

THE NEW POLITICS OF JUDICIAL ELECTIONS 2002

HOW THE THREAT TO FAIR AND IMPARTIAL
COURTS SPREAD TO MORE STATES IN 2002

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ABOUT THE BRENNAN CENTER FOR JUSTICE



The Brennan Center for Justice at NYU School of Law unites thinkers and advocates in pursuit of a vision of inclusive and effective democracy. Its mission is to develop and implement an innovative, nonpartisan agenda of scholarship, public education, and legal action that promotes equality and human dignity, while safeguarding fundamental freedoms. Through its Campaign Finance Reform and Fair Courts Projects, the Center has been seeking to reduce the influence of money on politics, including both judicial and non-judicial elections. Using television advertising data obtained from the Campaign Media Analysis Group, the Center's superb Research Associate Laura Moulton created a comprehensive database and produced the quantitative analyses presented in Part I of this report.

ABOUT THE INSTITUTE ON MONEY IN STATE POLITICS



The Institute on Money in State Politics has been collecting, publishing, and analyzing data on money in state legislative and gubernatorial elections for more than 12 years. The Institute has also compiled a summary of state Supreme Court contribution data from 1989 through the present and has compiled complete detailed databases of campaign contributions for all high-court judicial races beginning with the 2000 elections. The Institute on Money in State Politics has done an in-depth study of fundraising and spending in Supreme Court elections in seven states and how often money comes from attorneys or litigants who appear before the justices to whom they have contributed. The analysis of candidate fundraising and spending in Part II of this report uses data compiled by the Institute.

ABOUT THE JUSTICE AT STAKE CAMPAIGN



The Justice at Stake Campaign is a nonpartisan national partnership working to keep our courts fair and impartial. In states across America, Campaign partners work to protect our courts through public education, grass roots organizing and reform. The Campaign provides strategic coordination and brings unique organizational, communications and research resources to the work of its partners and allies at the national, state and local levels. The Campaign's Maneesh Sharma and Jesse Rutledge provided substantial research and editorial support for this report.

This report was prepared by two Justice at Stake Campaign partners, the Brennan Center for Justice and the Institute on Money in State Politics. It represents their research and viewpoints, and does not necessarily reflect those of other Justice at Stake Campaign partners or their funders. Publication of this report was supported by grants from the Carnegie Corporation, Deer Creek Foundation, Joyce Foundation, and Open Society Institute.

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The New Politics of Judicial Elections 2002

EXECUTIVE SUMMARY

Two years ago, in **THE NEW POLITICS OF JUDICIAL ELECTIONS**, we documented the growth of big money, special interest pressure, and television air wars in the election of Supreme Court justices across the country. **This report shows how the threat to fair and impartial courts is spreading to more states—and how a recent Supreme Court decision could usher in a new era of special interest influence over the courts that protect our rights.**

Eighty-six percent of America's judges must stand for election. Thirty-eight states conduct elections for their Supreme Courts (including partisan and non-partisan ballots, along with uncontested "retention elections" featuring up-or-down votes on an incumbent).¹ Some of these states—like Alabama, Illinois, Michigan, Mississippi, Ohio, and Texas—are on their way to becoming perennial judicial battlegrounds where PACs, political parties, and special interests line up every other fall to elect judges who will pursue their narrow interests, not the public interest. Other states that elect judges have had an occasional taste of how bad things can get. A few states still enjoy court campaigns that are quiet and dignified.

But under the New Politics of Judicial Elections, none of these 38 states is safe. More special interests are targeting Supreme Court races. More judges find themselves trapped in a bad system, forced to raise money like ordinary politicians. More TV ads treat our courts of law like naked political prizes. Most of the public feels too ill informed to vote in judicial elections, leaving a vacuum that special interests are happy to fill. And in 2002, the U.S. Supreme Court made it easier for judicial candidates to announce their positions on hot-button issues, triggering a "New Dating Game" that gives special interests new powers to pressure judicial candidates—and tempts judicial candidates to pander to special interests or face their wrath.

Twenty-nine states are scheduled to hold Supreme Court elections in 2004. Many of the candidates will find themselves subject to this growing crosswind of political pressures, pledging impartiality even as they are forced to keep one eye on the encroaching world of big-money endorsements, political partisanship, and single-issue special interests.

We have compiled the available data about fundraising and spending from the 2001-02 state Supreme Court elections, along with other analyses reaching as far back as 1989. Part I analyzes television advertising in these elections, including the estimated costs of airtime and the role of interest groups. Part II focuses on fundraising by candidates in the states that elect their highest courts. Part III discusses how the Supreme Court's 2002 decision in *Republican Party of Minnesota v. White* boosted special interest clout in judicial campaigns.

¹ In 18 of these states—AL, AR, GA, ID, KY, LA, MI, MN, MS, NV, NC, ND, OH, OR, TX, WA, WV & WI—seats are filled solely through contested elections between competing candidates. In 16 others—AK, AZ, CA, CO, FL, IN, IA, KS, MD, MO, NE, OK, SD, TN, UT & WY—justices are initially appointed, then face uncontested retention elections at the end of their terms, where they must win at least a majority of the yes votes to stay in office. Four other states—IL, PA, NM & MT—use a mix of both systems.

TV “AIR WARS” ARE CHANGING HOW JUDGES ARE ELECTED

JUDICIAL CAMPAIGN ADS ARE APPEARING IN MORE STATES: In 2002, candidates and special interests ran Supreme Court election ads in more than twice as many states as in 2000. In fact, ads appeared in 64% of the states with contested races in 2002, compared with less than a quarter of such states in 2000.

THE CANDIDATE WITH THE MOST ON-THE-AIR SUPPORT USUALLY WON: In 9 out of 11 races where TV ads ran, the candidate with the most combined spending on TV ads—the candidate’s and supportive ads from interest groups—won the election.

TWICE AS MANY INTEREST GROUPS RAN ADS IN 2002: Ten interest groups ran ads, compared to five in the previous election cycle. An increase in involvement by the plaintiffs’ bar, after overwhelming corporate-sponsored advertising in 2000, may signal an upward spiral of spending in the duel over tort liability reform.

INTEREST GROUP SPENDING ON TV TOPPED \$2.2 MILLION: A pair of Ohio interest groups each spent more on ads than 85 of the 88 Supreme Court candidates across America. In two states (Idaho & Washington), only interest groups ran ads; in two others (Michigan & Mississippi), they outspent all of the candidates in their states combined.

ADS ARE SIGNALING HOW CANDIDATES MIGHT DECIDE CASES: Every special interest ad—along with more than half of candidate ads—wooed votes by invoking hot button issues like crime, health care, tort liability, and special interest influence. But special interests cut back on the use of attack ads that triggered a fierce backlash in 2000.

SPECIAL INTEREST MONEY IS KNOCKING AT THE COURT HOUSE DOOR

THE RISING PRICE OF VICTORY: Ten candidates raised more than \$1 million in 2001-02, and the top fundraiser prevailed in 20 out of 25 contested races. Two states endured \$6 million campaigns, and records were broken in Illinois and Ohio. Since 1993, winners have outraided losers by a margin of \$91 million to \$53 million.

LAWYERS AND BUSINESSES ARE POURING MORE MONEY INTO COURT RACES: During the 2001-02 campaign cycle, almost two-thirds of all donations to Supreme Court candidates came from lawyers and business interests—compared with less than half the donations in 2000. Political parties, candidates, and labor interests still come after, though their relative shares of all donations declined.

SPENDING SURGES CAN HAPPEN ANYWHERE: In more than half of the states with “contestable” races—defined here as races where candidates must face opponents—total candidate fundraising has broken the million-dollar mark at least once during the last three election cycles. A handful of states are on their way to becoming permanent arenas in the Court Wars: Alabama, Illinois, Michigan, Mississippi, Ohio, and Texas have all endured repeat campaigns involving more than a million dollars a year. Some states are quieter—but no state is safe.

PARTISAN JUDICIAL ELECTIONS ARE MONEY MAGNETS: Partisan elections, where judicial candidates are identified by their political party, continue to attract the most money and spending on television ads, followed by nonpartisan elections and retention elections (where incumbents face an up-or-down vote with no opponent).

THE NEW DATING GAME: HOW THE *WHITE* DECISION IS CHANGING JUDICIAL CAMPAIGNS

CAMPAIGN SPEECH STANDARDS HAVE BEEN LOOSENING: In *Republican Party of Minnesota v. White*, the U.S. Supreme Court in 2002 struck down Minnesota’s “Announce Clause,” which prohibited a candidate for judicial office from “announc[ing] his or her views on disputed legal or political issues.” Eight other state codes use similar language (AZ, CO, IA, MD, MS, MO, NM & PA).

SPECIAL INTERESTS ARE THE REAL WINNERS: By making it easier for judges to comment on policy issues that could come before them, the *White* decision helps judicial candidates send signals to special interests. In turn, special interest largesse will reward candidates who are the most outspoken on hot button issues like abortion, tort liability, medical malpractice, and insurance reform.

JUDICIAL CAMPAIGNS ARE ALREADY BECOMING MORE POLITICAL: Just weeks after the *White* decision, **INDIANA RIGHT TO LIFE** sent questionnaires to state judicial candidates, pressuring them to announce their positions on abortion rights, assisted suicide, and in vitro fertilization. Judges running for the Pennsylvania Supreme Court in 2003 characterized themselves as “pro-choice” and “pro-life.”

ACTING BEFORE IT’S TOO LATE

The New Politics of Judicial Elections is here to stay. Powerful interests don’t care if courts are fair and impartial: they’ve mobilized to target state courts, and they’re unlikely to quit. And action breeds reaction: there are signs that the plaintiffs’ bar is gearing up to contest the campaigns waged by pro-business groups. America’s Supreme Court elections could be degenerating into a succession of political auctions, fed by big money and led by special interests, where candidates are pressured to sacrifice the impartiality that the law demands of them. No state that elects judges is immune.

But states are not powerless. They can avoid becoming perennial battlegrounds, by working now to stay off of the special-interest target list. In 2002, North Carolina became the first state in the nation to enact full public funding for Supreme Court races. Others may follow. A variety of other proposals are being considered to keep special interests out of our courtrooms, including reducing the number of elections by lengthening terms of office or eliminating elections altogether in favor of appointive systems, better disclosure laws, standards of conduct for judicial campaigns and citizen committees to monitor them, and voter guides and performance evaluations of judges to give ordinary citizens the information they need to keep judicial elections from being overrun by special interests.

Most states still have time to act. But if they don’t act—soon—they may find that their judicial elections have been hijacked, and that their courts are no longer fair and impartial.

TV “Air Wars” Are Changing How Judges Are Elected

In a growing number of states, television advertising—by candidates and supportive special interests—is becoming the key to getting elected to America’s Supreme Courts. Ads ran in 64% of the states with contested races in 2002, compared to less than a quarter of such states in 2000. An increasing percentage of candidates in contested races are buying ads, and the number of special interests buying airtime has doubled in just two years. Altogether, in America’s 100 largest media markets, candidates, and interest groups spent almost \$8.3 million on television airtime in 2002.² Television “air wars” are also turning more would-be judges into traditional politicians, as ads routinely include language signaling how a judge might rule on hot-button social issues like crime, the death penalty, and medical malpractice suits.

The States

JUDICIAL CAMPAIGN ADS ARE APPEARING IN MORE STATES

In a growing number of states, the culture of sound bites and attack ads is spreading into the elections of Supreme Court justices. In 2002, candidates and special interests ran Supreme Court election ads in more than twice as many states as in 2000. In fact, ads appeared in 64% of the states with contested races in 2002, compared to less than a quarter of contested-election states in 2000.³ Advertising records were broken in Ohio and Mississippi, and nearly broken in Alabama.

Interest group television campaigns are spreading steadily. Just a few years ago, special interest ads were virtually unheard of in court elections. But in 2002, special interests and political parties ran ads in nearly half the states where contested Supreme Court elections were held, compared to a quarter of such states in 2000.⁴ And they’re playing to win: in half of the six states where special interest groups ran ads in 2002, the groups outspent candidates they opposed.⁵

In 2004, 29 states have scheduled Supreme Court elections. Some of these contests may remain free of expensive television ad campaigns. But for an increasing number of interest groups, in an increasing number of states, Supreme Court races are becoming a central arena in the struggle to achieve their narrow policy aims. Many of their sworn opponents will follow, if only to provide a counterweight. The 2000 campaign was a turning point; the escalation is underway. Ultimately, none of these states is safe.

² Research methods and notes can be found in Appendix C.

³ In 2002, ads ran in 9 out of 14 states (64%) where contested elections were held, compared to 4 of 18 (22%) in 2000. No ads were run in the 15 states where retention elections were held in 2002, or the 12 retention states in 2000. Breaking the data down by individual races, ads ran in 12 of the 23 Supreme Court races (52%) where candidates faced opponents in 2002. In 2000, ads ran in only 13 out of 39 contested races (33%).

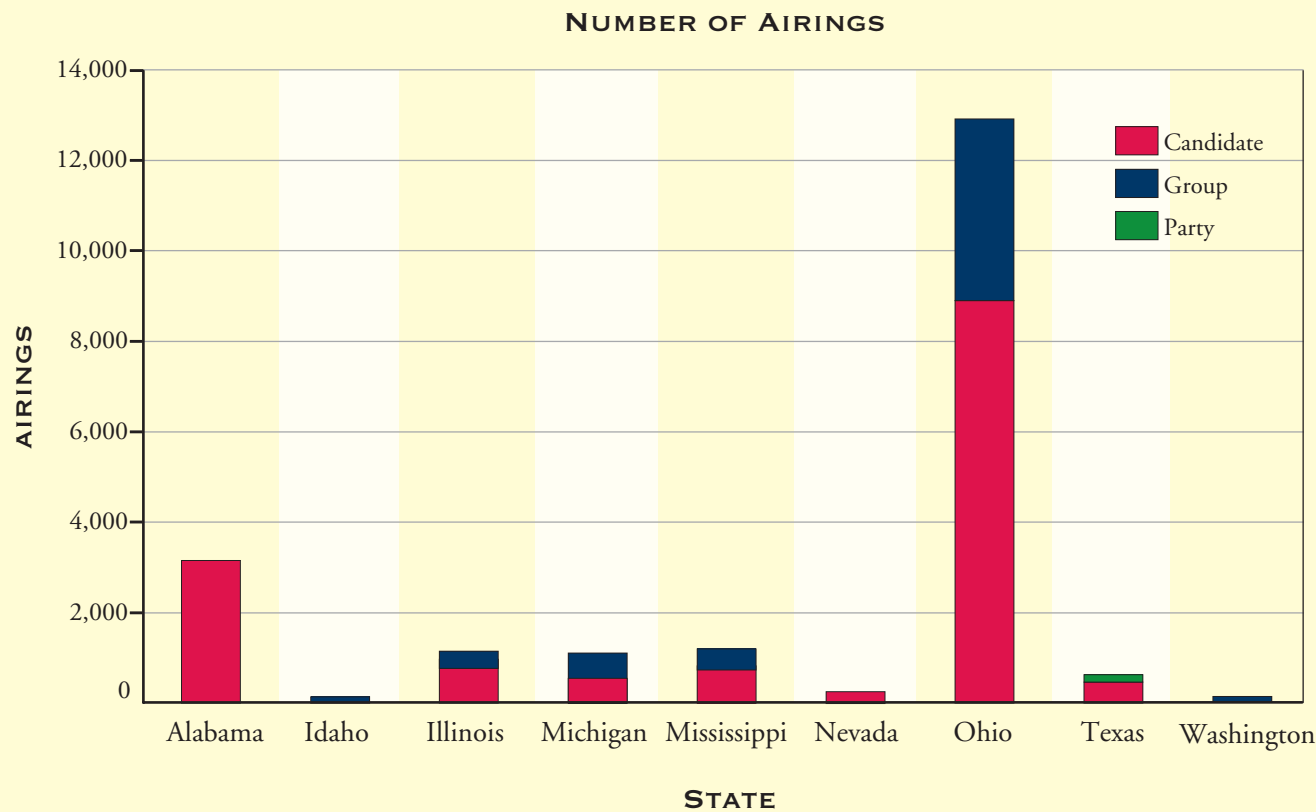
⁴ In 2000, when 18 states held contested Supreme Court elections, special interests and political parties ran television ads in Supreme Court contests in Alabama, Michigan, Mississippi, and Ohio. In 2002, when only 14 states held contested races, voters in six of these states—Idaho, Illinois, Michigan, Mississippi, Ohio, and Washington—watched special interest ads. In Idaho and Washington, where no candidate ads appeared, interest group ads were the *only* Supreme Court campaign ads on television.

⁵ Idaho, Michigan & Washington. Some interest group ads attacked their targets directly; others praised their opponents.

FIGURE 1

SCOPE OF TELEVISION ADVERTISING IN SUPREME COURT ELECTIONS
by State and Sponsor, 2002

	CANDIDATE		GROUP		PARTY		TOTAL	
	Airings	Cost	Airings	Cost	Airings	Cost	Airings	Cost
Alabama	3,594	\$1,163,447	0	\$0	0	\$0	3,594	\$1,163,447
Idaho	0	\$0	133	\$26,712	0	\$0	133	\$26,712
Illinois	1,247	\$279,810	226	\$39,428	0	\$0	1,473	\$319,238
Michigan	508	\$243,907	522	\$313,409	0	\$0	1,030	\$557,316
Mississippi	701	\$168,016	778	\$199,952	0	\$0	1,479	\$367,968
Nevada	233	\$115,598	0	\$0	0	\$0	233	\$115,598
Ohio	8,958	\$3,778,650	4,147	\$1,647,697	0	\$0	13,105	\$5,426,347
Texas	396	\$285,976	0	\$0	159	\$142,238	555	\$428,214
Washington	0	\$0	37	\$37,156	0	\$0	37	\$37,156
Total	15,637	\$6,035,404	5,843	\$2,264,354	159	\$142,238	21,639	\$8,441,996



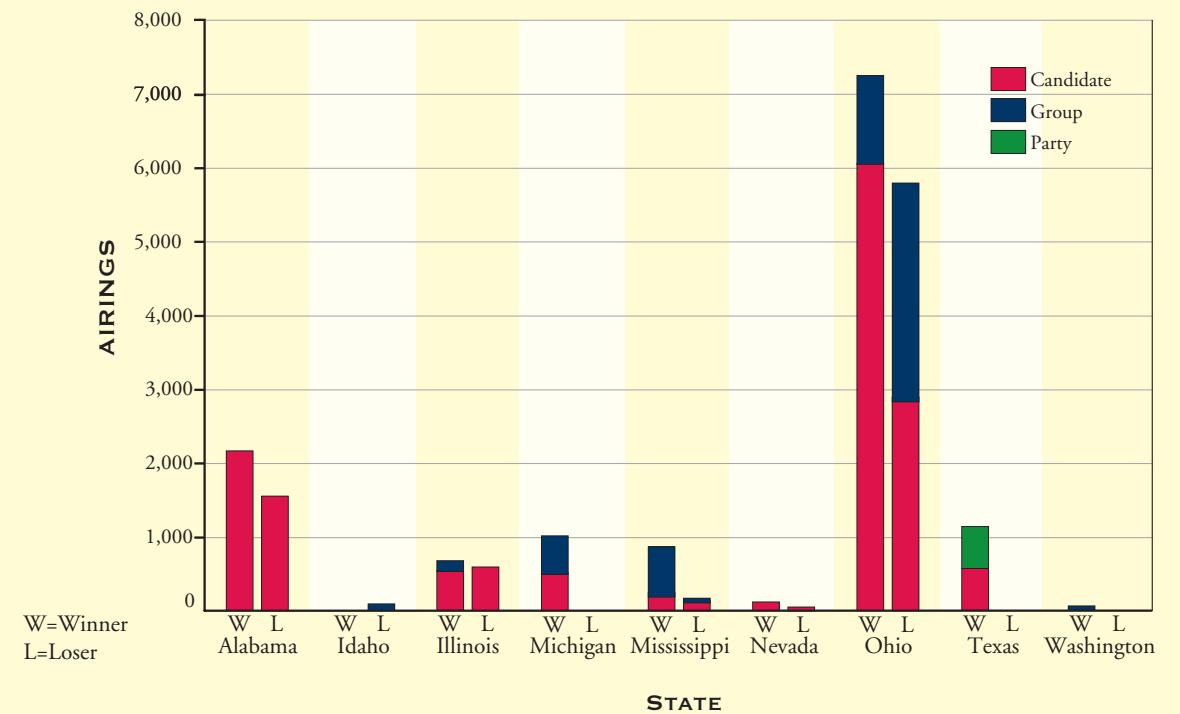
The Winners

THE CANDIDATE WITH THE MOST ON-THE-AIR SUPPORT USUALLY WON

In 2002, judges who won the air war almost always won at the ballot box. In 9 out of 11 races where TV ads ran, the candidate with the most combined spending on TV ads—the candidate’s and supportive ads from interest groups—won the election.⁶ And the exceptions may not be significant: Justice Harold See, who was re-elected in Alabama, spent less on airtime than his challenger, but actually bought 628 more spots for his money. In Idaho, challenger Starr Kelso was supported by a relatively small \$26,712 interest group expenditure on ads in his unsuccessful effort to unseat a veteran incumbent. In Michigan, Texas, and Washington, the winners were the only candidates with support on television. In Washington, where one race was too close to call for days after the election, interest group advertising may have tipped the balance.

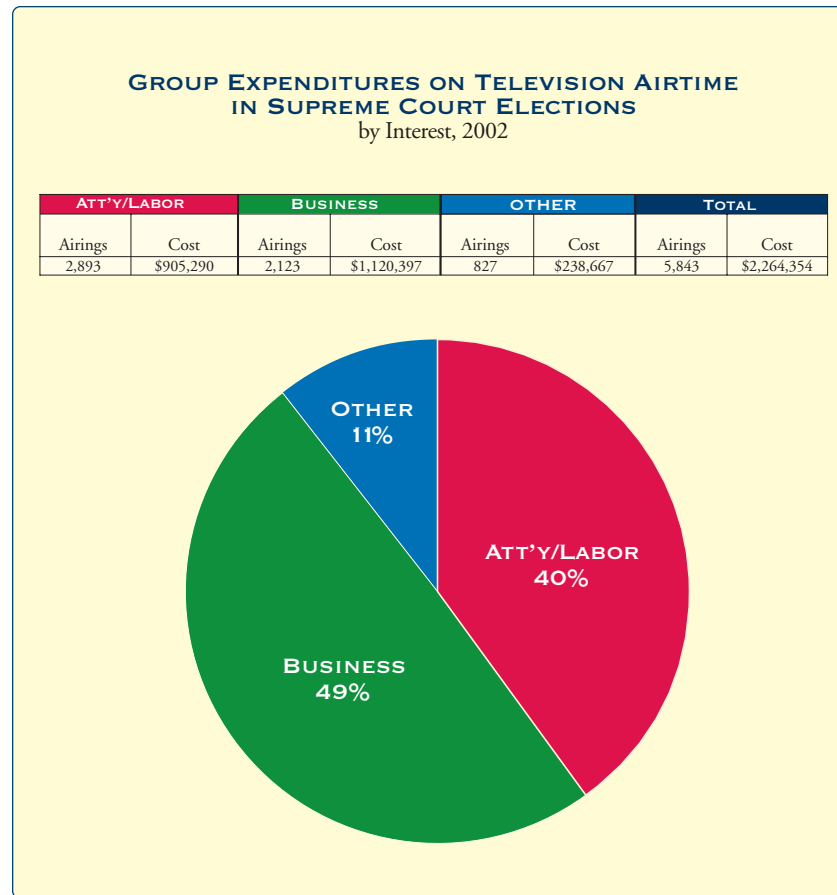
FIGURE 2

ADVERTISING SUPPORT AND ELECTORAL OUTCOMES

IN SUPREME COURT ELECTIONS
by State and Sponsor, 2002

⁶ In Texas, where all five Republicans won their Supreme Court races, only Wallace Jefferson and Mike Schneider ran ads promoting their candidacies. For purposes of analysis, the other three Republican winners are not included in the tabulation.

FIGURE 3



The Sponsors

TWICE AS MANY INTEREST GROUPS RAN ADS IN 2002

Twice as many special interest groups ran ads in the 2002 campaigns than in 2000. In 2000, the U.S. Chamber of Commerce and one of its state affiliates ran 57% of unique interest group ads; only three other groups even ran advertisements. In 2002, even as the Chamber elected not to run any ads in Supreme Court campaigns, ten other interest groups did.⁷

Six of the ten groups either supported Republican candidates or used traditional conservative lines of attack on judicial candidates (liberal, soft on crime). Three of these six are ideological groups, one is a state chamber of commerce, one is supported by a Republican statehouse leader, and one is a coalition, co-founded by AT&T, that lobbies on telecommunications issues. The other four groups either supported Democrats or attacked Republicans, or were backed by trial lawyers or Native Americans. The increased involvement by the plaintiffs' bar in 2002, after the overwhelming corporate advertising in 2000, may signal an upward spiral of spending in the duel over tort liability reform.

In six states—Alabama, Michigan, Mississippi, Ohio, Texas & Washington—separate interest group legislative advocacy campaigns on tort liability also helped frame judicial election issues for voters. The sponsors of these ads spent \$2.53 million on 5,629 airings.⁸ Since these issues are a staple of Supreme Court campaigns, money spent on legislative advocacy ads may have also helped mobilize judicial election voters.

⁷ The national Chamber, which ran five distinct ads in Mississippi's 2000 elections, dropped out of the picture altogether—prompting speculation that it was covertly financing ads run in Mississippi by the Law Enforcement Alliance of America. Michael Orey, "Business Targets Judicial Race in 'Tort Mecca,'" *Wall Street Journal* (Oct. 30, 2002), at B1. No verifiable information is available about the source of the LEAA's funds because a 2002 court ruling exempted so-called "issue advocacy" from Mississippi's financial disclosure requirements. *Chamber of Commerce v. Moore*, 288 F.3d 187 (5th Cir. 2002).

⁸ The interest group legislative advocacy expenditures broke down as follows: AL (\$262,271 spent on 1,211 airings); MI (\$752,360, 1,279 airings); MS (\$239,573, 1,007 airings); OH (\$56,308, 277 airings); TX (\$1,124,094, 1,495 airings); WA (\$98,352, 360 airings).

The Special Interest Money

INTEREST GROUP SPENDING ON TV TOPPED \$2.2 MILLION

2002 was another multi-million-dollar year for special interest spending on Supreme Court campaign commercials. Even using a conservative method to estimate the cost of political advertising, interest groups spent more than \$2.2 million running ads in the largest 100 media markets in America. In two states, only interest groups ran ads; in two others, they outspent all state candidates combined.

In five states where Supreme Court justices were elected in 2002, ads paid for by interest groups—not candidates—ruled the airwaves. Two special interest groups in Ohio—Citizens for Independent Courts and Informed Citizens of Ohio—each spent more on TV ads than 85 of the 88 Supreme Court candidates across America. Interest groups paid for all of the television ads aired in the Idaho and Washington campaigns. In Michigan, the state Chamber of Commerce spent more on airtime than all the candidates combined. Likewise, in Mississippi, the Law Enforcement Alliance of America spent more on ads than all the candidates combined—250% the amount spent by the candidate the group opposed.

Political spending traditionally drops during non-presidential election years, so it's not surprising that special interests spent a little less on judicial campaign ads than in 2000.⁹ Indeed, competing against fewer political ads, mid-term Supreme Court TV ads arguably get more attention than ads run in presidential election years, when high profile national races dominate the airwaves and soak up so much media attention.

Interestingly, political parties—who spent more than \$1.4 million on Supreme Court television ads in 2000—spent nothing on ads discussing individual 2002 Supreme Court candidates.¹⁰

The Content

ADS ARE SIGNALING HOW CANDIDATES MIGHT DECIDE CASES

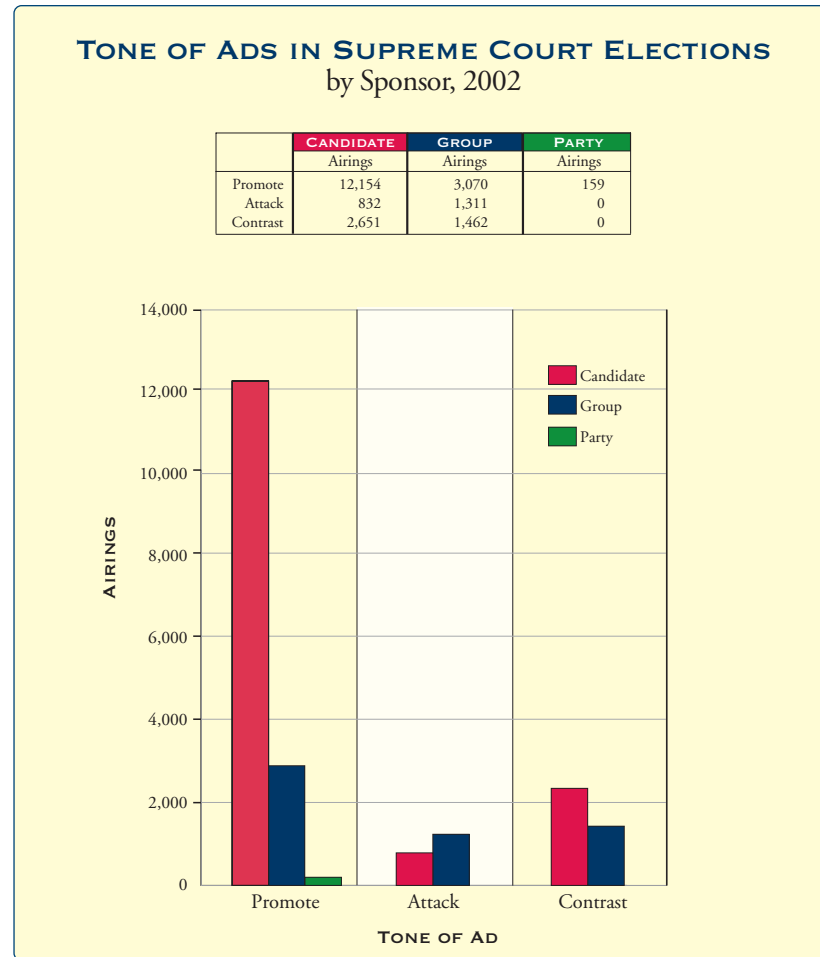
Unlike legislators and executives, judges aren't supposed to promise what decisions they'll make if they're elected. And for many years, judicial candidates shied away from talking about issues they might have to decide, focusing their campaign communications on their qualifications, or perhaps their ideas for improving the judiciary.

But today's campaign ads show that in the New Politics of Judicial Elections, candidates and special interests routinely craft ads that will send signals—that is, offer voters clues as to how future cases might be decided if a particular candidate is elected. In 2002, only 36% of airings of Supreme Court candidate advertisements focused on the traditional theme of candidate qualifications. Instead, most candidate ads invoked hot-button issues like crime, health care, tort liability, and special interest influence. And the candidates' carefully scripted language made it clear that the era of stressing qualifications, already under siege, appears to be on its way out:

⁹ Interest groups spent an estimated \$2.8 million in 2000. See Deborah Goldberg, Craig Holman & Samantha Sanchez, *THE NEW POLITICS OF JUDICIAL ELECTIONS*, Justice at Stake (February 2002). The methodology used to calculate these estimates is discussed in Appendix C, along with estimates made by other groups for interest group spending in Idaho, Michigan, Mississippi, and Ohio.

¹⁰ In Texas, the Harris County Republican Party spent \$142,238 on 159 airings of ads urging voters to support GOP judges generally.

FIGURE 4



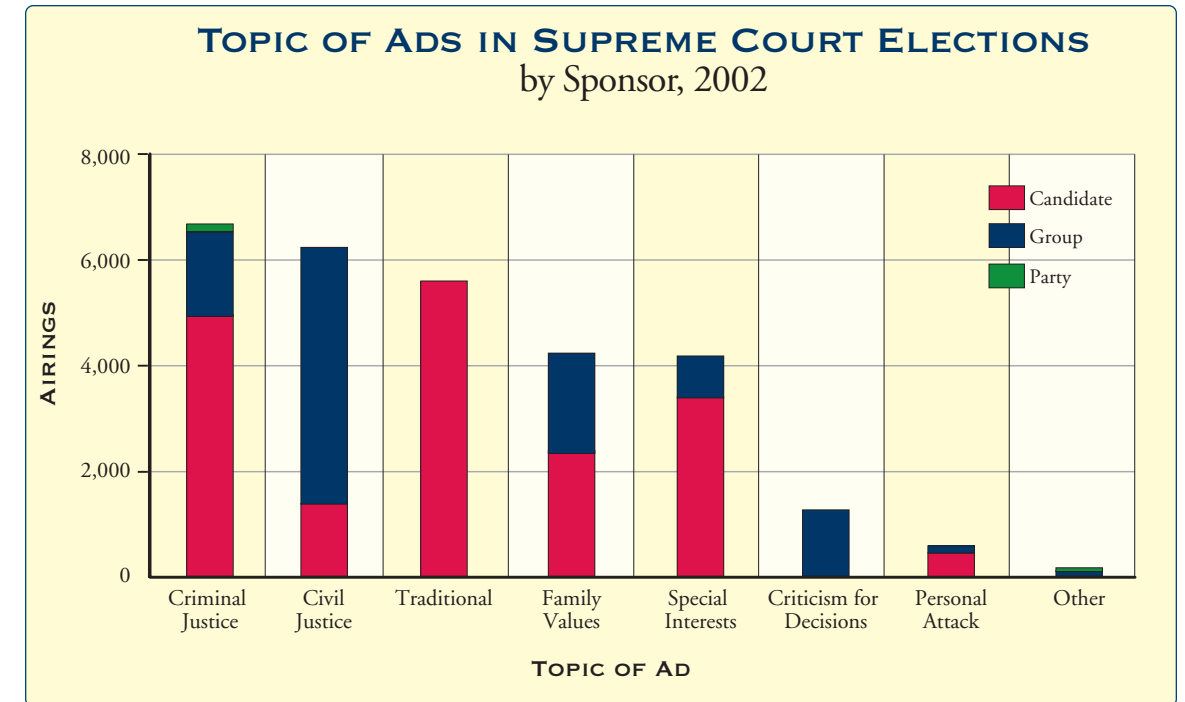
- ◆ In **Illinois**, Sue Myerscough’s ad boasted that she “kept children safe from sexual predators and kept violent juveniles off our streets...On the Supreme Court, I’ll keep fighting because as any crime victim will tell you, there’s a lot more to be done.” Her opponent’s ad said, “Justice Rita Garman is tough on crime. She’s worked with police, prosecutors and victims to put violent criminals and sexual predators in jail.”
- ◆ In **Ohio**, an ad by Justice Evelyn Stratton said that her record had “always been tough sentencing for street criminals and just as tough on corporate crooks, that’s why she’s called the velvet hammer.” An ad by her opponent said, “Janet Burnside is independent. Janet Burnside receives no contributions from big insurance companies.” “As a Probate Court Magistrate, Maureen O’Connor’s rulings protected children,” noted an O’Connor ad.¹¹

- ◆ In **Mississippi**, Jess Dickinson looked into the camera and said, “frivolous lawsuits are costing us our health care and our jobs. Mississippi is suffering while a few lawyers are becoming multi-millionaires.” In another ad, Dickinson’s opponent Chuck McRae responded, “Rich lawyers and big corporations shouldn’t control our courts,” and listed 26 of Dickinson’s businesses contributors.
- ◆ In **Alabama**, James Anderson said, “I won’t be a vote for trial lawyers or big corporations.” Justice Harold See attacked Anderson for serving “on the legal team for Al Gore against George Bush.”
- ◆ In **Nevada**, an ad by Judge Don Chairez said, “When the city of Las Vegas and some downtown casinos took the land of a widow named Carol Papus, Judge Chairez stood up and stopped them, because a widow’s faith in the Constitution is more important than a casino’s contributions.”

So what’s so bad about signaling? Nothing—in legislative and executive branch contests, where voters want to know in advance which side of a hot issue a candidate pledges to come down on. Politicians are expected to make promises, and keep them. But judges don’t vote on bills: their job is to decide cases, one at a time, in accordance with the facts and the law.

¹¹ Interest group endorsements can also be used to send signals: “The Fraternal Order of Police urges you to vote O’Connor,” noted one of her ads.

FIGURE 5



Interest groups, seeking to elect judges who will support their concerns, also rely heavily on ads that signal to voters how a judicial candidate might rule on hot-button issues. In 2000, all but one non-candidate ad invoked controversial cases and issues.¹² In 2002, every single interest group ad alluded to divisive topics: the most popular were criminal justice issues like sentencing and victims’ rights, closely followed by civil justice issues like corporate wrongdoing and frivolous lawsuits.¹³

- ◆ In **Idaho**, an ad by **IDAHOANS FOR TAX REFORM** said, “Linda Copple Trout is very liberal. She voted to hand over Idaho water to federal bureaucrats, supports court imposed tax increases, and Trout is backed by Idaho’s leading trial lawyers.”
- ◆ In **Illinois**, an ad by **AMERICANS FOR TAX REFORM** warned that one candidate “says the Supreme Court ‘should take a more activist role.’ [She] called it a social service agency. Call Sue Myerscough. Tell her judges should interpret the law, not play politics.”
- ◆ In **Michigan**, the state **CHAMBER OF COMMERCE’S** ad said, “Not long ago, Michigan’s Supreme Court was out of step. Special interests were everywhere, and some even seemed to put criminals’ rights ahead of victims’ rights.”
- ◆ In **Mississippi**, an ad from the **LAW ENFORCEMENT ALLIANCE OF AMERICA** called candidate Jess Dickinson “a strong leader who supports the death penalty to keep our families safe...a common sense leader who supports our right to bear arms. And Chuck McRae? He was the only judge to vote to reverse the conviction of the murderer of a three-year-old girl.” An ad by **CITIZENS FOR TRUTH IN GOVERNMENT** attacked Dickinson for suing a church.

¹² In 2000, in officially “nonpartisan” elections where political parties were not mentioned on the ballot, third parties went out of their way to mention the party affiliation of candidates.

¹³ In addition, the Harris County Republican Party spent more than \$140,000 running ads saying that, “crime is falling because experienced Republican judges are tougher on repeat criminals. Republican judges are getting criminals off the streets and into jails and keeping them there. For safer streets, safer homes, a safer Harris County: vote for these Republicans November 5th.” Although the ads make no mention of the five Supreme Court races held in Texas that fall, they could easily have affected those elections.

- ◆ In **Ohio**, **CITIZENS FOR AN INDEPENDENT COURT** charged that “Maureen O’Connor and Eve Stratton put large corporations ahead of working families...Judges Black and Burnside put people ahead of profits. Judges Black and Burnside—they’re on our side.” **CONSUMERS FOR A FAIR COURT** cited a Supreme Court case involving a drug alleged to cause cancer: “Eve Stratton said she had sympathy for the victims, but she gave sanctuary to the big drug companies.” In its ads, **INFORMED CITIZENS OF OHIO** defended Stratton, saying that “doctors are disappearing from the state of Ohio...because frivolous lawsuits are forcing them to leave...Stratton’s record “shows that she understands the need to stop lawsuit abuse.” An ad by **COMPETITION OHIO**, after alleging that SBC Ameritech wanted to hike phone rates, praised O’Connor and Stratton for “standing up for Ohio consumers and small businesses. Choice and competition mean better service and lower prices.”
- ◆ In **Washington**, the **FIRST AMERICAN EDUCATION FUND** attacked candidate Jim Johnson as too extreme: “Johnson’s made a career out of attacking teachers and Native Americans and opposes protecting clean water and salmon.”

The 2002 campaigns also showed that some interest groups might be adjusting their strategies regarding the tone of their ads. During the 2000 campaigns, 80% of special interest ads attacked candidates, compared to fewer than 20% of candidate ads. Some of these attacks triggered a fierce backlash. **CITIZENS FOR A STRONG OHIO**’s notorious ad depicting Lady Justice with money on her scales outraged Ohio voters in 2000 and failed to unseat its target. In Mississippi, the U.S. Chamber’s highly visible advertising was evidently regarded as unwelcome out-of-state meddling. Such condemnations may be working: in 2002, less than half of special interest ads were negative. (Candidates continued to promote themselves, rather than attack their opponents, at a rate of approximately four to one.)

Indeed, several candidates disavowed interest group TV support in 2002. In Ohio, both candidates condemned an ad attacking the incumbent for a particular judicial decision. A group called **COMPETITION OHIO** also raised hackles when it used an ad both to support an Ohio candidate and to attack SBC Ameritech. In its defense, the group claimed not to be engaged in electioneering but instead to be appropriating the judicial campaigns for its own economic purposes. Either way, what the public saw was the linkage between special interests and judges—not a combination likely to promote public confidence in fair and impartial courts.

Even as judges seek to emulate special interest campaign ad tactics, it’s worth noting that studies conducted on television advertising in congressional elections have shown that the public has great difficulty distinguishing between ads run by candidates and ads run by other sponsors.¹⁴ Once again, this isn’t so troubling in legislative and executive campaigns. But as more voters come to see court campaigns as a series of thinly veiled appeals to decide cases the “right” way, they will increasingly wonder whether their judges’ decisions are based on the facts and the law, or on pressure and promises and interest group dollars.

¹⁴ Outside Money: Soft Money and Issue Advocacy in Competitive 1998 Congressional Elections 26 (David B. Magleby & Marianne Holt, eds), at <http://www.byu.edu/outsidemoney/1998/contents.htm>.

PART II

Special Interest Money Is Knocking at the Courthouse Door

Special interests continue to invest heavily in Supreme Court races, and they’re winning handsome returns. Ten candidates raised more than a million dollars in 2001-02. Almost two-thirds of all donations came from lawyers and business interests, compared to less than half the identified donations in 2000. Surges can happen anywhere: in more than half of the states with contestable elections—where candidates face opponents—total candidate fundraising has broken a million dollars in at least one of the last three election cycles. Partisan elections continue to attract the most money. And the top fundraiser almost always wins at the polls.

The Money

THE RISING PRICE OF VICTORY

For Supreme Court candidates trying to navigate the New Politics of Judicial Elections, fundraising skills are becoming as indispensable as a law degree. Ten candidates raised more than \$1 million for their campaigns in 2001-02, and two states—Ohio and Texas—endured \$6 million campaigns. State records were broken in Louisiana and Ohio. In the seven most expensive states, where more than \$1 million was raised—Alabama, Illinois, Louisiana, Mississippi, Ohio, Pennsylvania, and Texas—winning candidates raised an average of \$793,908, more than twice their opponents’ average (\$302,449). All told, winning candidates raised more than \$15.5 million, the losers \$13.5 million. Of the 63 winners in the 2001-02 cycle, only five were outraised by their opponents.

Since 1993, winners have outraised losers by a margin of \$91 million to \$53 million. Indeed, among candidates who raised funds, the average and median raised has climbed steadily during the last three election cycles.¹⁵ With few exceptions, money means victory. In 2001-02, the top fundraiser prevailed in 20 out of 25 contested Supreme Court races. In 1999-2000, 30 out of 42 top fundraisers won; in 1997-98 the top fundraiser won 23 of 31 races.

As usual, a few key battleground states dominated.

- ◆ In **Ohio**, Justice Evelyn Stratton was the nation’s top fundraiser, retaining her seat by raising \$1,899,313. Maureen O’Connor was second—raising \$1,798,902 in winning an open seat. Their Democratic opponents raised \$1,349,636 and \$1,193,732. The grand total—\$6,241,583—shattered state records for individual and cumulative fundraising.
- ◆ The nation’s third highest fundraiser was another Republican, Harold See of **Alabama**, who

¹⁵ Among candidates who did raise funds, the average amount raised climbed from \$394,904 in 2000 to \$397,783 in 2002. The average amount raised by winners who raised any money climbed from \$423,143 to \$457,003. This rising price of victory comes even as the average raised by all candidates tapered off at \$273,940 after doubling from 1994-2000. But the drop in the overall average occurred in large part because more of the 2002 races occurred in states with retention elections, where candidates don’t have to face opponents: 35% of all Supreme Court races in 2002, compared to 25% in 2000. In addition, in 28% of the “contestable” races in 2001-02, only one candidate ran, compared to 20% in 1999-2000. Given these two factors, and the frequent drop-off in fundraising during mid-term elections, it’s not surprising that only 65% of all Supreme Court candidates even had to raise money in 2001-02, compared to 75% during 1999-2000.

FIGURE 6

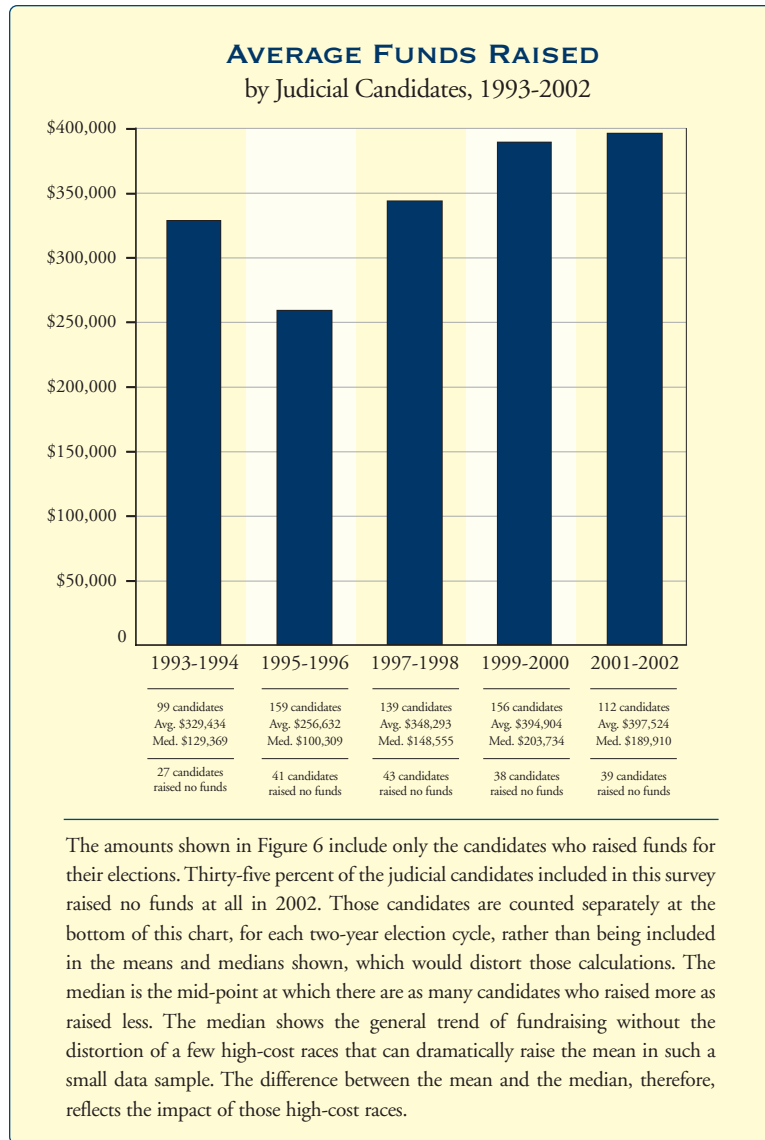
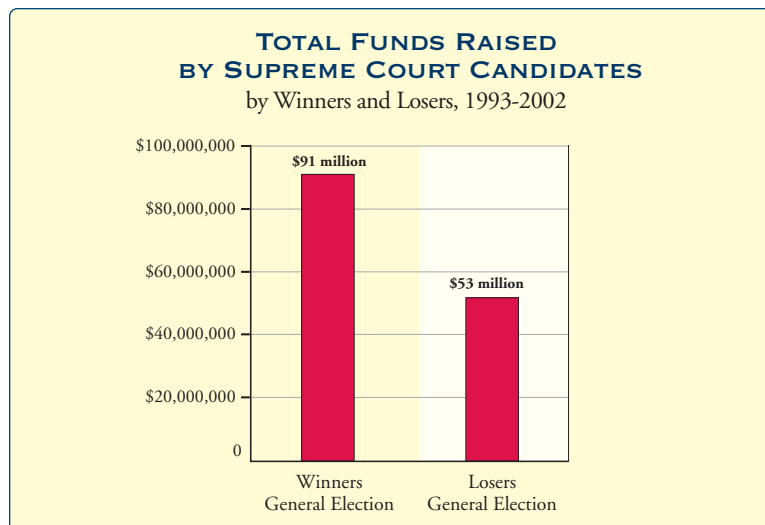


FIGURE 7



raised \$1,589,797 to retain his seat. (Justice See was the nation's top fundraiser in 2000, raising \$1,669,163 in a losing bid for the chief justice position.)

- ◆ In **Illinois**, Justice Rita Garman raised \$987,187 in her winning campaign. Her opponent raised \$803,163.
- ◆ In **Texas**, where all five Republicans won their Supreme Court races, the GOP candidates raised a total of \$4,487,594 (including primaries) compared to the Democratic candidates' \$1,402,588—even though two of the Republicans raised virtually nothing. (Chief Justice Thomas Phillips was re-elected after swearing off outside donations in order to protest the growing role of money in judicial elections. His opponent made the same pledge. Steven Wayne Smith, a nationally prominent activist against affirmative action in college admissions, also won despite raising little money.)

The Donors

LAWYERS AND BUSINESSES ARE POURING MORE MONEY INTO COURT RACES

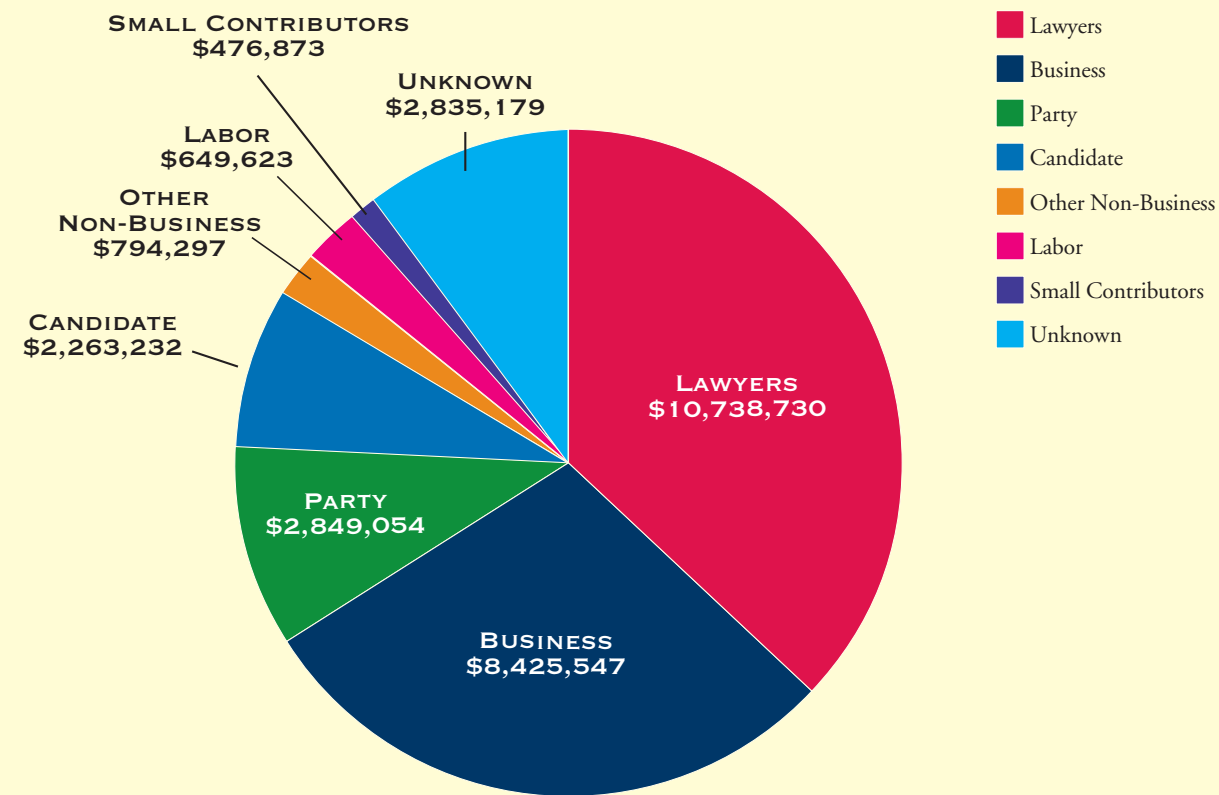
During the 2001-02 campaign cycle, fully two-thirds of all donations to Supreme Court candidates came from lawyers and business interests—compared to less than half the identified donations in 2000. Political parties, candidates and labor interests still come after, though their relative shares of all donations declined.

- ◆ The top outside contributor in the country was the **ALABAMA DEMOCRATIC PARTY**, which gave \$893,000 to losing candidate James H. Anderson.¹⁶
- ◆ Second was the **PROGRESS PAC**—affiliated with the **BUSINESS COUNCIL OF ALABAMA**—which gave \$284,000 to Judge Harold See's victorious campaign for a seat on the Alabama Supreme Court.
- ◆ Third was the **OHIO DEMOCRATIC PARTY**, which gave \$231,736 to two candidates, Timothy Black and Janet Burnside, both of whom lost. **THE OHIO REPUBLICAN PARTY** contributed \$229,000 to two winning candidates, Maureen O'Connor and Evelyn Stratton.
- ◆ Fifth was the **PENNSYLVANIA FUTURE FUND PAC**, which gave \$185,000 to successful Republican candidate Michael Eakin. The Texas law firm, **VINSON & ELKINS**, was sixth with \$172,018 in contributions to ten different Texas candidates. (Individual attorneys at **VINSON & ELKINS** contributed another \$29,955 to candidates, bringing the law firm's total to \$201,973.)
- ◆ The top business contributor was the **PROGRESS PAC** (discussed above). The next leading business contributor was the **AUTOMOBILE DEALERS ASSOCIATION OF ALABAMA**, giving \$119,000 to winning Republican candidate Harold See.
- ◆ The top labor contributors were to losing candidates; the **ILLINOIS EDUCATION ASSOCIATION** and the **ILLINOIS FEDERATION OF TEACHERS** (which gave a combined \$104,780 to Sue Myerscough), the **PENNSYLVANIA EDUCATION ASSOCIATION** (which gave \$25,500 to losing candidate Kate Ford Elliott), and the **OHIO AFL-CIO** (which gave \$21,000 to Kate Ford Elliott). Indeed, only 10.6% of labor contributions went to winning judicial candidates across the country.
- ◆ The top five law firm contributors, all in Texas, gave \$710,470 (30% to Democrats and 70% to Republicans).
- ◆ Trial lawyer associations gave a total of \$75,400 in six different states: Michigan, \$25,000; New Mexico, \$25,000; Ohio, \$12,000; North Carolina, \$8,000; Georgia, \$5,000; Montana, \$400. Of that total, \$30,400 went to Democrats, \$1,000 to Republicans, and \$44,000 to candidates not identified by party. (Contributions from individual plaintiffs lawyers or any other lawyer are harder to track, since they can be embedded within the law firm or individual donor categories.)
- ◆ The top ideological givers were two PACs supporting African Americans (the **BLACK AMERICAS PAC** and the **AFRICAN AMERICAN PAC**), which contributed a total of \$9,000 to candidates in Texas and North Carolina. PACs supporting women's issues gave a total of \$6,700 in four states, and gun policy groups in four states contributed \$2,750.

¹⁶ Self-funded candidates are omitted from this list of examples, which deals with special interests and other outside contributors.

FIGURE 8

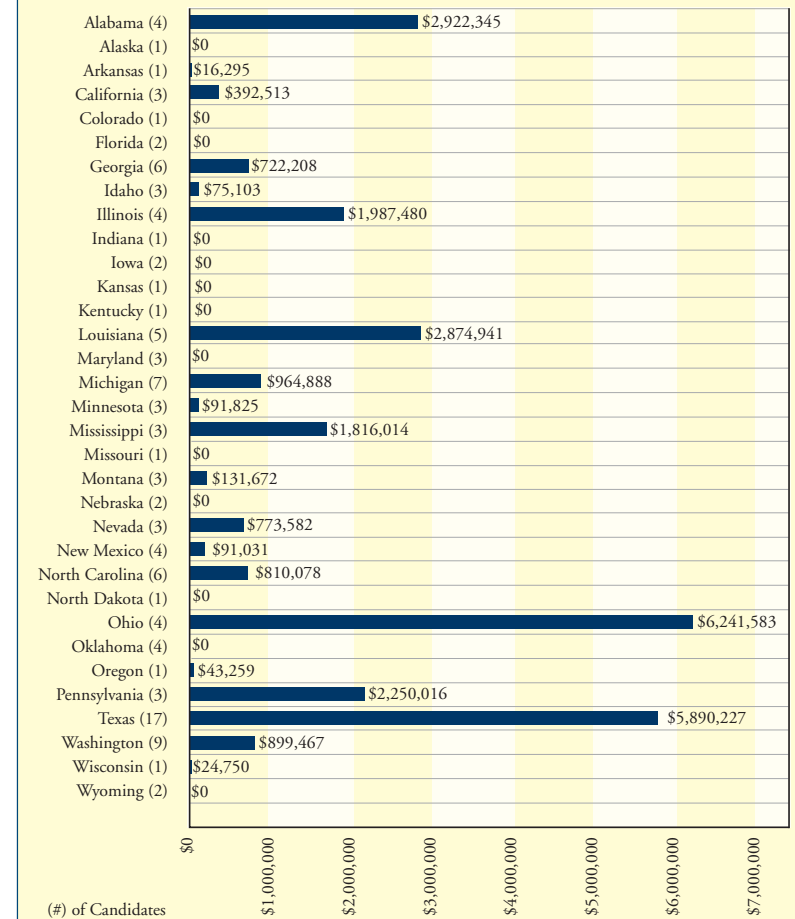
SOURCES OF CONTRIBUTIONS TO SUPREME COURT CANDIDATES
by Contributor Interest, 2002



This chart describes total contributions of \$29,038,169 to the 73 candidates in the 2001–02 state Supreme Court elections who raised funds. The candidates ran in Alabama, Arkansas, California, Idaho, Illinois, Louisiana, Michigan, Minnesota, Mississippi, Montana, North Carolina, New Mexico, Nevada, Ohio, Oregon, Pennsylvania, Texas, Washington and Wisconsin. Research by the Institute on Money in State Politics has identified 90% of the funds by interest. Lawyers account for \$10,738,730 (37% of all the funds, ranging from a high of 66% in Texas to less than 10% in Wisconsin and Minnesota). General business, which accounts for all business and manufacturing interests, contributed \$8,509,329 (29.3% of all funds, ranging from a high of 49% in Michigan to a low of 5% in Minnesota). Within the general business category, health professionals supplied the largest share, with \$1,349,739 and business associations, such as Chambers of Commerce, followed with \$1,196,816. Insurance interests, third highest in the business category, gave \$786,314. Contributions from political parties and other candidates were a distant third in the funding of elections, \$2,849,054, or 9.8% of the total. Democrats raised 59.2% of these funds, Republicans 37.5% and the remaining 3% went to nonpartisan candidates from other candidates. Candidates themselves supplied 7.8% of the funds, \$2,263,232, with Louisiana Democrat Mary Hotard Becnel supplying all of her own campaign funds, \$1,337,855, to account for more than half the category. Thirty-eight other candidates contributed their own money, \$502,519 from Republican candidates, \$397,090 from nonpartisan candidates and \$25,768 from Democrats. The labor category supplied just 2.2% of the total, \$649,623, with public employee unions representing teachers, firefighters and other government workers contributing \$304,820 of that total. General trade unions supplied another \$300,807 and transportation unions \$43,995. Other non-business contributors include government employees, (\$152,116), retirees (\$404,799), clergy, and others who work for non-business entities, as well as those organizations representing ideological interests such as elderly and social security concerns (\$5,000) and anti-gun-control interests (\$2,757).

FIGURE 9

TOTAL JUDICIAL CAMPAIGN FUNDRAISING
by State, 2002



The States

SPENDING SURGES CAN HAPPEN ANYWHERE

Within the long-term surge in spending on Supreme Court races, totals continue to vary widely from state to state. Twenty-two states hold contestable Supreme Court elections, where candidates face opponents. In nearly two-thirds of the contestable states—AL, IL, KY, LA, MI, MS, MT, NC, NV, OH, PA, TX, WV & WI—total candidate fundraising has broken the million-dollar mark at least once during the last four election cycles.¹⁷ Among the other contestable states, only in North Dakota has no Supreme Court candidate reported raising more than \$100,000 in a recent election.¹⁸ The other seven—AR, GA, ID, MN, NM, OR, WA—simply don't know what will happen from campaign to campaign. In the 16 retention election states, only two Supreme Court candidates have raised more than \$100,000 during the last three election cycles.¹⁹

A handful of states are on their way to becoming permanent arenas in the Court Wars: Alabama, Illinois, Louisiana, Michigan, Mississippi, Ohio and Texas have all endured repeat campaigns involving more than a million dollars a year. Together, campaigns in these judicial battleground states have cost more than \$126 million since 1990. These six states are gaining national reputations for Supreme Court races that are perpetually “nasty, noisy and costly.”

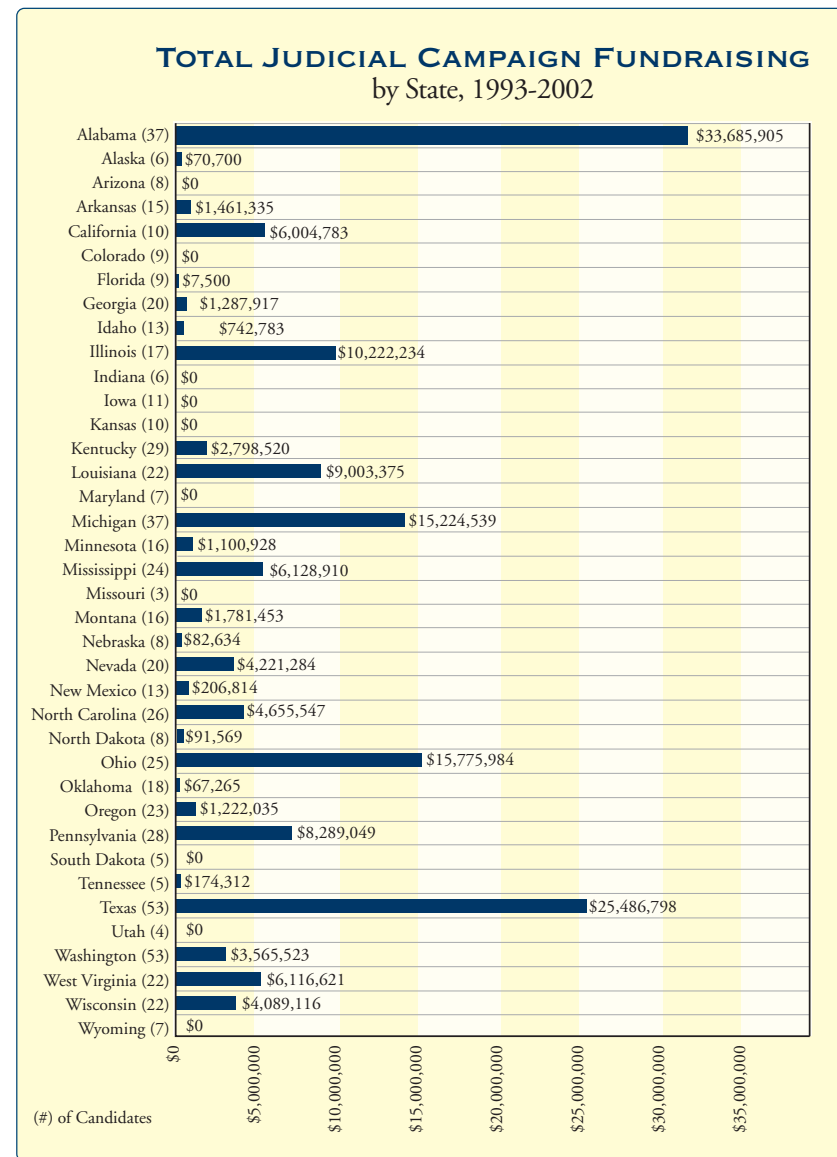
¹⁷ In 8 of those states—AL, IL, LA, MI, MS, OH, PA & TX—individual candidates have broken the million dollar mark.

¹⁸ North Dakota candidates do not have to report candidate contributions or expenditures, so it's difficult to know how much has really been raised there

¹⁹ Indeed, in 10 of the 16 retention election states—AZ, CO, IN, IA, KS, MD, MO, NE, SD & WY—no Supreme Court candidate reported raising any money during the last three election cycles.

Variation is hardly surprising, given that the amount of money in state politics already varies greatly from state to state.²⁰ States that elect judges also vary considerably in their population, media advertising costs, political culture, and contribution limits. As we discuss below, different judicial selection systems appear to attract different levels of money. And of course, the number of Supreme Court candidates fluctuates from election to election—and the attention and money that is showered on these candidates can also be affected by other important state and federal contests on the ballot. Since national averages are not always useful in studying the elections of any one state, we provide a state-by-state analysis.

FIGURE 10



²⁰ This is true even when accounting for population differences. For example, the cost per voter for state legislative races in 2000 ranged from \$15 in Alaska to \$0.70 in North Dakota.

FIGURE 11

The Election Systems

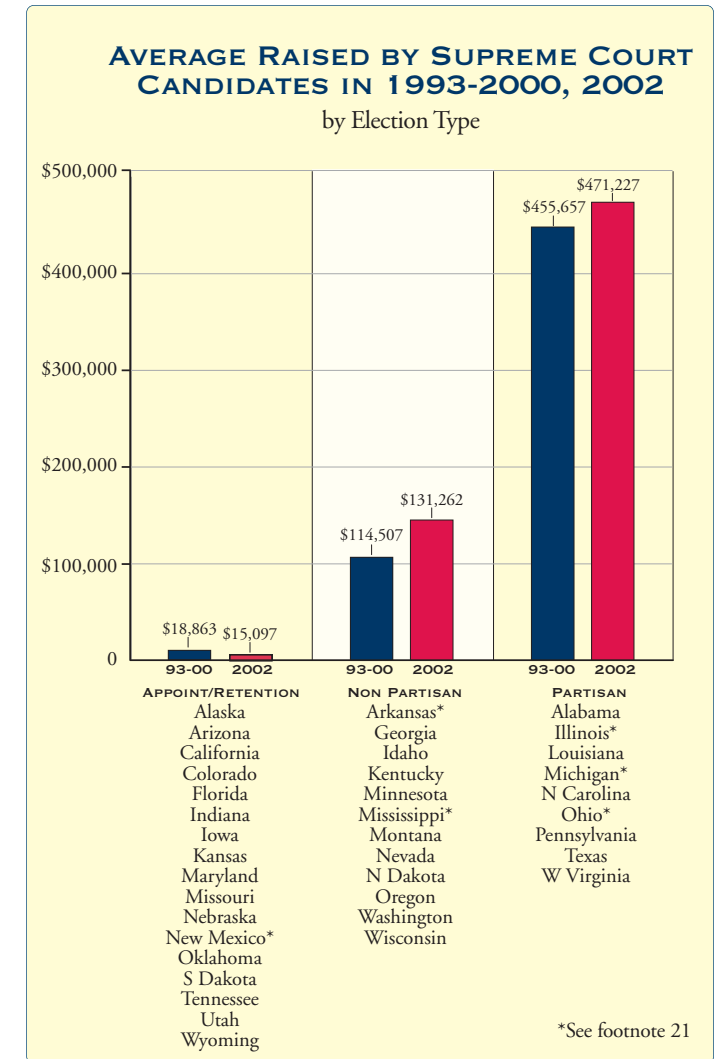
PARTISAN JUDICIAL ELECTIONS ARE MONEY MAGNETS

How a state elects its judges continues to affect the amount of money candidates raise, and whether they have to raise money at all. Partisan elections—where judicial candidates are identified on the ballot by their political party—continue to attract the most money: an average of \$471,227 in 2002, and \$455,657 between 1993-2000.²¹ In nonpartisan elections, candidates raised an average of \$131,262 in 2002, compared with \$114,507 from 1993-2000.²² As usual, the least expensive races took place in retention elections, where judges must keep their office in an up-or-down race where they face no opponent.²³

Television advertising buys reveal similar patterns: in 2002, more than \$2.2 million was spent on ads in states with partisan elections, compared to \$290,525 in nonpartisan states and none in retention states.

The fact that partisan election systems are money magnets is also illustrated by the experiences of states where partisan races take place alongside other kinds of races. In Illinois in 2002, even as an incumbent was re-elected in a cost-free retention contest, candidates in a partisan contest raised \$1.9 million.²⁴ Similarly, three Supreme Court contests were held in New Mexico: no money was raised in the two retention races, while candidates raised nearly \$91,000 in a partisan contest.²⁵

In 2001-02, Republican Supreme Court candidates won 14 out of 18 partisan contests. Republican candidates raised a total of \$13,601,686, and Democrats \$10,443,822. (Nonpartisan candidates raised \$4,986,724 and third-party candidates \$5,892.) Republican winners raised an average of \$815,640; the four Democratic winners averaged \$196,302.



²¹ For purposes of analysis, Ohio and Michigan are categorized as partisan election states. Although these states' ballots do not identify Supreme Court candidates by party, they are so identified during the campaign season. In Michigan, political parties nominate the candidates. Data from Illinois and New Mexico are divided between two categories—partisan and retention—because their Supreme Court justices initially run in partisan elections but subsequently stand in retention elections. Historic data from Arkansas and Mississippi are also divided between two categories—partisan and nonpartisan—because these states switched from partisan to nonpartisan elections in the past decade.

²² Of the 51 candidates who ran in partisan elections in 2002, 8 raised no funds; the 43 candidates who did raised an average of \$559,336 each. In the 2000 election, there were 66 partisan candidates, 11 of whom raised no funds; the 55 who did raised an average of \$654,869 each. Of the 35 candidates who ran in nonpartisan elections in 2002, six raised no funds; the 29 who did raised an average of \$158,420 each. In 2000, there were 61 nonpartisan candidates, five of whom raised no money; the remaining 56 averaged \$175,356.

²³ Of the 26 candidates who ran in retention elections in 2002, only one raised funds (\$392,513). In 2000, only four of 25 retention candidates raised money, averaging just \$19,973.

²⁴ In Illinois, Supreme Court justices are initially selected in partisan elections, and must stand in retention elections thereafter.

²⁵ After initially being appointed, New Mexico Supreme Court justices must run in a partisan election the first time they defend their office. Subsequent contests are retention elections.

The New Dating Game: How the *White* Decision Is Changing Judicial Campaigns

CAMPAIGN SPEECH STANDARDS HAVE BEEN LOOSENING

On June 27, 2002, in *Republican Party of Minnesota v. White*, the U.S. Supreme Court changed the rules for judicial elections in America. By a 5-4 vote, the Court struck down Minnesota's "Announce Clause," which prohibits a candidate for judicial office from "announc[ing] his or her views on disputed legal or political issues."²⁶

The dispute sounds arcane, but its effects could be momentous: by loosening standards for campaign speech, the *White* decision lit a time bomb that could drive more big money into campaigns, give special interests new powers to pressure judicial candidates, and tempt judicial candidates to pander to special interests or face their wrath. In other words, the *White* decision will accelerate the growing threat to our courts, and to the 86% of America's state judges who must stand for election.

When executive and legislative candidates need to raise money, they simply tell a would-be donor, as clearly as they can, what they'll do if they're elected. They make a promise. For judges, the mechanics of wooing contributors is more difficult. Even under the loosened *White* standards, they can't make outright promises as to how they'll decide cases.²⁷

So how are contributors supposed to identify judges who might rule "their" way? Judicial candidates can't expect would-be contributors to parse through complicated opinions and lengthy footnotes. If court candidates are going to raise big money, they have to send signals that are loud and clear. That's why, as the Republican Party became ascendant in Texas during the 1990s, many of the state's judges switched away from the Democrats—to send a signal to supporters and contributors.²⁸ That's why a judge in Washington campaigned as being "tough on drunk driving."²⁹ That's why one candidate's stump speech began with a promise *never* to overturn a death penalty.³⁰

SPECIAL INTERESTS ARE THE REAL WINNERS

By making it easier for judges to comment on policy issues that could come before them, the *White* decision helps judicial candidates send signals to special interests. And that's exactly what

²⁶ 122 S. Ct. 2528 (2002). Eight other state codes use similar language (AZ, CO, IA, MD, MS, MO, NM & PA).

²⁷ In addition, in virtually every state judicial candidates are not allowed to solicit contributions directly, and must instead rely on campaign committees or unsolicited donations. In one case in 2002, *Weaver v. Bonner*, Georgia's ban on direct fundraising was struck down by a federal court of appeals.

²⁸ ABA Panel: "Breaking the Most Vulnerable Branch: Do Rising Threats to Judicial Independence Preclude Due Process in Capital Cases?," 31 COLUM. HUMAN RIGHTS L. REV. 123, 134 (1999).

²⁹ *In re Disciplinary Proceeding v. Kaiser*, 759 P.2d 392 (Wash. 1988). The judge was censured by the Supreme Court of Washington, though in the wake of the *White* decision a challenge to such a campaign pledge might well be rejected.

³⁰ ABA Panel, *supra* note 28, at 134.

interest groups will demand: in the post-*White* world, special interests will be choosy shoppers, methodically inspecting the field of candidates so they can invest money in judges who will rule their way. “This opens a Pandora’s box,” said ABA President Robert E. Hirshon when the *White* ruling came down.³¹

JUDICIAL CAMPAIGNS ARE ALREADY BECOMING MORE POLITICAL

This is not speculation. This is what began to happen in 2002. Just weeks after the *White* decision was issued, the group **INDIANA RIGHT TO LIFE** sent questionnaires to state judge candidates, seeking their positions on abortion rights, assisted suicide and in vitro fertilization. “Candidates not responding,” the group warned, “will be identified as ‘Refused to Respond’ on our voter education materials.”³²

The 2003 Supreme Court elections in Pennsylvania confirmed that these new trends are here to stay. “I am not in favor of caps on damages,” Democratic candidate Max Baer told Philadelphia trial lawyers. “I am pro-choice and proud of it,” he wrote in answer to a questionnaire from the National Abortion and Reproductive Rights Action League of Pennsylvania—which cited *White* in insisting that candidates answer its questionnaire, later used by the group to decide endorsements in the spring primary.

“We are getting a lot more judicial candidates to feel comfortable in letting us know their opinions,” said Lois Murphy, president of the NARAL-PA board. And the Pennsylvania Catholic Conference surveyed judicial candidates for the first time, seeking their positions on abortion, cloning, stem-cell research, gay adoption, and insurance coverage for contraceptives. Judge Baer won by 86,000 votes. “I think people liked me because I told them the truth,” he said the day after the election.

Under *White*, the future of judicial campaigns is a New Dating Game where special interests quiz judges to find out who will meet their litmus tests, and judges are pressured to provide answers that will please their suitors. At stake: big money, powerful endorsements, and platoons of grass roots support.

Of course, in legislative and executive campaigns, such a courtship sounds like politics as usual. But judges are supposed to be different. Legislators and executives are paid to make promises, and keep them. Judges are paid to be fair and impartial, to decide cases one at a time based on the facts and the law. We want judges to spend their time looking down at law books, not over their shoulder at special interests.

In the New Dating Game, interest groups won’t be pressing judges just on crime and abortion. In an era when hot button social issues increasingly end up in court, special interests closely track cases involving civil rights, education, adoption, the environment, gun control, labor law, and other sensitive issues where judges are relied upon to rule with fairness and impartiality.³³

³¹ ABA Journal E-Report, June 28, 2002.

³² Since the *White* decision came shortly before the 2002 campaign season, few judicial candidates had prepared to test the boundaries in that year’s elections. “Judicial candidates can say anything they want about what they want,” said New Mexico primary candidate Paul Kennedy. In Minnesota, attorney Allan Lamkin openly proclaimed his opposition to abortion, the death penalty, and gay marriages. Neither man was nominated.

³³ U.S. Senator Patrick Leahy last year cited *White* in describing as a “myth” the notion that federal Appeals Court nominee Miguel Estrada “cannot answer questions without violating judicial ethics.” Press Release, March 6, 2003, <http://www.senate.gov/member/vt/leahy/general/press/200303/030603a.html>

In particular, the *White* decision will enlarge the multi-million dollar political battles already raging over tort liability, medical malpractice and insurance issues. And at every step, political consultants will be on hand to track court decisions, formulate detailed questionnaires, and craft candidate answers that fall short of outright promises, but which clearly convey to special interests who stands on “their side.”

A no-holds-barred attitude could invite a return to racial appeals, including the use of code words in special interest ads. Such gutter politics would also undercut the states’ slow progress towards greater diversity on the bench, which is essential to achieving fair and impartial courts.

Moreover, in the wake of *White*, judges are beginning to challenge a variety of rules designed to ensure that elected judges don’t campaign like ordinary politicians.³⁴ Since the decision, campaign conduct rules have been struck down in Georgia, and challenged unsuccessfully in Florida, Maine, Nevada (currently on appeal), and New York.

A variety of scholars, bar committees, and citizens’ groups have begun working to ameliorate the worst effects of the *White* decision. They’re advising states on how to salvage their codes of judicial conduct, urging judges not to campaign with one eye on special interests, and organizing committees to monitor the tone and conduct of judicial campaigns. In Ohio, for example, many observers credit such efforts with keeping the tone and conduct of their 2002 Supreme Court campaigns from growing even worse.

With each passing year, the judges who protect our rights will be pressured to play the New Dating Game—not a game of outright promises, but one of code words and coy signals. Of course, they don’t have to play. But if they don’t, they might well face opponents who do. It’s already happening.

³⁴ See J.J. Gass, *After White: Defending and Amending Canons of Judicial Ethics* (Brennan Center 2004).

The 2002 Campaign in Five States

ALABAMA

Alabama was the first state to suffer from chronically expensive and contentious Supreme Court elections, and the 2002 campaign continued this tradition. Although there was a drop-off in third party "issue" advertising, the candidates in just one Alabama Supreme Court race raised more money than all but two states (both of which had multiple races). Only in Ohio was the average cost of winning a Supreme Court seat greater.

Almost \$1.6 million of this money was raised by Justice Harold See, making him the third-best fundraiser among Supreme Court candidates in 2002. (He ranked first in 2000, when he raised almost \$1.7 million in an unsuccessful bid to be Chief Justice.) Indeed, the top two donors in the country in 2002 gave to Alabama races: the Alabama Democratic Party gave \$893,000 to See's challenger, James Anderson, while the pro-business Progress PAC gave \$284,000 to Justice See.

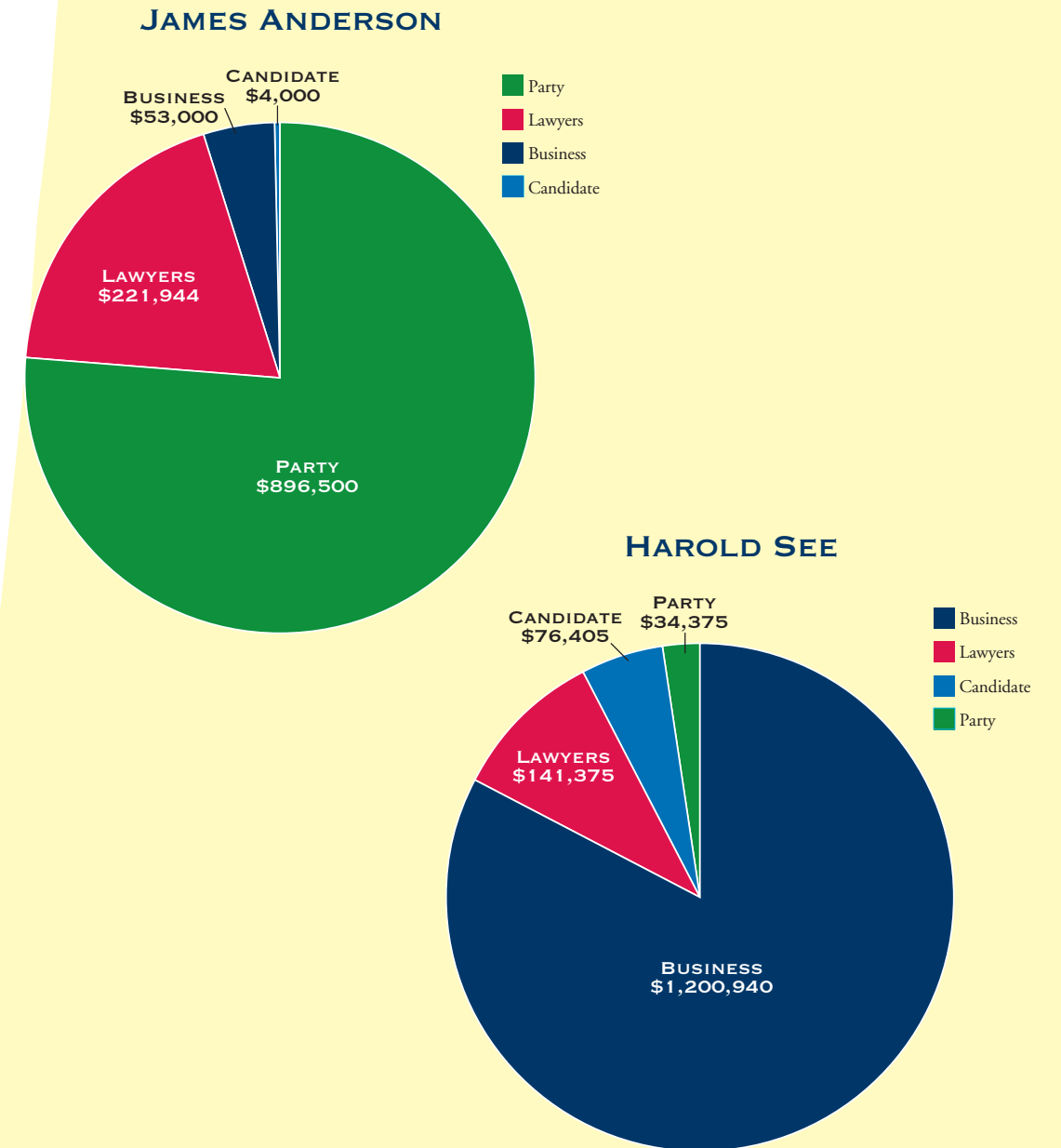
With three races scheduled for 2004, and Chief Justice Roy Moore's Ten Commandments controversy still very much at issue, Alabama promises to remain in the forefront of the New Politics of Judicial Elections.

ALABAMA SUPREME COURT ELECTION, 2002

	HAROLD SEE REPUBLICAN	JAMES ANDERSON DEMOCRAT
VOTE SHARE	51%	46%
AMOUNT RAISED	\$1,589,797	\$1,327,248
TV AD SPENDING	\$564,194	\$599,253
LARGEST SOURCE OF FUNDS	Business (76%)	Political Party (68%)

ALABAMA

SOURCES OF CONTRIBUTIONS TO ALABAMA SUPREME COURT CANDIDATES by Contributor Interest, 2002



See and Anderson each relied heavily on single-interest backers in compiling their campaign war chests.

ILLINOIS

The 2002 Supreme Court race between Justice Rita Garman and her challenger, Justice Sue Myerscough, demonstrated that the New Politics of Judicial Elections is in Illinois to stay. Justice Garman raised \$987,187, exceeding the total raised by the 2000 winner of the race in Illinois' Third Judicial District by more than 25 percent. The fact that Illinois elects Supreme Court justices by district—and not in statewide races—makes these figures all the more notable, since candidates are not under pressure to raise money to compete in multiple large television markets.

The candidates' commercials seemed clearly crafted to telegraph messages to voters. One of Justice Garman's ads boasted that she's "tough on crime. She's worked with police, prosecutors and victims to put violent criminals and sexual predators in jail." Justice Myerscough echoed similar themes: "Justice Sue Myerscough kept children safe from sexual predators and kept violent criminals off our street." Few of the spots provided information about candidate qualifications. None emphasized the importance of a judge being fair and impartial, or that cases should be decided based on the facts and the law.

When comparing the money spent on campaign ads, Justice Myerscough actually outspent the incumbent by about \$6,000. But Justice Garman enjoyed almost \$40,000 in additional advertising support from a Washington, D.C.-based group, the American Taxpayers Alliance, which attacked Justice Myerscough for having "made some questionable calls, having cases overturned, one decision even judged 'egregiously erroneous.'"

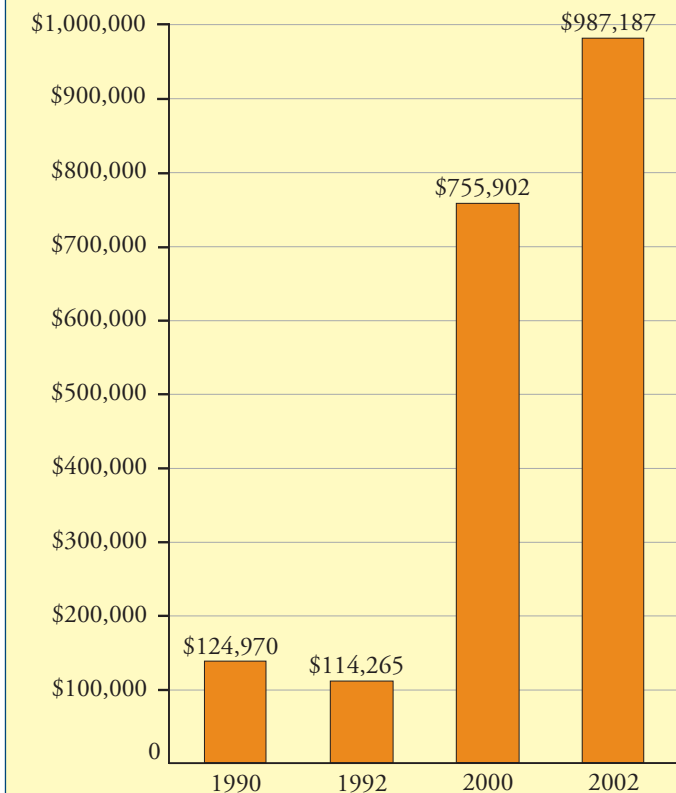
ILLINOIS SUPREME COURT ELECTION, 2002

	RITA GARMAN REPUBLICAN	SUE MYERSCOUGH DEMOCRAT
VOTE SHARE	53%	47%
AMOUNT RAISED	\$987,187	\$803,163
TV AD SPENDING	\$136,877	\$142,933
LARGEST SOURCE OF FUNDS	Business (28%)	Lawyers (35%)

ILLINOIS

Many observers forecast much worse for the 2004 Supreme Court election, which will take place in the state's Fifth Judicial District. Since this district includes Madison County, a jurisdiction that earned a national reputation for large tort awards, the race could attract substantial attention and resources from business and trial lawyer groups. In justifying business interest in the Fifth District race, Ed Murnane of the Illinois Civil Justice League, a group funded by the U.S. Chamber of Commerce, said that "Madison County (courts have) been hostile to the business community and hostile to the medical community and hostile to consumers."

AVERAGE COST OF WINNING, ILLINOIS
Supreme Court Elections, 1990-2002



MISSISSIPPI

The cost of winning a seat on the Mississippi Supreme Court continues to climb steadily. A decade ago, it cost no more than a public defender's salary to win a seat on the state's high court. By 2002, the average cost had rocketed to more than \$1 million. These figures present only part of the picture, since unknown sums were spent on TV advertising done in the name of interest groups that shielded themselves from campaign finance disclosure laws by not employing so-called "magic words" (such as "vote for" or "vote against").

Indeed, Mississippi's judicial elections are more dominated by special interest money than any other state's. Representatives of both business and the plaintiffs' bar speak openly of their desire to elect a court favorable to their interests, and they have made the state a winner-take-all battleground—a war waged primarily through 30-second sound-bite TV ads. Two groups, the Law Enforcement Alliance of America (LEAA), which has had ties to the NRA, and Citizens for Truth in Government, supported by the state's trial lawyers, combined to spend at least \$200,000 on TV ads (see Appendix C for notes on interest group TV advertising estimates). Incumbent Chuck McRae and challenger Jess Dickinson spent a fraction of this amount on their own ads.

MISSISSIPPI SUPREME COURT ELECTION, 2002

	JESS DICKINSON	LARRY BUFFINGTON	CHUCK McRAE
VOTE SHARE	54%	23%	23%
AMOUNT RAISED	\$1,005,380	\$177,121	\$633,513
TV AD SPENDING	\$99,179	\$0	\$68,837
LARGEST SOURCE OF FUNDS	Business (61%)	Self (42%)	Lawyers (81%)

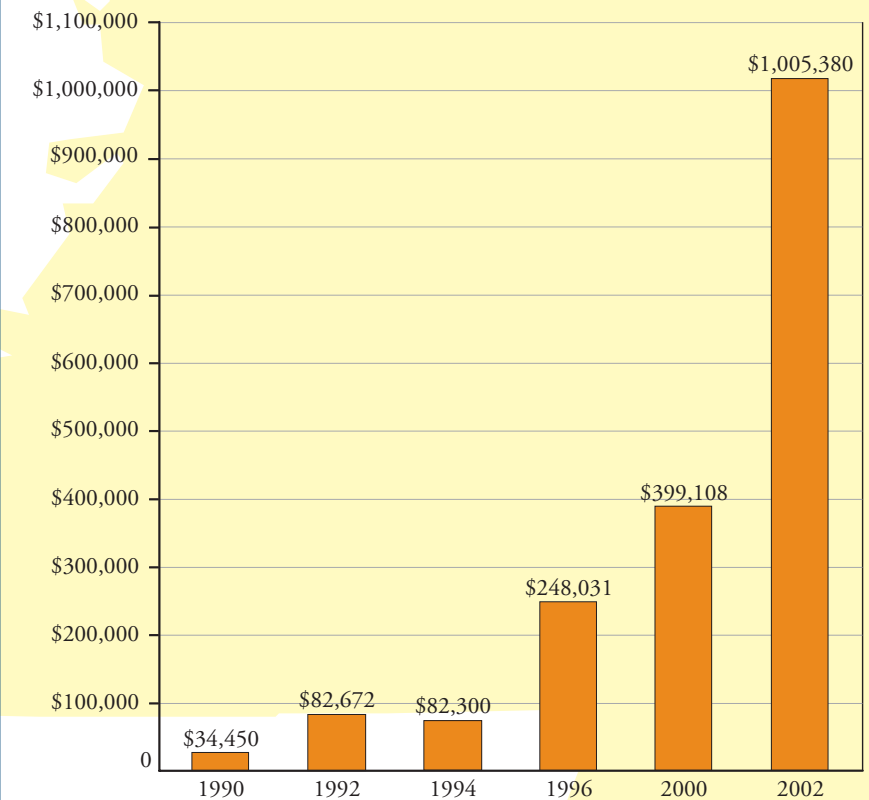
MISSISSIPPI



Interest groups spent an estimated \$199,952 on TV ads in the 2002 Mississippi Supreme Court elections. This one from Citizens for Truth in Government attacked challenger Jess Dickinson. See Appendix B for itemized TV spending figures.

Particularly disturbing was the tone of the advertising. Interest group ads attacked candidates or contrasted them 58 percent of the time, while candidate-sponsored ads did so only nine percent of the time. Citizens for Truth in Government attacked Dickinson personally, saying that "he was even sued for hitting a customer in the face with a whiskey bottle" while the candidate was managing a franchise of bars. The LEAA attacked McRae for "being the only judge to vote to reverse the conviction of the murderer of a three-year-old girl."

AVERAGE COST OF WINNING, MISSISSIPPI Supreme Court Elections, 1990-2002



The 2002 campaign secured Ohio's reputation as a poster child: the nation's leading battleground for big money and special interests to square off over Supreme Court seats. Four candidates raised a total of \$6.2 million in 2002, as much as 17 candidates totaled in Texas. The two winners each raised nearly \$2 million, and the losers each broke \$1 million. After largely holding constant for the better part of a decade, the average cost of winning a seat on the Ohio Supreme Court more than doubled in two years, jumping from \$717,808 in 2000 to \$1,849,108 in 2002.

OHIO SUPREME COURT ELECTION, 2002

	EVELYN STRATTON REPUBLICAN	JANET BURNSIDE DEMOCRAT
VOTE SHARE	55%	45%
AMOUNT RAISED	\$1,899,313	\$1,193,732
TV AD SPENDING	\$1,174,786	\$624,631
LARGEST SOURCE OF FUNDS	Business (62%)	Lawyers (69%)

	MAUREEN O'CONNOR REPUBLICAN	TIM BLACK DEMOCRAT
VOTE SHARE	57%	42%
AMOUNT RAISED	\$1,798,902	\$1,349,636
TV AD SPENDING	\$912,601	\$676,737
LARGEST SOURCE OF FUNDS	Business (61%)	Lawyers (63%)

Ohio's high court races have attracted big-league fundraising techniques, like bundling, as more than 200 employees of Cincinnati Financial Corporation combined to donate \$96,663 to the two Republican candidates. And while Ohio's elections are nominally nonpartisan, the state Democratic Party gave more than \$231,000 to judges Burnside and Black, while the GOP gave generously to their candidates.

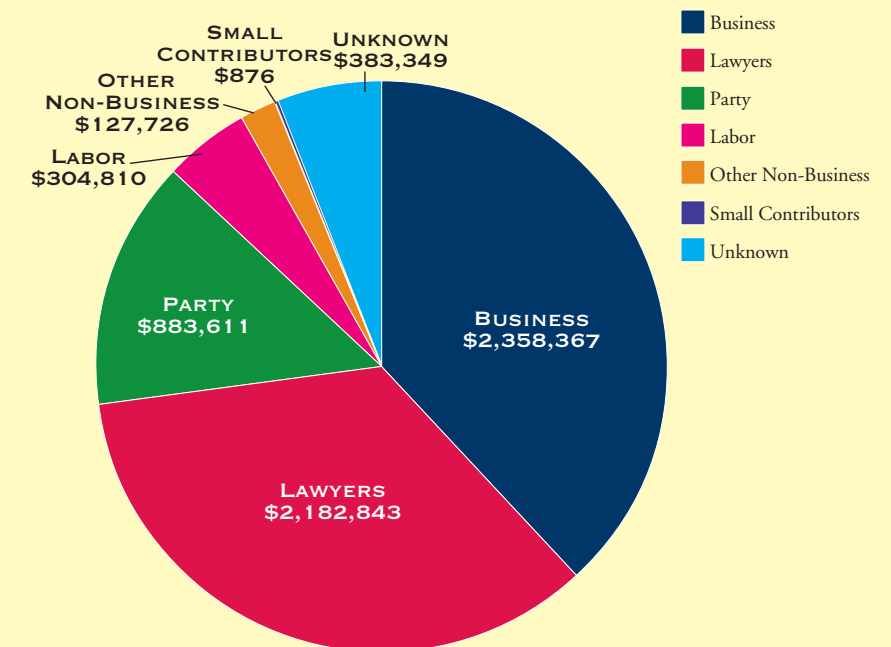


Interest groups spent an estimated \$1.6 million on TV ads in the 2002 Ohio Supreme Court elections, including this one from Informed Citizens of Ohio that lampooned personal injury law firms, while also promoting Justice Stratton. See Appendix B for itemized TV spending figures.

Ohio broadcasters were also big winners in 2002, pulling in more than \$5 million in advertising revenue. Most came from the candidates, with special interests accounting for the rest with so-called "issue ads"—allegedly immune from donor disclosure—which actually attacked and supported particular candidates. Indeed, a pair of Ohio interest groups—Informed Citizens of Ohio and Citizens for Independent Courts—each spent more on TV ads than 85 of the 88 Supreme Court candidates across America.

Interest groups were far more likely to run negative ads. Nearly four out of five candidate ads were positive, while almost half of special interest ads attacked a candidate. (E.g., "Stratton sided with the big insurance company," and "Tim Black declared that his seat would be labor's seat").

SOURCES OF CONTRIBUTIONS TO OHIO SUPREME COURT CANDIDATES by Contributor Interest, 2002



Republicans are currently fully in charge of state politics in Texas—including the Supreme Court—and this dominance is affecting fundraising in high court campaigns. The GOP won five out of five Supreme Court races in 2002, four of them with no less than 57% of the vote. This lack of

competition might account for the decline in the average cost of winning a seat on the Court—from its high of \$1.6 million in 1994—even as the national average has been rising. In 2002, the average winner spent \$568,430, and only two of the ten candidates bothered to run TV ads.

Given this dominance, the real surprise is that three of the winning candidates felt the need to amass almost \$1 million apiece. In contrast, Chief Justice Thomas Phillips swore off outside donations—in part to protest the state of the system—and won reelection handily despite raising only \$19,433, a majority of it from himself. Steven Wayne Smith, a national anti-affirmative action activist, also won a seat despite being shunned by the state GOP and raising only \$15,828.

TEXAS SUPREME COURT ELECTION, 2002

	THOMAS PHILLIPS REPUBLICAN	RICHARD BAKER DEMOCRAT
VOTE SHARE	59%	40%
AMOUNT RAISED	\$19,433	\$2,815
TV AD SPENDING	\$0	\$0
LARGEST SOURCE OF FUNDS	Self (52%)	N/A

	MIKE SCHNEIDER REPUBLICAN	LINDA YANEZ DEMOCRAT
VOTE SHARE	57%	41%
AMOUNT RAISED	\$953,573	\$391,223
TV AD SPENDING	\$257,677	\$0
LARGEST SOURCE OF FUNDS	Lawyers (63%)	Lawyers (87%)

	DALE WAINWRIGHT REPUBLICAN	JIM PARSON DEMOCRAT
VOTE SHARE	57%	41%
AMOUNT RAISED	\$942,479	\$270,800
TV AD SPENDING	\$0	\$0
LARGEST SOURCE OF FUNDS	Lawyers (56%)	Lawyers (96%)

	WALLACE JEFFERSON REPUBLICAN	BILL MOODY DEMOCRAT
VOTE SHARE	57%	43%
AMOUNT RAISED	\$910,837	\$204,175
TV AD SPENDING	\$28,229	\$0
LARGEST SOURCE OF FUNDS	Lawyers (48%)	Lawyers (83%)

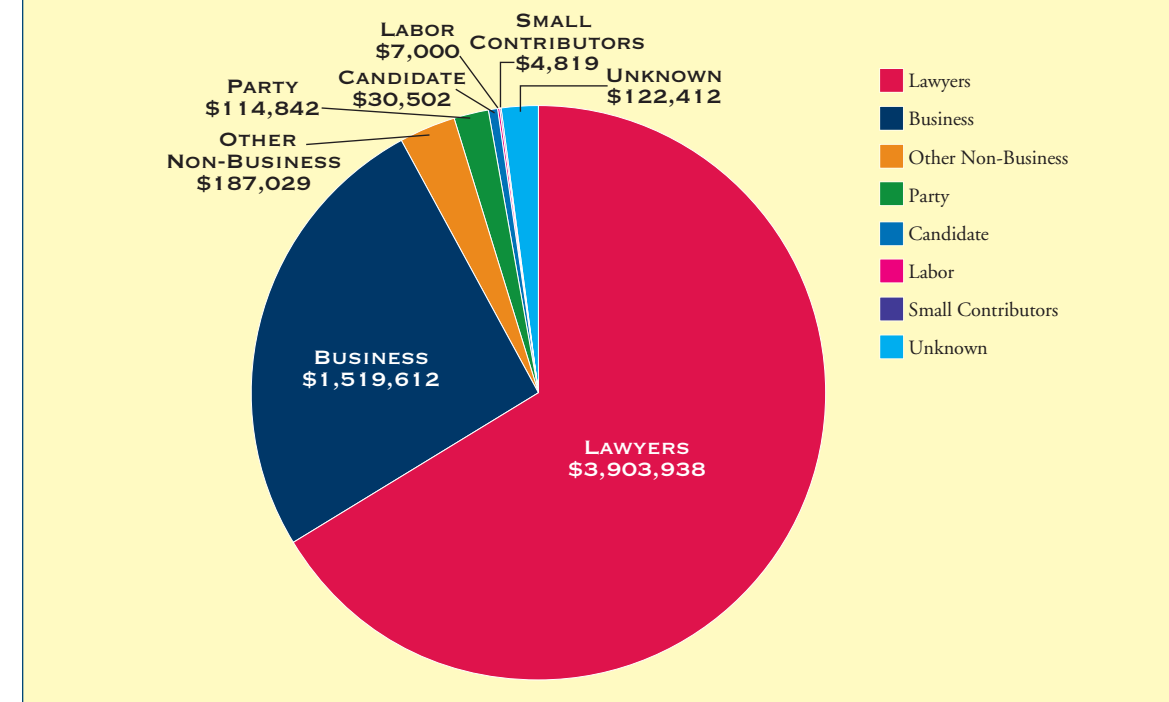
	STEVEN W. SMITH REPUBLICAN	MARGARET MIRABEL DEMOCRAT
VOTE SHARE	54%	46%
AMOUNT RAISED	\$15,828	\$533,575
TV AD SPENDING	\$0	\$0
LARGEST SOURCE OF FUNDS	Self (65%)	Lawyers (85%)

Of the seven candidates who raised a significant amount of money for their campaigns in 2002, six received more than 50% of their support from attorneys. One candidate, Democrat Jeff Parson, raised 96% of his \$270,800 from attorneys. Republican candidates attracted far more support from business backers than did Democratic candidates.

A 1999 survey by the State Bar Association of Texas found that an overwhelming majority of attorneys (79%) and the public (86%) believe that campaign contributions influence judicial decisions. Even 48% of judges expressed similar concerns.

SOURCES OF CONTRIBUTIONS TO TEXAS SUPREME COURT CANDIDATES

by Contributor Interest, 2002



APPENDIX A: SELECTED TV STORYBOARDS FROM JUDICIAL ELECTIONS, 2002

CMAG Reports

Storyboard

AL/SEE ANDERSON MISLEADING

Brand: POL-JUDGE (8333)
Parent: POLITICAL ADV
Aired: 10/29/2002 - 10/29/2002

CMAG Reports

Storyboard

Creative Id: 2694063

 <p>James Anderson</p> <p>Desperate last minute attacks on Justice Harold See</p> <p>[Announcer]: James Anderson, making desperate last minute attacks on Justice Harold See. Anderson knows political charges were dismissed</p>	 <p>James Anderson</p> <p>Knows political charges were dismissed</p> <p>long ago. Why the misleading attacks? Anderson has no judicial experience.</p>	 <p>James Anderson</p> <p>No judicial experience</p> <p>And he's taken thousands of dollars from trial lawyers. Anderson was on</p>
 <p>Al Gore</p> <p>On legal team for Al Gore against George Bush</p> <p>a legal team for Al Gore against George Bush. Justice Harold See.</p>	 <p>Justice See is serving with honor. Chief Justice Roy Moore praises Harold See</p>	 <p>"Count upon me as a loyal supporter and true friend." -Chief Justice Roy Moore</p> <p>saying "count upon me as a loyal supporter and a true friend." Justice Harold See.</p>
 <p>Justice for Alabama. [PFB]: Committee to Re-elect Justice Harold See</p>		

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www.PoliticsOnTV.com

1-866-559-CHAO

CMAG Reports

Storyboard

IL/MYERSCOUGH CRIME

Brand: POL-SUPREME COURT (8333)
Parent: POLITICAL ADV
Aired: 10/10/2002 - 10/14/2002

CMAG Reports

Storyboard

Creative Id: 2665737

 <p>Sue Myerscough</p> <p>[Myerscough]: "I was accosted near my office by a convicted rapist who the system let go." [Announcer]: Justice</p>	 <p>Sue Myerscough, [Myerscough]: "Thankfully I was not hurt, but as a</p>	 <p>Justice Harold See</p> <p>judge for the last 15 years I've seen far too many people who were."</p>
 <p>[Announcer]: Justice Sue Myerscough kept children safe from sexual predators.</p>	 <p>and kept violent juveniles off our streets.</p>	 <p>[Myerscough]: "On the Supreme Court I'll keep fighting because as any crime</p>
 <p>victim will tell you, there's a lot more to be done." [Announcer]: Justice</p>	 <p>Sue Myerscough for Supreme Court. [PFB: NA/Candidate]</p>	

Campaign Media Analysis Group

www.PoliticsOnTV.com

1-866-559-CHAO

CMAG Reports

Storyboard

MS/LEAA DICKINSON MCRAE

Brand: LAW ENFORCEMENT ALLIANCE OF AMERICA (8329)
 Parent: LAW ENFORCEMENT ALLIANCE OF AMERICA
 Aired: 10/31/2002 - 10/31/2002

CMAG Reports

Storyboard

Creative ID: 2697271

<p>JESS DICKINSON</p>  <p>[Announcer]: Jess Dickinson is a strong leader who supports the death penalty to keep our families safe. A friend</p>	<p>JESS DICKINSON</p>  <p>Strong leader. Supports the death penalty.</p> <p>to law enforcement, Jess Dickinson has been recognized by his peers</p>	<p>JESS DICKINSON</p>  <p>Friend to law enforcement. High ethical standards.</p> <p>for his high ethical standards, Jess Dickinson is a common sense leader</p>
<p>JESS DICKINSON</p>  <p>who supports our right to bear arms. And Chuck McRae?</p>	<p>And Chuck McRae?</p> <p>He was the only judge to vote to reverse the conviction of the murderer of a 3 year old</p>	<p>Chuck McRae?</p>  <p>Only judge to vote to reverse the conviction of the murderer.</p> <p>girl. No wonder Reader's Digest named Chuck McRae as one of</p>
<p>Reader's Digest AMERICA'S WORST JUDGES</p>  <p>Reader's Digest named Chuck McRae one of America's worst judges.</p> <p>America's worst judges. Chuck McRae, no common sense.</p>	<p>Reader's Digest AMERICA'S WORST JUDGES</p>  <p>Reader's Digest named Chuck McRae one of America's worst judges.</p> <p>Learn more. Visit: www.LEAA.org/NoCommonSense</p> <p>[PFB: Law Enforcement Alliance of America]</p>	

Campaign Media Analysis Group

www.PoliticsOnTV.com

1-866-559-CMAG

CMAG Reports

Storyboard

OH/CFIC BLACK & BURNSIDE PROTECT PEOPLE

CMAG Reports

Storyboard

Brand: POL-SUPREME COURT (8333)
 Parent: POLITICAL ADV
 Aired: 10/22/2002 - 10/22/2002

Creative ID: 2695412

<p>David Norgard</p>  <p>[Norgard]: "For years, I worked for a large corporation in Ohio. Now I have a fatal disease."</p>	<p>David Norgard contracted chronic beryllium disease at work.</p> <p>[Announcer]: David Norgard contracted chronic beryllium disease at work.</p>	 <p>[Norgard]: "They lied about the risks, then they hid the evidence."</p>
<p>Justice Eve Stratton sided with the big chemical company.</p> <p>[Announcer]: Eve Stratton sided with the big chemical company.</p>	 <p>[Norgard]: "Eve Stratton calls herself the velvet hammer. Yeah, corporations get the velvet."</p>	<p>We need Justices who protect people, not corporations.</p> <p>Ohio families get the hammer!" [Announcer]: We need justices that protect people, not corporations.</p>
<p>Tim Black & Janet Burnside</p>  <p>[Norgard]: "We need Tim Black and Janet Burnside because they're on our side." [PFB]: Citizens for Independent Court.</p>		

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1-866-559-CMAG

APPENDIX B: SUPREME COURT TV ADVERTISEMENTS 2002

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism for Decisions	Family Values	Other Themes	Attack (No Theme)	Airings	Cost
ALABAMA												
AL/Anderson Bio	Candidate	Promote	X								304	\$209,949
AL/Anderson Different 15	Candidate	Promote	X								120	\$22,835
AL/Anderson Play By The Rules	Candidate	Promote	X								464	\$153,165
AL/Anderson See Disqualified	Candidate	Contrast				X					289	\$110,617
AL/Anderson See Honest Shot	Candidate	Attack				X					306	\$102,687
AL/See Anderson Misleading	Candidate	Contrast				X					486	\$132,482
AL/See Family Man	Candidate	Promote						X			984	\$264,109
AL/See Keeping His Promise	Candidate	Promote	X								641	\$167,603
IDAHO												
ID/Kelso Trout Liberal	ITR	Contrast		X		X	X				133	\$26,712
ILLINOIS												
IL/Garman Edgar Endorsement	Candidate	Promote	X								395	\$92,315
IL/Garman Not A Politician	Candidate	Promote	X								35	\$6,940
IL/Garman Tough And Fair	Candidate	Promote	X								130	\$29,102
IL/Garman Tough On Crime	Candidate	Promote				X		X			34	\$8,520
IL/Myerscough Crime	Candidate	Promote				X					174	\$39,280
IL/Myerscough Garman Negative Attacks	Candidate	Contrast				X					68	\$15,139
IL/Myerscough Honor & Dignity	Candidate	Contrast	X								55	\$14,206
IL/Myerscough Honor Oath	Candidate	Promote				X		X			138	\$29,920
IL/Myerscough Police Endorsements	Candidate	Promote				X		X			218	\$44,388
IL/ATA Garman Fairness & Skill	ATA	Contrast		X			X				226	\$39,428
MICHIGAN												
MI/Weaver Chief Justice 10	Candidate	Promote	X								70	\$20,531
MI/Weaver Criminals Accountable 10	Candidate	Promote				X					67	\$19,005
MI/Weaver Experience 10	Candidate	Promote	X								67	\$20,462
MI/Young Looking For Justice	Candidate	Promote				X		X			304	\$183,909
MI/MICC Weaver & Young Common Sense	MICC	Promote				X	X				522	\$313,409
MISSISSIPPI												
MS/Dickinson Attacked Faith	Candidate	Promote				X		X			66	\$20,126
MS/Dickinson Community Endorsements	Candidate	Promote	X								21	\$7,205
MS/Dickinson Community Endorsements 2	Candidate	Promote						X			22	\$5,500
MS/Dickinson McRae Smart Bombs	Candidate	Contrast				X					63	\$18,591
MS/Dickinson Restore Respect	Candidate	Promote				X		X			148	\$37,484
MS/Dickinson Three Reasons	Candidate	Promote		X		X					44	\$10,273
MS/McRae Daughter Endorsement 2	Candidate	Promote	X								181	\$35,228
MS/McRae Dickinson Special Interests	Candidate	Attack		X		X					2	\$297
MS/McRae My Dad	Candidate	Promote	X								49	\$16,604
MS/McRae Open Book	Candidate	Promote	X								9	\$1,373
MS/McRae Tough And Fair	Candidate	Promote				X					96	\$15,335
MS/CTG Dickinson Bars	CTG	Attack								X	30	\$5,792
MS/CTG Dickinson Fines	CTG	Attack								X	51	\$10,719
MS/CTG Dickinson Sued Church	CTG	Attack								X	28	\$7,241
MS/CTG Dickinson Violated Rules	CTG	Attack								X	12	\$1,401
MS/LEAA Dickinson McRae	LEAA	Attack				X		X			30	\$7,118
MS/LEAA Dickinson Strong Leader	LEAA	Promote				X		X			323	\$92,218
MS/LEAA McRae Disbarment	LEAA	Attack				X		X			304	\$75,463
NEVADA												
NV/Chairez Stood Up	Candidate	Promote						X			38	\$28,695
NV/Maupin Finished First	Candidate	Contrast	X								25	\$12,284
NV/Maupin Gibbons Endorsement	Candidate	Promote	X								44	\$18,670
NV/Maupin Innovative	Candidate	Promote	X								92	\$41,728
NV/Maupin Reid Endorsement	Candidate	Promote	X								34	\$14,221

Ad Title	Sponsor	Tone	Traditional	Civil Justice	Criminal Justice	Special Interests	Criticism for Decisions	Family Values	Other Themes	Attack (No Theme)	Airings	Cost
OHIO												
OH/Black O'Connor Breaking The Law	Candidate	Contrast								X	524	\$261,203
OH/Black O'Connor Politician	Candidate	Contrast			X						1,022	\$415,534
OH/Burnside Bio	Candidate	Promote		X		X					682	\$273,391
OH/Burnside Free Of Politics	Candidate	Promote		X	X	X					415	\$189,378
OH/Burnside Growing Up	Candidate	Promote		X		X					1	\$71
OH/Burnside Stratton Independence	Candidate	Contrast				X					289	\$161,791
OH/O'Connor & Stratton Experience	Candidate	Promote	X								77	\$39,346
OH/O'Connor Black Limited Experience	Candidate	Contrast			X			X			227	\$112,724
OH/O'Connor Endorsements 15	Candidate	Promote			X						372	\$131,082
OH/O'Connor Judicial Experience	Candidate	Promote			X						116	\$115,809
OH/O'Connor Judicial Experience 15	Candidate	Promote	X								1,710	\$552,986
OH/Stratton & O'Connor Condemn Ad	Candidate	Contrast		X		X					383	\$151,804
OH/Stratton & O'Connor Impartial	Candidate	Promote		X		X					241	\$151,728
OH/Stratton & O'Connor No Favorites	Candidate	Contrast				X					101	\$47,017
OH/Stratton At It Again	Candidate	Contrast	X								172	\$49,608
OH/Stratton Justice 15	Candidate	Promote			X						476	\$163,456
OH/Stratton Knows About Hard Work	Candidate	Promote			X			X			780	\$459,324
OH/Stratton Offended 15	Candidate	Promote	X								553	\$192,002
OH/Stratton Opens Doors	Candidate	Promote						X			226	\$81,463
OH/Stratton Velvet Hammer	Candidate	Promote			X						147	\$67,964
OH/Stratton Velvet Hammer 15	Candidate	Promote			X						444	\$160,969
OH/CFAFC Stratton No Justice	CFAFC	Attack		X			X				550	\$198,016
OH/CFIC Black & Burnside 15	CIC	Contrast		X							270	\$69,765
OH/CFIC Black & Burnside On Our Side	CIC	Contrast		X				X			833	\$361,914
OH/CFIC Black & Burnside Protect People	CIC	Attack		X			X				269	\$126,330
OH/CFIC Black & Burnside They're On Our	CIC	Promote		X							850	\$124,112
OH/CO O'Connor & Stratton Phone	CO	Promote						X	X		140	\$104,242
OH/ICO Stratton Endorsement	ICO	Promote		X							560	\$302,498
OH/ICO Stratton Lawsuits	ICO	Promote		X							675	\$360,820
TEXAS												
TX/Jefferson Brightest Minds	Candidate	Promote	X								46	\$28,299
TX/Schneider I Like Mike	Candidate	Promote	X								350	\$257,677
TX/TXRP Vote For Republican Judges	Party	Promote							X		77	\$68,807
TX/TXRP Vote For Republican Judges 2	Party	Promote			X						82	\$73,431
WASHINGTON												
WA/FAEF Johnson Too Extreme	FAEF	Attack							X		37	\$37,156
Sponsor Abbreviations:												
ATA: American Taxpayers Alliance												
CFAFC: Consumers for a Fair Court												
CIC: Citizens for an Independent Court												
CO: Competition Ohio												
CTG: Citizens for Truth in Government												
FAEF: First American Education Fund												
ICO: Informed Citizens of Ohio												
ITR: Idahoans for Tax Reform												
LEAA: Law Enforcement Alliance of America												
MICC: Michigan Chamber of Commerce												
TXRP: Texas Republican Party												

APPENDIX C: RESEARCH METHODS AND NOTES

CONTESTED RACES

References to contested races include Georgia and Idaho. In 2002, both states elected winners in primaries; November run-offs would have been held only if the winners had not gotten a majority of the vote. Washington's 2002 primaries are also included, despite the fact that a general election was also held, because the primary led to a general election with an unopposed candidate. These electoral systems made the political stakes in these primaries as high as in a traditional general election.

AIRTIME COST ESTIMATES

The estimated costs of airtime in Part I and in the analyses of individual states are supported by an analysis of state Supreme Court television advertising data from the nation's 100 largest media markets. The estimates, calculated and supplied by the Campaign Media Analysis Group ("CMAG"), are based on the average cost of a media buy for the airing time and station. This calculation does not include either premium costs typically associated with campaign ad buys or the costs of production. The costs reported here therefore reflect substantially understated minimum expenditures, and the estimates are useful principally for purposes of comparison within each state.

Estimates from 2000 reflected ads aired in only the top 75 media markets, and estimated airtime costs were unavailable for some ads run in Alabama, Michigan, and Mississippi, even in those markets. The estimates for airtime bought in 2000 for Supreme Court election advertising in those states, and the total cost estimates from 2000, are therefore not fully comparable with 2002 figures.

CMAG's understatement of actual costs can sometimes be evaluated by reference to other sources of information. For example, data obtained from CMAG indicates that interest groups in Ohio spent an estimated \$1.65 million. According to Professor Roy Schotland, the *Columbus Dispatch* has firm bases for concluding that interest groups actually spent a total of \$5.2-\$5.5 million in Ohio, though it is not clear how much of that was spent on airtime.³⁵

In addition, Idahoans for Fair Elections, a Justice at Stake partner, estimates that Idahoans for Tax Reform spent \$173,500 on behalf of candidate Starr Kelso, although the spending was divided between TV and radio ads.³⁶ The CMAG estimate for expenditures on TV airtime only was approximately \$27,000.

The Michigan Campaign Finance Network, a Justice at Stake partner, reports that the Michigan Chamber of Commerce spent \$840,000 on ads supporting Justices Young and Weaver.³⁷ The CMAG estimate for the Chamber's spending exclusively on airtime was slightly over \$300,000.

³⁵ National Center for State Courts, *Judicial Selection at the Crossroads*, p. 2, n.3 (Jan. 28, 2003).

³⁶ Idahoans for Fair Elections, *Tipping the Scales: How Money Threatens the Independence of Idaho's Courts*, pp. 13-14.

³⁷ Michigan Campaign Finance Network, *A Citizen's Guide to Michigan Campaign Finance*, 2002, p. 14 (June 12, 2002).

Finally, *Forbes* magazine reported that the LEAA spent \$500,000 attacking Mississippi Justice Chuck McRae.³⁸ CMAG estimated that the LEAA spent approximately \$175,000 on airtime only.

OTHER STATE FUNDRAISING ESTIMATES

In addition to the data gathered by the Institute on Money in State Politics, Justice at Stake partners in Illinois, Ohio and Texas have published reports on judicial fundraising in their states. For more information, contact the Illinois Campaign for Political Reform (<http://www.ilcampaign.org>), Ohio Citizen Action (<http://www.ohiocitizen.org>) and Texans for Public Justice (<http://www.tpj.org>).

³⁸ Robert Lenzner & Matthew Miller, "Buying Justice," *Forbes*, July 21, 2003.



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