



Crowding the race

Partisan politics, PAC money permeate Supreme Court campaign

By Jessica Mayer



Montana Supreme Court Justice Mke Wheat felt a sense of foreboding as he pulled from his mailbox a glossy political flier showing a picture of his challenger in the upcoming judicial election.

"It alarmed me a little bit," Wheat says. "It confirmed for me that there's going to be money supporting his race."

The flyer described Wheat's challenger, Lawrence VanDyke, as "fair, honest and impartial," and was paid for by a Billings-based political action committee called Montanans for a Fair Judiciary. According to state records, the PAC is overseen by former Montana Republican Party chairman Jake Eaton. The flyer marked an early shot in what's shaping up to be the most hotly contested, expensive and partisan race for the Montana Supreme Court the state's ever seen.

The Wheat-VanDyke race is one of two for the Montana Supreme Court that will be decided on Nov. 4. As the court shapes the law, whomever is elected stands to impact all Montanans.

Wheat is a former Democratic state senator who served as a prosecutor in Butte Silver-Bow County and worked in private practice in Bozeman. In 2009, Gov. Brian Schweitzer appointed him to the bench. He ran uncontested for election in 2010. Wheat penned the majority opinion in *Public Lands v. Madison County Commission*, reinforcing a longstanding precedent that ensures public access to state waterways. He also authored the court's majority opinion in *Clark Fork Coalition v. Montana DEQ*, reversing the Montana Department of Environmental Quality's decision to allow a Canadian mining company to extract resources from its proposed Rock Creek Mine into the Clark Fork.

Decisions such as those have earned Wheat the endorsement of Montana Conservation Voters and criticism from opponents who call Wheat's track record anti-business.

Among Wheat's staunchest critics is VanDyke, a Harvard Law School graduate who for five years worked for the global law firm Gibson, Dunn & Crutcher and for 18 months as Montana Solicitor General. The Montana Chamber of Commerce endorsed VanDyke, as has the Montana Shooting Sports Association.

Marking a significant change from years past, the state's Democratic and Republican parties are also publicly supporting judicial candidates, with Wheat garnering progressive backing and VanDyke conservative endorsements. Until recently, judicial races in Montana were nonpartisan affairs. Candidates didn't express political affiliation and were legally prohibited from endorsing political parties. That began to change after the U.S. Supreme Court's ruling in *Citizens United v. Federal Elections Commission*, which declared government restrictions on independent direct corporate contributions to influence elections as unconstitutional.

The cumulative impact of *Citizens United* and subsequent decisions, including a Ninth Circuit ruling that lifted Montana's ban on political party endorsements in judicial elections, alarms a number of incumbent and retired Montana Supreme Court judges. The group, including Wheat and Rice, warns that an influx of money and politics will taint the judiciary.

Since Sept. 10, three PACs have registered their interests in the upcoming judicial elections with the Montana Commissioner of Political Practices. The first was Montanans for a Fair Judiciary, which sent the mailer to Wheat's home. The second is the Helena-based Montanans for Liberty and Justice PAC, for which Helena attorney Anita Roessmann serves as treasurer. The most recent arrival, on Oct. 2, was the Republican State Leadership Committee-Judicial Fairness Initiative Montana, which lists as treasurer Billings business owner Barry Usher and a Washington, D.C., mailing address.

As special interests line up, six retired Montana Supreme Court Justices are joining Wheat and Rice to alert voters. In a shared opinion piece issued last month, the justices note specifically the impact of the Republican State Leadership Committee on judicial elections in North Carolina, Arkansas, Alabama and Tennessee, and its work with the Koch brothers-funded Americans for Prosperity.

"These various groups and organizations are inundating non-partisan judicial elections with staggering amounts of cash to accomplish their goals and to politicize otherwise non-partisan judicial races," the justices wrote. "Unfortunately, it has been demonstrated that the amount of expenditures and contributions to judicial races correlates directly with how a benefiting justice votes on cases."

Separate from institutional support, a significant portion of VanDyke's campaign funding is coming from his former colleagues at Gibson, Dunn & Crutcher. Among the donations is one for \$320 from Virginia-based attorney Theodore Olson, who's represented the Koch brothers and sits on the Cato Institute Board of Directors. Olson also served as lead counsel in the historic *Citizens United* campaign funding lawsuit.

VanDyke lauds the Citizens United decision, arguing, as the court majority did, that limiting corporate contributions in elections constitutes an infringement on free speech.

In response to questions about whether out-of-state support indicates that he doesn't have Montanans' best interests in mind, VanDyke says his former colleagues have nothing to gain "personally" from contributing to his campaign. That marks a contrast with Wheat supporters, VanDyke says, who are largely Montana attorneys with a vested interest in future court decisions.

"Wheat has consistently put the interests of his friends at the Trial Lawyers Association ahead of both Montanans and the law," VanDyke said in an emailed response to Independent questions.

VanDyke notes further that the PACs are lining up on both sides of the bench. He says Montanans for Liberty and Justice, for example, is "attacking" him. "Coincidentally, their office is right next door to the Trial Lawyers Association, who are some of Mike Wheat's biggest supporters," he says.

Wheat has received individual contributions from the Service Employees International Union's Jacqueline Helt and Planned Parenthood Public Affairs Director Stacey Anderson. Wheat's other backers include the Montana MEA-MFT political action committee, which represents state, county and municipal staffers.