

TN Supreme Court battle brings national money, scrutiny

Brian Haas, Tennessean 2:45 p.m. EDT August 4, 2014



(Photo: Larry McCormack / THE TENNESSEAN)

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Any other year, the election to retain or replace Tennessee's Supreme Court justices would be a ho-hum affair.

Not this year.

More than \$1 million has been spent in a battle for the heart of the Tennessee Supreme Court. Three of its five members, Chief Justice Gary Wade and Justices Connie Clark and Sharon Lee, are in a pitched fight against both grassroots and out-of-state groups sinking hundreds of thousands of dollars in an effort to make the court more conservative. Among those looking to replace the justices are the Charles and David Koch-affiliated [Americans for Prosperity](#), which has been aggressive in trying to elect conservatives in local and state-level seats across the nation.

But the big push has come from Lt. Gov. Ron Ramsey, who provided the blueprint for the campaign to replace the three justices, not to mention the largest recorded campaign contribution — more than \$400,000 to the conservative Tennessee Forum, donated through his political action committee.

Ramsey declined to be interviewed for this article, saying through a spokesman that he hasn't been involved in the day-to-day campaign. He acknowledged mentioning the effort in speeches but did not say when or how often.

The unique timing of the election, the unprecedented spending in this race and the ramifications have drawn national attention to Tennessee's Aug. 7 election, as it joins a growing number of states where national, partisan groups are trying to influence judicial contests.

"This is a trend that we are seeing more and more of in retention elections in those states that have them," said Laurie Kinney, spokeswoman for [Justice at Stake](#), a nonpartisan organization that tracks spending and opposes the politicization of judicial elections. "It appears this year it's Tennessee's turn."

The three justices, having been put on the defensive, are battling back at accusations that they are too soft on crime, including death penalty cases; too liberal for Tennessee; and culpable for problems associated with the Affordable Care Act, also called Obamacare.

"The adjectives, like 'soft' or 'liberal,' aren't applicable. On issues like Obamacare, our Supreme Court has never ruled on anything to do with Obamacare. That's a federal issue," Clark said in a phone interview last week between campaign events. "It continues to be disappointing and difficult to understand why anyone would try to make the type of accusations they're making."

Lee said politics have no place in deciding who should administer justice in Tennessee.

"I think that when you have politics in the courtroom, you basically put the Constitution out," she said. "When you have politics, only the rich and powerful can prevail."

Ramsey flexes his muscles

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Only once in Tennessee's history has a Supreme Court justice been replaced. In 1996 Penny White lost out to a Republican-led effort to oust her, based on a ruling overturning a death sentence in a brutal murder case.

But Ramsey began meeting in the spring with business groups and floating the themes that would become the lynchpin of the campaign to oust the trio: liberal, soft on crime.

On Friday he put out a message urging voters to boot the justices. That same day, state election finance records show two donations from Ramsey's RAAMPAC political action committee — a July 10 donation for \$225,000 and a July 17 donation for \$200,000 — to the group leading the fight against the justices.

Ramsey early on was open about enlisting the help of national groups. His efforts may have paid off as three such groups — Americans for Prosperity, [State Government Leadership Foundation](#) and the [Republican State Leadership Committee](#) — have run ads on radio and television to oust the justices.

Lee said she was perplexed by Ramsey's push, which she described as a "power grab."

"Gov. Haslam has said, 'These attacks are dangerous,' " she said. "And they are."

In-state opposition

But the main opposition is coming from within Tennessee, courtesy of the Tennessee Forum, a Franklin-based group dedicated to electing conservative politicians. Susan Kaestner, the group's founder, attacked the justices on three fronts: They're too liberal, they're soft on crime and they helped Obamacare along.

"We believe them to be partisan and political, contrary to what their claims are," Kaestner said.

Kaestner said the trio have donated more campaign money to Democratic candidates than Republicans. Her argument that the justices are responsible for Obamacare is based on the court's appointment of Attorney General Bob Cooper.

She criticized Cooper for not joining a multistate lawsuit against Obamacare. Since Tennesseans don't elect the attorney general, she said, the only way to hold him accountable is by taking on the Supreme Court.

"I do believe that holding the Supreme Court accountable for political partisan actions of the AG, that were a pattern of behavior before he was ever brought into office, is fair," Kaestner said.

Lee, who wasn't on the court when it appointed Cooper, finds that argument puzzling.

"I was not appointed to the court until 2008," she said. "However, he is independent from the Supreme Court. We cannot and do not try to affect or to exert any influence on him. To do so would make us activist judges."

Justices fight back

The justices have fought back through personal campaign ads, joint campaign ads through a group they formed called [Keep Tennessee Courts Fair](#) and with the help of a group formed by Hendersonville attorney Clint Kelly, called Tennesseans for Fair Courts. The three have been recommended for retention by Tennessee's Judicial Performance Evaluation Commission, a nine-member state board formed to rate judges.

Ramsey himself appointed four of those commission members. Four others were appointed by House Speaker Beth Harwell, and the ninth member was a joint appointment by Ramsey and Harwell.

Clark said their decisions have shown that they aren't weak on crime.

"Statistically speaking, we have upheld 18 of the 21 capital (death penalty) cases that

have come before us," she said. "I believe we have applied the law as it was written."

She said that in those three cases, the court didn't strike down the death penalty, but sent it back to lower courts for review.

Lee said the criticism is absurd.

"They'll say we're responsible for UT's losing season and Vanderbilt's winning season," she said. "I took an oath when I was sworn into office to uphold the Constitution and follow the statutes. And I've done that."

Reach Brian Haas at 615-726-8968 and on Twitter [@brianhaas](#).

Supporting replacement

Americans for Prosperity

A conservative, Arlington, Va.,-based political organization founded by the Koch brothers, Charles and David Koch, campaigning to replace the three justices.

Republican State Leadership Committee

A Washington, D.C.-based Republican group devoted to electing conservatives to state-level positions.

State Government Leadership Foundation

A Washington-based conservative organization affiliated with the Republican State Leadership Committee campaigning to replace the three justices.

Tennesseans for Judicial Accountability

A group formed by Grant Everett Starrett, a Franklin-based conservative writer, campaigning to replace all three justices.

Tennessee Forum

A Nashville-based, conservative group formed by Susan Kaestner and Dawn Eades campaigning to replace the three justices. This group is spearheading the replace campaign, bankrolled almost entirely by Lt. Gov. Ron Ramsey's political action committee.

Supporting retention

Keep Tennessee Courts Fair

A group formed by Justices Clark, Lee and Wade.

Tennesseans for Fair Courts

A Nashville-based organization founded by [Hendersonville attorney Clint Kelly](#) campaigning to retain all three justices.



