where it’s safe for candidates to say, I can’t tell you where I stand on issues that might come before me.” William Glaberson, *A Bipartisan Effort to Remove Politics from Judicial Races*, New York Times, October 23, 2000.
  21. Article reports that, on the day before Election Day, Chicago’s Prosecutor Bar Association posted on its website, [www.ipba.net/news](http://www.ipba.net/news), evaluations of Illinois’ high court judges seeking retention in 2000 based on the judges’ agreement or disagreement with the state’s position in criminal cases. Although the appraisals received little initial attention from the judges and the public, legal observers, after learning of the Association’s evaluations, worry that “they over-simplified

- judicial decision-making and appeared to be designed to intimidate judges into ruling for the state.” William Linklater, President of the Chicago Bar Association, found the evaluations disturbing because “judges are apparently being singled out for ruling in favor of the constitutional rights of individual citizens.” Terry Ekl, a criminal defense attorney and the Prosecutor Bar Association’s spokesman, stated that the evaluations were not intended to rate or intimidate judges, but to identify trends in judicial rulings. Aaron Chambers, *Prosecutors’ Bar Eyed Judicial Leanings*, Chicago Daily Law Bulletin, January 12, 2001.
22. Article ponders the absence of lawsuits challenging the apportionment of judicial districts in Illinois. Under the state constitution, Illinois is divided into five judicial districts, Cook County and four others of “substantially equal populations.” Yet currently 41% of the state population resides in District 2, more than the number of residents in Districts 4 and 5 combined. Dawn Clark Netsch, Professor of Law, emeritus at Northwestern University School of Law, asserts that although judicial districts are not subject to the requirement of “one person, one vote,” there are clear grounds for a lawsuit: “I’ve never understood why someone hasn’t filed a lawsuit in state court. [The state constitution] says ‘substantially equal,’ which would be grounds to challenge.” Chief Justice Moses Harrison contends that the disparities are not important: “we’re justices for the entire state, not just one district.” Ronald Rotunda, Professor of Law at University of Illinois, retorts, “If they don’t respond to the public, then why do we elect them?” Mark Skertic, *Uneven Judicial Districts*, Chicago Sun-Times, May 2, 2001.
  23. Article reports that the Illinois Supreme Court has rejected a proposal to have contribution limits for donations by lawyers to judicial campaigns. The proposal by the Chicago Bar Association was rejected without comment. Last year, three Supreme Court candidates spent nearly \$2.5 million in campaigning. Thomas Demetrio, former President of the Chicago Bar Association, stated that “the fact that they denied it doesn’t mean the subject is closed. The fact is . . . something has to be done.” Considering reasons for the rejection, Demetrio thought that First Amendment concerns might have prompted the ruling. Jerry Crimmins, *Court Rejects Campaign Reform Proposal*, Chicago Daily Law Bulletin, May 18, 2001.
  24. Article reports that Illinois business groups have vowed to focus on next year’s state Supreme Court race after Democrats prevailed in the 2000 race. Justices are elected to 10-year terms and after the first term, they face retention elections, which few lose. According to Edward Murnane, president of the tort-reform group, Illinois Civil Justice League, “the business community . . . realize[s] that these are not two-year terms . . . they’re really not even 10-year terms, they’re lifetime terms.” Business leaders first became interested in judicial elections after the state Supreme Court struck down Illinois’ tort reform law. Kent Redfield,

- Professor of Political Science at the University of Illinois, Springfield, predicts that spending for the three candidates in next year's race will reach \$2.5 million. Daniel Vock, *Business Leaders See Supreme Court Race as Good Investment*, Chicago Daily Law Bulletin, September 13, 2001.
25. Article reports on a panel discussion concerning judicial campaign finance in Illinois. According to Cynthia Canary, director of the Illinois Campaign for Political Reform, spending by judicial candidates increased by 132% from 1992 to 2000. Additionally, nearly 70% of voters believe that judges are influenced by campaign donations. Charging that the state judiciary is reluctant to implement changes, some panelists suggested that legislative reform might prove more fruitful. One panelist opined because "legislators don't like judges," "[l]egislators may be willing to impose rules on judicial candidates that legislators are reluctant to impose on themselves." One proposal is House Bill 1704, which would provide public funding to state Supreme Court candidates who agree to adopt certain restrictions. It would also provide increased funding to candidates with high-spending non-participating opponents. Jerry Crimmins, *Time Has Come For Judicial Campaign Reform: Panel*, Chicago Daily Law Bulletin, November 1, 2001.
26. Op-ed by Patrick Murphy, Cook County, Illinois Public Guardian and consultant to the Kosovo government on the formation of juvenile courts, denounces judicial elections. Working with legal experts in England, France, and Sweden, Murphy "asked each of them whether judges were elected in their country. They looked horrified and said judges were appointed, normally by institutions connected to their highest courts." Noting the role that Chicago ward committeemen play in selecting judicial candidates (See Court Pester, November 29), he states, "If ward committeemen selected the heads of surgery at our major hospitals, we most certainly would get substandard work. Unfortunately, that is too often what we presently get from some judges." He then proposes that Illinois adopt the following model of judicial selection: Supreme Court justices still face popular election. Lower-court judges, however, are first nominated by a body composed of five individuals selected by the governor and five chosen by the legislature, and then confirmed by the Supreme Court. The judges then face retention elections in which they must garner 60% of the vote to keep their seats. Patrick Murphy, *Elections of Judges Leads to Injustice*, Chicago Sun-Times, December 3, 2001.
27. Article announces a new initiative in Cook County, Illinois designed to help judicial candidates run more ethical campaigns. The county's Judicial Advisory Council's Task Force for Illinois Judicial Elections has established a telephone hotline where volunteers will advise candidates on ethical dilemmas that may arise during campaigns. The task force will also make available educational materials through bar association websites. William Quinlan, chair of both the



- Council and the Task Force, explains that the reforms were spurred by last year's primary election, in which a candidate sponsored a number of misleading, negative ads. (See Court Pester, March 11, 2000.) Quinlan notes that outcry by bar associations and the media effectively countered the ads' influence, leading to the candidate's defeat. John Rooney, *As Candidates File, Task Force Urges Ethical Election Races*, Chicago Daily Law Bulletin, December 10, 2001.
28. Editorial argues that a television advertisement by an Illinois Supreme Court candidate demonstrates the folly of judicial elections. Judge Robert Steigmann (R.) has run advertisements showing the mascot of the University of Illinois, "Chief Illiniwek," dancing around a basketball court. In turn, the University has ordered the judge not to use their trademarked symbol but Steigmann has refused. The advertisement does not mention Judge Steigmann's fitness for a Justiceship, but the judge proclaims, "It's doing exactly what I wanted it to. Part of my goal there was to get some buzz." The editorial concedes that "that kind of attention is more than most judicial candidates could hope for." It laments that restrictions on judicial speech offer little alternative to candidates seeking to attract the attention of voters: "nobody pays attention . . . because the judicial candidates are forced to act as though they have no opinions on any of the critical issues they will face on the bench." The editorial concludes that merit selection offers the best solution: "Elections have given political bosses too much influence over the judiciary and left everyone else to resort to stunts like deploying Chief Illiniwek." *Hail to the...Judge*, Chicago Tribune, January 9, 2002.
29. Article reports that Illinois Supreme Court candidate Robert Steigmann (R.) has pulled his controversial advertisement featuring Chief Illiniwek, the mascot of the University of Illinois. (See Court Pester, January 10.) The commercial featured Chief Illiniwek dancing at a basketball game followed by a message stating Appellate Justice Steigmann's candidacy. The University charged that the advertisement ran afoul of trademark laws. Appellate Justice Steigmann, who faces sitting Supreme Court Justice Rita Garman as his primary opponent, states: "Because of the truly extraordinary media coverage given to my Chief Illiniwek commercial, I have concluded that this commercial has served its purpose and need not be further run." He explains that the controversy achieved his goals of publicizing his name and drawing attention to the race. Planning now to air advertisements mentioning endorsements and previous achievements, Justice Steigmann adds, "I just hope the media will cover those other issues as extensively." Daniel Vock, *Steigmann Yanks Controversial TV Spot*, Chicago Daily Law Bulletin, January 11, 2002.
30. Article reports: "a heated downstate contest for the Illinois Supreme Court and a case before the nation's highest court have renewed debate over the limits on political speech for judicial candidates in Illinois." Challenging incumbent Justice

- Rita Garman in the Republican primary, Judge Robert Steigmann has issued position papers calling for a state law to allow citizens to carry concealed weapons. Justice Garman has charged that the papers violate the state's judicial canon preventing candidates from making statements that "commit or appear to commit" the candidate to particular decisions in cases. The U.S. Supreme Court is considering a challenge to the constitutionality of Minnesota's restrictions on judicial speech. Steven Lubet, Professor of Law at Northwestern University, states that "[t]he constitutional law is as uncertain as it's ever been" and that Illinois' current rules on judicial speech permit statements such as those of Judge Steigmann. James Bopp, who is arguing against Minnesota's codes, asserts that without freer speech, voters are forced to elect judges based on little more than "name, rank, and serial number." Daniel Vock, *Candidates Duel over Canons on Loose Cannons*, Chicago Daily Law Bulletin, January 21, 2002.
31. Illinois legislators are considering proposals for public financing of Supreme Court elections. A recent study found that in the past decade, the cost of an average general election campaign increased by 37% and primary spending by 132%, after controlling for inflation. A bill in the House and another in the Senate propose creating a "Democracy Trust Fund," drawn from voluntary income tax checkoffs, to fund candidates who agree to contribution limits. The Senate bill would allow a candidate to receive \$750,000 for use in both the primary and the general elections. In return, candidates would first have to demonstrate viability by collecting 500 contributions between \$5 and \$25 during a qualifying period, agree not to spend more than \$10,000 of their personal funds, and agree not to accept certain types of contributions. Michael Bologna, *Illinois State Lawmakers to Debate Providing Public Funding for Judicial Campaigns*, Money and Politics, January 31, 2002.
  32. Article reports that "the increasingly nasty, money-drenched races for state judgeships that take place in 38 states, including Illinois, . . . [has spurred] the creation of Justice At Stake, a coalition whose stated aim is to clean up judicial campaigns." Last week, the Justice At Stake Campaign released two surveys detailing a widespread lack of public confidence in the impartiality of elected judges, due in large part to candidates raising large sums from interests likely to appear before them in court. (See Court Pester, February 14.) Commenting on the amount of money spent in recent Illinois court races, Cynthia Canary, director of the Illinois Campaign for Political Reform, charges: "All these elections have really tarnished the system. Each election has knocked it down another peg." Naftali Bendavid, *Reform Judicial Races, Critics Urge*, Chicago Tribune, February 19, 2002.
  33. Article discusses the upcoming Supreme Court case on candidate speech restrictions in judicial elections, Republican Party of Minnesota v. Kelly.

- Minnesota Supreme Court candidate Gregory Wersal alleges that the state's provision banning candidates from offering statements on "disputed legal or political issues" violates the First Amendment and denies voters the knowledge they need to make an informed choice at the voting booth. Others worry that freer speech for candidates would further contribute to the politicization of judicial elections. A Justice at Stake survey reports that over half of state judges believe the tenor of court races has declined over the past five years. In addition, citing the amicus brief of the Brennan Center for Justice, the article notes that looser speech codes may "interact dangerously with the increasing role of money in judicial elections." A recent report by the Brennan Center, the National Institute on Money in Politics, and Justice at Stake, found that "a tidal wave of money" swept into the 2000 state Supreme Court elections of states such as Alabama, Illinois, Michigan, and Ohio. At the same time, the Justice at Stake survey found that over a quarter of the judges believe that campaign contributions have too great an influence on judicial decisions. Robert S. Greenberger, *Supreme Court to Decide on Judicial Candidates' Speech*, Wall Street Journal, March 12, 2002.
34. Article reports that the Cook County Democratic Party of Illinois suffered its worst defeat since 1992 because it "slated too many men for judgeships." The party has won 80% of its races over the past decade. This year, though, it lost six of nine contested races because, according to the article, party elders ignored the tendency of Chicago voters to support Irish-American candidates, especially Irish-American women. For example, the author asserts that public defender Kerry Kennedy "may have survived the male slaughter because voters believed he was a woman." Likewise, James Fitzgerald Smith, "a not-so-well-rated judge" who changed his middle name to run for judicial office, prevailed over "the better rated Roger Fein, the Democratic Party's slated candidate" who enjoyed an endorsement from Mayor Richard Daley because Fein was "saddled with a Jewish name that did not play as well at the polls." According to the article, party officials are now concerned about whether they can continue to ask endorsed candidates to contribute \$15,000 in return for help with poll drives. (See Court Pester, November 27.) Abdon Pallasch, *Woman's Place Is On Bench*, Chicago Sun-Times, March 25, 2002.
35. Article reports on reactions in Illinois to the U.S. Supreme Court's decision striking down Minnesota's canon restricting judicial speech. The decision is likely to jeopardize Illinois's canon, according to legal experts. James Alfini, a law professor at Northern Illinois University, said, "The problem is, you would think the Supreme Court of the United States would be particularly sensitive to the need to uphold integrity and independence in the judiciary, but they have shown insensitivity at least in giving [lower courts] guidance." Daniel C. Vock, *Campaign-Speech Ruling To Be Felt in Illinois: Observers*, Chicago Daily Law Bulletin, June 28, 2002.

36. Editorial praises the U.S. Supreme Court's decision striking down Minnesota's canon restricting judicial speech. The "threat to judicial impartiality doesn't come from communication between judicial candidates and voters - it stems from the custom of electing judges," because "gagging judges doesn't prevent them from pandering to public opinion, since they can tailor their verdicts to suit the prevailing sentiment." Therefore, "merit selection is the only plausible way" to ensure independence and impartiality." *Politics and the Job of a Judge*, Chicago Tribune, July 9, 2002.
37. Article reports that Illinois Appellate Justice Sue E. Myerscough (D.) "has the early financial advantage in her bid to unseat" Illinois Supreme Court Justice Rita B. Garman (R.). Justice Garman spent \$330,000 winning a primary contest against Appellate Justice Robert J. Steigmann and now has only \$12,000 on hand, compared to Justice Myerscough's \$152,000. The article notes that both candidates "relied heavily on contributions from people in their own communities." Attorney and former Illinois Trial Lawyers Association president David Dorris, who donated \$6,250 to Justice Myerscough (as did his wife), said that his first consideration was that he was "100 percent certain" that the contribution would not affect her decisions. U.S. House of Representatives speaker J. Dennis Hastert (R., Ill.) gave \$15,000 to Justice Garman, who noted that the two attended high school together. Daniel C. Vock, *Dem Has the Cash in High Court Race*, Chicago Daily Law Bulletin, August 1, 2002.
38. Article discusses "a crisis of credibility ... gripping many of the thirty-nine states that elect appellate judges" as judges contend with a "flood of money ... driven by a fierce battle over judicial philosophy that has pitted trial lawyers, consumer advocates and unions against corporations, their attorneys and their trade associations." "In recent years, the single greatest wild card in judicial races has been the influx of anonymous spending beyond the direct control of candidates," usually in the form of "issue advertising" which "insulates donors from disclosure, allowing for nastier, more underhanded tactics." One major player, the U.S. Chamber of Commerce, plans to spend "as much as \$25 million in undisclosed contributions" in 2002. The result of such spending is likely to be "costly and bitter elections in states like Texas, Ohio, Michigan, Florida, Louisiana, Illinois, Mississippi, Alabama and Idaho, where the voters' decisions could alter the courts' ideological makeup." Georgetown University law professor Roy Schotland said that contribution limits and independent expenditure disclosure requirements, if narrowly tailored for judicial elections, "could pass constitutional muster." Michael Scherer, *State Judges for Sale*, The Nation, September 2, 2002.

39. Column considers the findings of a new poll commissioned by the nonpartisan Illinois Campaign for Political Reform, which provide further evidence that there is growing momentum for public financing of judicial elections. According to the poll, more than 85 percent of Illinois voters are concerned that political contributions influence the decisions of judges. Nearly 62 percent said that they would support a voluntary system of public financing and 70 percent favor nonpartisan judicial elections. The columnist welcomes these findings: “Our current system of electing judges is broken. Isn’t it time to balance the scales of justice?” Steve Neal, *State Needs Fairer Way to Pick Judges*, Chicago Sun-Times, September 4, 2002.
40. Article reports that it is becoming standard practice for attorneys to dole out campaign money to sitting judges. For example, lawyers contributed more than \$60,000 to Appellate Court Justice Melissa Chapman of Edwardsville, IL to remain on the bench. Her challenger, lawyer John Long, has managed to raise one-tenth as much, with very little coming from lawyers. With lawyers digging into their pockets, political reformers are increasingly concerned about the public’s perception. “These races are extraordinarily expensive,” said Chapman. “It has to come from somewhere.” A recent survey by the Illinois Campaign for Political Reform found that more than 85% of respondents believe campaign contributions influence the decisions of judges. Kevin McDermott, *Lawyers’ Give Big to Judges’ Campaigns*, St. Louis Post Dispatch, September 9, 2002.
41. Article reports that “after publicly vowing earlier this year to raise and spend more than \$30 million to help elect business-friendly candidates and push legal reform in the 2002 elections, the U.S. Chamber of Commerce has become more tight-lipped about the effort.” Although the Chamber’s Institute for Legal Reform has declined to comment “on how much was being spent on advertising and get-out-the-vote operations in judicial and attorney general races around the country,” several sources say “that a joint fundraising drive by the Chamber and the Business Roundtable has raised about \$20 million so far.” That money “is being spent to bolster Supreme Court and attorney general candidates in Delaware, Florida, Illinois, Michigan, Mississippi, and Texas.” Judicial candidates in Ohio and Wisconsin “may also get some help.” Peter H. Stone and Louis Jacobson, *Chamber Is Coy on Campaign Effort*, National Journal, October 12, 2002.
42. Article reports that “more and more state medical societies are getting involved in” state Supreme Court races. Tim Maglione, the Ohio State Medical Association’s senior director for government relations, said, “It’s important for physicians to know that courts are equally as important as the governor’s office or the legislative branch.... The court’s decisions have an effect not only on the practice of medicine, but property taxes we pay and other issues.” In recent years, “doctors in Illinois, Michigan, Ohio, Pennsylvania and Washington have stepped

- up their efforts to promote judicial candidates,” often in response to the issue of tort reform. Troy Alexander, the director of TEXPAC, the Texas Medical Association’s political action committee, said that doctors “were getting killed in the courtrooms.” In Texas, “doctors hand out 1.5 million bright red ‘vote smart’ slate cards that contain the names of judges” endorsed by doctors. Tanya Albert, *Reorder in the Court: Which Judges Will Serve Medicine Best?*, American Medical News, November 4, 2002.
43. Article reports that three circuit judges in Madison County, Ill., seeking retention in next month’s election “have begun running a television commercial” in order to “respond to attacks by interest groups.” The commercial is expected to take “a large chunk of the nearly \$155,000” raised by judges Edward Ferguson, Nicholas Byron, and Phillip Kardis. Various interest groups, “which get funding from manufacturers and corporations, have been critical of the number of class-action lawsuits filed in Madison County, as well as the amount of money that attorneys have given to the judges’ campaigns.” The commercial shows the judges in courtroom scenes and touts their experience and the endorsements they have received. Judge Ferguson said the level of fund-raising necessary for judicial elections this year “might be a sign of things to come in Madison County.” Brian Brueggemann, *Three Madison County Judges Take to Airwaves to Campaign for Retention*, Belleville (Ill.) News-Democrat, October 28, 2002.
44. Column argues that the success of Cook County (Ill.) Circuit Judge James Ryan in retaining his seat “makes the point that merit selection would be an improvement over an electoral process in which voters, for whatever reason, often don’t do their homework when it comes to electing or retaining judges.” In part because of news accounts about Judge Ryan denying a woman permission to use the bathroom until she soiled herself, upholding a speeding ticket issued to a woman en route to a hospital to give birth, and telling two children that they would go to hell if they lied in their testimony, “newspapers and several lawyers groups said he lacked the appropriate temperament to serve as a judge.” Voters have a hard time getting “worked up about judges,” partly because of the sheer volume of judges elected each cycle, and partly because “candidates higher up on the ticket have already barraged the electorate with so much information that the noise is deafening.” Dawn Turner Trice, *Time for a Change in Way Judges Get, Keep Jobs*, Chicago Tribune, November 8, 2002.
45. Article reports on a campaign by the American Tort Reform Association, “a lobbying group supported by businesses and defense attorneys,” to “highlight[] allegedly horrific abuses of the [Jefferson County, Miss.] legal system.” Their campaign “employed a political tactic long used by trial lawyers: Win the hearts of the public, and you’ll win the hearts of juries.” Corporations are seeking “new arenas” for tort reform since they have been “frustrated in their efforts to secure

- broad legal protection from Congress.” In judicial elections, “business racked up judicial wins in Mississippi” in 2002, where “pro-business candidates tallied \$1.6 million in campaign donations.” Also in 2002, the U.S. Chamber of Commerce spent “an estimated \$10 million to elect judges in Alabama, Illinois, Ohio, and elsewhere,” the article reports. Lorraine Woellert, *Tort Reform: A Little Here, a Little There...*, Business Week, January 20, 2003.
46. Article reports that the Illinois Senate will vote on a bill providing public financing for Illinois Supreme court campaigns. The bill, which “would let taxpayers check a box on their state tax forms to donate to the campaign fund,” was passed unanimously by the Executive Committee. Candidates would not be required to take part in the plan, but they “would be eligible to receive up to \$750,000 in public funding and, if they accept the money, could not take political donations from anyone else.” Testifying in favor of the bill, American Bar Association president Alfred Carlton said, “The American public is beginning to equate judicial decision-making with judicial campaign finance, eroding public trust and confidence in the judiciary.” Kristy Hessman, *Senate Committee OKs Public Funding of Supreme Court Campaigns*, Daily Herald (Arlington Heights, Ill.), March 5, 2003.
47. Article reports that a bill currently being considered by the Illinois legislature would subdivide certain circuit court districts into subcircuits. “This would guarantee that you don’t have a particular region or area that dominates the whole district,” said state Sen. Frank Watson (R.). Judges must reside in the subcircuit in which they were elected, but would take cases from across the circuit. Watson added, “If you have an area that has a minority population this gives them the opportunity to elect a minority judge.... You want to be judged by your peers, and that’s what we are attempting to do.” If enacted, the change would go into effect for the next judicial election, in 2006. Jennifer A. Bowen, *Bill Overhauls How Judges Are Elected*, Belleville (Ill.) News-Democrat, April 1, 2003.
48. Editorial argues that “given the sleazy standards that govern judicial elections in Illinois, the news that a judge received nearly \$10,000 in political contributions from a law firm and then ruled in the firm’s favor should be filed under ‘B’ for business as usual.” However, the Korein Tillery law firm received a “mind-boggling” return on its contributions to Madison County Circuit Judge Nicholas Byron, standing “to share in a \$1.8 billion bonanza in legal fees” in a class-action lawsuit against Philip Morris USA. “Three out of every four dollars spent on judicial elections in Madison County are contributed by personal-injury lawyers. That’s a big reason for the county’s richly deserved reputation as a plaintiff’s paradise,” the editorial concludes. *18 Million Percent*, St. Louis Post-Dispatch, April 13, 2003.

49. Article reports that “the campaign for this year’s only open Illinois Supreme Court seat is on track to set a record in political fund raising, with lawyers and business groups throughout the state viewing the race as a showdown” over tort reform. In the last six months of last year, the candidates, Circuit Judge Lloyd Karmeier (R.) and Appellate Justice Gordon Maag (D.), raised “a combined total of just under \$200,000” in preparation for this fall’s election, slightly ahead of what had been raised at a comparable point before the 2002 election. “Maag’s \$117,760 take in the six-month period has come almost entirely from lawyers, while Karmeier’s \$80,375 was raised largely through the state’s major medical and business groups.” Neither candidate faces an opponent in the March primaries. Kevin McDermott, *Tort Reform Is Key Issue in Race*, St. Louis Post-Dispatch, February 2, 2004.
50. Article reports on the race to fill a seat on the Illinois Supreme Court. Candidate Lloyd Karmeier (R.) found himself “reluctantly draft by business consortiums, including the Illinois Civil Justice League and the U.S. Chamber of Commerce, in their national battle to reform the practice of class-action lawsuits by influencing key judicial races.” Edward Murnane, president of the Civil Justice League, predicted that \$3 million could be raised to support Judge Karmeier. However, Judge Karmeier said, “It’s an unfortunate change in circumstances when we are trying to look for an independent judiciary, and people seem to think they have to find a certain person to align themselves with or to be aligned with them.” His opponent, Judge Gordon Maag (D.), said that Chamber of Commerce officials “don’t care about truth. They don’t care about integrity. They only care about trying to spend a lot of big corporate money to buy a Supreme Court seat.” Michael J. Berens, *Business Running in Judicial Contest*, Chicago Tribune, March 8, 2004.