



# Bankrolling the Bench



THE  
**NEW POLITICS**  
OF JUDICIAL ELECTIONS 2013-14



by

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BRENNAN  
CENTER  
FOR JUSTICE

*at New York University School of Law*



Justice  
at Stake 

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# CONTENTS

## **Executive Summary 1**

Outside Spending by Special-Interest Groups Made Up a Record Percentage of Total Spending.	2
Big Spenders Dominated.	3
“Tough on Crime” Was the Most Common Campaign Theme.	3
National Organizations Continued to Target State—and Even Local—Races.	3
Retention Elections Remained a Battleground for Special Interests and Partisan Politics.	4

## **Chapter 1 | Wealthy Special Interests Cast a Long Shadow 6**

Million-Dollar Elections in Eight States	6
Spending Records Fall in Three States	7
State in Focus: North Carolina	8
Judicial Elections Are the Laughingstock of America. Literally.	11
Outside Spending Played an Unprecedented Role	13
A Few Big Spenders Dominated	14
Judicial Ethics at the U.S. Supreme Court	17
Politicians Pressure Courts Over Controversial Rulings	18
Spending Patterns Evolve as Retention Elections Become New Battlegrounds	20
State in Focus: Ohio	21
State in Focus: Kansas	23
Number of Unopposed Elections Rises	24
State in Focus: Tennessee	26

**Chapter 2 | Who’s Behind the Spending? 30**

---

Contributions by Sector	31
Major Contributors to Candidates in Six States with Highest Fundraising, 2013-14	31
National Groups Target State Races	32
Following the Money: Five States in Focus	34
Political Pressure on the Courts in Ferguson	35
Lower Court Race Attracts National Attention in Cole County, Missouri	38
When Money Comes to Court: The Need for Recusal Reform	41
Lack of Transparency in Independent Expenditures Obscures Donors and Spending	44

---

**Chapter 3 | Court TV: Criminal Justice Themes Dominate Television Ads 48**

---

Major Themes	48
TV Ads May Influence Judges Long After Election Day	50
Ad Tone and Negativity: Retention Races Go Negative	52
Interest Groups and Political Parties Lead TV Spending	54
TV Spending Records Fall in Three States	56
Ad Spotlight	62

---

**Appendix A 66**

**Appendix B 75**

**Appendix C 77**

# LIST OF FIGURES

## Executive Summary

### Chapter 1

Estimated Spending on State Supreme Court Races for All States, 2013-14 (Total Spending)	9
Editorial Cartoon	10
Outside Spending as a Portion of Total Spending, 2001–14 (Historical Data)	12
Pro-Retention Campaign Billboard	12
2013-14 Supreme Court Races Spending Breakdown	14
“Life Isn’t Fair” Television Ad	14
Top 10 Spenders, 2013-14	15
Top 10 Candidate Fundraisers, 2013-14	15
Donations of \$1,000 or More as a Percent of Total Contributions, 2013-14	16
“25 Years 15” Television Ad	21
Retention Election Spending by Cycle, 2001-2014	22
“Carr Brothers” Television Ad	23
Direct Mail Piece	27
<b>Infographic</b> 2013-2014 State Supreme Court Elections by State	28

### Chapter 2

Contributions by Sector, 2013-14	31
U.S. Department of Justice Report on Ferguson	35
<b>Infographic</b> Republican State Leadership Committee	36
“Groovy” Television Ad	38
Hydraulic Fracturing, or “Fracking,” Operation	43
Kansans for Justice Website	44
Direct Mail Piece from RSLC	45
Direct Mail Piece from Montanans for Liberty and Justice	46

## Chapter 3

Negative Ad Sponsorship, 2013-14	53
Ad Tone by Sponsor, 2013-14	54
Total TV Spending by Cycle, 2001-14	55
Total TV Spending, 2013-14	57
Top 10 TV Spenders, 2013-14	58
<b>Infographic</b> Judicial Election Ads: Major Themes in 2013–2014	60
“Young Victims” Television Ad	63
“Protect Us” Television Ad	63
“Worst” Television Ad	64
“Most Liberal” Television Ad	64
“Pocket” Television Ad	65
“Montana Deserves” Television Ad	65

# EXECUTIVE SUMMARY



Over the last decade and a half, state Supreme Court elections have been transformed into politicized and costly contests, dominated by special interests seeking to shape courts to their liking. The most recent 2013–14 cycle was no different, as the pressure of big money—increasingly reflected in outside spending by special-interest groups—threatened the promise of equal justice for all.

Thirty-eight states conduct elections for their highest courts. There are partisan and nonpartisan contested elections, where multiple candidates vie for a single seat. And there are judicial retention elections, where sitting justices face yes-or-no votes. In total, almost 90 percent of state appellate court judges must regularly be reelected.<sup>1</sup> Elections

mean campaigns, and campaigns cost money—as candidates, their campaign contributors, political parties, and special-interest groups all know.

Fundraising success was highly correlated with success at the ballot box this election cycle: in the 23 contested seats this cycle, 21—or over 90 percent—were won by the candidate whose campaign raised the most money. Multiple factors likely contributed to this relationship, but research suggests that in judicial elections, both incumbents who were initially appointed, as well as challengers, gain electoral advantages from heightened spending.<sup>2</sup>

The stakes are high for all of us. Approximately 95 percent of all cases initiated

## Elections mean campaigns, and campaigns cost money...

in the United States are filed in state courts,<sup>3</sup> with more than 100 million cases<sup>4</sup> coming before nearly 30,000<sup>5</sup> state court judges each year. State Supreme Courts, the final authority on state law, set legal standards that determine individuals'

and businesses' rights and liabilities. Their dockets address issues as diverse as education, the environment, contract and commercial disputes, voting rights, criminal justice, real estate, health care, and corporate accountability. Yet while these decisions affect people's everyday lives in significant ways, the culture of influence from well-to-do donors and special interests may threaten the ability of judges to deliver impartial justice. In 2013–14, state Supreme Court election spending took place in 19 states and exceeded \$34.5 million—much of it coming from special interests. Overall spending was slightly lower than in other recent cycles because of an unusually high number of unopposed races. However, in states with the most expensive races, spending patterns were consistent with recent trends.

Since 2000, *The New Politics of Judicial Elections* series has told the story of the politicization of state Supreme Court elections, highlighting the news and trends that defined each election cycle. This edition goes deeper, connecting these spending numbers to particular interests and showing how individuals, industries, and special interests tried to

shape the courts. From deep-pocketed trial attorneys in Illinois to a charter school advocate in North Carolina, this report looks at who stands to win—and who stands to lose—when money floods our courtrooms.

Here are the five big takeaways:

### **Outside Spending by Special-Interest Groups Made Up a Record Percentage of Total Spending.**

Spurred in part by the U.S. Supreme Court's 2010 ruling in *Citizens United v. FEC*, special interests are increasingly taking out their own ads and sponsoring other election materials in judicial races rather than contributing directly to candidates. In 2013–14, outside spending by interest groups, including political action committees and social welfare organizations, was a higher percentage of total spending than ever before, accounting for over 29 percent of total spending, or \$10.1 million, topping the previous record of 27 percent in 2011–12. When outside spending by political parties is also included, the percentage rises to 40, a record for a non-presidential election cycle and just short of the all-time non-candidate spending record of 42 percent in 2011–12. Much of this spending came from groups that were not required to publicly disclose their donors, or who were not required to disclose their expenditures under state law, making it hard to discern the interests seeking to shape state courts.

## Big Spenders Dominated.

State court judges rule on cases that affect us all, but their campaigns are overwhelmingly supported by wealthy interests, enabling a system that may disproportionately elevate the preferences of wealthy spenders. The top 10 spenders this cycle, for example, accounted for nearly 40 percent of total spending nationwide. This economic power was even more concentrated when it came to television spending, as the top 10 TV spenders paid for 67 percent of total TV spending. Furthermore, in 15 of the 19 states where candidates raised money, a majority of their contributions came from donors who were willing and able to shell out at least \$1,000—a substantial figure in the context of relatively low-cost judicial elections. Nearly one-third of these direct contributions came from lawyers or lobbyists, many of whom could be expected to have interests before the courts.

## “Tough on Crime” Was the Most Common Campaign Theme.

The politicking in judicial elections around criminal justice issues is intense. A record 56 percent of television ad spots this cycle discussed the criminal justice records of judges and candidates. These ads typically either touted a candidate’s history of putting criminals behind bars or attacked them as soft on crime. Previous highs for criminal justice-themed ads compare at 33 percent in 2007–08 and 2009–10. While most of these ads were positive in tone (praising a candidate as “tough on crime”),

criminal justice was also the single most common theme of attack ads. Overall, 82 percent of attack ads discussed criminal justice issues, including an ad that claimed one sitting North Carolina Supreme Court justice was “not tough on child molesters” and “not fair to victims.” Who funds these ads? Often, groups with no demonstrable interest in criminal justice issues, suggesting that criminal justice may be used strategically as a wedge issue. The stakes are high: recent research suggests that the prominent role of criminal justice issues in judicial races may ultimately be influencing judicial decision-making.

## National Organizations Continued to Target State—and Even Local—Races.

Spending on state judicial elections is also increasingly nationalized. National groups and their state affiliates spent an estimated \$4.8 million on state Supreme Court races, approximately 14 percent

**The politicking in judicial elections around criminal justice issues is intense. A record 56 percent of television ad spots this cycle discussed the criminal justice records of judges and candidates.**

of total spending. (Because this figure excludes contributions by national groups to state organizations that did not spend exclusively on state Supreme Court elections, the real number is likely much higher.) While data limitations make comparisons over time difficult, several metrics, including an analysis of TV sponsorship, suggest that national groups paid greater attention to state Supreme Court races in 2013–14 than in other recent cycles. And though voters of all political persuasions care about the fairness of our courts, most of the spending by national groups targeting judicial elections came from the political right. The Republican State Leadership Committee (RSLC) led the pack, spending nearly \$3.4 million across four state Supreme Court elections—as well as one county court race—through its publicly announced “Judicial Fairness Initiative.” Other major spenders included the Center for Individual Freedom and American Freedom Builders.

## **Retention Elections Remained a Battleground for Special Interests and Partisan Politics.**

Retention elections, in which the public casts a yes-or-no vote for a sitting justice, have also become political battlegrounds in recent cycles. These races used to be fairly low-cost and low-attention affairs, and, on average, many still are. But in a handful of states, retention campaigns have become intense, high-profile, and expensive—frequently in response to a decision in a controversial case or when there is an opportunity to change the ideological

composition of a court. Average per seat spending in retention elections in 2009–14 reflects a tenfold increase from the average over the previous eight years. Overall, nearly \$6.5 million was spent on retention races in four states in 2013–14. Multi-million-dollar elections in Illinois and Tennessee were some of the most expensive and contentious races this cycle. The trend puts new pressures on judges who had previously been largely insulated from politicized judicial elections.

The 2013-14 election cycle reflects pressing challenges for all those who believe we need to keep our state courts fair, impartial, and equitable for all: record levels of influence by outside spenders, increased political pressure from legislatures and governors, and a growing economy of influence that threatens to tip the scales of justice toward the wealthy and powerful and away from ordinary citizens.

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In 2013–14, outside spending by interest groups ... was a **higher percentage** of total spending **than ever before**.

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# CHAPTER 1



## Wealthy Special Interests Cast a Long Shadow

Big spenders and interest groups dominated state Supreme Court elections this cycle. Outside spending by interest groups (excluding political parties) as a share of total spending hit an all-time high in 2013-14, constituting 29 percent of all dollars spent in state Supreme Court elections and topping the previous record of 27 percent in 2011-12. Million-dollar elections were seen in eight states, and new spending records were set in three.

High-profile retention elections also served as battlegrounds for interest groups, continuing a trend first seen in 2010. At the same time, states that choose their justices via contested elections saw an unusually high number of uncontested seats this cycle, raising a

question as to why so many races were unopposed and contributing to lower aggregate spending nationwide.

### **Million-Dollar Elections in Eight States**

Total spending on state Supreme Court elections exceeded \$34.5 million this cycle, with documented spending in 41 races across 19 states.<sup>1</sup>

While high court election spending is typically small compared to other statewide races, such small expenditures can nonetheless make a big impact on the composition of a court. Voters in state Supreme Court races typically have little to no information on which to base their decisions at the ballot box, and voters tend to drop off when faced with

## Outside Spending

Outside spending refers to election spending by entities other than the candidates and their campaigns. It does not include direct contributions to candidates' campaigns.

down-ballot, judicial races. As a result, even small expenditures on campaign ads and literature can move the needle in these low-information contests. Electoral success is also correlated with the size of a candidate's (or his or her supporters') wallet. For example, of the 23 contested seats in this election cycle, 21 were won by the candidate whose campaign raised the most money—a success rate of over 90 percent.<sup>2</sup>

State Supreme Court election spending is historically lower in non-presidential cycles. But total spending this cycle was also lower when compared to other recent non-presidential cycles (\$38.1 million in 2009-10 and \$42.9 million in 2005-06), due to an unusually high number of unopposed races. (See “Number of Unopposed Elections Rises” on page 24 for more analysis.) Many states nevertheless saw heavy spending in state Supreme Court contests, with spending trends in the most expensive races similar to patterns in other recent cycles.

Let's look at the most expensive elections. Eight states saw more than \$1 million spent on state Supreme Court races in 2013-14, with **Michigan** leading the

nation with more than \$9.5 million in spending over three races.<sup>3</sup> An average of at least \$1 million *per seat* was spent in five states—**Michigan, North Carolina, Illinois, Ohio, and Wisconsin**—and average spending per seat topped \$3 million in Illinois and Michigan. Similarly, in 2009-10, six states saw more than \$1 million spent per seat on average (and two had more than \$3 million spent per seat). Back in 2005-06, only four states saw more than \$1 million spent per seat on average, and none had more than \$3 million spent per seat.

## Different Types of Judicial Elections

In states with contested elections, multiple candidates can vie for a seat on the court. Some contested elections are partisan, meaning that the candidate's party affiliation is listed on the ballot. Others are nonpartisan, meaning that no affiliation is listed. Other states use retention elections, in which a sitting justice is subject to a yes-or-no vote, without any opponents.

## Spending Records Fall in Three States

Three states set spending records this cycle, as **North Carolina** and **Montana** had record spending in their nonpartisan contested elections, and **Tennessee** saw record spending in its retention election.

### **North Carolina**

In **North Carolina**, which held its first judicial elections without public financ-



## State in Focus: North Carolina

# Candidate Fundraising Skyrockets After Loss of Public Financing

What happens when politicians eliminate a judicial public financing system? North Carolinians know the answer.

2014 marked the first state Supreme Court election in North Carolina since politicians dismantled the state's judicial public financing system, in which participating state Supreme Court and intermediate appellate court candidates could receive public funds for their campaigns while agreeing to limits on fundraising.

Two-thirds of all candidates running in North Carolina Supreme Court primary and general elections participated in the program during the years it was in effect (2004-12).<sup>1</sup> During this period, state Supreme Court candidates who participated raised an average of \$75,000 and received an average of \$180,000 in public funds per election.

All of that changed in 2013 when legislators voted to scrap the system, raising contribution limits at the same time. As the *National Journal* observed about Justice Robin Hudson's 2014 reelection race:

Her campaign had to be different than the one she ran eight years earlier, when she relied on public financing. "We're kind of back to the Wild West," [Hudson said]. Where once she asked for \$500 contributions, she now solicits \$5,000 checks, often making the calls herself. "I've basically got two full-time jobs: A full-time job running a campaign. And a full-time job on the court. I've had to spend time on the phone when I can."<sup>2</sup>

Another high court justice, Cheri Beasley, told a National Public Radio (NPR) affiliate that she reads briefs and writes opinions in the early morning or late at night because her daytime hours are spent making fundraising calls.<sup>3</sup>

Predictably, with limits off, the judicial candidates shattered previous fundraising records. They collectively raised almost \$4 million, the highest amount recorded in North Carolina since the *New Politics* report series began and substantially more than the \$2.8 million raised in 2006, the last time the state had an election for four state Supreme Court seats. On average, candidates raised \$440,000 each.

Many North Carolina judges agree that public financing was a better way. In 2013, nearly every judge on the court of appeals signed a letter to the North Carolina Senate President Pro Tem urging the legislature to preserve the system.<sup>4</sup> "If I have to campaign, this is a much better way to do it," said Court of Appeals Judge Wanda Bryant in an interview, "to have some sort of judiciary not beholden to big money influence. This program ensures there can be confidence that people are running on a level playing field."<sup>5</sup>

## Estimated Spending on State Supreme Court Races for All States, 2013-14 (Total Spending)

State	Candidate Fundraising**	Outside Spending by Political Parties	Outside Spending by Special-Interest Groups	Total Number of Seats	Totals
Michigan†	\$4,982,887.95	\$3,596,515.00	\$938,950.21	3	\$9,518,353.16
North Carolina†	\$3,924,277.81	\$13,081.56	\$2,068,624.24	4	\$6,005,983.61
Texas	\$3,664,247.77	\$0.00	\$0.00	4	\$3,664,247.77
Illinois†	\$309,331.02	\$0.00	\$3,043,620.45	1	\$3,352,951.47
Ohio	\$2,539,392.12	\$125,710.00	\$596,440.00	2	\$3,261,542.12
Tennessee†	\$1,152,349.75	\$0.00	\$1,363,045.84	3	\$2,515,395.59
Wisconsin**	\$997,709.74	\$0.00	\$833,968.09	1	\$1,831,677.83
Montana†	\$376,361.22	\$0.00	\$1,127,160.76	2	\$1,503,521.98
Louisiana	\$777,111.31	\$0.00	\$0.00	1	\$777,111.31
Pennsylvania*	\$597,000.83	\$0.00	\$0.00	2	\$597,000.83
Arkansas	\$357,569.26	\$0.00	\$164,560.00	3	\$522,129.26
Georgia	\$273,085.70	\$0.00	\$0.00	3	\$273,085.70
Washington	\$175,216.45	\$0.00	\$0.00	4	\$175,216.45
Minnesota	\$170,498.84	\$0.00	\$0.00	2	\$170,498.84
Idaho	\$163,370.62	\$0.00	\$0.00	2	\$163,370.62
Kentucky	\$134,169.37	\$0.00	\$0.00	4	\$134,169.37
Alabama	\$41,163.43	\$0.00	\$0.00	1	\$41,163.43
Wyoming	\$9,600.00	\$0.00	\$0.00	2	\$9,600.00
Oregon	\$7,600.00	\$0.00	\$0.00	2	\$7,600.00
<b>Totals</b>	<b>\$20,652,943.19</b>	<b>\$3,735,306.56</b>	<b>\$10,136,369.59</b>	<b>46</b>	<b>\$34,524,619.34</b>

This chart estimates spending on high court races, including competitive and retention elections, in the 19 states in which spending was documented. Candidate fundraising figures were provided by the National Institute on Money in State Politics. Independent expenditures by political parties and interest groups reflect television spending estimates by Kantar Media/CMAG. In Illinois, Michigan, Montana, North Carolina, Tennessee, and Wisconsin, additional information on independent expenditures by parties and interest groups was obtained through campaign finance filings and other verified reports, as detailed in the notations for each state. This additional data was added to spending totals to the extent it did not duplicate television spending estimates by Kantar Media/CMAG

\* 2013 election

\*\* Candidate fundraising includes contributions and self-financing by candidates. It excludes fundraising by judges that did not run for election in 2013-14. All candidate fundraising information was gathered from FollowTheMoney.org on June 9, 2015. Information is current as of that date

† Independent expenditures reflect estimated spending on television ad time, as provided by Kantar Media/CMAG, and data from the following sources: Illinois: Illinois State Board of Elections Division of Campaign Disclosure (excluding estimated television spending); Michigan: Michigan Secretary of State Campaign Finance Disclosure (excluding estimated television spending); Montana: Montana Commissioner of Political Practices Report Search (excluding estimated television spending); North Carolina: North Carolina State Board of Elections Campaign Finance Report Search (excluding television spending); Tennessee: Tennessee Registry of Election Finance Report Search (excluding estimated television spending); Wisconsin: Wisconsin Campaign Finance Information System (excluding estimated television spending), Wisconsin Democracy Campaign

ing since 2002, those seeking to shape the courts pumped over \$6 million into races for four seats on the state’s seven-member high court. (See “State in Focus: North Carolina” on page 8.) At the time of the election, the court had five justices with Republican ties (the state’s election itself is nonpartisan, meaning that party labels do not appear on the ballot).<sup>4</sup> With the two justices with Democratic ties up for reelection, these contests had the potential to give Republicans complete control of their state’s highest court and attracted substantial spending from both sides of the aisle.

Without the state’s highly-regarded public financing system—under which taxpayer money helped cover the cost of judicial campaigns and thus reduced the influence of wealthy contributors—the candidates were forced to turn to lawyers and lobbyists for campaign support. These donors made up over 40 percent of all candidate contributions. Though lawyers and lobbyists collectively put the most money into the four races, interest groups also spent heavily. The Republi-

can State Leadership Committee (RSLC) proved to be the biggest single source of election funds in the state, giving \$1.3 million to a local group called Justice for All NC, which ran a high-profile TV ad claiming that a sitting justice had “sided with [child] predators.” Ultimately, three of the four incumbent justices held on to their seats, leaving the court with a 4–3 Republican majority.<sup>5</sup> This was the second consecutive North Carolina Supreme Court election to attract seven-figure spending; in 2012, the state saw \$4.5 million spent on a single seat, despite both candidates having opted into the state’s public financing system.

## Montana

In **Montana**,<sup>6</sup> two seats were up in the state’s nonpartisan state Supreme Court election—one held by a justice with Democratic ties, Mike Wheat, and one held by a justice with Republican ties, Jim Rice—on a court considered to lean 5–2 Democratic. The overwhelming majority of spending was concentrated on Wheat’s seat, as national groups including the RSLC and Americans for Prosperity poured nearly \$550,000 into efforts to replace him. Trial lawyers and labor unions came to the justice’s defense, supporting the group Montanans for Liberty and Justice—whose TV ads attacked his opponent, Lawrence VanDyke, as being in the pocket of out-of-state special interests. Montanans for Liberty and Justice spent \$520,000 in ads and mailers, helping to bring total independent expenditures to over \$1.1 million and total election spending to over \$1.5 million. Both Wheat and Rice ultimately held onto their seats; despite the spending war, Wheat was reelected by more than a 20-point margin.

Editorial cartoon  
skewering North Carolina’s 2014 Supreme Court election

Courtesy:  
Dwane Powell



## Judicial Elections Are the Laughingstock of America. Literally.

“When you have a system where judges are serenaded with banjos, shake down lawyers for money, compare themselves to prostitutes, and live in constant fear of tractors, you have a problem. Because faith in a strong, independent judiciary is essential for a civilized society. Without it, we’re settling disputes either in Thunderdomes, or via *The Purge*.”

Judicial elections got a rare moment in pop culture after the 2013-14 cycle’s close. In February 2015, John Oliver’s HBO show, *Last Week Tonight*, aired a 13-minute segment comically confronting the problems that underlie the almost-uniquely-American practice of electing judges.<sup>1</sup> He highlighted key issues, from how some state judges can solicit campaign money from the attorneys who appear before them, to the absurdity of judicial campaign ads that are menacing or that focus on wholly irrelevant topics.



Oliver got right to heart of the matter:

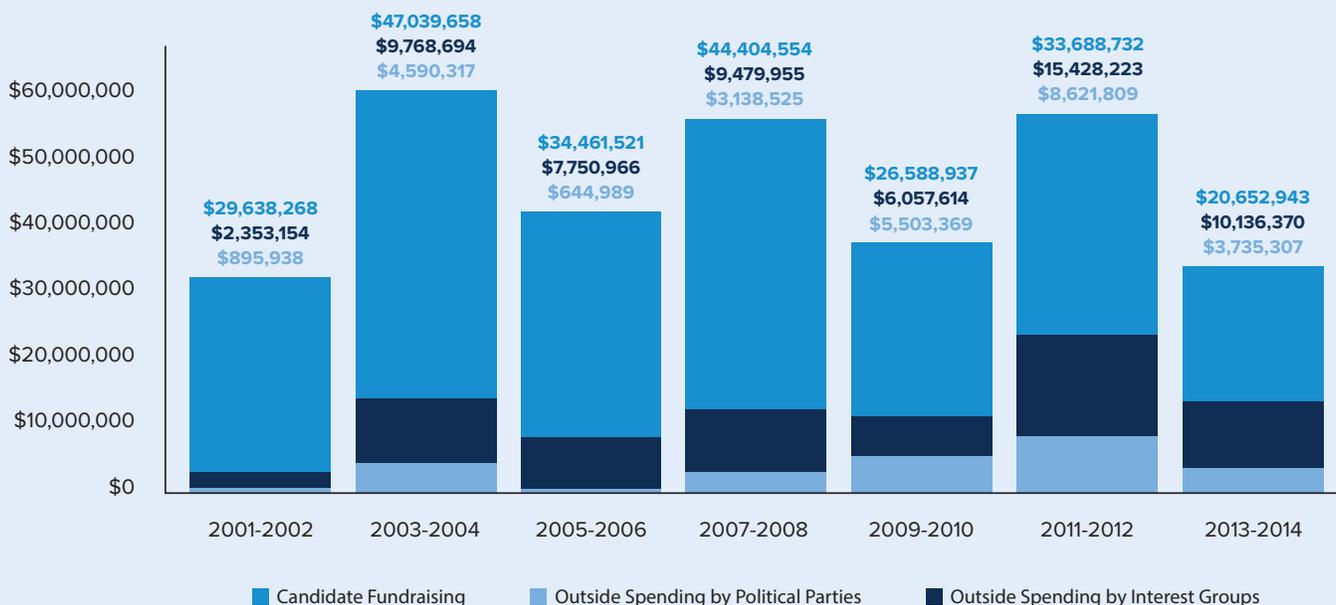
“The problem with an elected judiciary is that sometimes the right decision is neither easy nor popular. And yet, campaigns force judges to look over their shoulder on every ruling, because while political attack ads can be aggressive, judicial attack ads can be downright horrifying.”

“Judges asking lawyers to give them campaign money is the definition of a conflict of interest. Think about it—giving money to judges wouldn’t be acceptable in a state fair squash growing competition.”

“Why would a person want to give up their legal career to go out and campaign ... you’re going to have to [go] out and campaign for a long time, to counter the money, and it’s going to get ugly and it’s going to get dirty... Why would people want to do that?”<sup>7</sup>

—Montana Supreme Court Justice Mike Wheat

## Outside Spending as a Portion of Total Spending, 2001–14 (Historical Data)



Data sources include past reports from the *New Politics* series, as well as updated candidate fundraising and television data from the National Institute on Money in State Politics and Kantar Media/CMAG. Because of this, totals in this graph may be different than figures that were published in previous *New Politics* reports. This graph represents the most up-to-date information.

### Tennessee

In **Tennessee**, which held retention elections in the summer of 2014, three justices appointed by a previous Democratic governor faced an anti-retention campaign led by the state’s Republican Lieutenant Governor, Ron Ramsey. With a slim 3-2 Democratic-appointed majority on the five-member court heading into the retention races, unseating any one of the justices would have handed

the Republican governor a new appointment and therefore potentially a new majority. The Tennessee Supreme Court also holds the power to appoint the state’s attorney general and had drawn scrutiny for putting a Democrat in the position. Total on-the-books spending by pro-retention forces clocked in at nearly \$1.5 million, while those vying to unseat the three justices spent over \$1 million. The race was highly politicized. The justices were falsely characterized in attack ads as having “advanced Obamacare” (they never even heard a case involving it), while airing their own ads touting their record of “upholding nearly 90 percent of death sentences.” The outcome: all three justices narrowly retained their seats. (See “State in Focus: Tennessee” on page 26.)



Pro-retention campaign billboard in Tennessee

## Outside Spending Played an Unprecedented Role

Historically, campaign contributions were the principal way that money flowed into state Supreme Court elections. In the aftermath of the U.S. Supreme Court's 2010 decision in *Citizens United v. FEC*, however, this has started to change. Outside spending—where non-candidates spend money directly on ads and other election materials—is becoming an increasingly important part of the Supreme Court election landscape.

In 2013-14, outside spending by interest groups—including political action committees, social welfare organizations, and other groups—was a record 29 percent of total spending (\$10.1 million), compared to 27 percent (\$15.4 million) in 2011-12, 16 percent (\$6 million) in 2009-10, and 17 percent (\$9.5 million) in 2007-08. These groups skewed heavily toward the right: 70 percent of all expenditures by outside groups were spent supporting Republican or conservative candidates.

When spending by political parties is added, outside spending accounted for 40 percent of total spending in 2013-14. This reflects the highest percentage of spending by non-candidates in a non-presidential cycle ever, and falls just short of the all-time record of 42 percent in 2011-12. In contrast, non-candidate spending was 30 percent of total spending in 2009-10 and 22 percent of total spending in 2007-08.

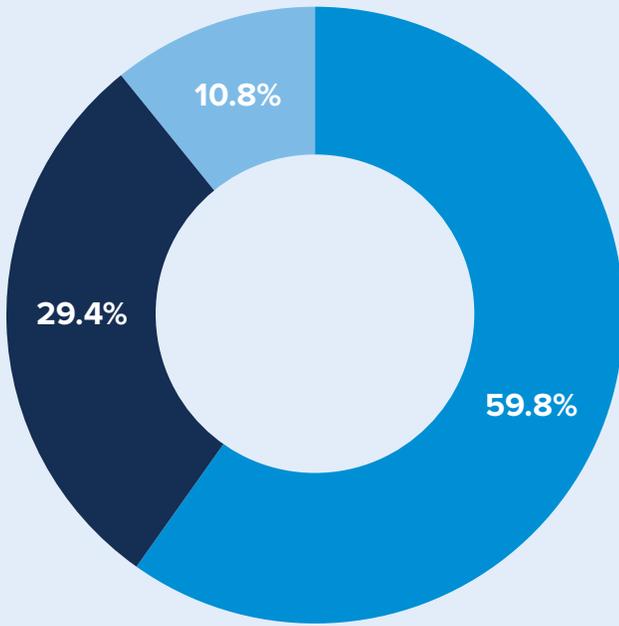
In three states—**Tennessee**, **Illinois**, and **Montana**—outside spending accounted for a majority of all dollars

spent on state Supreme Court races. Illinois led the pack with over 90 percent of spending coming from interest groups. Next was Montana, where outside groups spent nearly three out of every four dollars, and then Tennessee, where both national and state organizations weighed in to make outside spending over 54 percent of all money spent.

High levels of outside spending in retention elections in Tennessee and Illinois contributed to the record numbers seen in 2013-14. These record figures also reflect the impact of *Citizens United*. While the decision ultimately led to the invalidation of restrictions on corporate spending in 21 of the states that hold judicial elections, its greatest impact on state Supreme Court races has been on how money is spent.

The rise of outside spending reflects the creation of new spending infrastructure since *Citizens United*. *Citizens United* also led to a cultural shift, toward the normalization of outside campaign spending at levels never before seen. In the context of judicial elections, this is most clearly seen in the activities of so-called social welfare organizations. These organizations are creatures of the U.S. tax code that can weigh in on elections without publicly disclosing their donors. And while some of such spending was legal prior to *Citizens United*, the decision expanded the ability of organizations to weigh in on elections and contributed to their playing a more prominent role in the election landscape.

The result is heightened secrecy and less accountability. Outside spenders frequently take advantage of weak disclosure laws to shield their donors from



## 2013-14 Supreme Court Races Spending Breakdown

- Candidate Fundraising
- Political Party Spending (Outside Spending)
- Special-Interest Group Spending (Outside Spending)

For data sources, see notation in “Estimated Spending on State Supreme Court Races for All States, 2013-14”

public scrutiny. And when organizations with benign-sounding names—whose donors and connections to candidates are unknown to the public—spend substantial sums to influence elections, voters do not know which messages to trust or how—or if—to hold elected judges accountable for mudslinging ads or conflicts of interest.

“Life Isn’t Fair”  
sponsored by Richard  
Bernstein for Justice  
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## A Few Big Spenders Dominated

While state court judges rule on cases that affect us all, their campaigns are disproportionately supported by wealthy interests, suggesting that state courts could be less responsive to the interests of ordinary citizens. In 2013-14, the top 10 spenders accounted for nearly 40 percent of *all* spending nationwide—including candidate contributions and outside spending—which is a proportion similar to percentages seen in other recent cycles. And the top spenders this cycle skewed heavily toward outside spending, as 84 percent of their dollars went toward outside spending rather than to the candidates themselves.

Notably, this spending did not fall evenly on both sides of the political aisle. The highest spenders overwhelmingly

supported Republican and conservative candidates. Roughly two-thirds of the money spent by the top 10 spenders went to supporting candidates on the right, and 7 of the top 10 spenders were conservative or business groups or state Repub-

lican parties, reflecting patterns seen in previous cycles.

Moneyed interests on the left also spent significantly in a few judicial races. Two of the three biggest spenders of the cycle

## Top 10 Spenders, 2013-14

	Outside Spending	Contributions to Candidates	Total
1. Michigan Republican Party	\$3,587,408.54	\$295,468.00	\$3,882,876.54
2. Campaign for 2016 (IL)	\$2,064,994.13		\$2,064,994.13
3. Richard Bernstein (MI)		1,846,839.27*	\$1,846,839.27
4. Republican State Leadership Committee (IL, MT, TN)	\$1,643,044.04		\$1,643,044.04
5. Justice for All NC	\$1,434,276.24		\$1,434,276.24
6. The Tennessee Forum	\$787,667.59		\$787,667.59
7. American Freedom Builders (OH)	\$596,440.00		\$596,440.00
8. Montanans for Liberty and Justice	\$519,998.29		\$519,998.29
9. The Center for Individual Freedom (MI)	\$468,110.00		\$468,110.00
10. Michigan Realtors Super PAC/Michigan Association of Realtors	\$399,787.00	\$15,000.00	\$414,787.00
	<b>\$11,501,725.83</b>	<b>\$2,157,307.27</b>	<b>\$13,659,033.10</b>

\*This reflects self-financing. Candidate Richard Bernstein largely funded his campaign with his own money. For data sources, see notation in "Estimated Spending on State Supreme Court Races for All States, 2013-14"

## Top 10 Candidate Fundraisers, 2013-14

Candidate	State	Total Contributions Raised
1. Richard Bernstein	MI	\$2,247,248.92
2. Judith French	OH	\$1,120,975.94
3. Jeff Brown	TX	\$1,108,118.38
4. Sharon Kennedy	OH	\$1,007,181.84
5. Brian Zahra	MI	\$953,819.64
6. Phil Johnson	TX	\$890,385.35
7. David Viviano	MI	\$887,034.10
8. Jeff Boyd	TX	\$844,237.14
9. Scott Crichton	LA	\$777,111.31
10. Samuel J. Ervin IV	NC	\$685,951.58

Data from National Institute on Money in State Politics

## Donations of \$1,000 or More as a Percent of Total Contributions, 2013-14

State	Donations of \$1,000 or More as a Percent of Total Contributions
Alabama	99.6%
Pennsylvania	97.6%
Illinois	95.1%
Michigan	85.2%
Texas	86.2%
Arkansas	77.0%
Louisiana	74.2%
Ohio	62.9%
Wyoming	62.5%
Idaho	60.7%
Tennessee	58.9%
North Carolina	50.8%
Georgia	53.3%
Kentucky	57.9%
Oregon	51.9%
Minnesota	39.1%
Wisconsin	43.1%
Washington	45.2%
Montana	1.5%

*This chart reflects the percentage of candidate contributions totaling \$1,000 or more in a given state. This information was gathered from FollowTheMoney.org in June 2015. In several states, candidates payed back loans or returned contributions after the election was over, which is why some contributions appear to be negative dollar amounts on FollowTheMoney.org. The figures in this chart are based on all contributions given to candidates throughout the 2013-14 election cycle, including those that were later returned or used to pay back a loan*

either supported Democratic candidates or opposed Republican candidates, including the biggest self-funder of the cycle—candidate Richard Bernstein in **Michigan**, who won a seat on the state’s Supreme Court. Three organizations supported almost entirely by plaintiffs’ attorneys—Campaign for 2016 in Illinois, Tennesseans for Fair Courts, and Montanans for Liberty and Justice—spent nearly \$3 million collectively.

Looking at direct contributions to candidates, in the 19 states with spending in 2013-14, a full 15 states saw donors who gave at least \$1,000 make up the majority of total contributions (all but **Minnesota, Wisconsin, Washington, and Montana**). Worth noting: those who gave \$1,000 or more were responsible for at least 95 percent of total contributions in three states—**Alabama, Pennsylvania, and Illinois**. In Michigan, where 85 percent of the nearly \$5 million raised by candidates was provided by those who

# Judicial Ethics at the U.S. Supreme Court

## *The Case of Williams-Yulee v. The Florida Bar*

In a notable departure from recent cases loosening the reins on campaign speech and spending, the U.S. Supreme Court delivered a decision in April 2015 that advocates consider a resounding victory for fair and impartial courts. In a decision that *The Washington Post* called “the most surprising of the term,” the U.S. Supreme Court held in *Williams-Yulee v. The Florida Bar*<sup>1</sup> that states can prohibit judicial candidates from personally soliciting campaign contributions.<sup>2</sup> In so doing, it effectively solidified a key aspect of judicial campaign fundraising laws in the majority of states.

As in most states, Florida’s code of judicial conduct prohibits judicial candidates from personally soliciting campaign contributions, whether in person, over the phone, through a direct mailing, or otherwise. Instead, candidates typically set up a separate campaign committee that raises funds on their behalf. Florida adopted its personal solicitation rule in the wake of corruption scandals that led to the resignation of four of the seven justices on Florida’s high court in the 1970s, including a justice who was caught on camera rolling dice at a craps table in Las Vegas, his trip allegedly funded by a Miami dog track owner with a case pending before the court. Lanell Williams-Yulee, a candidate for a Florida county court judgeship who was sanctioned by the Florida Bar for signing a mass mailing letter soliciting campaign contributions, argued that this rule infringed on her First Amendment right to free speech.

In upholding Florida’s rule, Chief Justice Roberts’ majority opinion emphasized the paramount importance of protecting the integrity of the courts, and preserving both the appearance and reality that “judges will apply the law without fear or favor.” The opinion recognized that contributions to judicial candidates may lead to the perception of favoritism<sup>3</sup>—and the practical reality that the majority of judicial campaign donors are the same lawyers and litigants who expect to appear before the judge they support. “Judges, charged with exercising strict neutrality and independence, cannot supplicate campaign donors without diminishing public confidence in judicial integrity,” the Chief Justice concluded.

*Williams-Yulee* affirms the ability of states to undertake reasonable regulations to protect the integrity of their courts—and could open the door to stronger state regulation. It is now up to states to heed the U.S. Supreme Court’s call and take stronger steps to insulate judges from inappropriate political and special-interest influence.

## Politicians Pressure Courts Over Controversial Rulings

Election season is not the only time state courts find themselves at the center of political storms. In 2013-14, politicians in several states took aim at judges through means other than the ballot box. Instead, their tools included impeachment threats and bills to limit courts' authority.

### A Governor and State Legislator Target Court in Death Penalty Case

In Oklahoma in 2014, political pressure on the state Supreme Court played out against the tragic backdrop of a botched execution. Inmate Clayton Lockett was scheduled to be the first person in Oklahoma executed using a new—and controversial—lethal injection drug. Lockett had challenged a state law that protects the identity of companies that supply lethal injection drugs. The Oklahoma Supreme Court intervened days before the scheduled execution, stating that it would stay Lockett's execution until it could sufficiently resolve the secrecy matter. A political firestorm ensued.

The next day, Governor Mary Fallin declared that the high court had overstepped its bounds, and issued an executive order directing officials to carry out the execution. The same day Fallin's order was filed, a state representative threatened the justices with impeachment. The next day, under immense political pressure, the court summarily resolved the secrecy issue in the state's favor, lifted the stay, and allowed the execution to proceed on schedule, with horrific results. Lockett was seen to

writhe on the gurney, in apparent agony, for nearly an hour. Instead of dying painlessly while unconscious, Lockett had died of a heart attack.

### Politicians Call to Impeach Judges in Response to Marriage Equality Decisions

While it was a death penalty case that spurred challenges to the authority of Oklahoma's high court, there is perhaps no issue in 2013-14 that generated more political efforts to pressure the courts than marriage equality. In 2013, Iowa legislators introduced a bill aimed at barring marriage licenses for same-sex couples and prohibiting the Iowa Supreme Court from reviewing the ban. Later that year, the U.S. Supreme Court handed down *U.S. v. Windsor*, striking down a portion of the Defense of Marriage Act and fueling speculation that the Court might in time affirm a national right to marriage equality. Throughout 2013 and 2014, marriage equality gained momentum as a series of state bans on marriage for same-sex couples were struck down by state and federal courts. At the same time, politicians targeted some of these same courts and judges for their decisions.

In 2014, Arkansas politicians, along with the National Organization for Marriage, called publicly for the impeachment of a state judge who struck down a ban on marriage for same-sex couples, while partisan groups and politicians in Pennsylvania and Virginia called for the

impeachment of federal judges who had struck down such bans.

In late 2014, legislators in South Carolina went one step further and introduced a bill that would deny pay to any judge or government official who recognized, granted, or enforced a same-sex marriage license. It set the stage for a flurry of bills the following year, as legislators in Texas, Oklahoma, and Iowa proposed similar legislation soon thereafter:

Oklahoma legislators launched an initiative to remove judges who recognized same-sex marriages from office, Texas legislators introduced an order directing state judges to continue to ban same-sex marriage regardless of how the U.S. Supreme Court ultimately ruled, and Iowa legislators sought to block court registrars from issuing marriage licenses to same-sex couples until a constitutional amendment could be submitted to Iowa voters. Each of these bills attempted to immunize their directives from subsequent judicial scrutiny.

Then, in February 2015, Roy Moore, the Chief Justice of the Alabama Supreme Court, directed the state's 67 counties to ignore a federal court ruling requiring the issuance of marriage licenses to same-sex couples. Shortly thereafter, the high court issued a ruling finding that Alabama judges have a duty to obey state law—which allowed for “marriage” between one man and one woman—and noting, “[n]othing in the United States Constitution alters or overrides this duty.”

Between 2013 and 2014, there had also been repeated calls<sup>15</sup> for the impeachment of Judge Timothy Black, a federal judge in Ohio who issued a decision recognizing the out-of-state marriage of James Obergefell. In addition, lawmakers in Idaho passed a resolution to impeach any federal judge who ruled for marriage equality.<sup>16</sup> The *Obergefell* case ultimately made its way to the U.S. Supreme Court, resulting in the court's landmark 2015 ruling that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed out-of-state.<sup>17</sup>

Ultimately, none of the impeachment threats came to fruition—and in fact, many were made by parties with no legal authority to even carry them out. Likewise, efforts to pressure state courts through legislation all faltered. But the hostility to judges who upheld the right to marry—and the accompanying political pressure on judges hearing such cases—was clear.

Legislators in South Carolina went one step further and introduced a bill that would deny pay to any judge or government official who recognized, granted, or enforced a same-sex marriage license.

gave \$1,000 or more, just one donor, candidate Richard Bernstein, who contributed to his own successful bid, accounted for 37 percent of total contributions.

Montana was a notable outlier on this front due to a state law that sets contribution limits to state Supreme Court candidates at \$320 per election (primary and general). Candidates raised over 98 percent of their contributions from people donating less than \$1,000, with exceptions coming from candidate self-financing. However, the state also saw over \$1.1 million in outside spending by deep-pocketed groups such as the RSLC.

## Spending Patterns Evolve as Retention Elections Become New Battlegrounds

By many measures, spending patterns for state Supreme Court elections have been relatively consistent over the past 15 years. Of the five states with the most expensive elections in 1999-2000, the first cycle in which the *New Politics* report tracked state Supreme Court elections (Alabama, Illinois, Michigan, Mississippi, and Ohio), three were also among the top five most expensive elections in 2013-14 (Michigan, Illinois, and Ohio). Of the other two, Mississippi's high court did not have any seats up for election in 2013-14, while Alabama had an uncontested election for a single seat. Likewise, of the 10 states with the highest spending in 1999-2000, seven were also among the top 10 in 2013-14.

However, these top-spending lists also obscure significant spending shifts over time, most notably the growing politici-

zation of retention elections, which has put new states on the top-spending map. Twenty states use retention elections to determine whether their high court judges will serve on the bench for another term. Historically, retention elections have typically been low-cost and apolitical races (though with some notable exceptions). Since 2010, however, when three Iowa Supreme Court justices were ousted in a targeted campaign over the court's unanimous decision that denying marriage licenses to same-sex couples violated the equal protection requirements of the state constitution, things have changed. Retention races have increasingly taken on the characteristics of contested elections, complete with special-interest spending, attack ads, and heavy candidate fundraising.

In 2013-14, spending occurred in retention elections in four states (**Tennessee, Pennsylvania, Illinois, and Wyoming**), totaling nearly \$6.5 million. Outside groups accounted for nearly 68 percent of total spending in those elections, compared to 44 percent of total spending in retention elections in 2009-10.

The comparison to previous years is stark: from 2001-08, spending in retention elections averaged \$490,000 per cycle. In the past five years, this average skyrocketed to \$6.1 million per cycle—a twelfold increase. In 2013-14, 19 percent of total election spending occurred in retention elections (\$6.5 million), compared with 12 percent in 2011-12 (\$6.8 million) and 13 percent in 2009-10 (\$5.1 million).

Illinois and Tennessee had the most expensive retention elections of 2013-14, making them the fourth and sixth most

## State in Focus: Ohio

# A Judge as a Conservative “Backstop”?

State Supreme Court elections have not only become more expensive in recent years—they are now more politically charged and partisan. Statements by a sitting Ohio justice on the campaign trail reflect this trend, and drew national headlines in what media reports described as the hottest race of Ohio’s political cycle.<sup>1</sup>

Commentary to the Ohio Code of Judicial Conduct advises that “Judicial candidates have a special obligation to ensure the judicial system is viewed as fair, impartial and free from partisanship.”<sup>2</sup> Yet while campaigning in a contested election to keep her seat, sitting Ohio Supreme Court Justice Judith French took the microphone at a political rally and told her supporters:

I am a Republican and you should vote for me. You’re going to hear from your elected officials, and I see a lot of them in the crowd. Let me tell you something: the Ohio Supreme Court is the backstop for all those other votes you are going to cast. Whatever the governor does, whatever your state representative, your state senator does, whatever they do, we are the ones that will decide whether it is constitutional; we decide whether it’s lawful. We decide what it means, and we decide how to implement it in a given case. So forget all those other votes if you don’t keep the Ohio Supreme Court conservative.<sup>3</sup>

Just five months earlier, French’s opponent, Judge John O’Donnell, stated that the Ohio Supreme Court has “one Democrat and six Republicans. Even people who are heavily partisan should rec-

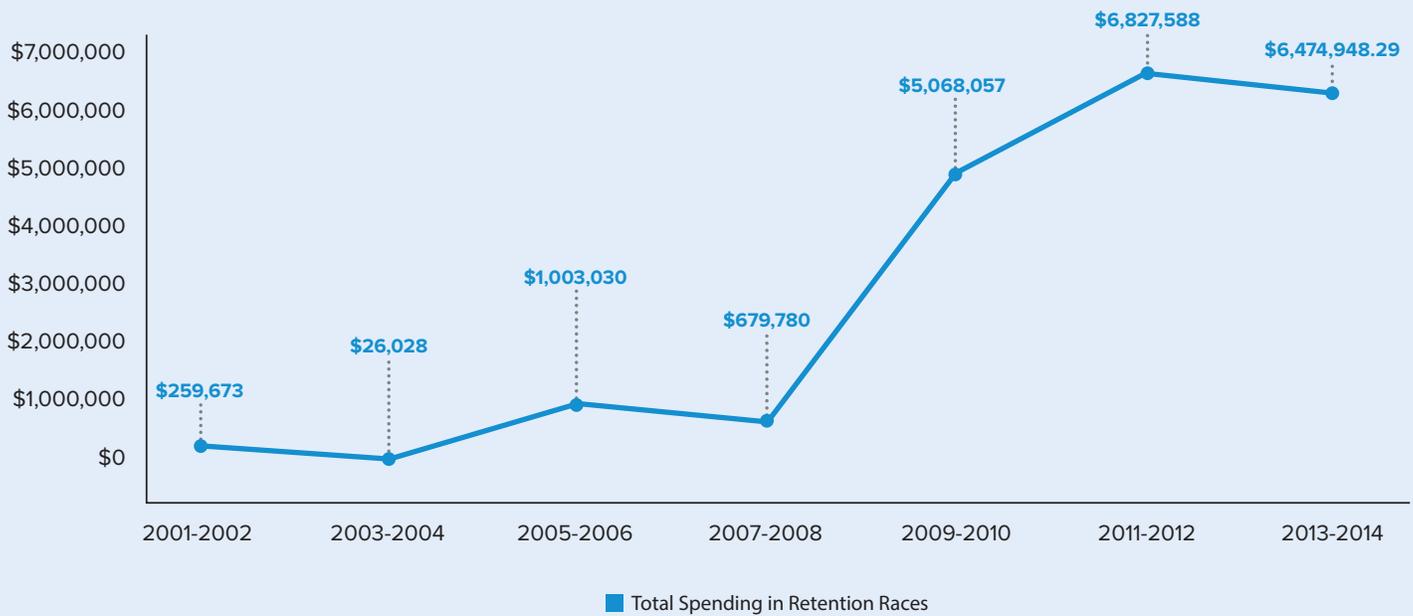


*“25 Years 15” sponsored by the Ohio Republican Party  
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ognize that a court that is that far out of balance is not good in the overall scheme of things.”<sup>4</sup>

French ultimately won with 56 percent of the vote, but questions about judicial impartiality have lingered since her election. In 2015, the Ohio Civil Service Employees Association asked French to recuse herself from a constitutional challenge to Republican-supported legislation that had been pending before the court during her campaign.<sup>5</sup> The case involved the sale of one of Ohio’s prisons and the transfer of another prison to a private company, resulting in a substantial loss of union jobs. French declined to recuse herself, defending her past remarks as statements of her “philosophical view” rather than partisan allegiances.<sup>6</sup> The president of the union expressed concern, stating, “There should be a better process for evaluating the need for a recusal, rather than the person doing it herself, as in this case ... She never denied making the statements reported in the press.”<sup>7</sup> At the time this report went to press, the case was still pending.

## Retention Election Spending by Cycle, 2001-14



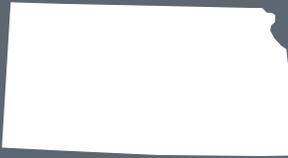
Data sources include past reports from the *New Politics* series, as well as updated candidate fundraising and television data from the National Institute on Money in State Politics and Kantar Media/CMAG

expensive elections nationally, with Tennessee also setting a state spending record. **Kansas** also saw a politically-charged retention election for two sitting justices who, among other things, were criticized for a controversial death penalty ruling. Spending information for Kansas is unavailable due to a state disclosure loophole that allowed an anti-retention group to avoid reporting its spending.

On average, retention elections remain less costly than contested elections—in 2013-14, states holding retention elections saw an average of \$190,000 spent per seat, compared to \$684,000 per seat in states that hold contested elections. Yet average spending per retention

race has surged in recent years—from an average of \$17,000 per seat between 2001-08 to \$178,000 per seat between 2009-14, a tenfold increase.

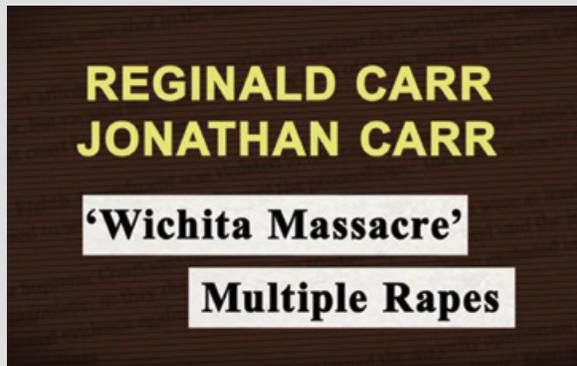
It's all a troubling trend. As retention elections come to look more like other elections, judges face new risks of retaliation when they make decisions that anger the public or draw the ire of special interests. Political players have also sought opportunities to influence the makeup of courts by changing the rules. Politicians in **Indiana**, **Arizona**, and **Kansas** introduced bills in 2015 to increase the threshold of votes required for retention from 50 percent to as much as 67 percent. Notably, had such supermajority votes been required for judges



## State in Focus: Kansas

# Bullying in the Heartland— Political Assaults on the Kansas Supreme Court

In Kansas, politics and the judicial branch collided during the state’s 2014 retention elections—one of many recent politically-motivated assaults on the Kansas judiciary.



*“Carr Brothers” sponsored by Brownback for Governor*

A controversial death penalty ruling became an issue in the 2014 retention election for two Kansas Supreme Court justices, Eric Rosen and Lee Johnson. Both had participated in a decision earlier that year that vacated the death sentences of two convicted murderers, Jonathan and Reginald Carr, and sent their cases back to the lower court for further hearings and a new sentencing. The justices concluded that the district court judge who presided over the brothers’ trial had erred by refusing to hold separate sentencing proceedings as required by the Eighth Amendment.<sup>1</sup>

A group calling itself “Kansans for Justice” launched a website opposing the justices’ retention, and members of the organization gave interviews criticizing the court’s decision. Then, Governor Sam Brownback, locked in a surprisingly close reelection campaign with his opponent—Kansas House of Representatives

minority leader Paul Davis—raised the decision as an issue in his own reelection campaign. In October 2014, Brownback ran television ads criticizing both the court and Davis, stating that Davis had stood with “liberal judges who let the Carr brothers off the hook.”<sup>2</sup> The allegation drew harsh criticism from defenders of the justices, and former Sedgwick County District Attorney Nola Foulston, who had prosecuted the case against the Carr brothers, called Brownback’s ad “reprehensible.”<sup>3</sup> A leaked campaign memo later revealed that Brownback’s campaign had concluded that turning the Carr brothers decision into a campaign issue “creat[ed] an opportunity for moving a significant number of voters” in the gubernatorial race.

Brownback’s assaults on the courts did not begin or end with his most recent campaign for reelection. With his encouragement, state legislators have introduced multiple bills to weaken the independence of the judiciary over the past two years, including measures to move from a judicial merit selection system, where nominees are vetted by a nominating commission, to either judicial elections or a gubernatorial appointment process without a nominating commission. In 2014, legislators also passed—and Brownback signed—a law stripping the high court of budgetary and administrative powers over lower courts. Following a lawsuit challenging the constitutionality of this measure (which was still pending at the time of publication),<sup>4</sup> in June 2015, Brownback signed a new budget for the judiciary that includes a controversial “nonseverability” provision, which would defund Kansas’ entire judicial system if the 2014 law is struck down.

to be retained in Kansas, Tennessee, and Illinois in 2014, all six justices in retention elections in those states would have lost their seats.

## Number of Unopposed Elections Rises

The 2013-14 cycle also presents a puzzle: why were there so many unopposed state high court races? The number of unopposed races in states that hold contested elections spiked dramatically in 2013-14, driving down total spending this election cycle.

Candidates ran unopposed in 18 races in 2013-14, making up 44 percent of all contestable seats. This is the highest number and percentage of unopposed races since 2000. (The previous high was in 2005-06, with 16 unopposed races making up 34 percent of all contestable seats.) In the 10 states with the highest spending in 2009-10, the number of judges running unopposed doubled from two in 2009-10 to four in 2013-14.

Overall spending dropped this cycle as a result. Where multiple candidates vied for state Supreme Court seats, spending averages per race were virtually unchanged from past years (\$1.2 million per race in 2013-14, compared with \$1.3 million per race in 2009-10, the last non-presidential election cycle). But with fewer judges facing opponents, spending aggregates fell by several million dollars.

Why was there a rise in judges running unopposed for state high courts? Since 2000, the number and percentage of unopposed elections has not shown a clear pattern. Perhaps the 2013-14 figures

are simply an anomaly. Also possible is that certain states have begun to see a decline in electoral competition. In **Alabama**, for example, which led the nation in total candidate fundraising in 2000-09, recent statements by the state Democratic Party Chair suggest that Democrats may have simply given up on contesting state Supreme Court seats in the face of limited resources and a weak political environment, instead prioritizing recruiting candidates for legislative elections and other statewide seats. Is this a statistical fluke, or does it herald a decline in competition in certain states with contested elections? Future cycles will tell. If this trend continues, some previously high-spending states may recede into the background as new battlegrounds emerge.

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Total spending on state Supreme Court elections exceeded **\$34.5 million** this cycle, with documented spending in **41 races across 19 states.**

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## Retention Elections See Unprecedented Partisanship

The 2014 retention elections of Tennessee Supreme Court Justices Gary Wade, Cornelia Clark, and Sharon Lee were the state's most expensive and politically hostile judicial races since the *New Politics* report series began in 2000. In a state where the governor's office, both U.S. Senate seats, and a supermajority of the state legislature were controlled by Republicans, the 2014 retention elections provided an opportunity to change the ideological composition of the court. Wade, Clark, and Lee were all appointed by a Democratic governor, and their loss in their retention races would have given the sitting Republican governor the opportunity to make new appointments. The loss of any one of their seats would have given the court a majority of Republican appointees.

Tennessee had seen a high-profile retention election once before, in 1996, when Justice Penny White—one of the first female justices on the court—lost her seat after joining a controversial decision overturning a death sentence. Retention elections later receded from the limelight, but the pendulum swung back in 2014, as Republican Lieutenant Governor Ron Ramsey served as the driving force behind a campaign to oust the three Democratically-appointed justices.

Anti-retention messaging focused on four central claims—the state Supreme Court was the “most liberal place in Tennessee,” the justices were anti-business, they had “advanced Obamacare,” and

they were soft on crime. Significantly, the Tennessee Supreme Court is also the only high court in the nation that appoints the state's attorney general. In 2006, the court appointed Bob Cooper, a Democrat, to the position. Importantly, the court was due to pick a new attorney general shortly after the 2014 election. Ramsey publicly spoke out in favor of appointing a Republican to the position.

Although the lieutenant governor pushed for the ouster of the justices along partisan lines, many Republicans opposed the politicization of the judicial selection process. When asked if he would join the anti-retention efforts, Republican Governor Bill Haslam replied, “[t]hat's not my role.” He added that he wanted “to let the candidates themselves speak for why they should be retained.” Former state Supreme Court Justice William Koch, who was appointed by a Republican governor (and is of no relation to the Koch Brothers), spoke out against the lieutenant governor's campaign, saying he was “sorry [Ramsey] want[ed] to inject partisan politics into the court system.”<sup>4</sup>

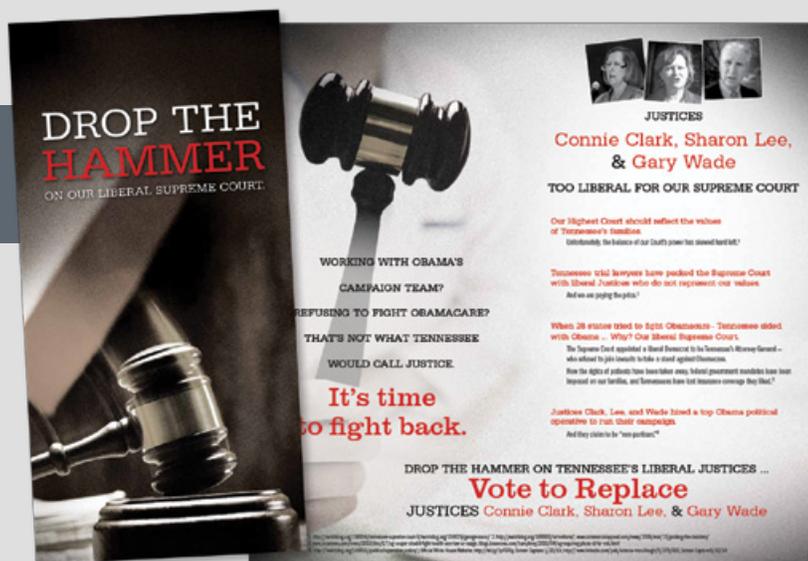
Ramsey's political action committee, which received substantial donations from corporate and healthcare interests, gave more than \$600,000 to the Tennessee Forum. The Forum was the highest non-candidate spender in the state that summer, pumping nearly \$790,000 into efforts opposing the justices. These included a mailer that urged voters to

“drop the hammer on our liberal Supreme Court,”<sup>5</sup> as well as TV ads asking voters to “replace the liberal Supreme Court.”

In addition, the Washington, D.C.-based RSLC spent nearly \$190,000 on mailers and also gave money to the Tennessee Forum. A partner group of the RSLC, the State Government Leadership Foundation, spent an estimated \$40,000 on TV ads.

On the other side, there was also an aggressive effort to defend the justices’ seats. A significant portion of the pro-retention dollars came from attorneys, resulting in what one campaign strategist referred to as “a mix of people who care about the issue and who benefit from giving to the justices.”<sup>6</sup> Tennesseans for Fair Courts, largely funded by trial lawyers, spent nearly \$350,000 on the election, most of which went toward TV ads defending the justices against the “outrageous extremists” the group claimed were attacking the court.

The justices themselves fought back the hardest, raising a combined \$1.2 million, a significant portion of which came from attorneys. This money bankrolled a sizable television ad campaign that highlighted their histories of “upholding nearly 90 percent of death sentences.” And they had bipartisan help. The justices sponsored an advertisement featuring retired Republican Tennessee Supreme Court Justice Mickey Barker, who said he was concerned that “out-of-



state special interests” were “trying to take over [the] Supreme Court.”

On August 7, all three justices were retained. But Ramsey had left his mark. Wade, Lee, and Clark received 57 percent, 57 percent, and 56 percent support respectively, compared to the 20 appeals court judges up for retention, who all received over 60 percent support. Likewise, when Lee last faced retention in 2010, she received 68 percent approval; when Wade faced retention in 2008, he received 77 percent approval; and when Clark was up for retention in 2006, she received 74 percent approval.

Shortly thereafter, when Attorney General Cooper’s term ended, the state Supreme Court replaced him with Herbert Slatery III, Governor Haslam’s chief legal counsel, a Republican.

This was not the only fair courts development in Tennessee in 2014. To see how the state’s judicial selection system was affected by the November elections, see the coverage of Tennessee’s Amendment 2 in “Appendix B: Court-Centered Constitutional Amendments in Tennessee, Florida, and Hawaii.”

*Direct mail piece distributed by the Tennessee Forum*

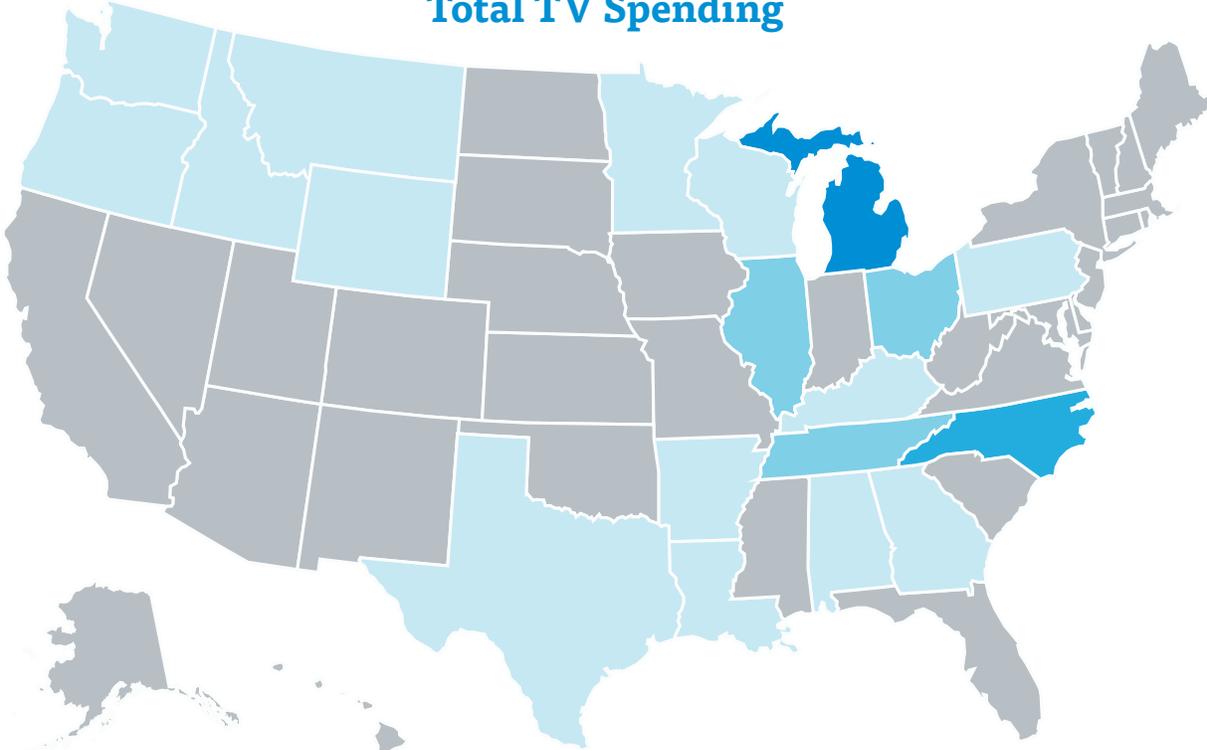


For a complete breakdown of each state, including a summary of its election and how it ranked against other states, see Appendix A: State Profiles.

### Total Non-Candidate Spending



### Total TV Spending



## CHAPTER 2



### Who's Behind the Spending?

For more than a decade, state Supreme Court elections have been battlegrounds for special interests seeking to shape the composition of state high courts. Even more troubling, survey data indicates that 87 percent of voters think that contributions to judges influence decisions on the bench<sup>1</sup>—and nearly half of state judges agree.<sup>2</sup> This chapter takes a closer look at this dynamic by “following the money”—examining exactly who invested in judicial races and what their ultimate interests might be.

Historically, business interests and conservative groups have typically backed candidates with Republican ties—frequently via powerful national players such as the Chamber of Commerce and the National Association of Manufac-

turers—while plaintiffs’ lawyers and unions have supported Democrats, generally organizing on the state level and relying on state political parties and PACs as spending conduits.

While these broad patterns continued in 2013-14, some relatively new national players took on greater significance—most notably the **Republican State Leadership Committee (RSLC)**, a national organization whose mission “is to elect down-ballot, state-level Republican officeholders,”<sup>3</sup> which put nearly \$3.4 million into state and local judicial races in five states. Notably, attention by national groups continued to overwhelmingly favor judges on the right: there was far less documented spending by national groups in support of can-

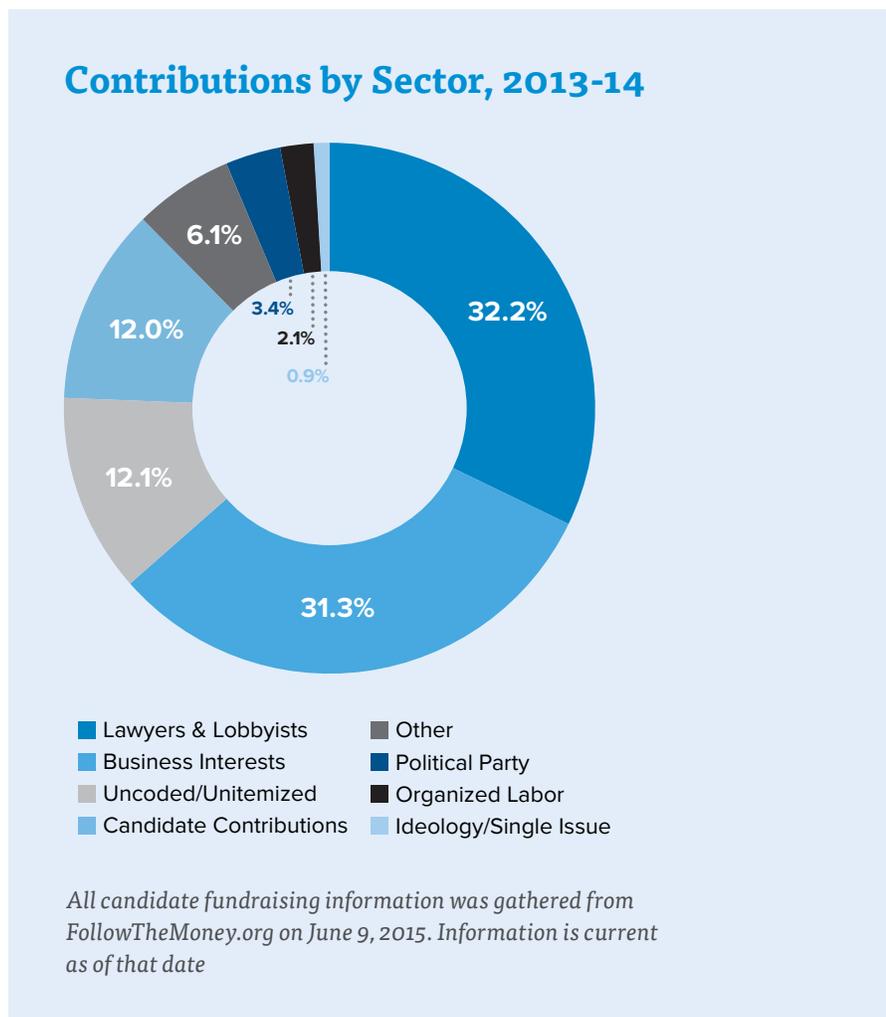
didates with Democratic ties, although many Democratic candidates benefited from state-level support.

While weak disclosure laws often make it hard to trace the underlying interests behind this flow of money, available information suggests that fights around the perceived business-friendliness of courts continue to be a prime motivation for spending. As reflected in the states profiled in this chapter, this dynamic played out differently depending on the specific issues likely to be addressed in a state’s high court—from environmental protection in **Montana** to tobacco litigation in **Illinois**. And while business climate is important, other controversial issues, such as school vouchers, were also spending drivers in individual states. These spending patterns raise troubling questions about how wealthy interests may be shaping courts in their favor—and the pressures judges may face when these same interests appear before them.

### Contributions by Sector

An analysis of direct contributions to state Supreme Court candidates in 2013-14<sup>4</sup> shows that business interests as well as lawyers and lobbyists were the largest donors, each responsible for about a third of all contributions, and together

equaling 63 percent of all donations made to candidates this cycle. These trends have been relatively consistent over time, as lawyers and lobbyists and business interests have dominated candidate contributions since the *New Politics* series began.



LEARN MORE: PAGE 77

## Appendix C

### Major Contributors to Candidates in Six States with Highest Fundraising, 2013-14

## National Groups Target State Races

While limited disclosure information makes it difficult to fully assess who sought to influence judicial elections in 2013-14, several metrics suggest that **national groups played a more prominent role than in other recent cycles.**

National organizations such as the Republican State Leadership Committee, Americans for Prosperity, the Law Enforcement Alliance of America, and the Center for Individual Freedom invested heavily in state races this cycle, helping to drive up the percentage of spending that came from outside groups. In 2013-14, national groups and their state affiliates<sup>5</sup> spent an estimated \$4.8 million<sup>6</sup> on state Supreme Court

races, making up about 14 percent of total spending. Because this estimate excludes contributions by national groups to organizations that did not spend exclusively on state Supreme Court races, the actual figure is likely much higher.

While limited disclosure information makes it difficult to fully assess who sought to influence judicial elections in 2013-14, several metrics suggest that national groups played a more prominent role than in other recent cycles. National groups made up three of the top 10 documented spenders in 2013-14 (the RSLC, American Freedom Builders, and the Center for Individual Freedom), while only one national group made the top 10 in 2011-12 or 2007-08 (the Judi-

cial Crisis Network and the Center for Individual Freedom, respectively) and two made the top 10 in 2009-10 (the Law Enforcement Alliance of America and the National Organization for Marriage). National groups were also responsible for a higher percentage of television spending in 2013-14 (13 percent) than in 2011-12 (four percent) or 2009-10 (eight percent).<sup>7</sup> Heightened interest by national groups in judicial races is potentially significant, because of their capacity to operate in multiple states and their access to deep coffers.

This cycle, the Washington, D.C.-based RSLC was the largest multi-state spender and put money into the greatest number of states, spending in state Supreme Court elections in **North Carolina, Illinois, Montana, and Tennessee**, along with a circuit court race in **Cole County, Missouri**. This was part of a public strategy: in April 2014, the RSLC announced that it had begun a “Judicial Fairness Initiative” to focus on state Supreme Court campaigns. In an interview with *The Washington Post*, the Committee’s president explained the motivations for the initiative, stating, “Republicans have had a significant amount of success at the state level ... implementing bold conservative solutions. Unfortunately, that’s running into a hard stop with judges who aren’t in touch with the public.”<sup>8</sup> Sure enough, over the next seven months, the RSLC committed nearly \$3.4 million in documented spending across five state and local races.

Several other right-leaning national groups also weighed in on state Supreme Court races in 2013-14. The top spenders included:

- The **Judicial Crisis Network**, a conservative group originally founded to support President George W. Bush’s U.S. Supreme Court nominees,<sup>9</sup> with reported financial ties to the Koch brothers,<sup>10</sup> and whose founders also played prominent roles in the influential conservative legal association The Federalist Society.<sup>11</sup> The Judicial Crisis Network gave \$528,000 to organizations that spent hundreds of thousands of dollars on judicial elections in Wisconsin and Tennessee.
- The Virginia-based **Center for Individual Freedom**, a libertarian group that received over \$2 million in 2012 from Karl Rove’s Crossroads GPS PAC<sup>12</sup> and has actively fought election disclosure requirements.<sup>13</sup> The organization spent over \$468,000 on TV ads in Michigan that hailed two Republican-appointed justices for having “thrown the book at violent child predators.”<sup>14</sup>
- The **State Government Leadership Foundation**, which describes itself as “conservative” and “a strategic partner of the Republican State Leadership Committee,”<sup>15</sup> and whose past funders include Exxon, Pfizer, Time Warner, and trade associations for pharmaceuticals, energy, and tort reform.<sup>16</sup> The organization ran over \$40,000 worth of TV ads in Tennessee.
- The **Law Enforcement Alliance of America** (LEAA), which has reportedly received funding from

the National Rifle Association.<sup>17</sup> The LEAA spent \$165,000 in Arkansas on TV ads that, among other things, accused a judicial candidate of calling child pornography a “victimless crime.”<sup>18</sup>

- **Americans for Prosperity** (AFP), a 501(c)(4), Virginia-based organization founded in 2004,<sup>19</sup> led and funded by prominent libertarians Charles and David Koch.<sup>20</sup> AFP spent nearly \$70,000 in Montana, along with undisclosed amounts on radio ads and mailers in Tennessee to “educate the public on the liberal records” of three justices running for retention.<sup>21</sup> Billing itself as “the state’s foremost advocate for economic freedom,”<sup>22</sup> AFP’s Tennessee affiliate was able to criticize the justices without disclosing its expenditures because its messaging did not expressly advocate for their defeat.

Documented spending by national groups on the other side of the political aisle was generally minimal. Notable,

In April 2014, the RSLC announced that it had begun a “**Judicial Fairness Initiative**” to focus on state Supreme Court campaigns.

however, was the **American Board of Trial Advocates**, which gave \$25,000 to Tennesseans for Fair Courts, which supported the three justices seeking retention in that state. **Progressive Kick IE North Carolina**, which describes itself as “a national organization that is working to elect fair minded North Carolina Supreme Court Justices and Courts of Appeals Judges,”<sup>23</sup> spent \$8,500 on mailers backing two justices supported by Democrats. Finally, the North Carolina Chapter of the **Sierra Club**—which holds itself out as the “oldest, largest, and most influential grassroots environmental organization in the United States”<sup>24</sup>—spent a little over \$1,300 on materials supportive of the judicial candidates with Democratic ties (as well as one candidate with Republican ties).

## Following the Money: Five States in Focus

What motivates spending in state Supreme Court races? Financial interests frequently appear to be paramount, with lawyers, businesses, and other repeat players investing heavily in who sits on the bench—sometimes while important cases loom on the horizon. Party agendas also cast a long shadow, even in states with formally “nonpartisan” elections, where party labels do not appear on the ballot. The following five examples help illustrate the interests that seek to shape the courts, and the financial strings that can tether candidates to their supporters.

### ***Illinois: Plaintiffs’ Lawyers and Big Tobacco Face Off***

Illinois Supreme Court Justice Lloyd Karmeier’s 2014 retention election was quiet

until a \$3 million spending battle broke out less than three weeks before Election Day. Spending was largely linked to interests with a connection to a high-stakes, multibillion-dollar lawsuit that was being heard by the Illinois Supreme Court.

This lawsuit involved Philip Morris’ allegedly deceptive marketing of “light” and “low-tar” cigarettes and was pending before the Illinois Supreme Court at the time of the election (and was still pending at the time this report went to press). The stakes were high: a lower court had imposed \$10.1 billion in damages against the tobacco giant, and the lawyers who brought the suit reportedly stood to receive a \$1.8 billion payout in the event of a win.<sup>25</sup>

The case also has a long history: a majority of the Illinois Supreme Court, including Karmeier, previously invalidated the multibillion-dollar verdict in 2005, ruling that the plaintiffs’ claims were barred under the Illinois Consumer Fraud Act because the Federal Trade Commission (FTC) had effectively approved the use of the “light” and “low-tar” labels.<sup>26</sup> In April 2014, an intermediate appeals court in Illinois restored the verdict in light of new evidence that the FTC had never approved the defendant’s use of these terms,<sup>27</sup> and in September 2014 the state’s high court agreed to hear an appeal. Due to changes in the composition of the Illinois Supreme Court, Karmeier was one of only two justices still on the court who had voted to dismiss the case back in 2005.<sup>28</sup>

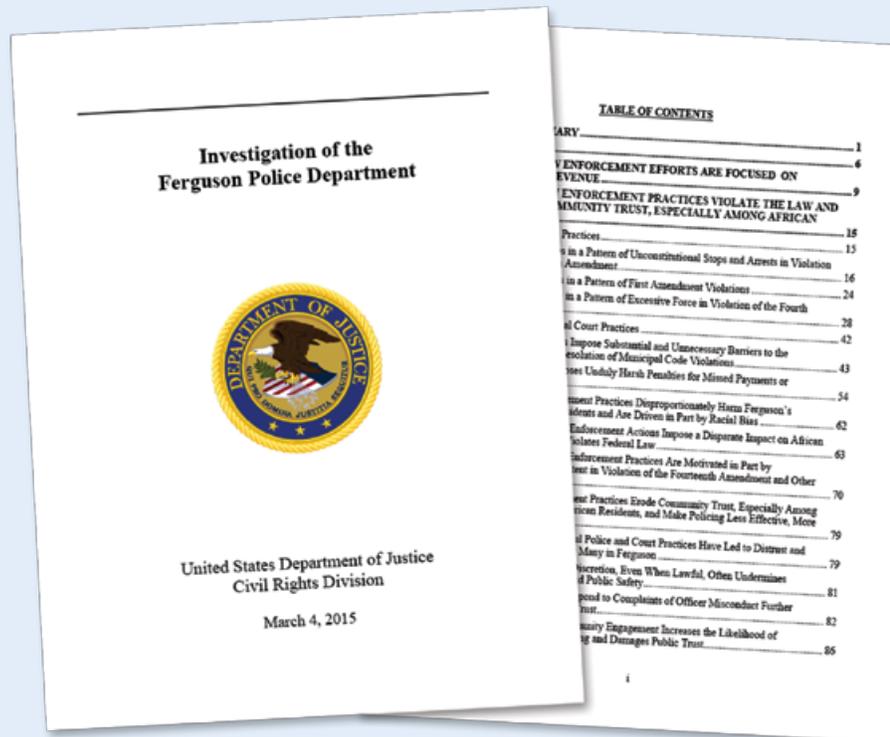
Funneling money into efforts to oust Karmeier in 2014 was a new group called “Campaign for 2016,” created less than

## Political Pressure on the Courts in Ferguson

Financial pressures on courts have also created troubling conflicts for judges, manifested most visibly this cycle in Ferguson, Missouri.

In March 2015, seven months after a white Ferguson police officer shot and killed Michael Brown, an unarmed black teenager, the U.S. Department of Justice (DOJ) issued a report concluding that Ferguson's municipal court staff was "keenly aware" that the city considered the municipal court's "primary purpose" to be "revenue generation."<sup>1</sup> Catalyzed by Brown's death—along with a grand jury's refusal to indict the police officer who shot him—the report revealed that the Ferguson city council pressured the municipal court system to increase revenue, applauding it as it did.<sup>2</sup>

The report highlighted the role of Judge Ronald Brockmeyer, who was first appointed as a municipal court judge in 2003 and was reappointed every two years thereafter. One city council member dissented from Brockmeyer's reappointment in 2012, contending that Brockmeyer "does not listen to the testimony, does not review the reports or the criminal history of defendants, and doesn't let all the pertinent witnesses testify before rendering a verdict."<sup>3</sup> Ferguson's city manager, John Shaw, responded, "It goes without saying the city cannot afford to lose any efficiency in our courts, nor experience any decrease in our fines and forfeitures."<sup>4</sup> Shaw urged that Brockmeyer be reappointed.<sup>5</sup>



Both Shaw and Brockmeyer resigned in the wake of the DOJ report.<sup>6</sup> Vanita Gupta, the Justice Department's top civil rights prosecutor, urged city officials nationwide to see how their own court systems may need reform. "Ferguson is one dot in the state, and there are many municipalities in the region engaged in the same practices a mile away," she told *The New York Times*.<sup>7</sup> "The Ferguson report really does highlight some issues that jurisdictions around the country are plagued with," she added.<sup>8</sup>

*U.S. Department of Justice report on Ferguson, Missouri's municipal court system and police department*

# REPUBLICAN STATE LEADERSHIP COMMITTEE

## WHO ARE THEY?

A 527 group created primarily to influence down-ballot, mostly state-level elections.

## WHAT DID THEY DO?

In 2014, the Republican State Leadership Committee funneled about \$3.4 million from donors into state and county judicial races.



According to the Center for Responsive Politics, the RSLC's biggest donors this cycle were the **U.S. Chamber of Commerce**, tobacco companies **Reynolds American** and **Altria Group**, the casino and resort operating company **Las Vegas Sands**, insurance association **Blue Cross/Blue Shield**, and a variety of *energy, pharmaceutical, and telecommunications* companies.\*

# WHERE DID \$3.4 MILLION GO?

## NORTH CAROLINA

**\$1.3 Million**

The RSLC gave Justice for All NC a total of \$1.3 million for the primary and general election, according to state disclosures.

## ILLINOIS

**~\$980,000**

The RSLC spent nearly \$980,000 on TV advertising and phone banking in support of Illinois Justice Lloyd Karmeier, who successfully sought retention to a new 10-year term, according to state disclosures.

## MONTANA

**~\$480,000**

In Montana, the RSLC spent nearly \$480,000 on TV ads, mailers, and other materials in support of Lawrence VanDyke, who was defeated by Justice Michael Wheat, state disclosures show.

## TENNESSEE

**\$330,000**

The RSLC spent nearly \$190,000 on a direct mail effort in Tennessee opposing the retention of three state Supreme Court Justices. The RSLC also gave \$140,000 to the Tennessee Forum, a group that aired ads accusing the three justices of being “liberal on crime.”

## MISSOURI

**~\$300,000**

In the Cole County, Missouri circuit court race, prosecutor Brian Stumpe, backed by RSLC funding that reached nearly \$300,000 according to state disclosure reports, failed to unseat Judge Pat Joyce.



## Spending Highlight

The harshest attack ad of the cycle: a spot accusing North Carolina's Justice Robin Hudson of siding with child predators, which attained national notoriety.

\* Republican State Leadership Cmte: Contributors, CTR. FOR RESPONSIVE POLITICS (last visited Sept. 14, 2015), [https://www.opensecrets.org/527s/527cmtedetail\\_contribs.php?ein=050532524&-cycle=2014](https://www.opensecrets.org/527s/527cmtedetail_contribs.php?ein=050532524&-cycle=2014) (using records released by the Internal Revenue Service on May 12, 2015)

## Lower Court Race Attracts National Attention in Cole County, Missouri



*“Groovy” sponsored  
by the RSLC  
Missouri PAC*

In addition to investing in four state Supreme Court races, the Republican State Leadership Committee (RSLC) also poured hundreds of thousands of dollars into a trial court election in Cole County, Missouri, home of the state capital, Jefferson City. The RSLC received substantial contributions from wealthy local businessman Rex Sinquefield, although it stated in press reports that it did not earmark funds for the Cole County race based on contributions.<sup>1</sup>

In 2011, Sinquefield was a major financial supporter of a series of bills called the Missouri Income Tax Replacement Initiative, which was designed to eliminate the income tax and instead enact an increased and expanded sales tax. In October 2011, Sinquefield donated \$1.3 million to a group called Let Voters Decide, which was a major supporter of the bill, and he gave them another \$1.2 million in January 2012.

But the bill never made it to the ballot. The Cole County 19th Judicial Circuit Court is the first stop for challenges to state ballot measures. And in April 2012, Judge Patricia Joyce of Cole County found that the proposed summary to be placed on the ballot was insufficient and possibly deceptive to voters.<sup>2</sup> Joyce ordered a rewrite of the fiscal summary to better inform voters of the proposal. Because the deadline for submitting the petition was only a few weeks later, the decision effectively killed the referendum.<sup>3</sup>

When Judge Joyce faced reelection in November 2014, a little over two years after this decision, the election was initially quiet. By the beginning of October, Republican challenger Brian Stumpe had less than \$5,000 left in his campaign account and was nearly \$13,000 in debt. Yet within a few weeks, the RSLC donated over \$300,000 to the RSLC-Missouri PAC, which in turn donated \$100,000 to Stumpe’s campaign, and spent the rest on TV ads and other materials targeting Joyce. All of this occurred nearly simultaneously with a donation of \$300,000 to the national RSLC by Sinquefield.

When the RSLC disclosed Sinquefield’s donation in an IRS filing in early December, press reports swiftly connected the dots between the donation and the local RSLC’s expenditures in the Stumpe-Joyce election. The actual sequence of contributions is not so linear; records show the local RSLC PAC actually got

the first \$100,000 from the national organization and gave to the Stumpe campaign a few days before Sinquefield gave his gift to the RSLC. After the national RSLC gave its campaign donation to Stumpe, RSLC spokeswoman Jill Bader told a Missouri newspaper that she could not identify any specific donor behind the contribution, saying, “We neither accept nor provide earmarked funds.”<sup>4</sup>

Although Sinquefield’s donations were only uncovered after Election Day, the RSLC’s involvement in the Cole County race drew objections from Missouri voters. A Justice at Stake poll conducted in October 2014 showed that two-thirds of Cole County’s voters were concerned about outside, special-interest money in the race.<sup>5</sup> Despite a series of ads depicting Joyce as “groovy” and beholden to “radical environmentalists,” she won the election with 53 percent of the vote. “Is there a negative backlash (from the outside advertising)?” Stumpe asked in an interview. “Clearly.”<sup>6</sup>

a month before Karmeier’s retention election and funded entirely by a group of plaintiffs’ lawyers and firms. During the PAC’s short existence, these lawyers and law firms poured over \$2 million into the fund for the express purpose of campaigning against Karmeier—with 85 percent of the funding coming from lawyers and law firms that were representing the plaintiffs in the Philip Morris case. This money largely funded attack ads that called Karmeier “the special interest judge,” referring to his decision not to recuse himself from hearing cases allegedly involving campaign supporters, both in the earlier iteration of the Philip Morris litigation, as well as in another multimillion-dollar suit involving State Farm Insurance.<sup>29</sup>

On the other side was Philip Morris. The company denies playing any role in the state Supreme Court election. However, it donated, through its parent company Altria, a total of \$500,000 to the RSLC between October 6 and October 8, 2014, just a few weeks after the Illinois Supreme Court agreed to hear the plaintiffs’ appeal, in addition to making earlier contributions in 2013 and 2014 of more than \$230,000.<sup>30</sup> A spokesperson for Altria stated that “we informed the [national] RSLC—both orally and in writing—that the company’s funds could not be used in any way for judicial elections.”<sup>31</sup> Within three and a half weeks of Altria’s donations, the RSLC gave over \$978,000 to its Illinois affiliate, which in turn spent this same amount supporting Karmeier, mostly through TV ads.

Karmeier scraped by in the retention election with 60.8 percent of the vote, just barely reaching the 60 percent

One commentator observed the “entire spectacle is a vivid demonstration of the **corrosive impact that big-time financial contributions in judicial election campaigns have on the credibility of court rulings.**”

threshold for retention required under Illinois law. Then, in February 2015, the plaintiffs requested that Karmeier be disqualified from the Philip Morris case because of the substantial amounts of money furnished both for and against his retention election by lawyers and parties in the case just a few months prior. This followed an earlier recusal motion brought in May 2014, citing alleged campaign spending by Philip Morris and its amici supporters in support of Karmeier’s

initial election to the bench in 2004.

Karmeier denied the May 2014 request in a 16-page order explaining that he believed he could decide the new appeal without bias and arguing that the judicial system would “come to a grinding halt if contributions by organizations and interest groups were sufficient to force a judge to recuse himself or herself in any case in which a member of the group was a party.”<sup>32</sup> In March 2015, the Illinois Supreme Court also denied the February 2015 disqualification request and stated that the motion for recusal had been referred to Karmeier for consideration. At the time this report went to press, Karmeier had not responded to the motion.

Of the Illinois race, one commentator observed the “entire spectacle is a vivid demonstration of the corrosive impact

that big-time financial contributions in judicial election campaigns have on the credibility of court rulings.”<sup>33</sup>

### ***From Global Corporations to Local Schools, Special Interests Funded North Carolina Races***

While Illinois’ retention election was dominated by spenders connected to a single high-stakes case, North Carolina’s Supreme Court election drew the attention of numerous wealthy interests with stakes in the court’s rulings.

Although Democratic and Republican candidates both undertook extensive fundraising, Republican candidates also benefited from substantial outside spending from three groups with business ties: Justice for All NC (principally funded by the RSLC) spent \$1.4 million, while the North Carolina Chamber IE, a political arm of the North Carolina Chamber of Commerce, and the North Carolina Judicial Coalition each spent hundreds of thousands of dollars.

Notably, each group’s contributors were dominated by business interests: RSLC backers ranged from health care to energy companies, among many others, while the North Carolina Chamber IE received significant contributions from tobacco company Reynolds American (\$100,000), the insurance company Blue Cross/Blue Shield (\$75,000), and Koch Industries (\$50,000). The North Carolina Judicial Coalition also received \$50,000 from Reynolds American, as well as \$15,000 from insurance company Medical Mutual.

Many of these donors were likely drawn to the state Supreme Court race by busi-

ness interests that could be affected by the high court's interpretation of state laws. For example, two of the RSLC's biggest donors in the state—Reynolds American and Lorillard Tobacco—are North Carolina companies and regular targets of consumer lawsuits. These two companies combined have reportedly contributed more than \$2 million to the RSLC since 2011.<sup>34</sup> Another local company—Duke Energy, which has reportedly contributed \$285,000 to the RSLC since 2011,<sup>35</sup> including \$10,000 before the 2014 state Supreme Court primary—won a major case concerning rate increases<sup>36</sup> and a high-profile case concerning the

company's deadline for cleaning up leaking coal ash dumps<sup>37</sup> in 2014 and 2015, respectively. Both of these cases were pending during the 2014 election.

A school voucher case that was before the court during the 2014 election likely also attracted attention. In December 2013, a constitutional challenge to a state voucher program, which allows public money to go to low-income families for use at private schools, came before the North Carolina Superior Court. In August 2014, a superior court judge ruled that the voucher program was unconstitutional.<sup>38</sup> The parties appealed, and

## When Money Comes to Court: The Need for Recusal Reform

More than nine in 10 voters think that judges should step aside from cases when one of the litigants has spent substantial sums to get them elected.<sup>1</sup> And in *Caperton v. A.T. Massey Coal Company*, the U.S. Supreme Court ruled that recusal was constitutionally required when a West Virginia Supreme Court justice cast a deciding vote to overturn a \$50 million verdict against Massey, after the company's CEO spent more than \$3 million to support the justice's campaign. Those circumstances, the court found, presented a serious risk of actual bias in violation of the Due Process Clause.<sup>2</sup>

Yet while nearly every state has some version of a rule calling for judges to recuse themselves when their impartiality might reasonably be questioned, few offer clear guidance about when campaign spending requires judges to step aside.

For example, while outside spending in judicial elections has skyrocketed in recent years, only six states have recusal rules addressing independent expenditures—creating uncertainty for judges and parties alike.<sup>3</sup> Most states also allow judges to decide their own recusal motions—creating obvious conflicts and discouraging litigants from filing motions in the first place.

Stronger recusal rules will not eliminate the threats to fair and impartial courts stemming from high-cost judicial elections—but they can address the most direct and egregious conflicts judges face.

on October 10, 2014, the North Carolina Supreme Court announced that it would bypass the court of appeals and review the superior court judge's ruling.

That very same day, Robert Luddy, a North Carolina businessman who founded a number of private and charter schools in North Carolina, donated \$15,000 to the North Carolina Judicial Coalition. Over the next few weeks, as Election Day grew near, the North Carolina Judicial Coalition spent nearly \$250,000 on TV ads and mailers supporting Republican candidates. Luddy's company, CaptiveAire, had previously contributed \$15,000 to the North Carolina Chamber IE during the primary season. The Chamber spent a total of \$345,000 on the primary and also spent on other North Carolina races. The voucher case attracted other groups with interests in education policy as well: the American Federation for Children, a conservative-backed 501(c)(4) that supports school vouchers, gave \$75,000 to Justice for All NC, which spent a total of \$1.4 million on the races. In July 2015, the North Carolina Supreme Court upheld the voucher program in a 4-3 decision split along partisan lines.<sup>39</sup>

### ***Political and Natural Resource Interests Invest in Ohio Supreme Court Race***

In Ohio, it was the Republican Party establishment that stood out among campaign spenders. Though two sitting justices stood for election in Ohio's 2014 Supreme Court race, the vast majority of campaign spending came in support of a single candidate, incumbent Justice Judith French—who started the race behind in the polls against her challeng-

er, Court of Common Pleas Judge John O'Donnell.<sup>40</sup>

Appointed by Republican Governor John Kasich, French described herself on the campaign trail as a “backstop” of support for the Republican governor and legislature (See “State in Focus: Ohio” on page 21), and while on the bench authored an opinion that prevented a progressive policy group and two Ohio legislators from challenging JobsOhio, the nonprofit economic development corporation formed via a major piece of legislation, supported by the Kasich administration, that privatized most of the state government's economic development functions.<sup>41</sup>

Although the state's general election is technically nonpartisan, with no party labels appearing on the ballot, the Ohio Republican establishment came out in support of French. American Freedom Builders (AFB), a Washington, D.C.-based group with reported ties to Kasich<sup>42</sup> (and for which there is little public information available about its funders),<sup>43</sup> spent nearly \$600,000 on outside spending in support of French. The Ohio Republican Party likewise invested \$125,000 in outside spending in support of her campaign.

French also raised more than \$1 million directly, including nearly \$30,000 from state and local Republican committees. Another major source of contributions was from businesses and individuals with energy and natural resources ties, which collectively contributed over \$100,000 to French's campaign. Notably, French received almost \$60,000 from parties, lawyers, and groups that filed amicus briefs in a case regarding a con-



controversial method of extracting natural gas known as “fracking,” which was pending before the Ohio Supreme Court at the time of the election.<sup>44</sup> In February 2015, a 4-3 majority of the court struck down local ordinances regulating fracking activities, holding that they conflicted with state laws regulating oil and gas activities in Ohio. French authored the opinion.<sup>45</sup>

French’s opponent, O’Donnell, did not benefit from outside spending and his fundraising, at just over \$377,000, fell far short of the amount raised by French, although he did receive tens of thousands of dollars from Democratically-aligned groups and labor unions. Despite starting behind in the polls, French ultimately won her election with just under 56 percent of the vote.

### ***Big Business Clashes with Environmental Interests in Montana***

Montana attracted a diverse array of wealthy interests during its record-setting 2014 judicial elections, as business interests and plaintiffs’ lawyers squared off. Two incumbents were up for reelection in nonpartisan elections, James Rice, a justice with Republican ties, and Michael Wheat, a justice with Democratic ties, but it was Wheat’s race against former state solicitor general Lawrence VanDyke that attracted the vast majority of spending.

One identifiable interest at play related to the environment. Wheat had authored<sup>46</sup> and dissented<sup>47</sup> from opinions impacting energy and development companies, and described himself on his campaign website as a “defender of

*A hydraulic fracturing, or “fracking,” operation. In February 2015, a majority of the Ohio Supreme Court struck down local ordinances regulating fracking*

*Courtesy: Joshua Doubek*

# Lack of Transparency in Independent Expenditures Obscures Donors and Spending



Kansans for Justice website

Many voters were left in the dark regarding who was trying to influence judicial elections this cycle due to spending by “dark money” groups that do not disclose their donors, as well as state campaign finance

laws that do not require full disclosure of independent expenditures.

Several races in the 2013-14 midterms showcased the ability of high-spending organizations to wield influence without reporting their donors. National dark money groups, principally on the right, including Americans for Prosperity, the Judicial Crisis Network, the Center for Individual Freedom, American Freedom Builders, the State Government Leadership Foundation, the American Federation for Children, and the Law Enforcement Alliance of America collectively spent \$1.4 million in at least six states. These groups are typically organized under section 501(c)(4) of the tax code, which is intended to provide a tax exemption for “social welfare organizations.” Under the IRS’s current regulatory scheme, they can spend money on political activities such as TV ads, radio buys, and mass mailings without being required to disclose their donors. To preserve their tax status, the only restriction is that the organization’s primary

purpose cannot be political activity—a vague standard that is rarely enforced.

Another loophole comes from state rules regarding when organizations have to disclose their outside spending. A 2014 report by the National Institute on Money in State Politics found that 24 states fail to ensure meaningful disclosure of outside spending in two ways: either they do not require disclosure unless an ad explicitly calls for the election or defeat of a candidate, or they do not require outside spending to be reported at all.<sup>1</sup> As a result, voters may never know how much money was spent by a particular group seeking to influence an election. In Michigan, for example, the Michigan Campaign Finance Network analyzed Michigan Bureau of Elections filings and public files of state broadcasters and cable systems and found that more than \$4.6 million in television spending on state Supreme Court elections was never disclosed to campaign finance authorities in 2014.<sup>2</sup> Although the messages of the ads were clear, because they did not explicitly ask voters to vote for or against a candidate, they fell outside the disclosure requirement.

A Kansas state law loophole also proved to be a problem in 2014, when Kansans for Justice led an 11th hour campaign to oust two state Supreme Court justices. Because Kansas’ disclosure laws do not apply to retention elections, the group was not required to report anything about its leadership, donors, or spending before Election Day. Yet its campaign—

which included a website<sup>3</sup> and interviews with local media—was certainly influential: Governor Sam Brownback, facing a close election himself and seeking to energize his base, tapped into the potency of the anti-retention campaign by claiming that the “liberal judges” backed by his opponent had let two convicted murderers “off the hook.”<sup>4</sup> Though the two justices retained their seats—by the closest margins in at least the last 26 years<sup>5</sup>—the donors behind Kansans for Justice remain secret today.

While many states have a long way to go towards strengthening disclosure standards, a handful of states have been on the vanguard of promoting greater election transparency. In 2015, political leaders from both sides of the aisle in Montana united to pass a law requiring that any outside group that spends money to influence state-level elections—including social welfare organizations—disclose all of its donors.<sup>6</sup> This law follows a similar measure passed in California in 2014<sup>7</sup> and similar regulations introduced in New York in 2013.<sup>8</sup>

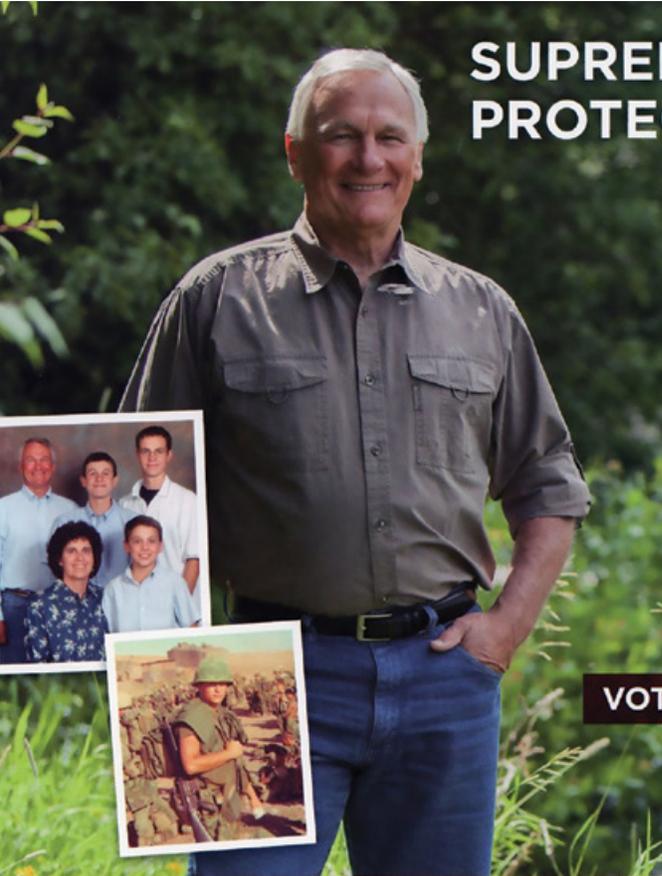
Montana’s constitutional right to a clean and healthful environment.”<sup>48</sup> A win for VanDyke, who criticized Wheat for “letting his environmental views influence his decisions on the court,”<sup>49</sup> would have reduced Democratic control of the court to a 4-3 majority and given opponents of strong environmental regulations a potential ally.

Among other interests, VanDyke attracted support from Great Northern Properties (GNP), a Houston, Texas-based company that operates coal reserves and offers bituminous coal mining services, and its Chairman and CEO, Corbin Robertson Jr. In 2009, GNP entered into a lease with Arch Coal—the second largest coal producer in the United States—granting Arch Coal the right to mine GNP’s coal interests in the Otter Creek coal tracts, located in southeastern Montana.<sup>50</sup> The other half of the Otter Creek tracts was owned by the state, and when Arch Coal signed a lease with the state the following year for the remaining rights, its lease became the subject of a high-stakes case for the future of the Otter Creek tracts. Finding that the lease did not impact or implicate the Montana Constitution’s fundamental right to a clean and healthful environment, the Montana Supreme Court unanimously upheld the legality of the lease, while making clear that the lease did not automatically



*Direct mail piece distributed by the RSLC Judicial Fairness Initiative Montana PAC*

# SUPREME COURT JUSTICE MIKE WHEAT PROTECTS MONTANA VALUES



A Supreme Court Justice for over four years, Mike Wheat is a decorated veteran with over 30 years of legal experience. He started his career as a **prosecutor in Butte-Silver Bow** and worked to toughen penalties for criminals.

Wheat knows that **predatory payday lenders** target the elderly and military families, and he upheld the voter-approved initiative that cracked down on predatory lenders.

As a Montana hunter and fisherman, Wheat understands and lives our Montana values and will protect all our rights. Just as he upheld our rights in writing the supreme court opinion guaranteeing our access to Montana's rivers and streams, Wheat will protect our **2nd Amendment** rights and our **right to privacy**.

Wheat knows **corporations have enough power** and influence and he upheld the voter-approved initiative that said corporations are not people.

A **fair and impartial guardian** of our Constitution, Wheat will continue to protect our rights and freedoms.

**VOTE OR MAIL YOUR BALLOT BY TUESDAY, NOVEMBER 4**

**MIKE WHEAT**  
for SUPREME COURT JUSTICE

*Direct mail piece distributed by Montanans for Liberty and Justice*

authorize or permit any mining activity by Arch Coal.<sup>51</sup> During the 2013-14 cycle, GNP and Robertson collectively donated \$10,000 to Montanans for a Fair Judiciary (MFJ), which spent over \$60,000 to support VanDyke.<sup>52</sup>

Americans for Prosperity (AFP), which has previously been funded by the American Petroleum Institute—of which Robertson is a board member—also spent nearly \$70,000 on TV ads characterizing Wheat as extreme, focusing on a dissent he authored that supported stricter requirements for natural gas wells.

Despite this opposition, Wheat ultimately raised more money than VanDyke, although VanDyke received more

support from outside groups. For his part, Wheat's support was dominated by plaintiffs' lawyers, including nearly \$520,000 in independent expenditures by the trial attorney-backed Montanans for Liberty and Justice. Wheat won the race with 62 percent of the vote.

## **Groups Pour Money into Preserving Wisconsin Supreme Court's Conservative Majority**

In Wisconsin, a 2013 state Supreme Court race attracted substantial support for conservative incumbent Justice Patience Roggensack. This spending faced new scrutiny when the state Supreme Court agreed in 2014 to hear a constitutional challenge to an investigation regarding Governor Scott Walker's 2011-12 recall

election—reportedly involving illegal coordination between Walker’s campaign and several of the same groups that had supported Roggensack and three other sitting justices in their state Supreme Court election campaigns.

While technically nonpartisan, the Wisconsin Supreme Court is widely understood to lean conservative. With that majority at stake in the 2013 race, support for Roggensack came principally from three outside groups, each responsible for more than \$200,000 in independent expenditures: the Wisconsin Club for Growth, Wisconsin Manufacturers & Commerce (WMC), and the Wisconsin Realtors Political Fund. These groups in turn received substantial support from national groups and state affiliates with conservative or business ties during the same time period—including the State Government Leadership Foundation (\$120,000 to WMC and \$25,000 to the Wisconsin Club for Growth), the Judicial Crisis Network (\$500,000 to the Wisconsin Club for Growth), and the National Association of Realtors State Exchange Account (\$215,000 to the Wisconsin Realtors Political Fund). While past races in Wisconsin had seen substantial spending on both sides of the aisle, Roggensack’s supporters considerably outspent those of her opponent, Edward Fallone, whose largest funding sources were donations from labor as well as lawyers and lobbyists, equaling nearly half of all donations he received.

This financial support for Roggensack’s election drew new attention in 2014 when Wisconsin Club for Growth and WMC—along with Citizens for a Strong

America—were reported to be under investigation for campaign finance violations relating to illegal coordination with Walker’s 2011–12 recall election.<sup>53</sup>

The targeted groups filed a (sealed) suit challenging the investigation, which the Wisconsin Supreme Court agreed to hear.<sup>54</sup> Collectively, the three organizations have spent more than \$8 million since 2007 supporting the election of four sitting justices on the court. The special prosecutor who initiated the investigation filed a (sealed) motion seeking the recusal of two justices, and also provided information about potential conflicts regarding two others.<sup>55</sup> While *The New York Times* editorial board argued that “This should not be a hard call,”<sup>56</sup> none of the justices agreed to step aside.<sup>57</sup>

In July 2015, a divided Wisconsin Supreme Court ordered an end to the investigation.<sup>58</sup> All four justices who benefited from spending by the targets of the investigation concurred in the opinion.<sup>59</sup>

## CHAPTER 3



### Court TV: Criminal Justice Themes Dominate Television Ads

This cycle, the most striking television trends in state Supreme Court races related to the themes and tone of the advertisements themselves. While many candidates ran traditional ads that highlighted their experience and backgrounds, there was a notable shift toward criminal justice themes. In fact, over half of the spots that aired in 2013-14 (both positive and negative) related to whether candidates were “tough on crime.”<sup>1</sup>

Although seven states saw nasty and often misleading negative ads, overall negativity was down compared to other recent cycles. Retention elections were an exception, however, as they experienced a surge in negative ads, while

spots airing in partisan contests remained almost exclusively positive.

Looking at spending totals, overall TV spending decreased as compared to other recent non-presidential election cycles, although three states did see their TV spending records fall. However, in those states that did see TV ads, average spending per seat was slightly higher compared to other recent non-presidential cycles.

#### Major Themes

“Traditional” ads—those that highlight a candidate’s experience, values, and qualifications—were common in 2013-14, with 28 percent of all ad spots<sup>2</sup> showcasing these themes, compared to 17 percent in 2011-12. These ads were all positive

in tone, ran in nine states in partisan, nonpartisan, and retention races, and were sponsored overwhelmingly by the candidates themselves.

However, while these “traditional” ads remained a fixture in the 2013-14 races, ads discussing public safety and criminal justice were the most common of the cycle, and played a much bigger role than ever before.<sup>3</sup>

### **Criminal Justice-Themed Ads Set Record, Dominate Cycle**

Ads discussing criminal justice issues—including describing a candidate as being tough or soft on crime, highlighting a candidate’s history of putting criminals behind bars, or showcasing their support of victims’ rights—made up an incredible 56 percent of all ads that ran this cycle. They appeared in 10 of the 11 states that saw TV spending, representing a substantially higher concentration than in past cycles. In fact, the previous high for criminal justice-themed ads was just 33 percent of total ad spots (in both 2007–08 and 2009-10).

Not only was criminal justice-themed messaging a bigger piece of the advertising pie this cycle, but half of these spots were sponsored by outside groups, many of which did not have an explicit criminal justice mission and received funding from businesses and plaintiffs’ lawyers. Campaign for 2016, for example, which ran an ad in **Illinois** criticizing Justice Lloyd Karmeier for failing “too many crime victims,” was exclusively funded by plaintiffs’ lawyers. And in **North Carolina**, the North Carolina Chamber IE, which ran an ad praising Judge Eric Levinson for “putting murderers, drug

dealers, and sex criminals in jail,” received extensive funding from businesses and insurance companies.

With this trend come serious consequences for criminal defendants. Recent research suggests that the prominent role of criminal justice issues in judicial races may be influencing judicial decision-making. For example, one recent study found that an increase in TV ad airings correlated with fewer court rulings in favor of defendants. (See “TV Ads May Influence Judges Long After Election Day” on page 50.) Norman Reimer, Executive Director of the National Association of Criminal Defense Lawyers, put it this way: “[c]onstitutional rights of the accused persons are often the road kill in these judicial campaign wars ... Our freedom and our constitutional rights depend on judges who have the courage to be fair and impartial. It’s a real problem if they know every ruling is likely to become fodder in a campaign.”<sup>4</sup>

**Ads discussing criminal justice issues—including describing a candidate as being tough or soft on crime, highlighting a candidate’s history of putting criminals behind bars, or showcasing their support of victims’ rights—made up an incredible 56 percent of all ads that ran this cycle.**

## TV Ads May Influence Judges Long After Election Day

Criminal justice-themed television ads are a fixture in state Supreme Court elections. This was especially true of the 2013-14 cycle, as 56 percent of all ads discussed criminal justice themes, often attacking judges for being “soft on crime” or praising them for imposing tough sentences—raising troubling questions about whether this focus on justices’ criminal justice records may impact their behavior on the bench.

*Skewed Justice*, a 2014 study published by Emory Law School professors Joanna Shepherd and Michael Kang with support from the American Constitution Society, examined the relationship between campaign ads and judicial decision-making in criminal cases.<sup>1</sup> It found that “The more TV ads aired during state supreme court judicial elections in a state, the less likely justices are to vote in favor of criminal defendants.” In exam-

ining the impact of the U.S. Supreme Court’s 2010 ruling in *Citizens United v. Federal Election Commission*—which struck down limitations on corporate and union independent spending on elections—the authors discovered that “In the 23 states that had bans on corporate or union independent expenditures, *Citizens United*’s lifting of these bans is associated with

a decrease in justices voting in favor of defendants.”

Shepard and Kang were not alone in their findings. In 2013, when the U.S. Supreme Court declined to hear a case addressing an Alabama law that allows judges to override jury decisions in capital cases, Justice Sonia Sotomayor wrote a strong dissent.<sup>2</sup> Sotomayor expressed her concerns that electoral pressures, including advertisements, were influencing outcomes. Since Alabama’s jury override law was implemented in the 1980s, judges have overridden jury decisions and imposed death sentences in 95 cases, yet have *reduced* a capital sentence to life in prison in only nine cases. “The only answer that is supported by empirical evidence,” wrote Sotomayor, is that Alabama judges “who are elected in partisan proceedings, appear to have succumbed to electoral pressures.” She went on to highlight one Alabama judge who had overridden jury verdicts to impose the death penalty six different times, and who campaigned for office by running ads that emphasized his support for capital punishment. “One of these ads boasted that he had ‘presided over more than 9,000 cases, including some of the most heinous murder trials in our history,’ and expressly named some of the defendants whom he had sentenced to death, in at least one case over a jury’s contrary judgment,” Sotomayor stated.<sup>3</sup>

“This mounting evidence suggests that the basic fairness of state criminal proceedings may indeed be at risk.”

In her dissent, Sotomayor also referenced a study published by the Equal Justice Initiative (EJI) that highlighted pro-death penalty campaign ads aired by Alabama judicial candidates.<sup>4</sup> “These political pressures produce the appearance and reality of a judiciary that is insufficiently independent to provide a fair and impartial hearing on controversial issues or enforce the rights of politically unpopular minorities,” the report argued. Similarly, a February 2014 study<sup>5</sup> published by professors Brandice Canes-Wrone, Tom Clark, and Jason P. Kelly found that “On hot-button issues like the death penalty, state supreme court justices in the United States are more likely to side with the public majority sentiment ... This occurs only after moneyed interest groups begin pushing for or against specific judicial stances—a phenomenon that began in the 1970s called ‘new-style campaigning.’”<sup>6</sup>

This mounting evidence suggests that the basic fairness of state criminal proceedings may indeed be at risk.

Criminal justice issues were particularly popular in attack ads, with a whopping 82 percent of attack spots focusing on criminal justice themes. These attacks typically criticized a candidate for being “soft on crime” and claimed that the candidate treated victims poorly. The three attack ads that aired the most this cycle were all criminal justice-themed, including one that criticized North Carolina Supreme Court Justice Robin Hudson for “siding with [child] predators,” one attacking three justices in **Tennessee** for being “liberal on crime,” and one attacking Illinois Supreme Court Justice Lloyd Karmeier for giving lenient sentences to criminals. In addition to these attack ads, 23 percent of all “contrast ads”—where one candidate is criticized while another candidate is promoted—also discussed criminal justice issues.

Criminal justice was also the most common theme in positive ads, which typically promoted candidates as “tough on crime.” In fact, of all the criminal justice-themed ads that ran this cycle, 76 percent of them were positive in tone. Common subjects included touting a judge’s sentencing record and decisions, as well as highlighting a candidate’s endorsements from police officers and/or prosecutors. In Tennessee, for example, after three justices who were up for retention were attacked for being soft on crime, the justices responded with ads claiming they had upheld “nearly 90 percent of death sentences.” In **Wisconsin**, an ad sponsored by Wisconsin Manufacturers & Commerce praised Justice Patience Roggensack for putting “children’s safety above all else” and for closing a “loophole that would have let a sexual predator back on the street.”

## Coding Advertisements

How did we decide what constitutes an “attack ad”? When coding for tone, ads are labeled as “positive,” “attack,” or “contrast.” Positive ads promote a candidate and highlight their background, experience, and/or accomplishments. Attack ads, on the other hand, criticize an opponent. Finally, contrast ads promote one candidate while also criticizing an opponent. Both attack and contrast ads are considered to be “negative” ads, and are included in this chapter’s calculation of negative ad totals.

### ***Ads Discussing Special-Interest Influence Prominent in Many States***

Concern over special-interest influence on the judiciary and the judicial selection process was another major TV theme in 2013-14, perhaps speaking to public concerns about the integrity of the courts. Eight of the eleven states with TV spending saw ads discussing special-interest influence on the judiciary, representing 16 percent of total ad spots in 2013-14. Special-interest influence has been a prominent theme in other recent cycles as well. Sixteen percent of the ads that aired in 2011-12 featured this theme, as did 13 percent of ads in 2009-10.

Over 50 percent of the special-interest-themed ads that ran this cycle were negative in tone. These ads frequently criticized candidates for being “in the pocket” of corporations, as well as taking donations from groups and, in some cases, going on to rule in their favor. For

example, one ad sponsored by Campaign for 2016 during Illinois Supreme Court Justice Lloyd Karmeier’s retention race criticized him “for letting corporations buy justice.”

Positive special-interest-themed ads promoted a candidate as someone who would stand up to outside groups and not allow them to influence the court. For example, Arkansas Supreme Court candidate Tim Cullen sponsored a spot stating that he would “have the courage to decide cases on the law and the Constitution, not on the demands of special interests.”

Ads praising judges for remaining fair and impartial when presiding over cases, and noting that judges should be free of any outside influences, were also common this cycle, with this theme appearing in 28 percent of all spots. The majority of these spots were positive in tone and were paid for by the candidates themselves.

### **Ad Tone and Negativity: Retention Races Go Negative**

By total spots aired, only 21 percent of all ads were negative in tone in 2013-14, making this the cycle with the least ad negativity since 2000, the first year of the *New Politics* report series. In 2011-12, 24 percent of ads were negative in tone, and in 2009-10, 29 percent of ads were negative.

Retention races were a notable exception to the broader trend of less negativity in 2013-14, however, as negative ads in retention elections escalated significantly. This cycle, 46 percent of all ads that

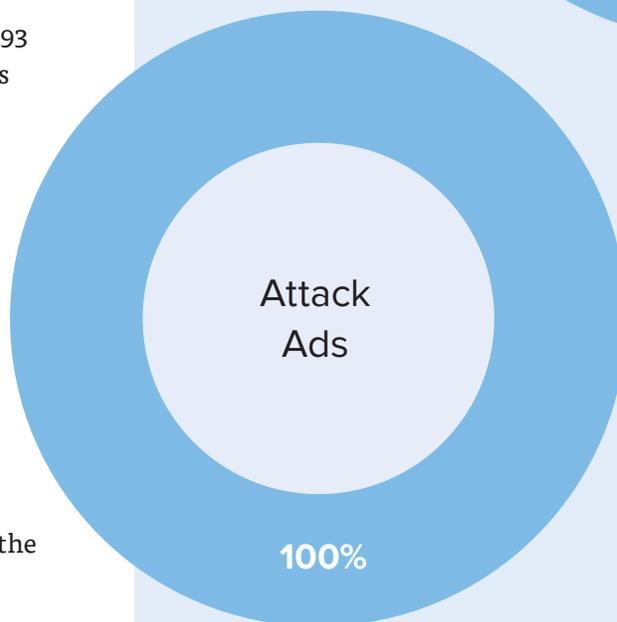
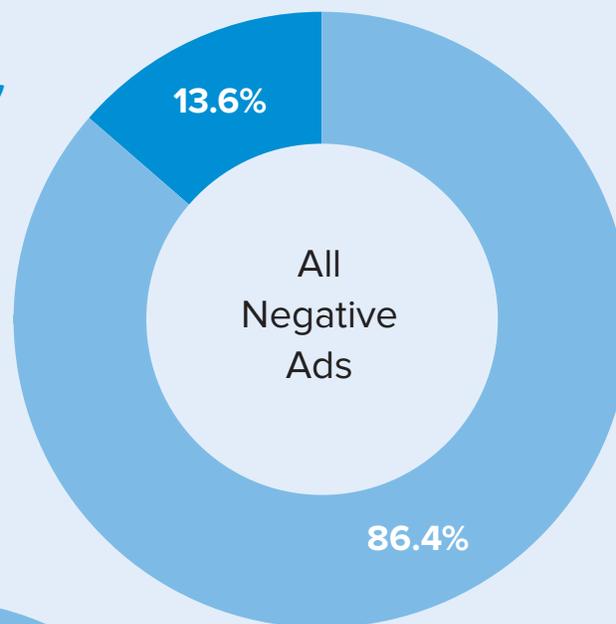
ran in retention races were negative in tone, compared with 10 percent in 2011-12, and 14 percent in 2009-10. Nasty retention races in **Tennessee** and **Illinois** drove these figures, as negative ads made up 42 percent of all ad spots in Tennessee and 71 percent of all ad spots in Illinois.

Although overall negativity was down, 7 of the 11 states with TV spending in the 2013-14 cycle saw at least one negative ad.

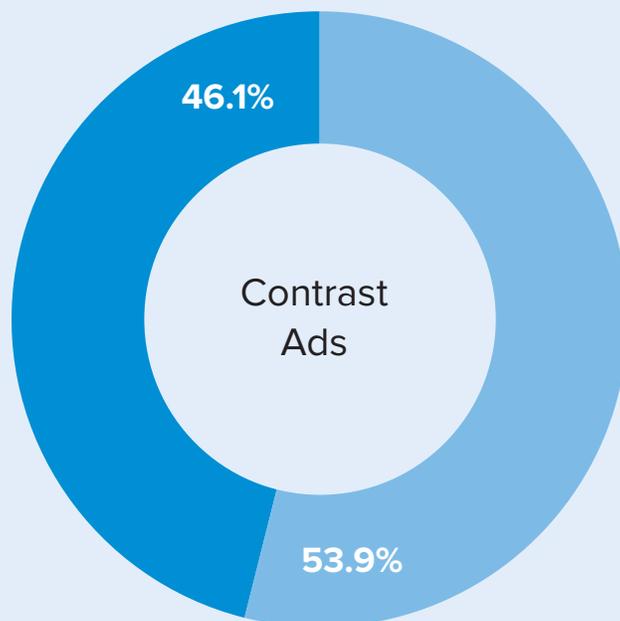
**Montana's** 2014 nonpartisan election saw the highest percentage of negative ads of any race this cycle, with 93 percent of all spots characterized as negative in tone. Many of these ads criticized candidates for being “in the pocket of out-of-state special interests” or for “supporting extreme partisan measures.” Tennessee experienced the largest absolute number of negative ads, with nearly 2,000 negative spots appearing on television over a four-week period, claiming that the justices “threaten [voters’] freedoms” and that the court was “the most liberal place in Tennessee.”

## Negative Ad Sponsorship, 2013-14

Source: Analysis of ad spots by the Brennan Center for Justice based on data provided by Kantar Media/CMAG



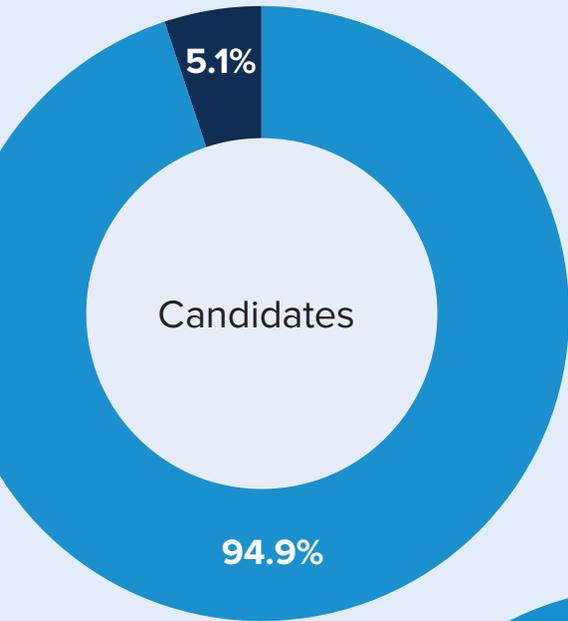
- Candidates
- Groups
- Parties



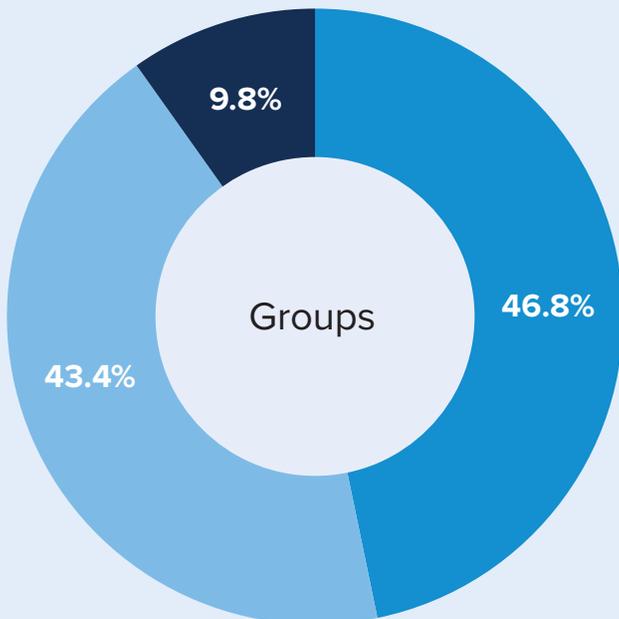
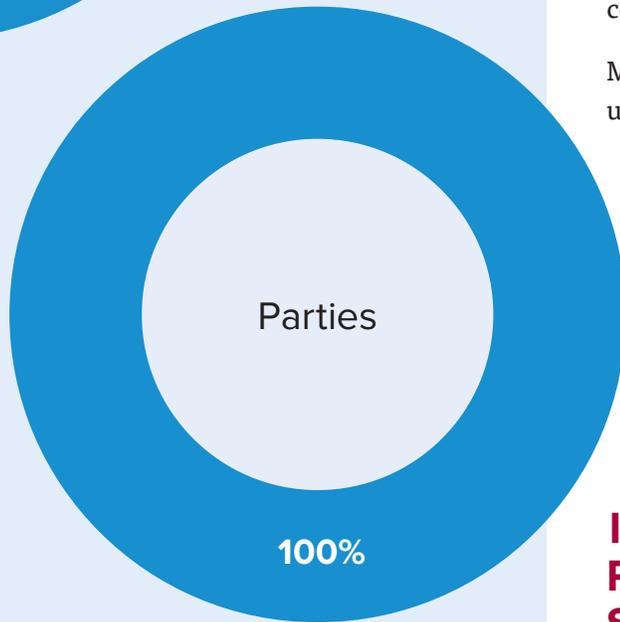
Concern over special-interest influence on the judiciary and the judicial selection process was another major TV theme in 2013-14, perhaps speaking to public concerns about the **integrity of the courts.**

## Ad Tone by Sponsor, 2013-14

Source: Analysis of ad spots by the Brennan Center for Justice based on data provided by Kantar Media/CMAG



- Promote
- Attack
- Contrast



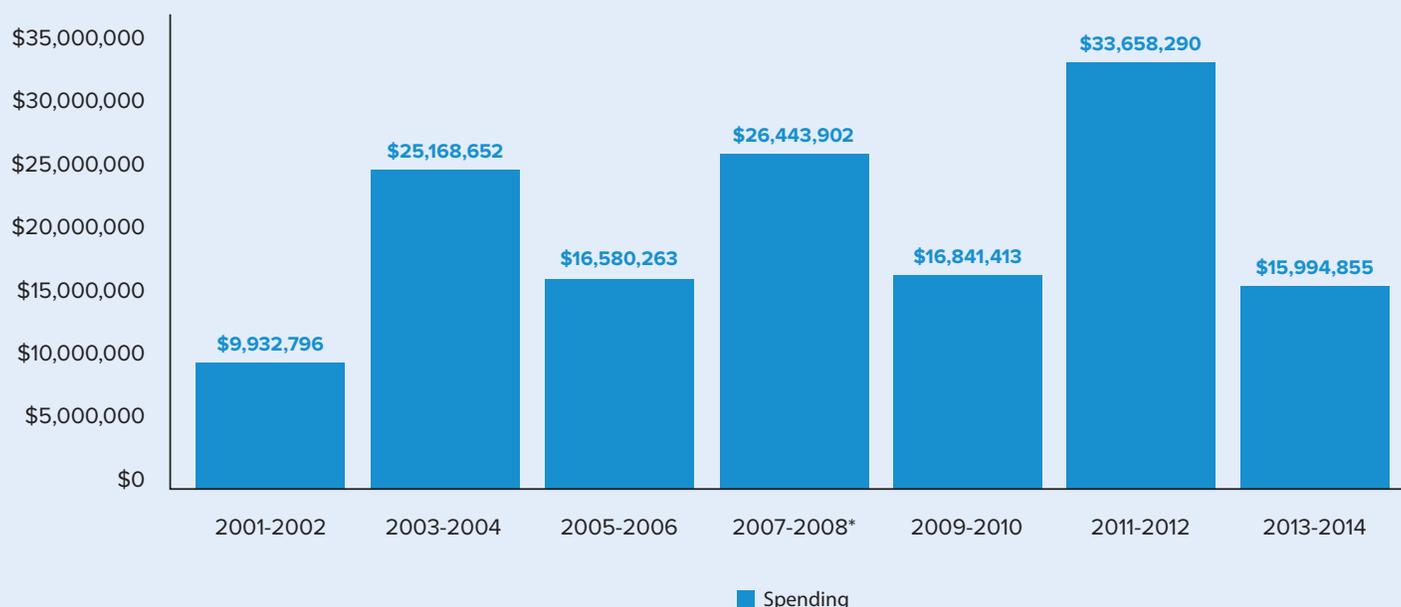
Special-interest groups dominated negative ad buys, as a remarkable 100 percent of all attack ads were purchased by interest groups, including PACs and social welfare organizations. Interest groups also sponsored 86 percent of all negative ads (including both attack and contrast ads). The remaining 14 percent of negative ads that aired this cycle were sponsored by candidates, while political parties did not run any negative advertisements. Compare this to 2011-12, when special-interest groups sponsored 56 percent of negative ads, while 21 percent were sponsored by political parties.

Meanwhile, ads in partisan races were unusually positive this cycle. Ninety-eight percent of all the ads that ran in partisan contests were positive in tone in 2013-14, compared with 84 percent in 2011-12 and 67 percent in 2009-10. These numbers dropped a bit for nonpartisan elections in 2013-14, as 76 percent of the ads that ran in these elections were positive in tone.

## Interest Groups and Political Parties Lead TV Spending

Consistent with this cycle's overall spending trends,<sup>5</sup> TV spending in 2013-14 dropped slightly compared to other recent non-presidential election cycles. Total estimated TV spending was \$16 million across 11 states, as opposed to \$16.8 million across 15 states in 2009-10 (\$18.2 million in inflation-adjusted terms), and \$16.6 million across 11 states in 2005-06 (\$19.4 million in inflation-adjusted terms).<sup>6</sup>

## Total TV Spending by Cycle, 2001-14



\*In 2014, it was discovered that one 2008 ad had been improperly coded and included in the TV spending total for the 2007-08 cycle. That ad ran in an attorney general race, not a Supreme Court election. These calculations correct for that mistake. Data courtesy of Kantar Media/CMAG

Yet despite this dip in overall TV spending, average spending per open seat increased slightly in those states that saw TV spending, indicating that TV dollars were more heavily concentrated among fewer races. In the states that saw such spending, spending per open seat averaged about \$600,000 in 2013-14, compared to \$540,000 in 2009-10 and \$450,000 in 2005-06.

Just as candidate fundraising correlated strongly with success at the polls, TV spending likewise corresponded strongly with electoral success. Of the 18 races in which TV advertisements aired, 15 were won by the candidates who saw the most TV dollars spent in their favor,<sup>7</sup> or who saw more monetary support than

the anti-retention efforts that opposed them. This included races such as the election between Justice Judith French and John O'Donnell in **Ohio**, where pro-French TV spending exceeded pro-O'Donnell spending by more than \$1 million. Yet it also included much closer races, such as the retention battle in **Tennessee**, where pro- and anti-retention forces spent similar amounts on ads.

Non-candidate spending also continued to dominate TV ad buys. Together, outside groups and political parties were responsible for 58 percent of total TV dollars—a record for non-candidate spending in a non-presidential election cycle, and falling just short of the

**Special-interest groups dominated negative ad buys, as a remarkable 100 percent of all attack ads were purchased by interest groups, including PACs and social welfare organizations.**

all-time record of 61 percent in non-candidate spending in the 2011–12 election cycle.

Interest groups alone accounted for 36 percent of all TV spending in 2013–14, setting a record for interest group spending in a non-presidential election cycle, and similarly falling just short of the all-time record of 38 percent of total spending by interest groups in

2011–12. Eight of the eleven states with TV spending in 2013–14 saw at least one ad sponsored by an interest group, and two of those states, **Ohio** and **Michigan**, also saw spending by political parties.

Campaign for 2016, an **Illinois**-based group funded by plaintiffs' trial lawyers, was the highest spending interest group that operated in a single state, sponsoring \$1.1 million worth of TV ads in Illinois' retention race, accounting for 60 percent of spending in the state and seven percent of total TV spending nationwide. The Michigan Republican Party was the highest spender overall, sponsoring \$3.3 million worth of TV ads that equaled 21 percent of total 2013–14 TV spending nationwide.

The RSLC also spent significantly on TV this cycle across multiple states. Estimates from Kantar Media/CMAG indicate that the group spent nearly \$800,000 in Illinois and **Montana**. State

disclosure forms indicate that the RSLC also gave \$1,300,000 to Justice for All NC, which spent an estimated \$950,000 on TV in **North Carolina**, as well as an additional \$140,000 to the Tennessee Forum, which spent an estimated \$600,000 on TV advertising.

Television spending was heavily concentrated among a handful of big spenders: the top 10 TV spenders (including candidates, parties, and interest groups) were responsible for 67 percent of all TV dollars this cycle, which is comparable to the amount spent by the top 10 spenders in 2011–12 and 2009–10. Likewise, while 11 states saw television ads in 2013–14, spending in just five states—Illinois, North Carolina, Michigan, Ohio, and Tennessee—collectively accounted for 89 percent of total TV dollars nationally. TV spending exceeded \$1 million in each of these states.

Michigan, where eight candidates faced off for three seats on the bench, saw the most TV dollars overall, with an estimated \$5.9 million in TV spending. North Carolina, where nine candidates competed for four open seats, took the second-place spot for spending, at \$3.1 million, as well as the first-place spot for total number of ad airings (10,903).

## **TV Spending Records Fall in Three States**

Two high-profile retention elections and one nonpartisan race dominated by outside spending also led to three state TV spending records falling this cycle.<sup>8</sup> In **Illinois**, where judges compete for open seats via contested partisan races, which are then followed by retention elections

## Total TV Spending, 2013-14

State	Sponsor	Spot Count	Estimated Spending
Arkansas	Candidate	93	\$44,210.00
	Group	811	\$164,560.00
	<b>Total</b>	<b>904</b>	<b>\$208,770.00</b>
Idaho	Candidate	79	\$23,060.00
	<b>Total</b>	<b>79</b>	<b>\$23,060.00</b>
Illinois	Group	2,300	\$1,820,630.00
	<b>Total</b>	<b>2,300</b>	<b>\$1,820,630.00</b>
Michigan	Candidate	4,841	\$2,054,090.00
	Party	3,778	\$3,342,430.00
	Group	481	\$468,110.00
	<b>Total</b>	<b>9,100</b>	<b>\$5,864,630.00</b>
Montana	Candidate	168	\$39,450.00
	Group	1,532	\$314,180.00
	<b>Total</b>	<b>1,700</b>	<b>\$353,630.00</b>
North Carolina	Candidate	8,731	\$2,039,685.00
	Group	2,172	\$1,054,940.00
	<b>Total</b>	<b>10,903</b>	<b>\$3,094,625.00</b>
Ohio	Candidate	2,906	\$1,031,590.00
	Party	314	\$125,710.00
	Group	676	\$596,440.00
	<b>Total</b>	<b>3,896</b>	<b>\$1,753,740.00</b>
Pennsylvania	Candidate	857	\$205,490.00
	<b>Total</b>	<b>857</b>	<b>\$205,490.00</b>
Tennessee	Candidate	2,099	\$854,040.00
	Group	2,499	\$893,930.00
	<b>Total</b>	<b>4,598</b>	<b>\$1,747,970.00</b>
Texas	Candidate	771	\$187,890.00
	<b>Total</b>	<b>771</b>	<b>\$187,890.00</b>
Wisconsin	Candidate	1,140	\$266,490.00
	Group	2,675	\$467,930.00
	<b>Total</b>	<b>3,815</b>	<b>\$734,420.00</b>
<b>Totals</b>	Candidate	21,685	\$6,745,995.00
	Party	4,092	\$3,468,140.00
	Group	13,146	\$5,780,720.00
	<b>Overall</b>	<b>38,923</b>	<b>\$15,994,855.00</b>

Data courtesy of Kantar Media/CMAG

## Top 10 TV Spenders, 2013-14

Spender	State	Spot Count	Est. Spending
Michigan Republican Party	Michigan	3,778	\$3,342,430
Richard Bernstein	Michigan	3,244	\$1,318,850
Campaign for 2016	Illinois	1,627	\$1,089,370
Justice for All NC	North Carolina	1,906	\$952,590
Republican State Leadership Committee	Montana & Illinois	1,226	\$796,620
Gary Wade, Cornelia Clark, & Sharon Lee	Tennessee	1,877	\$737,180
Brian Zahra & David Viviano	Michigan	1,387	\$690,710
Mark Martin	North Carolina	2,765	\$611,615
The Tennessee Forum	Tennessee	1,567	\$596,970
American Freedom Builders	Ohio	676	\$596,440
<b>Totals</b>		<b>20,053</b>	<b>\$10,732,775</b>

*This chart is based on data gathered by Kantar Media/CMAG and reflects the cost of ads that were directly paid for by one of the top 10 groups. The Republican State Leadership Committee contributed significant sums of money to both Justice for All NC (\$1.3 million) and the Tennessee Forum (\$140,000), who then went on to sponsor TV ads of their own. Those contributions are not included in the RSLC's total estimated TV spending*

every 10 years, Justice Lloyd Karmeier's retention battle drew \$1.8 million in ads—setting a new TV record for retention races in the state. Karmeier's initial election to the bench in 2004 also holds the record for highest TV spending in a contested judicial race in Illinois, coming in at \$6.8 million.

Another state record was set in **Tennessee**, where \$1.75 million was spent on TV ads in the weeks leading up to three justices' August 7 retention elections. The Tennessee Forum, a group largely funded this cycle by Lieutenant Governor Ron Ramsey's political action committee, RAAMPAC, led the charge in TV spending against the justices, sponsoring some \$600,000 worth of ads that claimed that the state Supreme Court was "the most liberal place in Tennessee." Justices Clark, Lee, and Wade fought back with \$850,000 in adver-

tising that condemned the attacks and highlighted their professional qualifications. Two other outside groups, one pro-retention and one anti-retention, also jumped into the ad war fray, collectively spending \$300,000 on spots.

Finally, in **Montana**, a heated nonpartisan race between incumbent Justice Mike Wheat and challenger Lawrence VanDyke drew a record-setting \$350,000 in TV spending. (See "Montana Deserves" on page 65.) Two national groups, Americans for Prosperity and the Republican State Leadership Committee, lobbed attack ads against Wheat, while a group called Montanans for Liberty and Justice responded with ads critical of VanDyke.

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Together, outside groups and political parties were responsible for 58 percent of total TV dollars—a **record for non-candidate spending** in a non-presidential election cycle, and falling just short of the all-time record of 61 percent in non-candidate spending in the 2011-12 election cycle.

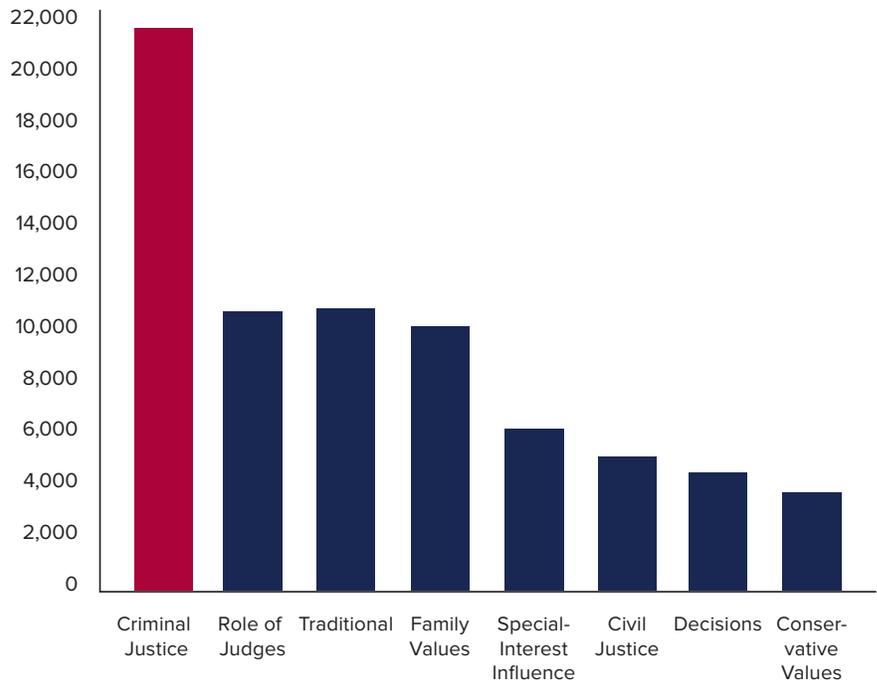
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# JUDICIAL ELECTION ADS: MAJOR THEMES IN 2013-14

2013–14 was a breakout year for criminal justice-themed ads. They swept the field by accounting for 56%\* of all television ads.

That’s nearly 22,000 spots and more than double the next two themes.

\*Ads can have multiple themes, therefore the total here may not correspond to the total ads aired elsewhere in the report.



## WHO ARE YOU? IF YOU'RE A...

### Candidate

It's likely you ran traditional ads.



Ads with traditional themes were the most common type of spot sponsored by candidates. This includes ads touting a candidate's experience, education, background, and values. Nearly 10,000 candidate-sponsored ads featured this theme and all were positive in tone.

### Party

It's likely you ran criminal justice or family value ads.



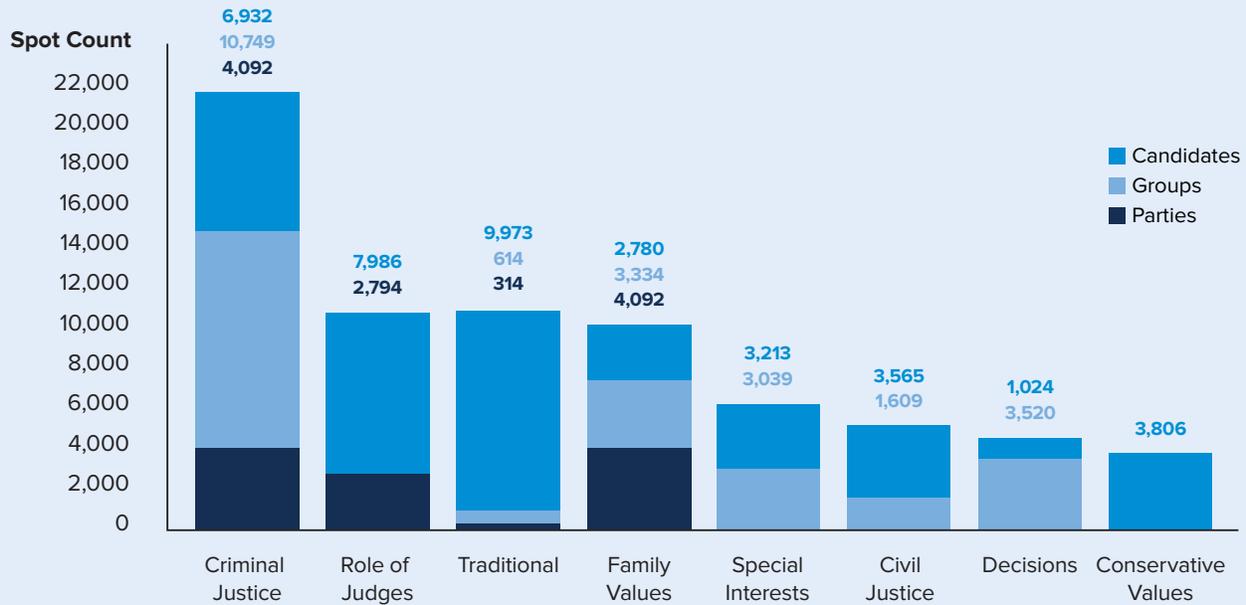
Most party-sponsored ads were either criminal justice or family values themed. Criminal justice ads often portray a candidate as “tough” or “soft” on crime and family values ads highlighted a candidate's history of protecting children and families. Parties sponsored roughly 4,000 of each type of ad.

### Outside Group

It's likely you ran criminal justice ads.



At nearly 11,000 spots, the overwhelming majority of ads sponsored by special-interest groups were criminal justice-themed. Almost half of these ads were negative in tone, criticizing candidates for their failure to protect victims. Many ads were also positive, praising a candidate for their tough stance against criminals.



# WHAT ARE THE THEMES?

NO. 1

## Criminal Justice

Ads describing a candidate as being “tough” or “soft” on crime. Highlights a candidate’s record prosecuting criminals, standing up for victims’ rights, and/or upholding death sentences. Showcases endorsements by police officers and/or prosecutors.

NO. 2

## Role of Judges

Ads describing the proper way for judges to act. Emphasizes fairness and impartiality, and notes that judges should be free of outside influences when presiding over cases.

NO. 3

## Traditional

Ads highlighting a candidate’s experience, personal and professional qualifications, education, character, family, and community involvement.

NO. 4

## Family Values

Ads that praise a candidate for protecting children and families. May deal with issues such as child predators and domestic violence.

NO. 5

## Special-Interest Influence

Ads claiming judges are “for sale” or “in the pocket” of big corporations. May praise a judge for ignoring special interests, or criticize a candidate for favoring outside groups and giving in to political pressure.

NO. 6

## Civil Justice

Ads that deal with dangerous/defective products, accidents, personal injury lawyers/trial lawyers, medical malpractice and insurance, drug companies, corporations and big businesses.

NO. 7

## Decisions

Ads that criticize a judge for a ruling in a past case, or for their rulings in a specific type of case.

NO. 8

## Conservative Values

Ads describing a candidate as having conservative values; may emphasize community and religion.



# Ad Spotlight

Highlights from some of the most notable ads in the 2013-14 election cycle

# Ad Spotlight

## Arkansas



The Law Enforcement Alliance of America (LEAA), a group with reported ties to the National Rifle Association,<sup>1</sup> ran an attack ad in 2014 against attorney Tim Cullen, who faced off against Judge Robin Wynne in a nonpartisan race for an open seat on the Arkansas Supreme Court. The ad accused Cullen of “work[ing] to throw out the sentence of a repeat sexual predator,” as well as “arguing that child pornography was a victimless crime.” The spot was criticized by FactCheck.org, a project of the Annenberg Public Policy Center at the University of Pennsylvania, which argued that the case referred to in the advertisement was “repeatedly misused in the ad to create a misleading narrative based on a partial set of facts,” and left a “false impression that Cullen was seeking to have [his client] avoid jail time altogether.”<sup>2</sup> FactCheck.org noted that Cullen, who had been appointed by the court to represent this client, did not explicitly say that child pornography was a “victimless crime” in his legal brief. Cullen responded with an ad of his own saying his opponents were “despicable for trying to exploit sexually abused children for political gain.” This marked the

first attack ad in the state, as well as the first time Arkansas had seen television spending by an outside group, since the *New Politics* report began tracking TV ads in 2000. Wynne, who saw the most TV spending in his favor, won the May 2014 race with 52 percent of the vote.<sup>3</sup> Two additional seats on the Arkansas Supreme Court were also up for election in 2014, but both candidates ran unopposed and did not place any TV ads.

## North Carolina

Justice for All NC sponsored one of the most vicious spots this cycle. Airing in the North Carolina primary, the ad alleged that Justice Robin Hudson ruled in favor of child predators, saying she was “not tough on child molesters, not fair to victims.”

The North Carolina Bar Association condemned the spot, saying the commercial “and others like it are an unfair attack on the legal profession.”<sup>4</sup> Hudson’s campaign quickly responded with a positive ad that highlighted her experience on the court and her role as a mother of two children, urging voters not to be “fooled by distortions and lies.” After the primary, the nonpartisan Supreme Court general election took on a more positive tone, with ads focusing mainly on the qualifications and experiences of the candidates. These candidates spent most of the TV money themselves, accounting for nearly 66 percent of television dollars in the primary and general races. Hudson won both her contested primary



**Arkansas:**  
“Young Victims”  
sponsored by the  
Law Enforcement  
Alliance of America

Copyright 2014  
Kantar Media/  
CMAG

**North Carolina:**  
“Protect Us”  
sponsored by Justice  
for All NC

Copyright 2014  
Kantar Media/  
CMAG

# Ad Spotlight, *continued*

and contested general election, receiving 43 percent and 52 percent<sup>5</sup> of the vote, respectively. Contests for the three additional state Supreme Court seats on the ballot also saw TV spending this cycle, but Hudson's race drew the most dollars.

## Illinois



**Illinois:** “Worst” sponsored by Campaign for 2016  
Copyright 2014  
Kantar Media/  
CMAG

**Tennessee:** “Most Liberal” sponsored by the Tennessee Forum  
Copyright 2014  
Kantar Media/  
CMAG

Illinois Supreme Court Justice Lloyd Karmeier faced strong opposition from a group largely funded by plaintiffs’ trial lawyers, Campaign for 2016, during his November 2014 retention race, resulting in a flurry of negative ads in the weeks leading up to the election. Campaign for 2016 ran several spots that accused Karmeier of allowing corporations and “their allies [to funnel] millions of dollars into [his] campaign,” and calling him the “special-interest judge.” This alluded to Karmeier’s refusal to recuse himself from two cases in which plaintiffs said his campaign benefited from spending by parties involved in the lawsuits. (See “Illinois: Plaintiffs’ Lawyers and Big Tobacco Face Off” on page 34.) One ad attacked the justice for “letting corporations buy justice.” The RSLC responded to Campaign for 2016’s ads with a spot praising Karmeier for offering “no leniency for violent criminals.” The RSLC, however, was outspent by Campaign for 2016 (an estimated \$731,000 compared to Campaign for 2016’s nearly \$1.1 million). Karmeier, who needed 60 percent of the vote to remain on the bench, squeaked by with just 60.8 percent.<sup>6</sup>

## Tennessee



Justices Cornelia Clark, Sharon Lee, and Gary Wade faced a difficult retention battle in Tennessee. They were targeted for ouster with several attack ads from the Tennessee Forum, a group that received substantial support from Lieutenant Governor Ron Ramsey’s PAC. One ad accused the justices of advancing “Obamacare in Tennessee,” despite the fact that the court never made a decision concerning the law. The spot also claimed that the justices were “liberal on crime.” The State Government Leadership Foundation ran a similar spot attacking the justices’ records on Obamacare and criminal justice issues.

The majority of the TV spending in the state, however, was in support of the justices. A group called Tennesseans for Fair Courts—largely supported by trial attorneys—sponsored an ad refuting the attacks on the justices, calling them a “smear campaign.” The justices themselves poured nearly \$850,000 into ads supporting their retention, highlighting their histories of “protecting individual rights, the Second Amendment right to bear arms, and upholding nearly

90 percent of death sentences”—even though media reports indicated that the justices never heard a case on the Second Amendment.<sup>7</sup> Voters eventually retained all three justices in August 2014.

## Ohio



Although all four candidates running in Ohio’s nonpartisan judicial elections signed a pledge with the Ohio State Bar Association to refrain from engaging in any negative election activities,<sup>8</sup> candidate John P. O’Donnell, a Democrat running against a Republican incumbent, Justice Judith French, sponsored an ad claiming French was “in the pocket of big utilities” and had “supported an unfair ruling that gave American Electric Power \$368 million of [Ohioans’] money.” The bar association asked O’Donnell to “immediately remove this ad from the air, and refrain from including statements that impugn the court’s integrity and imply that justice is for sale in [his] campaign materials.”<sup>9</sup> The bar added, “Ohioans are better served by learning about judicial candidate qualifications and experience.” The day after O’Donnell’s attack aired, the Ohio Republican Party began running an ad that promoted French’s 25 years of legal experience.

French, who reaped the benefits of most of the TV spending, won the election with 56 percent of the vote.<sup>10</sup>

## Montana

Montana experienced an especially negative and contentious election this cycle as incumbent Justice Mike Wheat was challenged by former state solicitor general Lawrence VanDyke, marking the first time that Montanans saw ads sponsored by special-interest groups since the *New Politics* report began tracking TV spending in the state in 2008. Two national organizations, the Republican State Leadership Committee and Americans for Prosperity (AFP), lit up the airwaves with ads attacking Wheat. One ad paid for by AFP blasted Wheat for his “history of supporting extreme partisan measures,” citing examples such as Wheat’s support for a statewide sales tax, along with higher hunting and fishing fees. What the ad did not say, however, was that these were positions Wheat had taken in his previous job as a state senator, and not as a judge. Wheat fought back with a TV spot of his own, saying out-of-state corporations were “distorting the truth.” A trial lawyer-backed group called Montanans for Liberty and Justice also took shots at Wheat’s challenger, running ads asserting that VanDyke was “in the pocket of out-of-state special interests.” Wheat, who saw the most TV spending in his favor, ultimately won the race with 62 percent of the vote.<sup>11</sup>



**Ohio:** “Pocket” sponsored by John O’Donnell

Copyright 2014  
Kantar Media/  
CMAG

**Montana:** “Montana Deserves” sponsored by Americans for Prosperity

Copyright 2014  
Kantar Media/  
CMAG

# APPENDIX A

## State Profiles



Election Type:  
Partisan election

### Alabama

Alabama saw one candidate, incumbent Republican Justice Greg Shaw, run unopposed for reelection in 2014. Past Alabama Supreme Court races have been extremely expensive—Alabama led the nation in total candidate fundraising from 2000-09—but this race remained fairly quiet. The court maintained its 9-0 Republican majority.

		Rank
Total Spending	\$41,163.43	17/19
Candidate Fundraising Total	\$41,163.43	17/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$0	N/A
Donations of \$1,000 or More as a Percent of Total Contributions	99.6%	1/19



Election Type:  
Nonpartisan election

### Arkansas

Three Supreme Court seats were up for election in Arkansas in 2014. Justice Karen Baker ran unopposed to retain her seat on the court, and Rhonda Wood ran unopposed to fill the seat of a recently retired justice. Court of Appeals Judge Robin Wynne and attorney Tim Cullen competed for the third seat in a match that saw harsh TV attack ads paid for by a special interest group, the Law Enforcement Alliance of America. This marked the first attack ad in the state since the *New Politics* series began, as well as the first time outside groups funded TV spending in recent history. Cullen raised over \$160,000, \$30,000 of which was spent on TV ads. Wynne raised and spent significantly less and won the seat.

		Rank
Total Spending	\$522,129.26	11/19
Candidate Fundraising Total	\$357,569.26	10/19
Non-Candidate Spending Total	\$164,560.00	8/8
Percent Non-Candidate Spending	31.5%	7/8
TV Spending Total	\$208,770.00	8/11
Donations of \$1,000 or More as a Percent of Total Contributions	77.0%	6/19

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judicial selection  
methods at  
[judicialselection.us](http://judicialselection.us)

## Georgia

The 2014 Georgia judicial elections, held in May, were some of the earliest in the nation. Three incumbent justices—Harris Hines, Keith Blackwell, and Robert Benham—ran unopposed and raised a total of \$273,000. Nearly 80 percent of these contributions came from lawyers and lobbyists.



Election Type:  
Nonpartisan  
election

		Rank
Total Spending	\$273,085.70	12/19
Candidate Fundraising Total	\$273,085.70	12/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$0.00	N/A
Donations of \$1,000 or More as a Percent of Total Contributions	53.3%	13/19

## Idaho

Two Supreme Court seats were up for election in Idaho in 2014. Incumbent Justice Joel Horton defeated attorney William “Breck” Seiniger, while incumbent Justice Warren Jones ran unopposed. Jones did not fundraise, while Horton raised almost \$125,000, over \$23,000 of which was spent on television ads.



Election Type:  
Nonpartisan  
election

		Rank
Total Spending	\$163,370.62	15/19
Candidate Fundraising Total	\$163,370.62	15/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$23,060.00	11/11
Donations of \$1,000 or More as a Percent of Total Contributions	60.7%	10/19



Election Type:  
Retention  
election

## Illinois

Justice Lloyd Karmeier was up for retention in Illinois in 2014. The justice himself raised only a small amount of money as spending was dominated by two special-interest groups, the RSLC and Campaign for 2016, which spent significant sums battling over Karmeier's retention. Ninety percent of all spending came from these two groups. Both sponsored TV ads—Campaign for 2016's ads attacked Justice Karmeier for being a "special interest judge," while the RSLC came to the justice's defense with positive ads. Karmeier narrowly won reelection with 60.8 percent of the vote, barely topping the 60 percent threshold for retention, and preserving the 4-3 left-leaning majority on the court.

		<b>Rank</b>
Total Spending	\$3,352,951.47	4/19
Candidate Fundraising Total	\$309,331.02	11/19
Non-Candidate Spending Total	\$3,043,620.45	2/8
Percent Non-Candidate Spending	90.8%	<b>1/8</b>
TV Spending Total	\$1,820,630.00	3/11
Donations of \$1,000 or More as a Percent of Total Contributions	95.1%	3/19



Election Type:  
Nonpartisan  
election

## Kentucky

Four seats were open in Kentucky's 2014 Supreme Court elections, though only one seat was contested. Incumbent Justices Lisabeth Hughes Abramson, Bill Cunningham, and Chief Justice John Minton Jr. ran unopposed and were reelected, while incumbent Justice Michelle Keller defeated her challenger, attorney Teresa Cunningham, with 58 percent of the vote.

		<b>Rank</b>
Total Spending	\$134,169.37	16/19
Candidate Fundraising Total	\$134,169.37	16/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$0.00	N/A
Donations of \$1,000 or More as a Percent of Total Contributions	57.9%	12/19



Election Type:  
Partisan election

## Louisiana

District Judge Scott Crichton ran unopposed for the one open seat on the Louisiana Supreme Court in 2014. Although the state has seen high-spending, competitive races in the past, the 2014 election was a fairly quiet affair. Yet even with no competition, Crichton raised almost \$800,000, 74 percent of which came from donations of \$1,000 or more. The court maintained its 4-3 Republican majority.

		<b>Rank</b>
Total Spending	\$777,111.31	9/19
Candidate Fundraising Total	\$777,111.31	7/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$0.00	N/A
Donations of \$1,000 or More as a Percent of Total Contributions	74.2%	7/19

## Michigan

In Michigan, eight candidates vied for three seats in 2014. Democratic candidate Richard Bernstein contributed \$1.8 million of his own money to his successful bid for a seat, accounting for 37 percent of total contributions in the state. Incumbent Republican Justices Brian Zahra and David Viviano also won after receiving substantial support from the Republican Party, the Farm Bureau, the Chamber of Commerce, and donors from the finance, insurance, and real estate industries. The court maintained its 5-2 Republican majority.



Election Type:  
Partisan  
nomination;  
Nonpartisan  
general  
election

		Rank
Total Spending	\$9,518,353.16	1/19
Candidate Fundraising Total	\$4,982,887.95	1/19
Non-Candidate Spending Total	\$4,535,465.21	1/8
Percent Non-Candidate Spending	47.7%	4/8
TV Spending Total	\$5,864,630.00	1/11
Donations of \$1,000 or More as a Percent of Total Contributions	85.2%	5/19

## Minnesota

Two incumbent justices faced competition in the 2014 Minnesota Supreme Court elections. Justice Wilhelmina Wright, the first black woman on the court, was challenged by John Hancock, a special agent with the Department of Homeland Security. This was Wright's first election to the high court after her appointment in 2012, and she won her seat with 57 percent of the vote. Incumbent Justice David Lillehaug faced Michelle MacDonald, an attorney endorsed by the Minnesota Republican Party, and won the election with 53 percent of the vote. This was also Lillehaug's first election since his appointment to the high court in 2013.



Election Type:  
Nonpartisan  
election

		Rank
Total Spending	\$170,498.84	14/19
Candidate Fundraising Total	\$170,498.84	14/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$0.00	N/A
Donations of \$1,000 or More as a Percent of Total Contributions	39.1%	18/19



Election Type:  
Nonpartisan  
election

## Montana

The 2014 nonpartisan race between incumbent Justice Mike Wheat and former state Solicitor General Lawrence VanDyke drew a record \$350,000 in TV spending. Two national groups, Americans for Prosperity and the RSLC, sponsored ads attacking Wheat, while a group called Montanans for Liberty and Justice responded with ads critical of VanDyke. A group called Montanans for a Fair Judiciary also spent money on radio ads and mailers in support of VanDyke. Both candidates received contributions from lawyers and lobbyists, and VanDyke also received significant funding from businesses. Wheat won with 62 percent of the vote and the court maintained its left-leaning majority.

		Rank
Total Spending	\$1,503,521.98	8/19
Candidate Fundraising Total	\$376,361.22	9/19
Non-Candidate Spending Total	\$1,127,160.76	5/8
Percent Non-Candidate Spending	75.0%	2/8
TV Spending Total	\$353,630.00	7/11
Donations of \$1,000 or More as a Percent of Total Contributions	1.5%	19/19



Election Type:  
Nonpartisan  
election

## North Carolina

In North Carolina, four seats were up for election in 2014. Three incumbents retained their spots—Justices Mark Martin, Cheri Beasley, and Robin Hudson. The final seat went to challenger Samuel Ervin IV, who defeated incumbent Justice Robert Hunter. This election marked the first state Supreme Court election cycle since lawmakers dismantled the state’s judicial public financing system in 2013; as a result, candidate fundraising soared to nearly \$4 million. All four winning candidates received significant financial support from lawyers and lobbyists. The RSLC was the biggest single source of election funds in the state, contributing \$1.3 million to a local organization, Justice for All NC, which went on to run a high-profile TV ad claiming that Justice Robin Hudson was “not tough on child molesters.” Although North Carolina races are nonpartisan, the court is widely understood to lean conservative. Samuel Ervin IV’s victory narrowed the court’s conservative majority from 5-2 to 4-3.

		Rank
Total Spending	\$6,005,983.61	2/19
Candidate Fundraising Total	\$3,924,277.81	2/19
Non-Candidate Spending Total	\$2,081,705.80	3/8
Percent Non-Candidate Spending	34.7%	6/8
TV Spending Total	\$3,094,625.00	2/11
Donations of \$1,000 or More as a Percent of Total Contributions	50.8%	15/19

## Ohio

Incumbent Republican Justices Judith French and Sharon Kennedy both won their seats in Ohio's 2014 elections. Kennedy easily won reelection against her challenger, former state representative Tom Letson, whereas French faced a closer race against Court of Common Pleas Judge John O'Donnell. Although all four candidates signed a pledge with the Ohio State Bar Association to refrain from negative campaigning, O'Donnell ran an attack ad against French. The state Republican Party came to French's defense with an ad touting her experience. French won the race with 56 percent of the vote, maintaining the court's 6-1 conservative majority.



Election Type:  
Partisan primary;  
Nonpartisan general election

		Rank
Total Spending	\$3,261,542.12	5/19
Candidate Fundraising Total	\$2,539,392.12	4/19
Non-Candidate Spending Total	\$722,150.00	7/8
Percent Non-Candidate Spending	22.1%	8/8
TV Spending Total	\$1,753,740.00	4/11
Donations of \$1,000 or More as a Percent of Total Contributions	62.9%	8/19

## Oregon

Two incumbent justices—Chief Justice Thomas Balmer and Associate Justice Martha Lee Walters—faced no opposition in 2014 and were reelected. At \$7,600, Oregon had the lowest candidate fundraising of any state this cycle.



Election Type:  
Nonpartisan election

Rank		Rank
Total Spending	\$7,600.00	19/19
Candidate Fundraising Total	\$7,600.00	19/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$0	N/A
Donations of \$1,000 or More as a Percent of Total Contributions	51.9%	14/19



Election Type:  
Retention  
election

## Pennsylvania

Two Pennsylvania Supreme Court justices, Ronald Castille and Max Baer, were up for retention in 2013. (In Pennsylvania, judges are initially selected through competitive races and then stand for periodic retention elections.) Both justices received major campaign contributions from unions and attorneys. Even though the retention races drew no viable opposition, the candidates raised almost \$600,000—98 percent of which came from donations of \$1,000 or more. The court maintained its 3-2 Republican majority. (Two seats on the seven-member court remained vacant at the time this report went to press.)

		<b>Rank</b>
Total Spending	\$597,000.83	10/19
Candidate Fundraising Total	\$597,000.83	8/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$205,490.00	9/11
Donations of \$1,000 or More as a Percent of Total Contributions	97.6%	2/19



Election Type:  
Retention  
election

## Tennessee

In Tennessee, Republican Lieutenant Governor Ron Ramsey was the driving force behind a campaign to oust three justices up for retention—Cornelia Clark, Sharon Lee, and Gary Wade—who had all been appointed by a Democratic governor. The RSLC, the Tennessee Forum, and the State Government Leadership Foundation all made independent expenditures against the justices. A group called Tennesseans for Fair Courts, funded in part by trial attorneys, came to the justices’ defense. Clark, Lee, and Wade received substantial contributions from lawyers and lobbyists, as well as from donors in the finance, insurance, and real estate industries. All three justices retained their seats, preserving the court’s 3-2 liberal-leaning majority.

		<b>Rank</b>
Total Spending	\$2,515,395.59	6/19
Candidate Fundraising Total	\$1,152,349.75	5/19
Non-Candidate Spending Total	\$1,363,045.84	4/8
Percent Non-Candidate Spending	54.2%	3/8
TV Spending Total	\$1,747,970.00	5/11
Donations of \$1,000 or More as a Percent of Total Contributions	58.9%	11/19

## Texas

Four Republican incumbent justices—Nathan Hecht, Jeff Brown, Jeff Boyd, and Phil Johnson—were reelected by large margins in 2014, maintaining the court’s 9-0 Republican majority. All four candidates received major donations from the oil and gas industry, lawyers and lobbyists, and the finance sector. Total candidate contributions reached nearly \$3.7 million. Only one candidate, Jeff Brown, ran TV ads.



		Rank
Total Spending	\$3,664,247.77	3/19
Candidate Fundraising Total	\$3,664,247.77	3/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$187,890	10/11
Donations of \$1,000 or More as a Percent of Total Contributions	86.2%	4/19

Election Type:  
Partisan election

## Washington

Washington saw four seats up for election in 2014. Incumbent Justices Mary Yu and Mary Fairhurst both ran unopposed, while incumbent Justices Charles Johnson and Debra Stephens both won reelection against one opponent each. Washington was one of only a few states this cycle in which a majority of campaign donations were \$1,000 or less.



		Rank
Total Spending	\$175,216.45	13/19
Candidate Fundraising Total	\$175,216.45	13/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$0	N/A
Donations of \$1,000 or More as a Percent of Total Contributions	45.2%	16/19

Election Type:  
Nonpartisan  
election



Election Type:  
Nonpartisan  
election

## Wisconsin

One seat on Wisconsin’s high court was up for election in 2013. Incumbent Justice Patience Roggensack and challenger Ed Fallone, a law professor, received the highest number of votes in the primary election, eliminating attorney Vince Megna from the race. Roggensack received substantial contributions from the Wisconsin Republican Party and businesses, while Fallone received support from unions as well as lawyers and lobbyists. Roggensack went on to win the general election with 57 percent of the vote, preserving the court’s 5-2 conservative majority.

		Rank
Total Spending	\$1,831,677.83	7/19
Candidate Fundraising Total	\$997,709.74	6/19
Non-Candidate Spending Total	\$833,968.09	6/8
Percent Non-Candidate Spending	45.5%	5/8
TV Spending Total	\$734,420.00	6/11
Donations of \$1,000 or More as a Percent of Total Contributions	43.1%	17/19



Election Type:  
Retention  
election

## Wyoming

Wyoming saw two justices on the ballot in the 2014 elections. Justices Michael Davis and E. James Burke were each retained with roughly 77 percent voter approval. Davis did not fundraise, while Burke received \$9,600 in donations, \$6,650 of which came from Republican State Representative Donald Burkhart, Jr.

		Rank
Total Spending	\$9,600.00	18/19
Candidate Fundraising Total	\$9,600.00	18/19
Non-Candidate Spending Total	\$0	N/A
Percent Non-Candidate Spending	0.0%	N/A
TV Spending Total	\$0	N/A
Donations of \$1,000 or More as a Percent of Total Contributions	62.5%	9/19

# APPENDIX B

## Court-Centered Constitutional Amendments in Tennessee, Florida, and Hawaii

Voters weighed in on court matters on Election Day 2014 as three states asked their electorates to approve or reject measures impacting the courts. Whether altering the judicial selection method in Tennessee or approving increased transparency in Hawaii, voters shaped policies that would govern the fair and impartial operation of their state court systems.

### Tennessee

In the November general election, voters approved an amendment in Tennessee that replaced the constitutional requirement that judges “shall be elected” (a requirement that had led to unsuccessful legal challenges of the state’s merit selection system, which provided for gubernatorial appointment pursuant to recommendations by a nominating commission, followed by retention elections) with a “modified federal” system for selecting justices. Over \$1.7 million was raised in support of the measure—with nearly 75 percent of funds coming from the Tennessee Business Partnership—while just under \$50,000 was raised in opposition, almost all of which was provided by two individuals. Under

the new system, the governor appoints all appellate judges, subject to confirmation by the legislature. Then, Tennesseans vote to retain or replace these newly appointed judges in subsequent retention elections. Immediately after Amendment 2 passed, Governor Bill Haslam followed up on his commitment to reestablish a judicial nominating commission to vet applicants and send him those candidates most qualified for appointment (maintaining the core elements of the state’s merit selection system). According to the order, every member of the council is to be appointed by the governor, with three members each from the western, central, and eastern parts of the state, and two at-large members. Once a set of candidates is sent to the governor, the governor can choose to appoint one of these three, or he or she can reject all three and ask for a second slate of candidates. However, as the product of a simple executive order, this new commission could be eliminated by Haslam’s successor.

In Tennessee, a constitutional amendment requires passage in two successive legislative sessions (with a simple majority in the first session, and support from

two-thirds of legislators in the second), followed by approval from a majority of the voters casting ballots in the election. Voters approved Amendment 2 with 61 percent of the vote.

## Florida

Florida voters defeated a proposed constitutional amendment that would have given the outgoing governor the power to make “prospective appointments” as his or her term comes to a close. Under the existing system, the governor can only appoint a judge when his or her position becomes vacant, leading to ambiguity when a position opens at the end of a governor’s term. Amendment 3, therefore, was an attempt by the legislature to vest the outgoing governor with the power to appoint a judge in the event that a judicial vacancy occurs on the same day that a new governor takes office. Significantly, on January 8, 2019, three justices widely considered to be part of the court’s left-leaning wing will reach the end of their terms and be subject to mandatory retirement. Governor Rick Scott, who is term-limited, will leave office the same day.

The initiative—which saw no spending on either side—was introduced by Senator Tom Lee (R) and gained the support of the Florida Chamber of Commerce and the Florida Farm Bureau. However, several Democratic lawmakers opposed the bill, as did the League of Women Voters of Florida and former Florida Supreme Court Justice Harry Lee Anstead,

who was nominated by four successive statewide nominating commissions and appointed by a Democratic governor. With only 48 percent approval, Amendment 3 fell 12 points shy of the 60 percent threshold needed for passage.

## Hawaii

Following unanimous votes in both houses of the state legislature, 82 percent of Hawaii voters approved a constitutional amendment requiring Hawaii’s judicial selection commission to disclose the names of the candidates it recommends to the governor or chief justice for appointment. (In Hawaii, the governor chooses an appointee from a list of four to six candidates submitted by the judicial nominating commission. The appointee must then be confirmed by the Senate.) Support for the amendment came from national advocacy groups with local chapters in Hawaii, including Americans for Democratic Action-Hawaii, the state affiliate of an organization founded by First Lady Eleanor Roosevelt that claims to be a “forthright liberal voice,”<sup>1</sup> the League of Women Voters of Hawaii, and Hawaii Family Advocates. The amendment was opposed by the attorney general, David M. Louie, who felt that a lack of candidate confidentiality and privacy might serve as a deterrent to potential high-quality applicants. No money was spent supporting or opposing the amendment.

# APPENDIX C

## Major Contributors to Candidates in the Six States with Highest Fundraising, 2013-14

State	Race	Total Amount Raised	Major Contributors
<b>Michigan**</b> Total Contributions: \$4,982,888 Number of Open Seats: 3	David Viviano (R)* vs.	\$887,034.10	Business (MI Chamber of Commerce, MI Farm Bureau); Lawyers & Lobbyists; Finance, Insurance & Real Estate; MI Republican Party
	Deborah Thomas (D) vs.	\$78,550.00	Lawyers & Lobbyists; Labor (AFSCME, SEIU)
	Kerry Morgan (L)	\$0.00	N/A
	Brian Zahra (R)* vs.	\$953,819.64	Business (MI Chamber of Commerce, MI Farm Bureau); Lawyers & Lobbyists; Finance, Insurance & Real Estate; MI Republican Party
	James Robert Redford (R) vs.	\$425,892.57	Business (MI Chamber of Commerce, MI Farm Bureau); Lawyers & Lobbyists; Finance, Insurance & Real Estate; MI Republican Party
	Bill Murphy (D) vs.	\$390,342.72	Lawyers & Lobbyist; MI Democratic Party; Health Professionals
	Richard Bernstein (D)* vs.	\$2,247,248.92	Lawyers & Lobbyists; MI Democratic Party; Self-Funding
	Doug Dern (NLP)	\$0.00	N/A

State	Race	Total Amount Raised	Major Contributors
<b>North Carolina</b> Total Contributions: \$3,924,278 Number of Open Seats: 4	Cheri Beasley* vs.	\$363,784.18	Lawyers & Lobbyists; Self-Funding
	Mike Robinson	\$395,085.82	Business (Retail, Construction); Lawyers & Lobbyists; Finance, Insurance & Real Estate; Health Professionals
	Samuel Ervin IV* vs.	\$685,951.58	Business (Management Services, Energy & Natural Resources); Lawyers & Lobbyists; Finance, Insurance & Real Estate; Misc. Individual Contributions
	Bob Hunter, Jr.	\$373,184.12	Business (Manufacturing, Wholesale Trade); Lawyers & Lobbyists; Finance, Insurance & Real Estate; Self-Funding
	Mark Martin* vs.	\$661,136.74	Business (Waste Management, Liquor Wholesalers); Lawyers & Lobbyists; Government Agencies, Education & Other (Misc. Government and Education Employees)
	Ola Lewis	\$209,448.02	Business (Manufacturing, Food Industry); Lawyers & Lobbyists; Finance, Insurance & Real Estate; Misc. Individual Contributions
	Robin Hudson* vs.	\$660,901.60	Lawyers & Lobbyists; NC Democratic Party; Self-Funding; Misc. Individual Contributions
	Eric Levinson vs.	\$562,794.41	Business (Retail, Sports Services); Lawyers & Lobbyists; Finance, Insurance & Real Estate; Transportation
	Jeanette Doran	\$11,991.34	Business (Manufacturing); Finance, Insurance & Real Estate; Government Agencies, Education & Other (Misc. Government Employees)

State	Race	Total Amount Raised	Major Contributors
<b>Ohio</b> Total Contributions: \$2,539,392 Number of Open of Open Seats: 2	Judith French* vs.	\$1,120,975.94	Business (Energy & Natural Resources, Telecommunications); Lawyers and Lobbyists; Finance, Insurance & Real Estate; Health Professionals & Hospitals
	John O'Donnell	\$377,395.24	Lawyers & Lobbyists; OH Democratic Party; Labor (OH AFL-CIO, Construction Unions); Self-Funding
	Sharon Kennedy* vs.	\$1,007,181.84	Business (Energy & Natural Resources, Telecommunications); Lawyers & Lobbyists; Finance, Insurance & Real Estate
	Tom Letson	\$33,839.10	Business (Energy & Natural Resources, Food Industry); Labor (Teachers Unions, Plumbers Unions)
<b>Tennessee</b> Total Contributions: \$1,152,350 Number of Seats Up for Retention: 3	Cornelia Clark (retention)	\$301,818.22	Lawyers & Lobbyists; Finance, Insurance & Real Estate; Misc. Individual Contributions
	Sharon Lee (retention)	\$324,518.01	Lawyers & Lobbyists; Finance, Insurance & Real Estate; Misc. Individual Contributions
	Gary Wade (retention)	\$526,013.52	Business (Construction, Hotels); Lawyers & Lobbyists; Finance, Insurance & Real Estate; Government Agencies, Education & Other (Public School Teachers, Non-Profit Institutions)

State	Race	Total Amount Raised	Major Contributors
<b>Texas</b> Total Contributions: \$3,664,248 Number of Open Seats: 4	Jeff Brown (R)* vs.	\$1,108,118.38	Business (Energy & Natural Resources, Business Associations); Lawyers & Lobbyists; Finance, Insurance & Real Estate
	Joe Pool (R) vs.	\$60,057.64	Lawyers & Lobbyists; Misc. Individual Contributions
	Lawrence Meyers (D) vs.	\$0.00	N/A
	Mark Ash (L)	\$0.00	N/A
	Phil Johnson (R)* vs.	\$890,385.35	Business (Energy & Natural Resources, Business Associations); Lawyers & Lobbyists; Finance, Insurance & Real Estate
	Sharon McCally (R) vs.	\$144,400.00	Lawyers & Lobbyists
	RS Roberto Koelsch (L) vs.	\$0.00	N/A
	Jim Chisholm (G)	\$0.00	N/A
	Jeffrey Boyd (R)* vs.	\$844,237.14	Business (Energy & Natural Resources); Lawyers & Lobbyists; Finance, Insurance & Real Estate; Ideology/Single Issue Groups (Texans for Family Values PAC, Good Government Fund)
	Gina Benavides (D) vs.	\$73,727.40	Lawyers and Lobbyists; Misc. Individual Contributions; Texas Democratic Women (political party)
	Don Fulton (L) vs.	\$0.00	N/A
	Charles Waterbury (G)	\$0.00	N/A
	Nathan Hecht (R)* vs.	\$495,916.86	Business (Energy & Natural Resources); Lawyers & Lobbyists; Finance, Insurance & Real Estate
	Robert Talton (R) vs.	\$37,255.00	Lawyers & Lobbyists
William Moody (D) vs.	\$10,150.00	Lawyers & Lobbyists; Labor (TX AFL-CIO)	
Tom Oxford (L)	\$0.00	N/A	

State	Race	Total Amount Raised	Major Contributors
<b>Wisconsin</b> Total Contributions: \$997,710 Number of Open Seats: 1	Patience Roggensack* vs.	\$617,111.18	Business (Retail, Construction); Finance, Insurance & Real Estate; WI Republican Party; Misc. Individual Contributions
	Edward Fallone vs.	\$372,998.56	Lawyers & Lobbyists; Labor (Teachers Unions, Electrical Union); Misc. Individual Contributions
	Vince Megna	\$7,600.00	Self-Funding

## Executive Summary

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5. *Id.*

## Chapter 1

1. 34 seats saw no spending.
2. This power of the purse is reflected in other metrics as well. For instance, of the 18 races in which TV advertisements aired, 15 were won by the candidates who saw the most TV dollars in their favor.
3. Spending ranged from \$9.5 million to nearly \$10.4 million. (The lower estimate comes from Kantar Media/CMAG and is based on an analysis of TV data gathered using satellite technology. The higher estimate—\$10,399,456—comes from the Michigan Campaign Finance Network and is based on an analysis of State Bureau of Elections filings and public files of Michigan broadcasters and cable systems.)
4. Throughout this report, in states that hold nonpartisan elections, ideological leaning was determined by the party of the appointing executive, the party primary in which the candidate previously ran (if applicable), credible media sources, or candidate self-identification.

5. Candidate Sam Ervin defeated incumbent Justice Robert Hunter, who had been appointed by Governor Pat McCrory, a Republican, to fill a vacancy earlier that year.
6. When adjusted for inflation, the \$1.1 million spent in Montana in the 2000 cycle slightly exceeds the 2014 figure. TV spending data before 2008 is unavailable.
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8. ADAM SKAGGS, THE BRENNAN CENTER FOR JUSTICE, *BUYING JUSTICE: THE IMPACT OF CITIZENS UNITED ON JUDICIAL ELECTIONS 8* (2010), available at <https://www.brennancenter.org/publication/buying-justice-impact-citizens-united-judicial-elections>.
9. The top 10 spenders were responsible for 35 percent of total spending in 2011–12 and 39 percent of total spending in 2009–10.
10. These contributions, at \$41,000, accounted for 99.6 percent of total donations. The majority of these contributions were from groups—PACs, trade associations, committees, or unions—and each group donation was \$1,000 or more.
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14. H.C.R. 5009, 2015 Leg., 2015 Sess. (Kan. 2015), available at [http://www.kslegislature.org/li/b2015\\_16/measures/documents/hcr5009\\_oo\\_0000.pdf](http://www.kslegislature.org/li/b2015_16/measures/documents/hcr5009_oo_0000.pdf).

15. The number of unopposed races was calculated using data from the National Institute on Money in State Politics at FollowTheMoney.org. Searches were conducted to calculate the number of total candidates that ran in state Supreme Court elections in every state in 2013–14. That data was then used to determine which candidates ran in contested races or retention elections, as well as which candidates ran unopposed for contestable seats. Races were coded as “contested” if the candidate faced a challenger in either the primary or general election.

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5. Molly Parker, *Judicial Races Could Soon Be Off the Public Tab*, *STAR NEWS ONLINE* (June 22, 2013), <http://www.starnews.com/article/20130622/ARTICLES/130629868/-1/news38?p=2&tc=pg&tc=ar>.

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## Chapter 2

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2. JUSTICE AT STAKE, STATE JUDGES FREQUENCY QUESTIONNAIRE (2001–2002), [http://www.justiceat-stake.org/media/cms/JASJudgesSurveyResults\\_EA-8838C0504A5.pdf](http://www.justiceat-stake.org/media/cms/JASJudgesSurveyResults_EA-8838C0504A5.pdf).

3. About RSLC, REPUBLICAN STATE LEADERSHIP COMMITTEE, [http://rslc.gop/about\\_rslc/](http://rslc.gop/about_rslc/) (last visited Aug. 20, 2015).

4. Contributions are considered “Uncoded” or “Unitemized” if the donor’s economic interest (i.e., occupation and employer) was not disclosed on the reports or discovered by the National Institute on Money in State Politics staff. The term “Other” includes retired persons, civil servants, local or municipal elected officials, tribal governments, clergy, nonprofits, and military persons. For a detailed explanation of how the National Institute on Money in State Politics collects, analyzes, and categorizes its data, see National Institute on Money in State Politics, available at <http://www.followthemoney.org/our-data/about-our-data/>.

5. For example, the Sierra Club is a national organization, but the North Carolina Sierra Club PAC is the state-based political arm of the North Carolina chapter.

6. This number reflects direct expenditures (both contributions and outside spending) by national groups and their state affiliates on state Supreme Court races combined with contributions from national groups to state-based, non-national affiliate organizations that spent exclusively on state Supreme Court races. Examples of the latter category include the RSLC, which gave \$1.3 million to the state-based, state Supreme Court-exclusive group Justice for All NC, and the American Board of Trial Advocates, which gave \$25,000 to the state-based, state Supreme Court-exclusive group Tennesseans for Fair Courts.

7. Due to data limitations, these TV-specific numbers do not include contributions that national groups made to state organizations that in turn spent on Supreme Court elections.

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10. *Id.*
11. *Id.*
12. Andy Kroll, *It Takes Dark Money to Make Dark Money*, MOTHER JONES (Apr. 20, 2012), <http://www.motherjones.com/politics/2012/04/karl-rove-cross-roads-gps-center-individual-freedom>.
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15. *About SGLF*, STATE GOVERNMENT LEADERSHIP FOUNDATION, <http://www.sglf.org/about> (last visited Aug. 20, 2015).
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17. See Billy Corriher, *NRA Working to Elect Pro-Gun Judges and Prosecutors*, CENTER FOR AMERICAN PROGRESS (Feb. 14, 2013), <https://www.americanprogress.org/issues/civil-liberties/news/2013/02/14/53076/nra-working-to-elect-pro-gun-judges-and-prosecutors/>.
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22. *AFP-Tennessee Launches New Campaign on Justices, A.G.*, AMERICANS FOR PROSPERITY TENNESSEE (July 22, 2014), <http://americansforprosperity.org/tennessee/article/afp-tennessee-launches-new-campaign-on-justices-a-g/>.
23. *Help Save North Carolina's Courts*, PROGRESSIVE KICK, <http://progressivekick.org/nccourts/> (last visited Aug. 20, 2015).
24. *About Us*, SIERRA CLUB NORTH CAROLINA CHAPTER, <http://nc2.sierraclub.org/content/about-us> (last visited Aug. 20, 2015).
25. Roger Parloff, *Is Judge Hearing \$10 Billion Appeal Tainted by Altria's Campaign Funds?*, FORTUNE (Feb. 13, 2015), <http://fortune.com/2015/02/13/judge-altria-campaign-funds/>.
26. *Price v. Philip Morris, Inc.*, 848 N.E.2d 1, 50 (Ill. 2005). Justice Karmeier also issued a concurrence arguing that the plaintiffs also failed to establish that they sustained actual damages as required under the Consumer Fraud Act. *Id.* at 55.
27. *Price v. Philip Morris Inc.*, 9 N.E.3d 599 (Ill. App. Ct. 2014).
28. See Parloff, *supra* note 25.
29. Justice Karmeier also joined the high court majority that voted to overturn a \$1.05 billion judgment against insurance company State Farm in 2005. The plaintiffs' lawyers have since alleged that State Farm recruited Karmeier, ran his campaign, and provided most of his campaign's funding in an effort to have him overturn the judgment. See Brian Mackey, *Supreme Tort: The Campaign to Fire Justice Lloyd Karmeier*, NPR ILLINOIS (Feb. 1, 2015), <http://wuis.org/post/supreme-tort-campaign-fire-justice-lloyd-karmeier>. These allegations are currently the subject of a RICO lawsuit against State Farm, which was pending at the time this publication went to press.
30. *Republican State Leadership Committee: Donor Search: Altria*, OPENSECRETS.ORG, [https://www.opensecrets.org/527s/527cmtedetail\\_donors.php?cycle=2014&cname=altria&ein=050532524&page=1](https://www.opensecrets.org/527s/527cmtedetail_donors.php?cycle=2014&cname=altria&ein=050532524&page=1) (last visited Aug. 20, 2015). According to OpenSecrets.org, Altria has contributed nearly \$4 million to the RSLC since 2003. *Id.*
31. Parloff, *supra* note 25.

32. *Philip Morris, Inc. v. Appellate Court, Fifth District*, No. 117689 (Ill. Sep. 24, 2014), [http://www.illinoiscourts.gov/supremecourt/specialmatters/2014/102114\\_117689\\_Order.pdf](http://www.illinoiscourts.gov/supremecourt/specialmatters/2014/102114_117689_Order.pdf). See also Bethany Krajelis, *Karmeier Pens 16-Page Order Explaining Why He Won't Recuse in Price v. Philip Morris*, MADISON-ST. CLAIR RECORD (Sept. 29, 2014, 7:29 PM), <http://madisonrecord.com/issues/332-class-action/266642-karmeier-pens-16-page-order-explaining-why-he-wont-recuse-in-price-v-philip-morris>.
33. Parloff, *supra* note 25.
34. See Jeremy P. Jacobs, *Conservatives, After Dismantling Public Financing System, Set Sights on N.C. Judiciary*, E&E PUBLISHING (June 17, 2014), <http://www.eenews.net/stories/1060001412>.
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37. Emery P. Dalesio, *North Carolina High Court Rules Duke Energy Has 'Years' to Cleanup Coal Ash*, INSURANCE JOURNAL (June 16, 2015), <http://www.insurancejournal.com/news/southeast/2015/06/16/371887.htm>.
38. *Hart v. State*, 13 CVS 16771, 2014 WL 6724598 (N.C. Super. Ct. Aug. 21, 2014), available at <https://s3.amazonaws.com/s3.documentcloud.org/documents/1279134/nc-ruling.pdf>.
39. *Hart v. State*, No. 372A14-1, 2015 WL 4487065 (N.C. July 23, 2015).
40. Randy Ludlow, *Candidates Seek Ohio Supreme Court Seat*, COLUMBUS DISPATCH (Sept. 25, 2014), <http://www.dispatch.com/content/stories/local/2014/09/25/candidates-seek-ohio-supreme-court-seat.html>.
41. *ProgressOhio.org, Inc. v. JobsOhio*, 13 N.E.3d 1101 (Ohio 2014).
42. See Henry Gomez & Stephen Koff, *Is an Outside Group Tied to Governor Kasich Planting Seeds for his Possible White House Bid?*, CLEVELAND.COM (Sept. 14, 2014), [http://www.cleveland.com/open/index.ssf/2014/09/is\\_an\\_outside\\_group\\_tied\\_to\\_go.html](http://www.cleveland.com/open/index.ssf/2014/09/is_an_outside_group_tied_to_go.html).
43. *Id.*
44. All figures are from the Ohio Secretary of State, available at [www2.sos.state.oh.us/pls/cfqry/f?p=119:37:307478361244387::NO:RP:P37\\_ENTITY\\_ID,P37\\_ENTITY\\_TYPE:10534,CAC](http://www2.sos.state.oh.us/pls/cfqry/f?p=119:37:307478361244387::NO:RP:P37_ENTITY_ID,P37_ENTITY_TYPE:10534,CAC), unless the data conflicted with data provided by the National Institute on Money in State Politics, available at [Followthemoney.org](http://Followthemoney.org), in which case the latter's data was used.
45. *State ex rel. Morrison v. Beck Energy Corp.*, No. 2013-0465, 2015 WL 687475 (Ohio Feb. 17, 2015).
46. For example, in *Clark Fork Coalition v. DEQ*, 288 P.3d 183 (Mont. 2012), Justice Wheat authored the 4-2 majority opinion that reversed the Department of Environmental Quality's decision to grant the Rock Creek Mine a permit approving storm water discharges.
47. For example, in *Montana Wildlife Federation v. Montana Board of Oil & Gas Conservation*, 280 P.3d 877 (Mont. 2012), the Montana Supreme Court rejected challenges to the environmental assessments completed by the Montana Board of Oil and Gas that allowed the issuance of gas well permits. Justice Wheat dissented from the decision. The Montana Wildlife Federation argued that the assessments did not adequately assess potential impacts to the sage grouse, a local bird.
48. Mike Dennison, *Wheat's Record Under Attack; What's Actually in the Record?*, DAILY INTER LAKE.COM (Oct. 31, 2014, 8:00 PM), [http://www.dailyinterlake.com/news/local\\_elections/wheat-s-record-under-attack-what-s-actually-in-the/article\\_a9f59eac-6155-11e4-98ad-3b38e855072b.html](http://www.dailyinterlake.com/news/local_elections/wheat-s-record-under-attack-what-s-actually-in-the/article_a9f59eac-6155-11e4-98ad-3b38e855072b.html).
49. *Id.*
50. *Arch Coal and Great Northern Properties Enter into Montana Coal Lease on Otter Creek Reserves*, ARCH COAL (Nov. 12, 2009), <http://news.archcoal.com/phoenix.zhtml?c=107109&p=irol-newsArticle&ID=1355044>.
51. *Northern Plains Res. Council, Inc. v. Mont. Bd. of Land Comm'rs*, 366 P.3d 169 (Mont. 2012).
52. A campaign disclosure form filed by Montanans for a Fair Judiciary on November 24, 2014 indicates that "Corbin Robertson" donated \$5,000 to the group between October 19 - November 19, 2014. This donation was linked back to Corbin Robertson Jr. using the address listed on the disclosure form (601 Jefferson Street, Suite 3600, Houston, TX 77002). Web searches indicate that this is Corbin Robertson Jr.'s business address. The campaign disclosure filing is located on the website of the Montana Commissioner of Political Practices, see [https://www.brennancenter.org/sites/default/files/analysis/Buying\\_Time/Corbin%20Robertson\\_MFFJ.pdf](https://www.brennancenter.org/sites/default/files/analysis/Buying_Time/Corbin%20Robertson_MFFJ.pdf).
53. See Brendan Fischer, *Supreme Court Challenge to WI Dark Money Probe Raises Questions of Judicial Ethics*, CENTER FOR MEDIA AND DEMOCRACY'S PR WATCH (Feb. 19, 2014, 9:02 AM), <http://www.prwatch.org/>

news/2014/02/12389/new-challenge-john-doe-raises-questions-judicial-ethics.

54. *See id.*

55. While the public version of the motion did not specify which justices were subjects of the recusal motion (the content of which was heavily redacted), subsequent rulings indicate that the motion sought the recusal of Justices Prosser and Gableman. This is also consistent with the description of the recusal motion in an opposition brief by one of the targets of the investigation, which said that the prosecutor sought recusal of two justices, and provided “guidance” regarding two others. *See State of Wisconsin ex. rel. Three Unnamed Petitioners v. Honorable Gregory A. Peterson*, Nos. 2013AP2504-2508-W, 2014AP296-OA, 2014AP417-421-W (Apr. 15, 2015), [http://www.prwatch.org/files/walker\\_opposition\\_to\\_recusal.pdf](http://www.prwatch.org/files/walker_opposition_to_recusal.pdf).

56. Editorial Board, *Elusive Justice in Wisconsin*, N.Y. TIMES (March 10, 2015), <http://www.nytimes.com/2015/03/10/opinion/elusive-justice-in-wisconsin.html>.

57. *See Peterson*, Nos. 2013AP2504-2508-W, 2014AP296-OA, 2014AP417-421-W, *supra* note 55. The Brennan Center for Justice represented legal ethics experts in an amicus brief on the standards for judicial recusal filed before the Wisconsin Supreme Court in connection with this case.

58. *See id.*

59. *See id.*

## Political Pressure on the Courts in Ferguson

1. UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 14 (2015), available at [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

2. In responding to emails from Ferguson Police Chief Thomas Jackson relating increases in court revenue, Ferguson City Manager John Shaw applauded the Chief’s efforts to increase revenue as “Wonderful” and “Awesome!” and congratulated the police department and court staff on their “great work.” *Id.* at 13.

3. *Id.* at 15.

4. *Id.*

5. *Id.*

6. Judge Brockmeyer resigned once the DOJ report was released, claiming the allegations in the report were untrue but “not worth fighting.” Jennifer S. Mann, *Missouri Supreme Court Takes Over Cases in Ferguson, Judge Resigns*, ST. LOUIS POST-DISPATCH (Mar. 9, 2015), [http://www.stltoday.com/news/local/crime-and-courts/missouri-supreme-court-takes-over-cases-in-ferguson-judge-resigns/article\\_7442c873-a1a1-581f-b4b4-20f93972d91e.html](http://www.stltoday.com/news/local/crime-and-courts/missouri-supreme-court-takes-over-cases-in-ferguson-judge-resigns/article_7442c873-a1a1-581f-b4b4-20f93972d91e.html).

7. Campbell Robertson, Shaila Dewan, and Matt Apuzzo, *Ferguson Became Symbol, but Bias Knows No Border*, N.Y. TIMES (Mar. 7, 2015), [http://www.nytimes.com/2015/03/08/us/ferguson-became-symbol-but-bias-knows-no-border.html?hp&action=click&pg-type=Homepage&module=first-column-region&region=top-news&WT.nav=top-news&\\_r=0](http://www.nytimes.com/2015/03/08/us/ferguson-became-symbol-but-bias-knows-no-border.html?hp&action=click&pg-type=Homepage&module=first-column-region&region=top-news&WT.nav=top-news&_r=0).

8. *See id.*

## Lower Court Race Attracts National Attention in Cole County, Missouri

1. Stumpe, *RSLC Comment on Large Campaign Donation In Cole County Judicial Race*, NEWS TRIBUNE (Oct. 8, 2014), [http://m.newstribune.com/news/2014/oct/08/stumpe-rslc-comment-large-campaign-donation/#.VbuQ5\\_n-nRl](http://m.newstribune.com/news/2014/oct/08/stumpe-rslc-comment-large-campaign-donation/#.VbuQ5_n-nRl).

2. *See Rudi Keller, Judge Blasts Tax Plan Ballot Descriptions*, COLUMBIA DAILY TRIBUNE (Apr. 14, 2012), [http://www.columbiatribune.com/news/politics/judge-blasts-tax-plan-ballot-descriptions/article\\_784a640e-f955-5dee-95c4-0ade4c1886b7.html](http://www.columbiatribune.com/news/politics/judge-blasts-tax-plan-ballot-descriptions/article_784a640e-f955-5dee-95c4-0ade4c1886b7.html)

3. *See id.*

4. Bob Watson, *Sinquefield Gave \$300,000 to GOP Group*, NEWS TRIBUNE (Dec. 7, 2014), [http://m.newstribune.com/news/2014/dec/07/sinquefield-gave-300000-gop-group/#.VcPih\\_IViko](http://m.newstribune.com/news/2014/dec/07/sinquefield-gave-300000-gop-group/#.VcPih_IViko).

5. Bob Watson, *Poll: Cole County Voters Concerned About ‘Outside Money’ in Judge’s Race*, NEWS TRIBUNE (Oct. 24, 2014), <http://www.newstribune.com/news/2014/oct/24/poll-cole-county-voters-concerned-about-outside-mo/>.

6. Bob Watson, *Voters Keep Joyce on Bench*, NEWS TRIBUNE (Nov. 5, 2014), <http://m.newstribune.com/>

news/2014/nov/05/democrat-joyce-re-elected-cole-county-judge/#.VcPi3vIVikp.

## When Money Comes to Court: The Need for Recusal Reform

1. JUSTICE AT STAKE & THE BRENNAN CENTER FOR JUSTICE, JUSTICE AT STAKE AND BRENNAN CENTER NATIONAL POLL, 10/22-10/24, 2013 (2013), available at <https://www.brennancenter.org/sites/default/files/press-releases/JAS%20Brennan%20NPJE%20Poll%20Topline.pdf>.
2. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).
3. Alabama, Georgia, Iowa, Mississippi, Ohio, and Washington. Additionally, New Mexico, Oklahoma, Pennsylvania, Tennessee, and Utah mention independent expenditures in the commentary to their codes of judicial conduct.

## Lack of Transparency in Independent Expenditures Obscures Donors and Spending

1. See PETER QUIST, SCORECARD: ESSENTIAL DISCLOSURE REQUIREMENTS FOR INDEPENDENT SPENDING, 2014 (2014), available at <http://www.followthemoney.org/research/institute-reports/scorecard-essential-disclosure-requirements-for-independent-spending-2014/>.
2. MICHIGAN CAMPAIGN FINANCE NETWORK, CAMPAIGN FINANCE SUMMARY, MICHIGAN SUPREME COURT CAMPAIGN 2/1/2014-11/24/2014 (2015), [http://www.mcfn.org/uploads/documents/2014Supremes\\_campaign\\_postgen\\_rev.pdf](http://www.mcfn.org/uploads/documents/2014Supremes_campaign_postgen_rev.pdf).
3. See *Injustice from our Justices*, KANSANS FOR JUSTICE, <http://www.kansansforjustice.com/home.html> (last visited Aug. 20, 2015).
4. Jan Biles, *State Supreme Court Justices Stave Off Ousting Campaign*, TOPEKA CAPITAL-JOURNAL (Nov. 4, 2014, 11:12 PM), <http://cjonline.com/news/local/2014-11-04/state-supreme-court-justices-stave-ousting-campaign>.
5. General election data dating back to 1988 is available on the Kansas Secretary of State's website. See *Election Statistics*, KAN. OFF. SECRETARY STATE, [http://www.kssos.org/elections/elections\\_statistics.html](http://www.kssos.org/elections/elections_statistics.html) (last visited Aug. 20, 2015).
6. S.B. 289, 64th Leg., Reg. Sess. (Mont. 2015).

7. S.B. 27, 2014 Leg., Reg. Sess. (Cal. 2014).

8. See Press Release, Attorney General Eric T. Schneiderman, A.G. Schneiderman Adopts New Disclosure Requirements for Nonprofits that Engage in Electioneering (June 5, 2013), available at <http://www.ag.ny.gov/press-release/ag-schneiderman-adopts-new-disclosure-requirements-nonprofits-engage-electioneering>.

## Chapter 3

1. Storyboards and copies of all ads are available on the Brennan Center for Justice's website at *Buying Time 2013*, available at <http://www.brennancenter.org/analysis/buying-time-2013>, and *Buying Time 2014*, available at <http://www.brennancenter.org/analysis/buying-time-2014>.
2. "Ad spot" refers to the number of times an ad aired. This number varies for each individual advertisement. See the figures in "TV Ad Archive, State Supreme Court Elections" for a detailed breakdown, available at <http://newpoliticsreport.org/election-cycle/2013-14/>.
3. All data on ad airings and spending on ads are calculated and prepared for the Brennan Center for Justice by Kantar Media/CMAG, which captures satellite data in the nation's largest media markets. CMAG's calculations do not reflect ad agency commissions, the costs of producing advertisements, or ad purchases limited to local cable channels. The costs reported here, therefore, generally understate actual expenditures and should be considered conservative estimates of actual TV spending. These estimates are useful principally for purposes of comparing relative spending levels across states and across time. All comparisons to past election cycles are calculated using old Kantar Media/CMAG data and information from previous *New Politics* reports. Kantar Media/CMAG data is unavailable for several ads that ran in 2009 and 2007. Analyses of the 2009-10 and 2007-08 election cycles are based on available data.
4. Christie Thompson, *Trial by Cash*, MARSHALL PROJECT (Dec. 11, 2014, 8:06 AM), <https://www.themarsshallproject.org/2014/12/11/trial-by-cash>.
5. See Chapter 1 for additional explanation.
6. Inflation-adjusted terms calculated using Morgan Friedman's inflation calculator that converts the numbers to 2014 dollars. See Morgan Friedman, *The Inflation Calculator*, WESTEGG.COM, <http://www.westegg.com/inflation/> (last visited Aug. 20, 2015).
7. Includes money spent in support of a candidate and/or money spent attacking their challenger(s).

8. Analysis of records based on available data. The *New Politics* report series first began tracking TV spending in North Carolina, Tennessee, and Illinois in 2000. TV tracking in Montana began in 2008. Prior to 2008, Montana's media market was not one of the top national media markets, therefore TV spending estimates were not gathered by Kantar Media/CMAG.

## TV Ads May Influence Judges Long After Election Day

1. SHEPHERD & KANG, *supra* Chapter 1, note 1.
2. *Woodward v. Alabama*, 134 S. Ct. 405 (2013) (Sotomayor, J., dissenting).
3. *Id.* at 408-09.
4. See EQUAL JUSTICE INITIATIVE, *THE DEATH PENALTY IN ALABAMA: JUDGE OVERRIDE 16* (2011), available at [http://eji.org/files/Override\\_Report.pdf](http://eji.org/files/Override_Report.pdf).
5. Brandice Canes-Wrone, Tom S. Clark, & Jason P. Kelly, *Judicial Selection and Death Penalty Decisions*, 108 AM. POL. SCI. REV. 23 (2014).
6. B. Rose Huber, *Targeted Campaigns Provoke Judges to Cater to Majority Sentiment on the Death Penalty*, WOODROW WILSON SCH. (Feb. 17, 2014), <http://wvs.princeton.edu/news-and-events/news/item/targeted-campaigns-provoke-judges-cater-majority-sentiment-death-penalty>.

## Ad Spotlight

1. Rachel Baye, *Secretive Group Destroys Candidates' Chances, Leaves Few Fingerprints*, CENTER FOR PUB. INTEGRITY (Mar. 25, 2015, 5:00 AM), <http://www.publicintegrity.org/2015/03/25/16941/secretive-group-destroys-candidates-chances-leaves-few-fingerprints>.
2. Eugene Kiely, *Mudslinging in Arkansas Judicial Race*, FACTCHECK.ORG (May 15, 2014), <http://www.factcheck.org/2014/05/mudslinging-in-arkansas-judicial-race/>.
3. *2014 Arkansas Preferential Primary Elections and Nonpartisan Election May 20, 2014*, ARK. SECRETARY ST., <http://results.enr.clarityelections.com/AR/51266/133405/en/summary.html> (last visited July 28, 2015).
4. Duncan McFadyen, *A Closer Look at 'Child Molester' Attack Ad and Where Money Funding it Comes from*, WFAE (May 1, 2014), <http://wfae.org/post/closer-look->

[child-molester-attack-ad-and-where-money-funding-it-comes](#).

5. *05/06/2014 Official Primary Election Results—Statewide*, N.C. STATE BOARD ELECTIONS, [http://enr.ncsbe.gov/ElectionResults/?election\\_dt=05/06/2014&county\\_id=0&office=JUD&contest=1657](http://enr.ncsbe.gov/ElectionResults/?election_dt=05/06/2014&county_id=0&office=JUD&contest=1657) (last visited July 28, 2014); *11/04/2014 Official General Election Results—N.C. ST. BOARD ELECTIONS*, [http://enr.ncsbe.gov/Election-Results/?election\\_dt=11/04/2014&county\\_id=0&office=JUD&contest=1225](http://enr.ncsbe.gov/Election-Results/?election_dt=11/04/2014&county_id=0&office=JUD&contest=1225) (last visited July 28, 2014).
6. *Election Results: General Elections—11/4/2014*, ILL. ST. BOARD ELECTIONS, <https://www.elections.il.gov/ElectionResultsSpecifyRace.aspx?ID=43> (last visited July 28, 2015).
7. Phil Williams, *Who's Really Behind Supreme Court Ad War?*, NEWS CHANNEL 5 (July 21, 2014), <http://www.scrippsmedia.com/newschannel5/news/newschannel-5-investigates/the-politics-of-justice/TN-Supreme-Court-Race-Ignites-Big-Money-Ad-War-268012351.html>.
8. Press Release, Ohio State Bar Ass'n, *Supreme Court of Ohio Candidates Sign OSBA Clean Campaign Pledge*, available at <https://www.ohioabar.org/NewsAndPublications/News/OSBANews/Pages/Supreme-Court-of-Ohio-candidates-sign-OSBA-Clean-Campaign-Pledge.aspx>.
9. Jackie Borchardt, *Ohio Supreme Court Candidate John O'Donnell Broke 'Clean Campaign' Pledge with Negative Ad*, Ohio State Bar Association Says, CLEVELAND.COM (Oct. 30, 2014, 6:30 PM), [http://www.cleveland.com/open/index.ssf/2014/10/john\\_odonnell\\_broke\\_clean\\_camp.html](http://www.cleveland.com/open/index.ssf/2014/10/john_odonnell_broke_clean_camp.html).
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