BRENNAN CENTER FOR JUSTICE

The Politics of Judicial Elections, 2019–20

Why Special Interests Are Spending More Than Ever on State High Court Races

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Introduction

In 2019–20, state supreme court elections attracted more money — including more spending by special interests — than any judicial election cycle in history, posing a serious threat to the appearance and reality of justice across the country.

Thirty-eight states use elections to choose the justices who sit on their highest courts, which typically have the final word in interpreting state law. Over the past two decades, the Brennan Center has tracked and documented more than $500 million in spending in these races.[1] Our analysis finds that the 2019–20 election cycle was the most expensive ever (adjusted for inflation). In fact, no other cycle comes close to the nearly $100 million that big donors and interest groups spent to influence the composition of state supreme courts in 2019–20.

This unparalleled spending speaks to the power and influence of state supreme courts, which often fly below the public's radar. While voters were at the polls on Election Day in 2020, for example, the Missouri Supreme Court announced that it would not hear Johnson & Johnson's appeal of a $2 billion verdict against it in a products liability suit.[2] Massive stakes like these, for both business interests and trial lawyers, are what fueled some of the first high-cost judicial races two decades ago.[3]

The current political moment only heightens the stakes. In 2020 alone, state supreme courts ruled on everything from ballot access and challenges to election results to governors' emergency orders concerning the Covid-19 pandemic. Looking ahead, state courts are playing a crucial role in the ongoing redistricting cycle, including resolving disputes about racial discrimination and partisan gerrymandering and even drawing electoral maps in some states.

The 2019–20 election cycle, however, was less an aberration than an escalation.[4] A newly enlarged conservative majority on the U.S. Supreme Court, for example, only makes it more likely that state courts and state constitutions will be a focal point as an alternative venue for protecting rights and resolving high-profile disputes. Going forward, more people and more interest groups — many with deep pockets — will almost certainly be paying close attention to who sits on these courts and how they reach the bench.

Key Findings

- **State and national spending set new records.** This cycle set an overall national spending record of $97 million, 17 percent higher than the previous record set in 2004 (adjusted for inflation). It also nearly doubled the record for spending in a retention election, in which a sitting justice stands for an up-or-down vote rather than face an opponent, with a $9.9 million election in Illinois. State spending also hit new highs. North Carolina saw its most expensive state supreme court race ever, as did Wisconsin in 2019 — before breaking that record again in 2020.

- **Outside special interests spent more than ever.** Interest groups set another record this cycle, spending an estimated $35 million on ads and other election activities, independent of any amounts they contributed to the candidates themselves. This peak surpassed the previous high-water mark set in 2015–16 and more than doubled interest group spending in every prior cycle. Interest groups accounted for 36 percent of all spending in 2019–20 and spent more money than the candidates themselves in Michigan and Wisconsin. Interest groups on the left came closer than they have in previous cycles to matching those on the right, spending $14.9 million compared to $18.9 million by conservative groups.

- **The biggest spenders included both long-time players and newcomers.** As in other recent cycles, the Judicial Fairness Initiative (JFI) of the Republican State Leadership Committee (RSLC) was active in the most races, spending $5.2 million across five states. At least $1 million of the RSLC's budget came from the Judicial Confirmation Network (also known as the Judicial Crisis Network), the dark money group that also spent millions to put Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett on the U.S. Supreme Court and that has perennially been one of the biggest spenders in state supreme court elections.[5] But new groups entered the fray as well: in Illinois, two in-state billionaires funded $5.9 million in spending by Citizens for Judicial Fairness (CJF), and in Texas, in-state business interests, many from the oil industry, fueled $4.5 million of spending by the newly formed Judicial Fairness PAC.

At a moment when our democracy is being tested, it is crucial to ask whether modern judicial elections leave state supreme courts equipped to play their vital constitutional role. Courts will need the public's trust to effectively counter antidemocratic forces, yet this uptick in spending gives the public little reason to trust that courts are independent of big donors, or any different than the political branches of government. Indeed, research suggests that election spending influences judicial decision-making — and specifically, that judges up for reelection are more likely to rule in favor of their donors and supportive political parties.[6]

States have a wide range of tools to mitigate the harms documented in this report, including eliminating supreme court elections or limiting justices to a lengthy single term in office, providing judicial candidates with public financing, strengthening disclosure rules, and adopting recusal and ethics reforms. The 2019–20 cycle underscores that the challenges posed by modern supreme court elections are not going away — and that the need for action is urgent.

Spending Analysis

In 2019–20, 35 states held elections for 76 seats on their highest courts. These elections, which amounted to nearly one in every four state high court seats in the country, included retention elections as well as more familiar contested elections, in which multiple candidates can compete and may or may not appear on the ballot with a party affiliation, depending on the state's law.[7] In all, states held 27 retention elections and 16 partisan elections (including one uncontested race) and filled 33 seats via nonpartisan elections (including 10 that were uncontested).

The number of contests was on par with prior cycles, but the spending was far from it.[8] In all, the Brennan Center documented $97 million in spending across 21 states during the 2019–20 state supreme court election cycle, shattering previous records. (We documented no spending in 14 states that held elections.) Even adjusting for inflation, spending was 17 percent higher than the prior all-time spending record set during the 2003–04 cycle. That cycle still holds the record for the most expensive judicial election for a single seat ($20 million in Illinois) and included the infamous West Virginia election that led the U.S. Supreme Court to declare in its *Caperton v. A.T. Massey Coal Co.* decision that judicial campaign spending by parties appearing before a court can at times be so substantial as to undermine constitutional guarantees of due process.[9]

Our analysis breaks spending down into three primary categories: candidate fundraising, interest group spending, and political party spending. Candidates raised $62.6 million, surpassing all prior cycles in terms of raw dollars, and surpassed only by 2003–04 after adjusting for inflation. This total includes $1 million in public financing in New Mexico, where all four candidates voluntarily participated in the country's only active public financing program for judicial candidates. Outside interest groups spent $35.2 million, breaking the 2015–16 record (adjusted for inflation) — which itself was nearly double that of any prior cycle. Political parties spent only $111,832 directly, though as discussed below, they contributed more significant amounts directly to candidates.

TABLE 1

Estimated Spending on State Supreme Court Races, 2019–20

STATE	CANDIDATE FUNDRAISING	PUBLIC FINANCING	OUTSIDE SPENDING BY SPECIAL INTEREST GROUPS	SPENDING BY POLITICAL PARTIES	TOTAL NUMBER OF SEATS ELECTED	TOTAL SPENDING
Illinois	$12,559,369	–	$6,221,868	–	3	$18,781,238
Wisconsin*	$8,978,739	–	$9,002,028	$6,354	2	$17,987,121
Texas	$6,930,487	–	$4,500,550	–	4	$11,431,037
North Carolina	$7,056,001	–	$3,430,939	–	3	$10,486,940
Michigan	$3,923,399	–	$6,179,661	$18,949	2	$10,122,008
Ohio	$5,359,854	–	$1,399,995	$86,530	2	$6,846,379
West Virginia	$4,049,521	–	$2,625,816	–	3	$6,675,338
Louisiana*	$4,595,557	–	$1,096,549	–	3	$5,692,106
Georgia	$1,832,445	–	–	–	2	$1,832,445
Nevada	$1,759,984	–	$47,020	–	2	$1,807,004
Mississippi†	$919,964	–	$396,394	–	2	$1,316,358
Kentucky*	$1,151,027	–	–	–	2	$1,151,027
New Mexico	$83,106	$1,036,180	–	–	2	$1,119,286
Alabama	$836,598	–	–	–	2	$836,598
Arkansas	$474,929	–	$225,000	–	1	$699,929
Montana	$490,883	–	–	–	2	$490,883
Washington	$327,744	–	$15,330	–	4	$343,074
Minnesota	$258,539	–	–	–	1	$258,539
Alaska	–	–	$52,300	–	1	$52,300
Kansas	–	–	$11,000	–	1	$11,000
Oregon	$8,260	–	–	–	2	$8,260
Totals	**$61,596,407**	**$1,036,180**	**$35,204,451**	**$111,832**	**46**	**$97,948,870**

Note: This chart estimates spending on high court races, including contested and retention elections, in the 21 states in which spending was documented. Unless otherwise noted, races occurred in 2020. Candidate fundraising figures were provided by OpenSecrets and reflect available data as of July 6, 2021. Candidate fundraising includes contributions and self-financing by candidates, including loans. It excludes loan repayments of $10,000 or more and fundraising by judges who did not run for election in 2019–20. Sources for independent expenditures by political parties and interest groups include state campaign finance disclosures, broadcast television spending estimates from Kantar Media/CMAG, and Facebook spending estimates from Facebook's Ad Library. The 2019 figures in this chart are lower than the totals reported in the historical chart, because in that chart totals were adjusted for inflation to 2020 dollars to allow for historical comparison. The 2019 figures in this chart have not been converted to 2020 dollars.

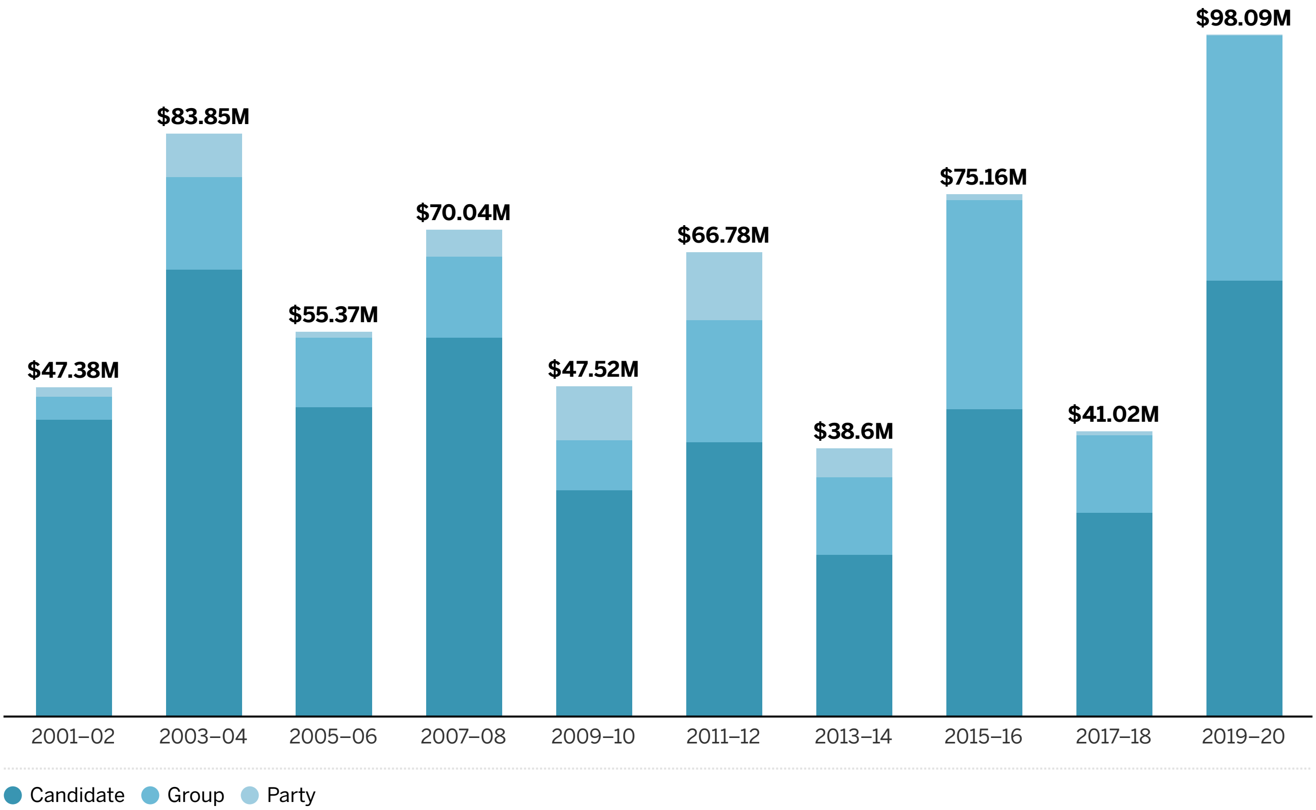
*These states held elections in both 2019 and 2020; figures for these states reflect combined spending for elections in both years.

†Our researchers identified spending for only two of the four seats for which Mississippi held elections.

FIGURE 1

State Supreme Court Election Spending by Cycle

2020 dollars



Source: Data from previous cycles drawn from earlier reports in the Politics of Judicial Elections series, as well as updated candidate fundraising and television spending estimates from OpenSecrets and Kantar Media/CMAG.

Note: All figures have been converted to 2020 dollars. Because of this inflation adjustment, totals in this graph are different than figures published in previous reports.

While we documented spending in a similar number of races as years prior, high-dollar races were more common than ever before in 2019–20. Thirteen judges were elected in races that cost more than $3 million, compared with seven in 2015–16 and six in 2017–18.[10] Wisconsin and North Carolina saw their most expensive judicial elections ever — $9.9 million and $6.2 million, respectively, for single seats. Five states had more than $10 million in total spending this cycle, whereas no prior cycle saw more than a single state pass that threshold.[11] Both nonpartisan and partisan contests attracted major spending: of the 22 races that cost more than $1 million, 12 partisan elections saw $36 million in spending, while the 10 nonpartisan contests cost $43 million.

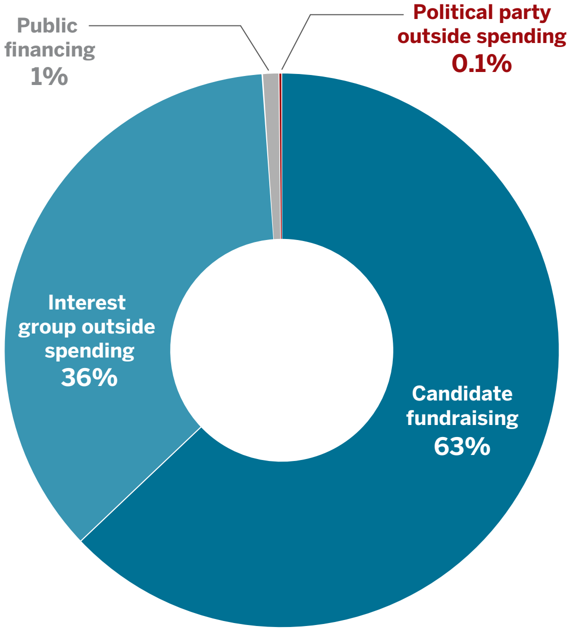
Two States Lead the Way

Why do big donors and interest groups target particular contests with record amounts of spending and contributions? Dynamics leading to a high-dollar race vary from state to state, but our research has identified several common factors that attract money to judicial elections. For example, elections often attract donors when a court's ideological or partisan majority is up for grabs, or if a court recently made a high-profile decision on a hot-button issue like reproductive rights, marriage equality, or education funding. Add in two key national trends — the 2021–22 redistricting cycle, in which some state courts will play a major role, and the newly strengthened conservative majority on the U.S. Supreme Court, which makes it more likely that progressive groups will try to avoid federal courts — and this cycle was ripe for big spending.

Together, spending in just two states — Illinois and Wisconsin — accounted for more than a third of all spending in 2019–20 and illustrates many of these factors.

FIGURE 2

Spending Breakdown for 2019–20 Supreme Court Races



For data sources, see note in table 1.

Illinois set a record for the most expensive retention election in history at nearly $10 million. Often, retention elections are quiet affairs in which candidates spend little money and easily win another term in office. But recently, opportunities to flip a particular court's ideological majority by removing one or several judges have attracted costly anti-retention campaigns. That was the situation in Illinois, where Republicans and their allies saw an opportunity to end Democrats' 4–3 majority on the Illinois Supreme Court by defeating Justice Thomas Kilbride in his swing district. Citizens for Judicial Fairness, founded just two months before the election, spent $4.3 million to defeat Kilbride (who won only 56.5 percent of the 60 percent needed to keep his seat). Per state law, the remaining justices selected a temporary replacement, and Republicans will have a chance to win the majority in a competitive election to permanently fill the seat in 2022.

Illinois Republican leaders cited anticipated court decisions about pension reform and redistricting as the prizes for winning a majority on the court.[12] The Illinois Supreme Court has a history of wading into the long-running fight over the state's pension system: in 2015, the court struck down a pension reform plan as violating the state constitution.[13] CJF was funded almost entirely by two in-state billionaires — Dick Uihlein, a national GOP megadonor, and Ken Griffin, the wealthiest person in Illinois. Griffin has long pushed for reducing the state's pension obligations to advance his goal of lowering state taxes,[14] and days after the election, CJF's chair wrote in the *Chicago Tribune* that the state's pension plan is "out of control" and that "to stop the bleeding, we have to go to the state high court again, arguing that . . . the justices must relent."[15]

However, although the anti-retention campaign succeeded, Illinois Democrats moved quickly to regain their advantage on the court. Just a few months after Kilbride's defeat, legislators redrew the supreme court's districts for the first time in 60 years. The new map includes three heavily Democratic districts and a fourth, which will be up for election in 2022, that voted for President Joe Biden by 13 percentage points.[16] This epilogue exemplifies how today's fights for control over state supreme courts are also playing out in state houses across the country, where legislators are passing laws to give their allies an advantage in state courts.[17]

Wisconsin, meanwhile, broke state spending records in 2019 and again in 2020. Since 2008, when conservatives won a majority, the state has consistently seen some of the most expensive state supreme court races in the country. In particular, the races have been characterized by spending by opaque interest groups that can account for half of all spending in a given race, as they did in 2019 and 2020. After the 2019 election, the RSLC released a statement touting its "full-scale, micro-targeted voter education project of $1.3 million over the last week of the campaign to turn out low propensity, conservative voters and persuade undecided swing voters, which helped carry conservative Judge Brian Hagedorn to victory."[18]

With the possibility that progressives could reclaim a majority on Wisconsin's court by winning in 2019 and 2020, the urgency of the impending redistricting cycle added fuel to the spending fire. Outside interest groups on the left and right, including the RSLC, called attention to the role the court would likely play in redistricting litigation. Eric Holder's National Democratic Redistricting Committee publicly stated that judicial races are central to its efforts to influence the redistricting process and contributed $500,000 to groups spending to support the progressive candidate in the state's 2019 and 2020 supreme court races.[19] Holder himself even went to Wisconsin in 2019 to campaign for Judge Lisa Neubauer.[20] Ultimately, conservatives' preferred candidate won in 2019, while a progressive candidate won in 2020, setting up another costly fight for the majority in the 2023 election.

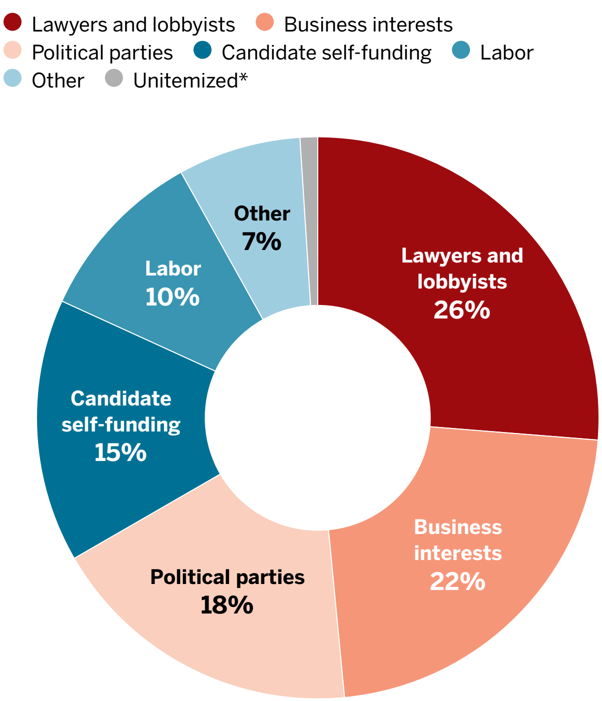
Candidate Fundraising

In the 2019–20 cycle, candidates raised $62.6 million, the most ever in raw dollars and second only to the 2003–04 cycle after adjusting for inflation. Nineteen candidates raised more than $1 million — more than double the number who raised that much in either of the two most recent election cycles. Clear party affiliation appears to enhance candidates' fundraising: 14 of the 19 million-dollar fundraisers ran in a partisan general election or reached the ballot through a partisan nomination process, 7 Democrats and 7 Republicans.[21]

As in prior cycles, lawyers and business interests likely to come before a state's high court accounted for a majority of contributions to candidates. These contributions highlight a central tension of judicial elections: often, only those with an acute personal or financial interest in state court decisions pay close attention to these under-the-radar races. These individuals and interest groups tend to be sophisticated political spenders who can navigate contribution limits in ways that create the potential for conflicts of interest rather than the accountability that elections are intended to provide. Louisiana, for example, is the only state where lawyers alone contributed more than half the money candidates received, and much of that came from law firms involved in long-running disputes between coastal parishes and oil companies accused of damaging the coastline. One such firm contributed $107,000 to candidates in Louisiana's 2020 supreme court contests, including donations from firm partners and their spouses, despite state law limiting the law firm itself to a $5,000 contribution.

FIGURE 3

Contributions to Candidates by Sector, 2019–20



Source: Data from OpenSecrets as of July 6, 2021.

Note: Itemized contributions for which researchers were unable to identify a donor's occupation accounted for 33 percent of all contributions to candidates; they are excluded here. This analysis is different from some previous cycles for which, because the share of uncategorized contributions was smaller, we included uncategorized contributions in our analysis. Rounded to nearest percentage point.

*Unitemized contributions are small ones for which states do not require disclosure of donor information.

Candidate Diversity

The pool of candidates in the 2019–20 cycle also failed to reflect the diversity of the public they were running to serve. The Brennan Center has previously documented the stark lack of diversity on many state supreme courts — only 17 percent of justices are people of color, and 22 state supreme courts are entirely white.[22]

In 2020, just 14 out of 106 candidates running for contestable seats identified as people of color (13 percent), and those candidates won 5 of the 49 seats (10 percent).[23] Each of the five winning candidates was either an incumbent or won the seat of a retiring justice of color, such that no court gained a justice of color via election. Six states with all-white supreme courts held elections this cycle, and none had a candidate of color on the general election ballot (including Alabama, Michigan, and Nevada, where people of color make up more than a quarter of the population). And the first Black woman to serve as chief justice of the North Carolina Supreme Court lost her reelection bid to a challenge from a fellow justice.

Although the small number of candidates of color makes it difficult to identify patterns in the data, a prior Brennan Center analysis of supreme court elections from 2000 to 2016 found that state supreme court elections have rarely been paths to the bench for candidates of color. Among other dynamics, candidates of color face disparities in fundraising and a greater likelihood of being challenged as an incumbent — both factors likely contributing to small candidate pools.[24]

Political Parties

In the 2019–20 cycle, political parties played a relatively small role. In addition to approximately $100,000 in direct expenditures, political parties made $7.3 million in contributions to candidates, split evenly between Democrats and Republicans. Nearly one-third of party contributions came from the Republican Party of Texas, which supported its candidates with $2.1 million. Nationally, including these contributions, parties accounted for 7.6 percent of all money spent this cycle, reflecting modest growth from the previous two cycles (6 percent in 2017–18 and 3 percent in 2015–16), but still a much smaller share than earlier cycles (13 percent in 2013–14 and 17 percent in 2011–12).

The diminished role of political parties, paired with the growth in interest group spending, likely reflects donors' preference for the less-regulated interest groups. Unlike interest groups, political parties are often subject to limits on the size of contributions they can accept and are also required to disclose at least some information about their donors. The Brennan Center has documented how, in other electoral contexts as well, less regulated groups are overtaking political parties in terms of dollars spent.[25]

Outside Special Interest Groups

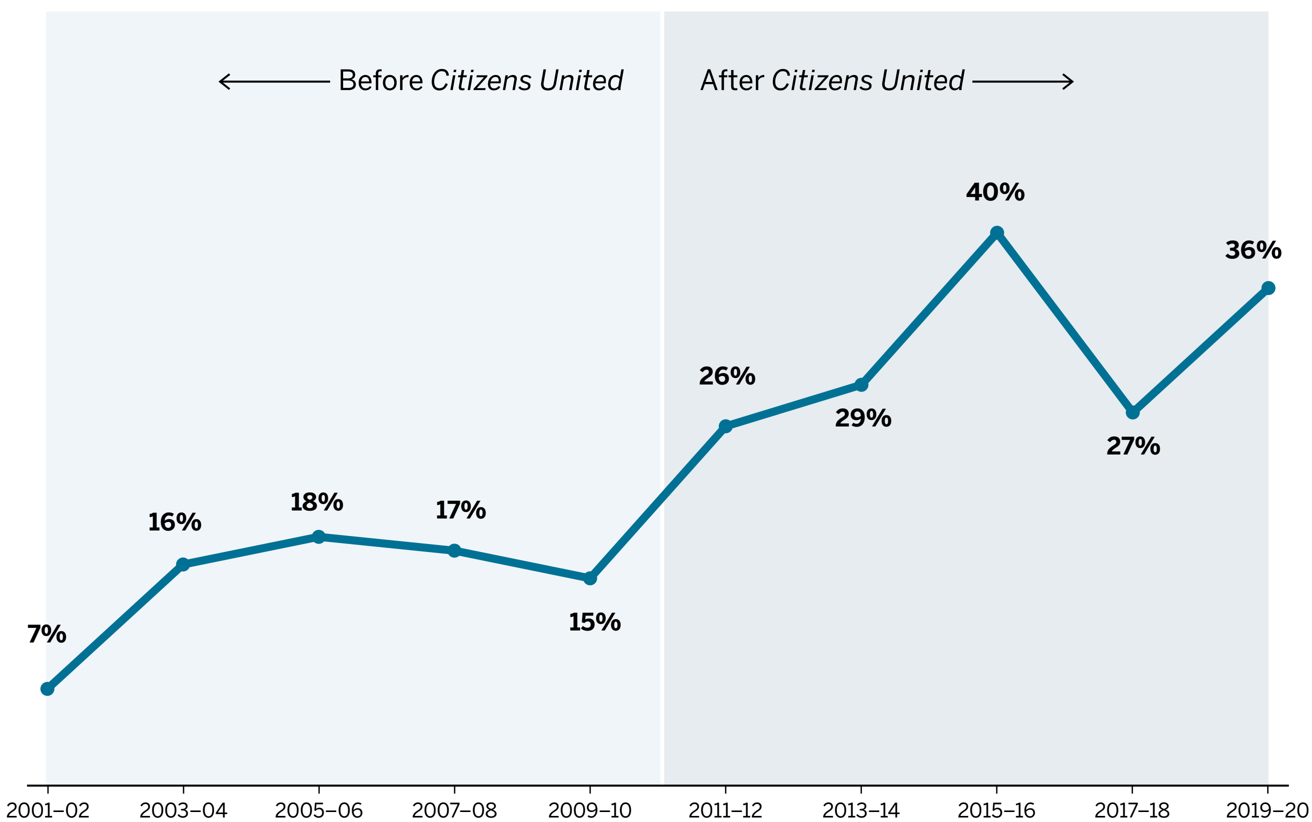
Ever since the U.S. Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission* created an environment in which interest group spending could flourish, interest groups have assumed a more prominent role in state supreme court elections. That ruling made it possible for groups to spend unlimited amounts to support candidates, so long as they do not coordinate with those candidates. Subsequent lower court decisions made it possible for the same groups to accept contributions of any size, pairing unlimited spending with unrestricted donations.[26] In the 2019–20 cycle, interest groups spent $35.2 million and accounted for 36 percent of all money spent, second only to the 40 percent share they claimed in 2015–16. Prior to *Citizens United*, interest groups never accounted for more than 19 percent of spending in a state supreme court election cycle. And, as has been the case in recent cycles, interest groups played an even larger role in targeted states: in Michigan and Wisconsin, these groups accounted for more than half of all money spent.

Consistent with recent election cycles, the RSLC's Judicial Fairness Initiative spent in the greatest number of races. A subsidiary of the RSLC, the JFI began in 2014 to elect conservatives to state judiciaries, and it has since established itself as the leading outside interest group in state judicial races.[27] While the JFI only reports contributions from its parent organization, the RSLC's IRS filings show multimillion-dollar contributions from Sheldon Adelson, the State Government Leadership Foundation (a conservative dark money group funded by Fortune 500 companies),[28] and the U.S. Chamber of Commerce.

Further examination of the RSLC's IRS filings provides some clues as to who specifically was trying to shape state court races. In 2019, for example, the Judicial Confirmation Network gave the RSLC $1 million on March 19, one day before the JFI made its first ad buy in what would be a successful $1.3 million campaign to elect Justice Brian Hagedorn in Wisconsin.[29] And in West Virginia, the nurs-

FIGURE 4

Share of Spending by Interest Groups



Note: The U.S. Supreme Court issued the decision in *Citizens United v. Federal Election Commission* on January 21, 2010, in the middle of the 2010 electoral cycle. The first full cycle with *Citizens United* in place was the 2011–12 cycle. For data sources, see note in table 1.

ing home industry gave a combined $600,000 to the RSLC three weeks before three justices were elected to West Virginia Supreme Court, which the industry has asked to overturn wrongful death judgments won by residents' families, including one appeal filed just months after their preferred candidates won seats on the state's high court.[30]

A substantial portion of the money from the left was equally hard to trace. A Better North Carolina, which supported the three Democratic candidates for the North Carolina Supreme Court, received more than half its funding from Make North Carolina First, a 501(c)4 group that has supported left-of-center candidates for the state's supreme court since at least 2016. Unlike traditional PACs, groups incorporated as "social welfare organizations" under this part of the Internal Revenue Code generally do not have to disclose information about their donors. In Michigan, the biggest donations to Justice for All, which supported the two candidates endorsed by the Democratic Party, were $700,000 from the Michigan Civic Action Fund, another 501(c)4, and $450,000 from in-state unions.

Although the three biggest spenders all supported Republican and conservative nonpartisan candidates, overall there was greater parity between conservative and progressive interest groups than in prior cycles. Groups supporting candidates on the left spent $14.9 million, compared with conservative groups' $18.9 million.

Eight Outside Special Interest Groups Spent More Than $1 Million This Cycle

- **>> Citizens for Judicial Fairness (Illinois)**
  $5.9 million
- **>> RSLC Judicial Fairness Initiative (Arkansas, Louisiana, Ohio, West Virginia, and Wisconsin)**
  $5.2 million
- **>> Judicial Fairness PAC (Texas)**
  $4.5 million
- **>> A Better North Carolina (North Carolina)**
  $3.4 million
- **>> Justice for All (Michigan)**
  $2.7 million
- **>> Greater Wisconsin Committee (Wisconsin)**
  $1.9 million
- **>> A Better Wisconsin Together (Wisconsin)**
  $1.9 million
- **>> Progress Michigan (Michigan)**
  $1.2 million

How Interest Group Spending Changes Judicial Elections

The outsize role of opaque, unaccountable interest groups is concerning in any election, but it presents unique problems in judicial elections. First, the groups enable major donors to evade contribution limits and judicial ethics rules. Although state law might prohibit a donor from giving a judicial candidate more than $2,000, the same donor can give $200,000 to an interest group they know will spend that money to support the same candidate. Making matters worse, lax state disclosure laws often enable interest groups to avoid reporting the identities of their donors, meaning that the public may never know who is spending so lavishly to influence their state's judicial races.

Even when a donor's identity is known, most states' judicial recusal rules — the rules that dictate when a judge needs to step aside from a case in which they have a conflict of interest — do not take this indirect support into account. This disconnect creates the potential that judges will hear cases involving major supporters. In Texas, for example, a Houston-based oil company called Apache gave $250,000 to Judicial Fairness PAC at the same time that justices supported by the PAC were considering Apache's appeal from a $900,000 jury verdict against it in an employment discrimination suit.[31] Prior to 2020, Apache last made a contribution to a judicial candidate more than a decade earlier, and it was only $2,500.[32] The Texas Supreme Court had declined to hear the appeal but then reconsidered its decision — a rare occurrence — and ultimately threw out the jury award, giving Apache everything it likely hoped to gain with its contribution. After the decision, a former Texas legislator said, "I'm not going to say justices are bought and paid for, . . . [b]ut the optics give plenty of people reason to think they are."[33]

Finally, interest groups change the tenor of races in ways that ultimately distort judges' decisions on the bench. Seventy-two percent of ads sponsored by interest groups during the 2019–20 cycle attacked a candidate, compared to only 8 percent of the ads that candidates paid for themselves.[34] The RSLC ran ads attacking candidates in four different states, accusing them each of being soft on crime for decisions that benefited defendants accused of violence against women and children. Attack ads like these are often misleading, conflating, for example, a judge's determination that law enforcement violated a defendant's constitutional rights with a judge being indifferent to the underlying violence.[35] Yet research suggests that these kinds of attacks ultimately impact outcomes: election pressures can lead judges to issue longer sentences, make them more likely to uphold death sentences, and incline them to rule against criminal defendants.[36]

Conclusion

States adopted judicial elections during the 19th and 20th centuries as a good-government fix to a broken judicial selection process. Among reformers' goals were bringing the process of picking judges into the public view, and in doing so, shoring up public confidence in the independence of courts from governors, legislators, political parties, and deep-pocketed special interests.[37]

Today's judicial elections, for high courts at least, fail to achieve these aims. Modern judicial races are instead characterized by the substantial influence of inscrutable interest groups and big donors who appear before judges whose campaigns they discreetly fund. And we should only expect interest groups to maintain or even grow the prominent role they have claimed in judicial elections. The 2019–20 cycle saw more money than ever before, new groups getting involved, and funding from people and businesses that had not previously focused their resources on state supreme court contests.

But there are ways of selecting judges that remove or mitigate at least some political and financial influences. The Brennan Center has proposed that states move away from state supreme court elections, instead using a publicly accountable appointment system to shield the process from special interest influence.[38] States can also limit elected judges to single, lengthy terms, helping to ensure that they are not simultaneously deciding cases and seeking financial support for their reelection campaigns. States that keep electing judges as they currently do can adopt judicial ethics rules and stronger disclosure requirements to better insulate courts from the worst effects of campaign money. Public financing, meanwhile, can offer judicial candidates an option for financial support other than the lawyers and businesses appearing before them and interest groups with deep pockets.

Our democracy faces existential threats, and state courts will be a crucial line of defense. Elected judges have been and will likely continue to be called on to stand up to legislators, governors, and even presidents seeking to consolidate their power. When those moments come, courts must be equipped to be independent from political and financial interests, and the public must be able to trust that they are.

Endnotes

1 The $500 million figure includes elections that took place from 1999 through 2018. All reports in the Politics of Judicial Elections Series are available at https://www.brennancenter.org/issues/strengthen-our-courts/promote-fair-courts/money-judicial-elections.

2 "Missouri Supreme Court Rejects Johnson & Johnson's Appeal of $2.21 Billion Talc Verdict," *St. Louis Post Dispatch*, November 3, 2020, https://www.stltoday.com/business/local/missouri-supreme-court-rejects-johnson-johnson-s-appeal-of-2-12-billion-talc-verdict/article_a50e8269-b5ea-5ad2-bbe0-ff2721aa963a.html.

3 Deborah Goldberg et al., *The New Politics of Judicial Elections 2004*, Brennan Center for Justice, 2004, 24–25, https://www.brennancenter.org/sites/default/files/2019-08/Report_New_Politics_Judicial_Elections_2004.pdf.

4 While this report covers the 2019–20 cycle, the next cycle is already underway. Pennsylvania held the first state supreme court election of the 2021–22 cycle and it illustrated many of the same themes, including spending by special interest groups and misleading attack ads. Angela Couloumbis and Danielle Ohl, "Powerful Special Interests Are Pouring Millions into the 2021 Pa. Supreme Court Race," *Spotlight PA*, October 26, 2021, https://www.spotlightpa.org/news/2021/10/pa-supreme-court-election-2021-biggest-donors/.

5 Marianne Levine, "Judicial Crisis Network Launches $3 Million Ad Campaign for Barrett," *Politico*, September 26, 2020, https://www.politico.com/news/2020/09/26/judicial-crisis-network-barrett-ad-campaign-422052. For an analysis of the Judicial Crisis Network's role in the previous state supreme court election cycle, see Douglas Keith, Patrick Berry, and Eric Velasco, *The Politics of Judicial Elections, 2017–18*, Brennan Center for Justice, 2019, 10, https://www.brennancenter.org/sites/default/files/2019-12/2019_11_Politics%20of%20Judicial%20Elections_FINAL.pdf.

6 Alicia Bannon, *Choosing State Judges: A Plan for Reform*, Brennan Center for Justice, 2018, 4, https://www.brennancenter.org/sites/default/files/2019-08/Report_Choosing_State_Judges_2018.pdf.

7 For a map detailing how each state selects its high court judges, see "Judicial Selection: An Interactive Map," Brennan Center for Justice, accessed December 6, 2021, http://judicialselectionmap.brennancenter.org/?court=Supreme.

8 The 49 seats filled via non–retention elections this cycle — a presidential election cycle — compares with 52 in 1999–2000; 46 in 2003–04; 42 in 2007–08; 43 in 2011–12; and 46 in 2015–16. See Alicia Bannon, Cathleen Lisk, and Peter Hardin, *Who Pays for Judicial Races?*, Brennan Center for Justice, 2016, chapter 1, endnote 5, https://www.brennancenter.org/sites/default/files/2019-08/Report_New_Politics_of_Judicial_Elections_1516.pdf.

9 Goldberg et al., *New Politics of Judicial Elections 2004*; and Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009).

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