

The Politics of Judicial Elections, 2017–18

How Dark Money, Interest Groups, and Big Donors Shape State High Courts

By Douglas Keith with Patrick Berry and Eric Velasco PUBLISHED DECEMBER 11, 2019
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Introduction

Over the past two decades, the Brennan Center for Justice and the National Institute on Money in Politics have documented more than a half-billion dollars in spending in state supreme court elections in the Politics of Judicial Elections series.¹ In that time, we've covered the transformation of these elections from sleepy low-dollar contests into costly races awash in dark money, threatening the hope of equal justice in America's courtrooms.

Our new analysis looks at the 2017–18 state supreme court election cycle. While elections during this period broke few of the spending and other records set in recent years, many of the worst features of modern judicial elections appear here to stay. Opaque interest groups running deceptive ads poured money into judicial races in multiple states, outspending the candidates themselves in some instances. In one state, a political party and its allies retaliated against a sitting judge for ruling against her party's wishes. At the same time, state supreme courts across the country remained strikingly homogeneous compared to the diverse populations they serve.

All this raises alarms for 2020, which is poised to be a big year up and down the ballot, including for judicial

races. Historically, state supreme court elections, which 38 states use as part of their system for choosing high court judges, have seen vastly more spending in presidential cycles, and big-money races are already underway (or all but guaranteed) in a handful of battleground states. For example, elections in Ohio, Michigan, and Wisconsin could shape their supreme courts' ideological balance for years to come. And races in Iowa and North Carolina will give the states' conservatives, who have recently passed laws to help their allies reach the bench, new opportunities to shape the courts via the ballot box. Wisconsin's 2019 election already attracted more than \$8 million in spending.²

Key Findings from the 2017–18 Judicial Election Cycle

- **Special interest groups maintained their outsized role in supreme court elections.** Spending by interest groups, rather than by the candidates or political parties, accounted for 27 percent of all supreme court election spending. By comparison, over the last 20 years, congressional elections have never seen interest groups account for more than 19 percent of all spending in a cycle.³ The share of

outside spending in this cycle's supreme court races was down from a high of 40 percent in 2015–16, but it continued to far outstrip any cycle prior to the U.S. Supreme Court's 2010 *Citizens United* decision, which set the stage for the rapid growth of interest group spending.

- **In some states, interest groups vastly outspent the candidates they supported.** In Arkansas and West Virginia, groups accounted for at least two-thirds of every dollar spent. This is consistent with other recent cycles, where a handful of states saw interest groups take over their supreme court races in a similar way.
- **Interest group spending was almost entirely non-transparent.** Eight of the 10 biggest spenders did not disclose the true sources of their funds in a way that would allow voters to know who was trying to influence the election and future court decisions. This is in line with our 2015–16 analysis, which found that 82 percent of all outside spending that cycle was nontransparent.⁴
- **The biggest source of dark money was likely the Judicial Crisis Network, which also led the fight to seat Brett Kavanaugh on the U.S. Supreme Court.** The conservative group, founded in 2005 to boost federal judicial nominations of Republican presidents, boasted of spending \$10 million in 2018 to seat Justice Kavanaugh.⁵ An analysis of IRS filings, state disclosures, and TV spending estimates suggests that more quietly that same year, the group likely put at least \$3.8 million toward state court elections.
- **States made meager progress toward achieving more diverse supreme court benches.** A recent Brennan Center study found that state supreme courts fall far short of reflecting the communities they serve – for example, people of color make up nearly 40 percent of the U.S. population but only 15 percent of state supreme court justices nationwide. Voters elected four new justices of color to the

bench in 2018, but no state with an all-white bench added a justice of color. As a result, 25 states began 2019 with an all-white supreme court.⁶

It is hard to overstate the importance of state supreme court elections. State supreme courts sit atop judicial systems that hear 95 percent of all cases filed in the United States. State high courts decide more than 10,000 cases on the merits annually, compared to the 72 opinions the U.S. Supreme Court issued in its 2018 term.⁷ In just the past two years, state high courts struck down the death penalty,⁸ authorized businesses to discriminate against same-sex couples,⁹ preserved reproductive rights,¹⁰ capped damages in medical malpractice suits,¹¹ and limited partisan gerrymandering.¹² These courts, and the elections that determine who sits on them, have a profound impact on the lives and freedoms of many.

Yet the politicization of supreme court elections continues to undercut the ability of these powerful bodies to be fair and independent. In many states, judges routinely hear cases involving major campaign supporters, and the growth of opaque interest groups has made these conflicts of interest potentially larger and less likely to come to light. A body of research suggests these conflicts and other election-year pressures impact judicial decision-making, leading to better outcomes for big donors and political supporters and worse outcomes for criminal defendants.¹³ Recent research by the Brennan Center also suggests the financial demands of modern supreme court elections may be one reason why elections have rarely been a path to the bench for candidates of color.¹⁴

To foster the fairness and independence of the courts that our democracy requires, states must insulate them from these pressures, limit conflicts of interest, and build benches that better reflect the public they serve. There are clear steps states can take, from strengthening the ethics rules that bind judges to more fundamental changes to how states pick judges. These solutions are discussed in greater detail below and in recent Brennan Center reports.

Whatever path states take in pursuit of judicial fairness and independence, it is becoming clear that, without reform, modern judicial elections risk putting these values forever out of reach.

Spending Analysis

Overview of the 2017–18 Supreme Court Election Cycle

In 2017–18, 33 states held elections for 66 seats on their high courts — equal to one of every five state supreme court seats across the country. They included 20 retention elections, in which sitting justices stood uncontested and voters simply decided whether to give

them another term, and 46 elections in which multiple candidates could vie for a seat, numbers in line with previous cycles.¹⁵

In all, the cycle saw \$39.7 million dollars in spending across 21 states. Breaking this down, we analyze three categories of spending: \$28.3 million in contributions to judicial candidates (including public financing), \$522,000 in spending by political parties (not including any contributions by parties to candidates or groups), and \$10.8 million in spending by special interest groups (not including any contributions by interest groups to candidates or parties).¹⁶ Twelve justices were elected in million-dollar races during the 2017–18 cycle, which accounted for 75 percent of all spending.

FIGURE 1

Estimated Spending on State Supreme Court Races, 2017–18

STATE	CANDIDATE FUNDRAISING	PUBLIC FINANCING	SPENDING BY POLITICAL PARTIES	OUTSIDE SPENDING BY SPECIAL INTEREST GROUPS	TOTAL NUMBER OF SEATS	GRAND TOTAL
Alabama	\$6,442,218	\$0	\$0	\$0	5	\$6,442,218
Wisconsin (2018)	\$2,711,636	\$0	\$1,320	\$2,623,754	1	\$5,336,710
Michigan	\$2,993,393	\$0	\$501,216	\$704,737	2	\$4,199,346
West Virginia	\$1,333,126	\$0	\$0	\$2,434,641	2	\$3,767,767
Arkansas	\$560,473	\$0	\$0	\$2,880,260	1	\$3,440,733
North Carolina	\$2,025,130	\$0	\$0	\$1,248,679	1	\$3,273,809
Pennsylvania	\$2,773,411	\$0	\$19,160	\$121,219	3	\$2,913,790
Texas	\$2,643,362	\$0	\$0	\$260,968	3	\$2,904,330
Ohio	\$1,618,157	\$0	\$0	\$297,200	2	\$1,915,357
Nevada	\$1,718,111	\$0	\$0	\$51	2	\$1,718,162
Georgia	\$1,065,691	\$0	\$0	\$0	5	\$1,065,691
New Mexico	\$215,339	\$180,656	\$0	\$176,644	1	\$572,639
Louisiana	\$548,161	\$0	\$0	\$0	2	\$548,161
Washington	\$409,302	\$0	\$0	\$21,931	3	\$431,233
Kentucky	\$427,631	\$0	\$0	\$51	1	\$427,682
Illinois	\$201,917	\$0	\$0	\$0	1	\$201,917
Wisconsin (2017)	\$151,140	\$0	\$0	\$0	1	\$151,140
Minnesota	\$142,644	\$0	\$0	\$0	4	\$142,644
North Dakota	\$71,065	\$0	\$0	\$0	1	\$71,065
Oregon	\$61,627	\$0	\$0	\$51	3	\$61,678
Montana	\$52,426	\$0	\$0	\$0	2	\$52,426
Arizona	\$0	\$0	\$0	\$21,000	2	\$21,000
Totals	\$28,165,960	\$180,656	\$521,696	\$10,791,186	48	\$39,659,498

This chart estimates spending on high court races, including contested and retention elections, in the 21 states in which spending was documented. Unless otherwise noted, races occurred in 2018. Candidate fundraising figures were provided by the National Institute on Money in Politics, and reflect available data as of May 29, 2019. Candidate fundraising includes contributions and self-financing by candidates, including loans. It excludes loan repayments and fundraising by judges that did not run for election in 2017–18. Sources for independent expenditures by political parties and interest groups include state campaign finance disclosures, broadcast television spending estimates from Kantar Media/CMAG, ad contracts posted on the FCC website, and Facebook spending estimates from Facebook’s Ad Library. The 2017 figures in this chart are lower than the totals reported in the historical chart, because in that chart totals were adjusted for inflation to 2018 dollars to allow for historical comparison. The 2017 figures in this chart have not been converted to 2018 dollars.

The \$39.7 million price tag was smaller than three of the four most recent midterm cycles, which saw an average of \$45 million in spending.¹⁷ Likewise, the 12 justices elected in million-dollar elections was the fewest since 2006; there were 17 in the previous midterm cycle.

These comparatively small figures are likely due in part to the number of uncontested races — half of the 46 contestable seats went uncontested this cycle, the greatest share since at least 2000, breaking the previous record set in 2014.¹⁸ We cannot say for sure why so many races went uncontested. It could be that challengers and funders saw few opportunities to alter the ideological balance on state courts, which have often driven spending in prior judicial elections. It may also be that, together with the 2014 cycle, a trend is developing in which non-presidential-election years see fewer contested supreme court elections.

National political events also likely drew money away from some state court races. The 2018 midterm elections saw record campaign spending, record voter turnout, and a blistering supreme court confirmation fight in the lead-up to Election Day.¹⁹ Explaining why Michigan’s election for two supreme court seats saw less spending

than previous elections, a Republican Party spokesperson said, “With all of the statewide races being competitive, and both the state House and state Senate in play, resources needed to be spread around more than in other cycles.”²⁰ Meanwhile, the fight to seat Brett Kavanaugh on the U.S. Supreme Court attracted \$15 million, led by the Judicial Crisis Network, which has been a primary source of funding for backers of conservative state supreme court candidates.²¹

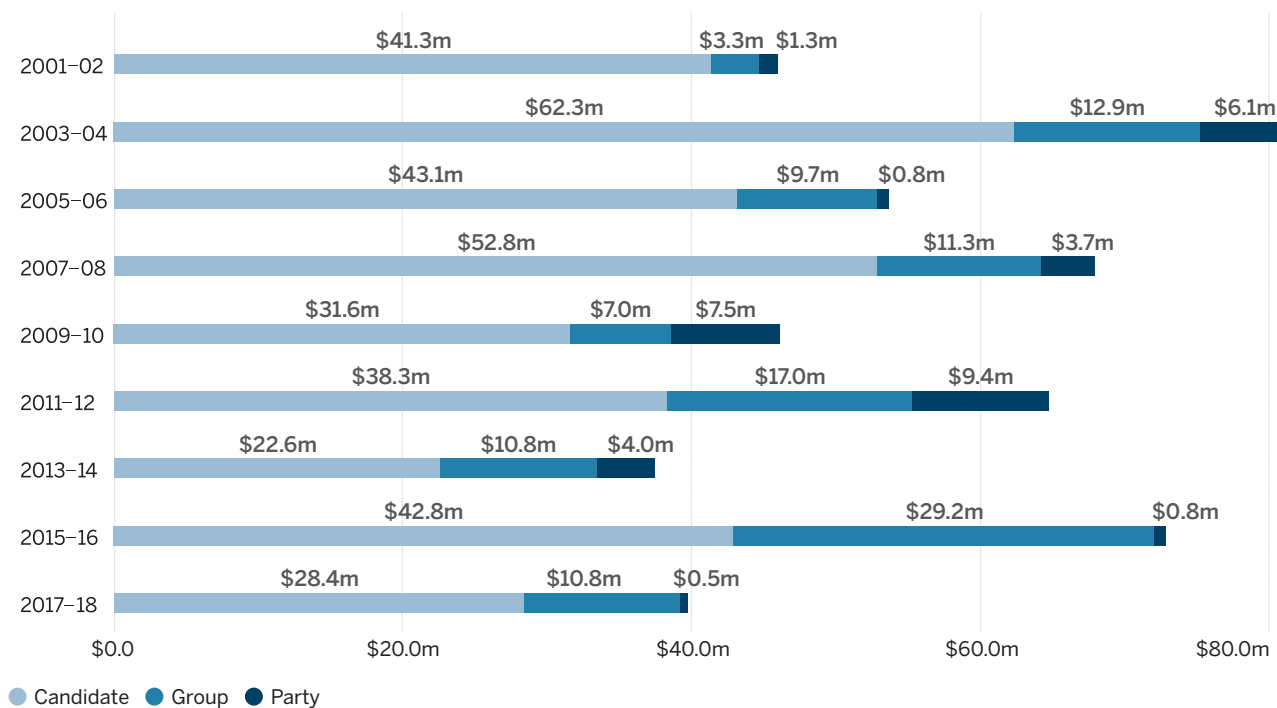
At the same time, some states did see spending for the record books. Arkansas had the most expensive election in its history, at \$3.4 million for a single seat on the supreme court. Wisconsin’s 2018 election attracted \$5.3 million in spending, nearly matching the record-holding 2011 election. (In 2019, Wisconsin broke the 2011 record with an \$8 million contest.)²²

Spending by Interest Groups and Political Parties

One key trend was the continued prominence of special interest groups, which accounted for \$10.8 million in spending, more than a quarter (27 percent) of all supreme court election expenditures in the 2017–18 cycle.²³ For our analysis, special interest group spending, which we

FIGURE 2

State Supreme Court Election Spending by Cycle (2018 dollars)



All figures have been converted to 2018 dollars. Because of this inflation adjustment, totals in this graph may be different than figures that were published in previous reports.

Data from previous cycles drawn from earlier reports in the New Politics of Judicial Elections series, as well as updated candidate fundraising and television spending estimates from the National Institute on Money in Politics and Kantar Media/CMAG.

also refer to as outside spending, includes spending by any political action committee (PAC), 501(c)4 nonprofit, trade association, or other group that is not a candidate or political party. This does not include any contributions interest groups made directly to a candidate or party.

While 27 percent was a drop from the 2015–16 cycle, when interest groups made up a record-setting 40 percent of all spending, it was similar to the previous midterm cycle (2013–14) when they accounted for 29 percent. Prior to *Citizens United*, outside spending by interest groups on supreme court elections was far less substantial: the high prior to *Citizens United* was 18 percent in 2005–06.²⁴ Supreme court elections have also attracted a higher share of interest group spending than congressional races: never in the last twenty years have U.S. Senate and House races seen interest groups account for more than 19 percent of all spending in cycle.²⁵

Interest groups played an even more pronounced role in the three costliest supreme court races of the 2017–18 cycle, where they accounted for 52 percent of all spending, including a whopping 84 percent in Arkansas.

As interest groups cemented their role in supreme court elections, traditional political parties scaled back their involvement. In total, political parties spent only \$522,000 during 2017–18, not including contributions they made to candidates’ campaigns, or 1.3 percent of all spending. This spending was concentrated almost entirely in Michigan. This was the lowest share of direct spending by political parties in a midterm cycle, and the smallest amount of spending in any cycle, since we began tracking supreme court elections in 2000.

This diminished role of political parties parallels a broader shift in nonjudicial elections since *Citizens United*. As interest groups have proven themselves able to

collect unlimited contributions while avoiding disclosure, their role has grown at the expense of political parties, which are more often subject to contribution limits and more rigorous transparency requirements.²⁶

Social Media Spending

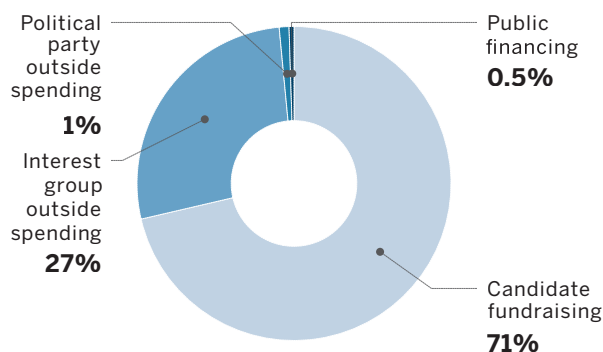
Finally, while judicial campaigns have advertised on social media platforms for several cycles, newly available tools made it possible to analyze this spending for the first time. In May 2018, Facebook began maintaining all political ads in a publicly accessible and searchable database called the Facebook Ad Library.²⁷ Facebook makes available copies of each ad, the name of its sponsor, high and low estimates for how much that sponsor spent on it, estimates of how many users saw it, the age and gender of users who saw it, and information about when it ran.

In total, Facebook estimates that candidates, parties, and interest groups spent between \$500,000 and \$2 million to support or oppose judicial candidates from May through November 2018, according to our analysis. As with overall spending, candidates accounted for two-thirds of Facebook spending — between \$370,000 and \$1.3 million — with interest groups spending between \$120,000 and \$580,000, and political parties between \$16,000 and \$69,000. Michigan saw by far the most spending on Facebook ads, between \$250,000 and \$960,000 in all, while candidates and groups also spent six figures on ads in Ohio, North Carolina, Texas, Minnesota, and West Virginia.

Users saw these ads as many as 113 million times, according to Facebook’s estimates, and none of these estimates include key races — including in Pennsylvania and Wisconsin — which took place before Facebook began publishing political ad data.

FIGURE 3

Spending Breakdown for 2017–18 Supreme Court Races



For data sources, see notation under figure 1.

FIGURE 4

Top Five Facebook Spenders

TOP FIVE FACEBOOK SPENDERS	TYPE OF SPENDER	ESTIMATED TOTAL SPENT
Sam Bagenstos (MI)	Candidate	\$566,678
Ohioans for a Healthy Economy	Group (did not report donors)	\$233,000
Justice for All Michigan	Group (reported donors)	\$152,000
Margaret Chutich (MN)	Candidate	\$105,179
Jimmy Blacklock (TX)	Candidate	\$91,598

Spending estimates are an average of the low and high estimates provided in Facebook’s Ad Library.

Data from Facebook’s Ad Library.

2018 Cycle Saw Meager Progress Toward Greater Judicial Diversity

>> **A recent Brennan Center report, *State Supreme Court Diversity***, details how little state supreme courts reflect the diversity of the public they serve.²⁸ As of May 2019, 24 state high courts had no justices of color, including eight states where people of color make up at least 25 percent of the state population. Of these 24 states, 19 use elections as part of their system for choosing or retaining justices. In addition, 17 states had only one woman on the supreme court bench.

>> **The 2017–18 cycle** showed mixed results with respect to judicial diversity. Four new justices of color, including three women of color, won seats on state high courts in North Carolina, Ohio, New Mexico, and Texas. But Nevada's only justice of color retired and Michigan's lost his election, and white justices replaced both of them.²⁹ As a result, more states had all-white supreme courts at the end of the 2018 cycle than at its beginning.

>> **The challenge of financing** judicial campaigns is one of several barriers facing aspiring justices of color. In an analysis of elections from 2000 to 2016, the Brennan Center found that nonincumbent candidates of color received less in contributions than their white counterparts, faced more outside spending on negative ads, and benefited from less outside spending on positive ads.³⁰ The Brennan Center also documented that attack ads against

candidates of color are frequently different in nature than those attacking other candidates, often evoking racist imagery or language to degrade the candidates or tie them to criminal defendants who they represented as lawyers or who appeared before them in court.³¹

>> **The same financial disparities** did not surface in 2018, when candidates of color on average outperformed white candidates in fundraising and received comparable levels of outside support. But racist attack ads did appear in North Carolina, where Republican Party mailers included altered images of Anita Earls, who is biracial, with skin "several shades darker than in real life" and the headline "Dangerous Anita Earls."³²

>> **The trend of homogeneous courts** poses a grave threat to public confidence in the judiciary and the ability of courts to develop a jurisprudence for an increasingly diverse America. Judges acknowledge that the perspectives and experiences they bring to the bench inform their and their colleagues decision-making. Even among lawyers, surveys show large racial disparities as to views on the presence of racial bias in the justice system.³³ As former Ohio Supreme Court Justice Yvette McGee Brown wrote, "When our courts are dominated by only one legal profession, one political party, or one gender or race, the public's perception of justice suffers."³⁴

Candidate Fundraising and Spending

In 2018, Ohio's insurance industry showed a keen interest in the state's supreme court elections. Between executives, employees, and insurance industry groups, the industry poured nearly \$150,000 into the campaign accounts of Justice Mary DeGenaro and another Republican candidate. This included \$47,000 from individuals affiliated with Cincinnati Financial, a business that previously raised eyebrows in 2016 with its employees' contributions to judicial candidates.³⁵ One possible explanation for Cincinnati Financial's interest in 2018 was that the court was considering the company's appeal of a lower court ruling: the case, which had potentially high stakes for the company's bottom line, raised the question of when an insurance company covering a general contractor is responsible for the

faulty work of subcontractors.³⁶

In early October, a month before Election Day, Justice DeGenaro and the rest of the Ohio Supreme Court unanimously overruled the lower court, finding that Cincinnati Financial was not responsible for the damage done by the subcontractor.³⁷ The decision, which insulates insurance companies from future liability in similar circumstances, saved Cincinnati Financial as much as \$6 million, and possibly much more in the long run. Strikingly, with the court's ruling in hand, the steady flow of insurance industry contributions slowed to a trickle (even while October was DeGenaro's biggest month for fundraising). There is no evidence suggesting Cincinnati Financial's donations influenced the court's unanimous decision — but why should the public have to wonder?

This is the tightrope that elected judges walk — raising the money necessary to run a competitive campaign while also making sure that they maintain the impartiality, and appearance of impartiality, that judging demands. "It's pretty hard in big-money races not to take care of your

friends,” Richard Neely, a retired chief justice of the West Virginia Supreme Court, once remarked. “It’s very hard not to dance with the one who brung you.”³⁸

During the 2017–18 supreme court election cycle, candidates across the country raised six- and seven-figure sums to their campaign coffers — and often did so from sources likely to appear before them in court. Seven candidates took in more than \$1 million in contributions and 22 raised over a half-million dollars. In total, candidates raised \$28.3 million (including approximately

\$180,000 in public funds to the one candidate participating in New Mexico’s public financing system). Fundraising totals were greater than in the last midterm election cycle, 2013–14, which saw \$22.6 million in candidate fundraising (in 2018 dollars), but less than in cycles prior to that.

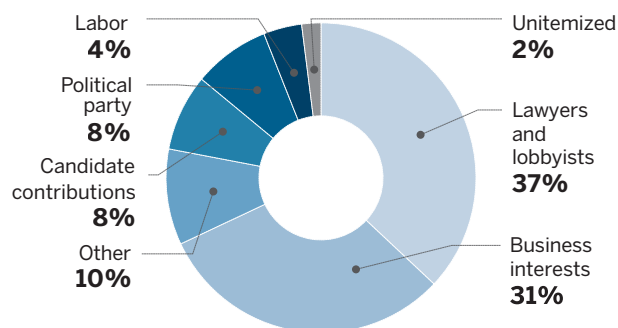
The two largest direct contributors to candidates’ campaigns were PACs funded by trial lawyers. The Philadelphia Trial Lawyers Association contributed \$600,000 to Justice Sallie Mundy in Pennsylvania, who had recently been appointed and was running for her first full term, and Progress for Justice contributed \$530,000 to Alabama Justice Tom Parker’s successful campaign for chief justice.

As in earlier cycles, lawyers and businesses — two categories of interests that regularly land in court — were responsible for the majority of contributions. Of contributions for which researchers were able to identify donors’ occupations, approximately 37 percent came from lawyers and lobbyists and 31 percent from business interests.

In some states, high-stakes legal matters drove that share even higher. In Louisiana, lawyers and businesses involved in lawsuits demanding that oil and gas companies pay for environmental damage to coastal properties have been major drivers of supreme court election spending in recent years.³⁹ In 2018, lawyers and lobbyists, many engaged in those disputes, accounted for a staggering 65 percent of all campaign contributions in Louisiana’s supreme court election. And in New Mexico, where the state supreme court regularly decides the rights of oil and gas producers vis-à-vis landowners,⁴⁰ 25 cents of every dollar Justice Gary Clingman raised for his campaign came from the mineral extraction industry. Clingman chose to privately finance his campaign while his opponent opted in to New Mexico’s public financing program.

FIGURE 5

Candidate Contributions by Sector, 2017–18



These figures do not include itemized contributions for which researchers were unable to identify a donor’s occupation. Uncategorized contributions accounted for 25 percent of all contributions. This analysis is different from previous cycles for which, because the share of uncategorized contributions was smaller, we included uncategorized contributions in our analysis.

Data from National Institute on Money in Politics as of May 29, 2019.

FIGURE 6

Top 10 Candidate Fundraisers

CANDIDATE	STATE	WON OR LOST	PARTY	TOTAL FUNDRAISED
Sallie Mundy*	PA	Won	R	\$1,685,571
Anita Earls	NC	Won	D	\$1,574,594
Sarah Stewart	AL	Won	R	\$1,272,747
Rebecca Dallet	WI	Won	Nonpartisan	\$1,261,452
Bob Vance, Jr.	AL	Lost-General	D	\$1,210,321
Michael Screnock	WI	Lost-General	Nonpartisan	\$1,057,089
Sam Bagenstos	MI	Lost-General	D	\$1,017,285
Tom Parker	AL	Won	R	\$983,510
Lyn Stuart*	AL	Lost-Primary	R	\$951,560
Jay Mitchell	AL	Won	R	\$855,725

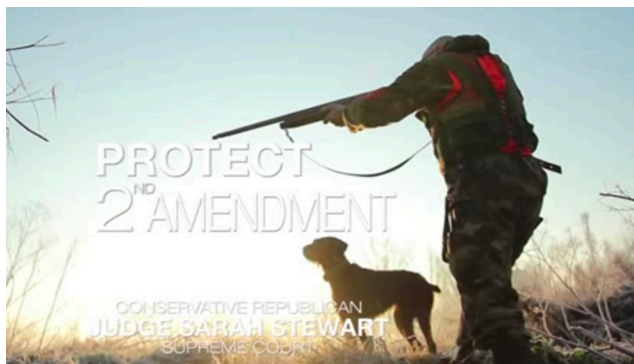
*Candidate was a sitting justice at the time of the election.

Data from National Institute on Money in Politics as of May 29, 2019.

TV Ads in the Trump Era

As is common in supreme court elections, much of the money candidates raised during the 2017–18 cycle ultimately paid for political consultants, mailers, and advertising on the radio, internet, and TV. Several candidates' ads explicitly referenced President Donald Trump, connecting national politics to state judicial campaigns. Three candidates ran ads touting themselves as judges who would defend individual rights against the Trump

administration, while one Alabama Republican ran a primary ad tying herself to Trump and claiming, "Like President Trump, Judge Sarah Stewart will protect our Second Amendment gun rights." Candidates also identified as "conservative" to a greater extent than in recent cycles — 29 percent of all candidate-run ads touted the candidate's conservative values, compared to 3 percent in the 2016 cycle.



Source: "President Trump," paid for by Sarah Stewart. Copyright 2018, Kantar Media/CMAG.

Interest Groups Changing Judicial Campaigns

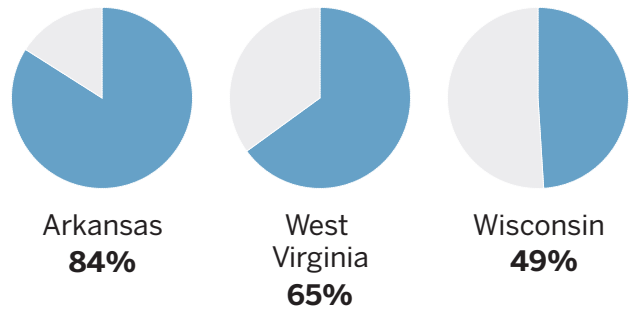
With special interest groups assuming such a prominent role in supreme court elections, what do we know about them? Who are the biggest spenders, and how are they funded? Where are they spending their money? And what are the consequences of their ascendancy?

In 2017–18, the Republican State Leadership Committee’s Judicial Fairness Initiative (RSLC-JFI) spent more than nearly any group ever has in a single cycle, accounting for \$4.1 million across three states. And, as discussed below, the conservative Judicial Crisis Network (JCN) was the likely source of most of RSLC-JFI’s funds. But progressive interest groups did not sit out these races — of the 10 largest outside spenders, six supported the more conservative candidate, with a combined \$6.6 million, and four supported the candidate on the left, with \$2.9 million.⁴¹

Groups played an even larger role in the several states where candidates appeared to rely on them to do the financial heavy lifting. In both Arkansas and West Virginia, discussed at length in the next section, interest groups accounted for two-thirds or more of all spending. At the same time, the candidates supported by these groups

FIGURE 7

States Where Interest Group Spending Accounted for the Largest Share of All Spending



raised relatively small sums for competitive races. This suggests at least an assumption by the candidates that the groups would take on the costliest aspects of campaigning, like running TV ads, if not explicit coordination between the candidates and the groups.

FIGURE 8

Top 10 Interest Group Spenders, 2017–18

GROUP	AMOUNT	STATE(S) IT SPENT IN	GROUP TRANSPARENCY
Republican State Leadership Committee — Judicial Fairness Initiative	\$4,128,983	AR, WV, PA	Nontransparent
North Carolina Families First	\$1,245,980	NC	Nontransparent
Wisconsin Manufacturers & Commerce	\$1,059,881	WI	Nontransparent
Greater Wisconsin Committee	\$980,214	WI	Nontransparent
Judicial Crisis Network	\$600,148	AR	Nontransparent
Just Courts West Virginia	\$487,891	WV	Transparent
Ohioans for a Healthy Economy	\$293,500	OH	Nontransparent
Michigan Chamber of Commerce	\$275,130	MI	Nontransparent
Texas Right to Life Committee	\$260,817	TX	Nontransparent
Safety and Justice for All	\$175,590	NM	Transparent

Data from state campaign finance disclosures, broadcast television spending estimates from Kantar Media/CMAG, radio and television ad contracts posted on the FCC website, and Facebook spending estimates from Facebook’s Ad Library. Transparency based on the Brennan Center’s analysis of each group’s public filings. A description of the methodology is included in this section of the report.

What Do We Know About the Biggest Outside Spenders?

>> RSLC Judicial Fairness Initiative

- Established in 2014 “to elect down-ballot, state-level conservatives to the judiciary” using TV and digital ads, mailers, and text messages
- Funded by the RSLC, which receives the bulk of its funds from dark money groups like the Judicial Crisis Network and U.S. Chamber of Commerce, along with large corporations
- Has spent in judicial elections in Arkansas, Illinois, Michigan, North Carolina, Ohio, Pennsylvania, West Virginia, and Wisconsin in recent cycles

>> NC Families First

- Funded primarily by the opaque groups Make NC First and North Carolina Citizens for Protecting Our Schools
- Also ran \$1.7 million in TV and digital ads opposing Republican candidates for North Carolina General Assembly in 2018

>> Greater Wisconsin Committee

- A nontransparent 501(c)4 nonprofit with a PAC arm and a 527-issue advocacy account
- Does not report most funding sources but receives substantial support from labor unions
- Engages in polling, research, and grassroots lobbying on a range of progressive causes

>> Wisconsin Manufacturers and Commerce

- The state’s chamber of commerce, has spent more than \$35 million supporting conservative judicial candidates in recent cycles and does not report funding sources for political spending
- Helped draft state judicial ethics rule allowing judges to hear cases involving major campaign supporters⁴²

We Know Little About Where Interest Group Money Really Comes From

Who is really funding these groups and why are they interested in judicial races? It is often impossible to know for sure, leaving the public without vital information about who is trying to sway their vote and influence who sits on their state’s highest court. This lack of transparency potentially obscures significant judicial conflicts of interest.

Most interest group spenders continue to be almost entirely nontransparent with respect to their funding, maneuvering around lax state and federal laws to the point where they rarely disclose their donors. In the last election cycle, the Brennan Center did an in-depth analysis of the funding sources for all outside spenders in supreme court elections — including their donors and their donors’ donors. The analysis found that 82 percent of all outside spending was nontransparent, meaning that the public either could not identify or would face major obstacles identifying who was truly behind the spending.⁴³

Last year was no different. Eight of the 10 biggest spenders reported either no donor information or that more than 75 percent of their funds came from other groups.⁴⁴ These nontransparent groups successfully obscured their donors from the public, denying voters information about possible motives behind their spending.

In some instances, groups also took advantage of loopholes in state laws that allowed them to avoid reporting their election spending to campaign finance authorities.⁴⁵ For example, estimates provided by Kantar Media/CMAG show that JCN, a group based in Washington, DC, that was founded to promote President George W. Bush’s U.S. Supreme Court nominees, directly spent a half-million dollars to unseat Arkansas Supreme Court Justice Courtney Goodson. JCN did not disclose its spending, let alone its donors, to state regulators.

And IRS filings suggest that JCN may have weighed in to an even greater extent on state supreme court races indirectly, by contributing to other groups. The Republican State Leadership Committee’s IRS filings show that JCN gave \$3.76 million to RSLC over the course of 2017–18.⁴⁶ RSLC in turn funded RSLC-JFI’s \$4 million in spending in the 2018 Arkansas and West Virginia supreme court elections. JCN also gave \$255,000 to the Wisconsin Alliance for Reform, which ran TV and radio ads supporting Wisconsin Supreme Court candidate Michael Srenock, according to IRS filings.⁴⁷

If that is where JCN’s money went, we still do not know where it came from. IRS filings covering January–June 2018 show only that JCN received \$17 million, three-quarters of its funding, from “Donor A.” Campaign finance watchdogs have concluded that Donor A is likely the Wellspring Committee, which funds a nationwide network of conservative groups.⁴⁸ But the Wellspring Committee’s donors — and their motives — remain unknown.

State Farm Settles Allegations They Secretly Manipulated a Supreme Court Race

>> **Opaque interest group spending** can directly benefit people and businesses with a financial stake in who sits on state benches. By contributing money to these groups, donors can wield immense influence and pursue their private interests while avoiding any public scrutiny.

>> **Weeks before Election Day 2018**, the insurance and financial services company State Farm settled a lawsuit alleging that it had successfully conspired to manipulate a 2004 Illinois Supreme Court election.⁴⁹ State Farm's alleged goal was to put a judge on the Illinois court who would overturn a jury's \$1 billion consumer fraud verdict against it. State Farm settled the new lawsuit for \$250 million days before trial, but court filings paint a damning portrait of the company funneling \$3.5 million through intermediaries to

identify then-trial judge Lloyd Karmeier as the right candidate, run his campaign through a group called the Illinois Civil Justice League, and fund a network of opaque groups to support his candidacy.⁵⁰ The plaintiffs' expert concluded that there was a deliberate and successful effort "to disguise State Farm's role as a primary supporter of Justice Karmeier's campaign," which "enabled State Farm to disingenuously represent to the Illinois Supreme Court that State Farm itself made no contribution" to Karmeier's campaign.⁵¹

>> **Karmeier won his election**, and nine months later, after declining to recuse himself from the case, joined the Illinois Supreme Court decision overturning the jury verdict against State Farm.⁵²

But We Do Know This Spending Makes Courts Less Fair

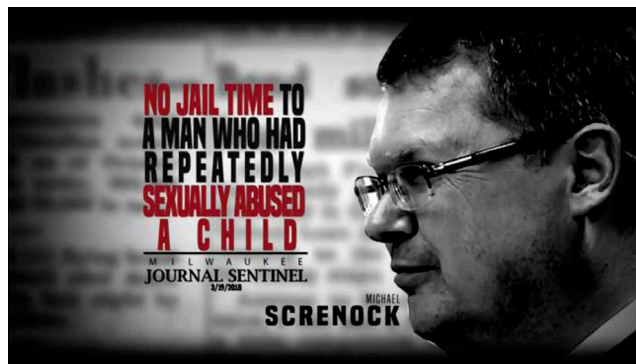
One byproduct of heightened interest group spending is a harmful shift in the nature of judicial campaigns. For starters, interest groups are more likely than candidates or political parties to run negative ads — groups ran two-thirds of all negative TV ads this cycle despite only accounting for one-third of all ads.

Cycle after cycle, group ads have regularly featured attacks based on judges' decisions in criminal cases. This cycle, half of the \$2 million spent by groups on negative advertising paid for ads targeting judicial decisions. These ads frequently misrepresent judges' rulings, often invoking violence against children to stir fear in viewers. In a typical ad, JCN in 2018 accused an Arkansas judge of being "soft on crime" and using a "technicality" to let off a defendant who was, as a result, "still on the run,

threatening children." Two months earlier, the conservative Wisconsin Manufacturers and Commerce (WMC) and liberal Greater Wisconsin Committee exchanged ads attacking judges for giving lenient sentences to persons found guilty of violence against children. WMC refused to take down its ad even after the victims' parents asked it to because the ad included identifying information and was doing harm to their family.⁵³

Among other harms, misleading attacks on judges' decisions in criminal cases can put pressure on judges' rulings. Previous studies found that Pennsylvania and Washington trial judges issued longer sentences as their next election approached and that supreme court justices across the country were less likely to rule in favor of criminal defendants as TV and outside spending increased.⁵⁴ A 2019 study found that "electoral cycles" in criminal sentencing, in which trial judges issue harsher sentences as their elections approach, are more likely in states with more competitive judicial elections.⁵⁵ As former California Supreme Court Justice Otto Kaus famously said, elections loom over judges like "a crocodile in your bathtub. You keep wondering whether you're letting yourself be influenced, and you do not know."⁵⁶

Most striking is how elections affect life and death decisions about capital punishment. Research suggests that trial and appellate judges are more likely to sentence defendants to death, or affirm death sentences, when they face electoral pressures.⁵⁷ One scholar of judicial elections, finding that the data supports Justice Kaus' crocodile theory, wrote that the death penalty is the "fattest crocodile" for how often judges appear to feed the desires of the electorate when it comes to capital punishment.⁵⁸



Source: "At It Again," paid for by Greater Wisconsin Political Fund. Copyright 2018, Kantar Media/CMAG.

States in Focus

States that had high profile supreme court races in the 2017–18 cycle saw clearly how high-cost and politicized judicial elections threaten fair and impartial courts. Millions in nontransparent spending prevented Arkansas voters from learning who was trying to buy a seat on their state’s court, a Michigan judge was threatened with losing party support while deciding a case, and West Virginia and North Carolina legislators abused their power to help their allies reach the bench. These case studies illustrate some of the worst features of judicial elections today but also show how the most brazen attacks on fair courts can sometimes backfire.

Campaign Outsourcing and Judges Organizing Against Misleading Ads in Arkansas

In 2018, Arkansas embodied the modern realities of state supreme court elections. Interest groups spent so abundantly that the race set a spending record based almost entirely on their spending, and they ran ads so misleading that a court was willing to intervene to stop them.

Justice Courtney Goodson won reelection despite \$2.9 million in support for her opponent, David Sterling, from



Source: “Reject,” paid for by Republican State Leadership Committee — Judicial Fairness Initiative. Copyright 2018, Kantar Media/CMAG.

two conservative groups during the nonpartisan contest. RSLC-JFI spent \$2.3 million on ads and mailers opposing Goodson, and JCN spent nearly \$600,000 on two TV ads. JCN also contributed \$3 million to RSLC over the course of 2018, including \$500,000 in May, when the only active judicial campaign was in Arkansas.⁵⁹ RSLC also received \$100,000 from Arkansas-based Wal-Mart and \$10,000 from the Arkansas State Chamber of Commerce.⁶⁰

JCN had put Goodson in its sights before, including taking out \$550,000 worth of ads in a 2016 election in which Goodson ran for chief justice (and lost).⁶¹ In the lead-up to that race, JCN’s counsel authored articles attacking Goodson for her authorship of a unanimous 2011 decision striking down a state law capping punitive damages as violating the Arkansas constitution.⁶² Tort reform may still be a motivator for JCN’s spending: in 2018, the Arkansas Supreme Court voted 6–1 to remove a tort reform measure from the ballot due to procedural defects.⁶³

Spending by JCN and RSLC-JFI swamped that of the candidates themselves. Combined, these two groups accounted for 84 percent of the \$3.4 million spent on the election and 95 percent of the money supporting Sterling. The groups accused Goodson of taking gifts from attorneys, hearing cases involving the gift givers and donors, and asking for a pay raise. JCN even created a website, *greedygoodson.com*, featuring the same allegations.⁶⁴ Sterling raised only \$150,000, possibly predicting that these groups would do the heavy lifting, and the attacking, in place of his campaign.

A new and noteworthy voice in the race was a group of former judges and community leaders who had formed the Arkansas Judicial Campaign Conduct & Education Committee (AJCCEC) to respond to “false advertisements and attacks” in judicial races.⁶⁵ The AJCCEC’s rapid response team determined that Goodson had not heard cases involving donors or gift givers, had recused herself from cases as appropriate, and had not asked for a pay raise. The team sent JCN and RSLC letters asking them to stop lobbying those allegations. In response, RSLC’s general counsel denied any wrongdoing and called the team a “sham.”⁶⁶

Even more unusual, Goodson used the rapid response team’s findings in court to successfully block some of JCN’s TV ads for being false and defamatory. One state judge found that Goodson was likely to win her defamation suit and stopped television stations in part of the state from running the ads,⁶⁷ though other judges in the state refused to grant Goodson an injunction and a federal judge refused her request to block similar ads by RSLC-JFI.⁶⁸ Despite the attacks, Goodson won reelection with 55 percent of the vote.

Impeachments Lead to Big-Money Elections and Partisan Takeover in West Virginia

West Virginia began 2018 with no supreme court elections scheduled and ended the year with three new

justices. The shake-up came about because of an ethics scandal in which the state's House of Delegates charged justices with misusing state funds for lavish office renovations, using state vehicles and computers for personal benefit, and maladministration, including overpayment of senior-status judges.⁶⁹ With state and federal investigations ongoing, the West Virginia Supreme Court suspended Justice Allen Loughry, and Justice Menis Ketchum retired. While the state's judicial investigation commission cleared the remaining three justices of wrongdoing, Republican legislators backed articles of impeachment against all three, along with Loughry.⁷⁰

Some of the charges against sitting justices raised legitimate concerns, including spending \$32,000 on a suede couch and \$20,000 on a rug. But legislators slow-walked the impeachment process as the August 14 deadline for a vacancy to trigger a special election approached, suggesting politics was at least part of the motivation.⁷¹ If legislators removed the justices after the deadline, the state's Republican governor would have been able to appoint five new justices to what had been a 3–2 Democratic-majority court.

Frustrating the legislators' plan, two justices, Ketchum and Justice Robin Davis, gave up their seats in time to trigger a special election.⁷² Davis wrote in her August 13 resignation letter, "The will of the people is being DENIED! I just cannot allow the finalizing of their plot to come to fruition."⁷³

The special elections for two seats did not stop Republican officials from remaking the state's court, however. Gov. Jim Justice appointed two prominent Republicans, West Virginia House Speaker Tim Armstead and U.S. Rep. Evan Jenkins, to temporarily fill the two vacant seats until the special election, when they would be able to run as new incumbents.⁷⁴

Armstead and Jenkins won their respective nonpartisan elections, against nine candidates each, with the help of a combined \$1.9 million in support from conservative groups.⁷⁵ This amount was nearly 10 times what the two raised and included \$1.7 million from RSLC-JFI. In addition to JCN's donations, RSLC took in \$350,000 in the lead-up to Election Day from Pepperidge LLC, a West Virginia-based corporation tied to a local nursing home operator that was embroiled in wrongful death litigation in state court.⁷⁶

Even Governor Justice chipped in \$50,000 to West Virginians for Fair Courts, a group that sent mailers in support of Armstead and Jenkins. Beyond political gain, the changes on the court could benefit Governor Justice personally: he owns a network of coal and agricultural businesses that remain mired in state court litigation, and an allegation that he is violating the state's constitution by not living in the state capital may also eventually reach the state supreme court.⁷⁷

Two other justices who did not step down were able to keep their seats on the court: one was acquitted by

the Senate in an impeachment trial, while the other was kept on by a state supreme court decision holding that the legislature's impeachment proceedings violated the state's constitution.⁷⁸ With two seats filled by election, and two justices surviving impeachment, the governor appointed the fifth and final member of the court in December 2018.⁷⁹

Legislators strengthened their hand vis-à-vis the court in other ways as well. On the day Armstead and Jenkins were elected, legislators had also put before voters a constitutional amendment authorizing the legislature to reduce the judiciary's budget by up to 15 percent by a simple majority vote, or by more with a supermajority.⁸⁰ Voters approved it. And in 2019, legislators proposed withholding judicial retirement benefits until the state supreme court reversed its decision to intervene in the impeachment proceedings, or take away the court's authority to hear challenges to impeachment proceedings entirely (the legislation failed).⁸¹

Political Pressure on Judicial Decision-Making in Michigan

Michigan's supreme court contest cast in stark relief the undesirable pressures that elections can put on sitting judges. There, Justice Elizabeth Clement, a Republican who had been recently appointed to the bench and was facing her first election, faced organized efforts within her own political party to punish her for her vote in a redistricting case decided months before the election.⁸² While Clement ultimately held on to her seat, her experience sets a worrying precedent for judges who buck their party's preferences in high-stakes cases.

At issue in the case was a grassroots ballot initiative to reform the redistricting process in Michigan — taking the power to draw legislative maps away from the Republican-controlled legislature and giving it to an independent commission. While the case was before the state supreme court, a former Republican legislator wrote in his popular political newsletter that if Justice Clement "colludes" with other justices to uphold the measure, Clement could "expect that funding from the Republican Party and its major donors and allies in her election campaign WILL DRY UP."⁸³ Despite this threat, in July, Clement ruled with a majority of the court to allow the measure to proceed. Justice Kurtis Wilder, also a Republican standing for election in 2018, ruled with the minority.⁸⁴

There was swift and sustained retaliation against Clement. At the Republican Party convention one month later, she was endorsed over a chorus of boos and nays⁸⁵ and members distributed flyers instructing delegates to abstain from voting to endorse her in order to "show disapproval for her rulings and maybe cause her to think twice about violating our Constitution."⁸⁶ Later, her name was left off of party campaign flyers that included Wilder, allegedly because the party's volunteers did not want to

campaign for her.⁸⁷

The independent spending in the race also clearly reflected the abandonment of Clement by the Republican party and its allies. The Michigan Republican Party and Chamber of Commerce spent over \$640,000 on ads supporting Wilder but only \$30,000 on ads supporting Clement.⁸⁸ A political consultant explained to the Michigan Campaign Finance Network that conservative interest groups “largely cut her loose.”⁸⁹

Despite all of this, Clement held her seat and Wilder lost his to Democratic Party–endorsed Megan Cavanaugh.⁹⁰ While the court still has a Republican majority, observers predicted that the election would result in a significant shift to the ideological center.⁹¹

Electoral Gamesmanship in North Carolina Backfires

In North Carolina, civil rights attorney Anita Earls, a Democrat, prevailed against incumbent Justice Barbara Jackson, a Republican, and Raleigh attorney Chris Anglin, also a Republican, in the partisan election for Jackson’s seat on the state’s high court.⁹² Earls prevailed despite a series of moves by the Republican legislative supermajority to tilt the race in favor of Justice Jackson. Still, the series of brazen, if shortsighted, moves shows the lengths to which state politicians are willing to go to get their allies on the bench.

Anglin had changed his party affiliation from Democrat to Republican shortly before filing to run, and Republican lawmakers accused him of perpetrating “a fraud on the people of the state of North Carolina” to split the Republican vote.⁹³ But the legislature itself had enabled Anglin’s move. In 2017, it canceled judicial primaries for 2018, seemingly intending to attract a crowd of Democratic candidates to split the vote against the Republican

incumbent.⁹⁴ It also added partisan labels to the ballot after an incumbent conservative justice lost a nonpartisan contest in 2016.⁹⁵

The legislature ultimately sought to bar Anglin’s Republican affiliation from appearing on the ballot by passing a bill to omit the party affiliation of judicial candidates who changed political parties 90 days before filing. But a court struck down the change to the law, finding that its retroactive application to Anglin “violat[e] fundamental principles of fairness” and Anglin’s constitutional due process rights.⁹⁶ Anglin remained on the ballot as a Republican, and Earls won with 49 percent of the vote.

While Earls raised three times more than her incumbent opponent and benefited from over \$1 million in nontransparent outside support, the race’s \$3.3 million price tag did not compare to recent supreme court elections in the state — \$5.4 million in 2016 and \$6 million in 2014.⁹⁷ This may be because the election did not present Republicans with an opportunity to break the 4–3 liberal majority on the court, or because potential funders knew that a three-way race made it unlikely Justice Jackson would win.

These machinations occurred against the backdrop of a multiyear effort by the legislature to gain an upper hand in North Carolina’s courts that ranged from eliminating public financing for judicial races, to shrinking an intermediate appellate court to prevent the governor from filling upcoming vacancies, to gerrymandering judicial districts.⁹⁸ Voters pushed back on Election Day 2018 by voting down a controversial constitutional amendment that would have given the legislature new control over the appointment of judges to fill interim vacancies.⁹⁹ The amendment faced bipartisan opposition from all five living former governors¹⁰⁰ and was subject to litigation that ultimately required the legislature to rewrite misleading ballot language.¹⁰¹

Looking Ahead

In the current political environment, the public's confidence in American democracy and the institutions at its core cannot be taken for granted. Yet today's politicized judicial elections put that very confidence at risk.

If judges take contributions from lawyers appearing before them, why should the public think that money won't influence their thinking?

If a dark money group runs misleading ads to support judges, why should the public think the judges are any more trustworthy than the groups backing them?

If a state's judiciary looks nothing like the communities it serves, why should the public think their courts are equipped to decide cases involving those communities?

There are no good answers to these questions, but there is much that states can do to make sure we don't have to ask them. Even in the short time before Election Day 2020, states can take steps to strengthen their courts. Nothing prevents state courts from adopting stronger ethics rules requiring judges to step aside from cases involving major campaign supporters. Courts can also

require parties appearing before a judge to be forthcoming about money they spent toward the judge's election. As for building more diverse benches, all stakeholders — from judges to bar associations and political officials — can work to open paths to the bench for judicial candidates from underrepresented communities.

Beyond 2020, states can reconsider how they choose judges. The Brennan Center has urged states to adopt a publicly accountable appointment system as a better way of balancing the values of fairness, independence, and accountability.¹⁰² In states that continue to hold judicial elections, public financing of candidates can ensure that judges do not need to raise money from lawyers and businesses appearing before them. The Brennan Center has also recommended that states adopt a lengthy single “one and done” term for supreme court justices, which would help protect judges from threats to their job security that can interfere with fair decision-making.

Not all these proposals will be realized in every state, and while states or courts can adopt some almost immediately, others will take time to consider and implement. But, in trying times for American democracy, it is necessary to equip courts so that they can do justice and are worthy of the public's confidence.

Appendix: State Profiles

Alabama

Five of the nine seats on the Alabama Supreme Court were up for election in 2018, attracting substantial spending, including \$2.4 million in TV ads from the candidates. The race for chief justice — in which Associate Justice Tom Parker defeated incumbent Chief Justice Lyn Stuart in the Republican primary and Alabama Circuit Judge Bob Vance Jr. in the general election — saw each candidate raise approximately \$1 million. Parker received most of his backing from the state’s trial lawyers while running ads alleging that George Soros was plotting to remove him from the court. Attorney Jay Mitchell raised more than \$850,000 while defeating attorney John Bahakel in the Republican primary and attorney Donna Wesson Smalley in the general election for an open seat on the court. Circuit Judge Sarah Stewart defeated recently appointed Justice Brady Mendheim and Circuit Judge Debra Jones in the Republican primary, raising more than \$1.2 million and running ads connecting her to President Trump. Justices Tommy Bryan and William Sellers faced no opposition.

Arizona

Justice Clint Bolick and Justice John Pelander stood for retention elections and won new six-year terms on the Arizona Supreme Court with approximately 70 percent of the vote each. Bolick won his first full term after Gov. Doug Ducey appointed him to the court in 2016. After the Arizona Supreme Court removed from the ballot a measure that would have increased taxes to fund public education, advocates of the measure pledged to campaign against the justices. An expensive antiretention campaign never materialized.

Arkansas

The nonpartisan contest for Justice Courtney Goodson’s seat on the Arkansas Supreme Court was the most expensive in the state’s history, with most of the money coming from outside groups. Goodson kept her seat by defeating attorney David Sterling in a runoff election after both received more votes than Court of Appeals Judge Kenneth Hixson in the general election. The Republican State Leadership Committee’s Judicial Fairness Initiative spent almost \$2.3 million on ads, mailers, and robo-calls supporting Sterling and attacking Goodson, while the Judicial Crisis Network spent another estimated \$600,000 in TV and Facebook ads attacking both Hixson and Goodson. Sterling supplemented his outside support with only \$150,000 in fundraising, and Goodson raised \$279,000, significantly less than in her prior election.

Alabama

	TOTAL	RANK
Total spending	\$6,442,218	1
Candidate fundraising	\$6,442,218	1
Group spending	\$0	N/A
Party spending	\$0	N/A
TV spending	\$2,470,740	1

Arizona

	TOTAL	RANK
Total spending	\$21,000	22
Candidate fundraising	\$0	N/A
Group spending	\$21,000	11
Party spending	\$0	N/A
TV spending	\$0	N/A

Arkansas

	TOTAL	RANK
Total spending	\$3,440,733	5
Candidate fundraising	\$560,473	11
Group spending	\$2,880,260	1
Party spending	\$0	N/A
TV spending	\$1,209,860	4

Georgia

Five justices ran unopposed in 2018 for seats on the Georgia Supreme Court. Justice Harold Melton won his third full term on the court and Georgia Court of Appeals Judge John Ellington was elected to the bench for the first time, raising more than \$500,000. Gov. Nathan Deal appointed Justices Michael P. Boggs, Nels Peterson, and Britt Grant in 2016 after he expanded the court from seven to nine justices, and they all won their first full terms on the court.

Illinois

Illinois voters retained Justice Anne M. Burke with 81 percent of the vote. Justice Burke raised \$200,000 in her low-profile election.

Kentucky

Kentucky Court of Appeals Judge Debra Lambert won a competitive nonpartisan election for an open seat on the Kentucky Supreme Court. Lambert and Circuit Judge Dan Ballou advanced from a primary with Circuit Judge David A. Tapp. Lambert raised \$240,000, more than twice what of each of her opponents raised.

Louisiana

Justice Jefferson Hughes, a Republican, ran unopposed in a partisan election to keep the seat he has held since 2012. Justice Greg Guidry, also a Republican, ultimately ran unopposed after a court disqualified his opponent, attorney Richard Ducote, for failing to file his tax returns. Anticipating a contested election, Guidry raised more than \$370,000.

Georgia

	TOTAL	RANK
Total spending	\$1,065,691	11
Candidate fundraising	\$1,065,691	10
Group spending	\$0	N/A
Party spending	\$0	N/A
TV spending	\$0	N/A

Illinois

	TOTAL	RANK
Total spending	\$201,917	16
Candidate fundraising	\$201,917	16
Group spending	\$0	N/A
Party spending	\$0	N/A
TV spending	\$0	N/A

Kentucky

	TOTAL	RANK
Total spending	\$427,682	15
Candidate fundraising	\$427,631	13
Group spending	\$51	12
Party spending	\$0	N/A
TV spending	\$73,170	10

Louisiana

	TOTAL	RANK
Total spending	\$548,161	13
Candidate fundraising	\$548,161	12
Group spending	\$0	N/A
Party spending	\$0	N/A
TV spending	\$0	N/A

Michigan

Justice Elizabeth Clement and Justice Kurtis Wilder — both Republicans appointed to the Michigan Supreme Court in 2017 by Gov. Rick Snyder — ran for full terms on the court. The party and outside groups gave Wilder \$819,000 in outside support, and Clement just \$75,000 — after Clement voted with the court’s majority to allow a grassroots redistricting reform ballot measure to move forward, a decision Republicans viewed as against their interests. Running against Clement and Wilder were law professor Samuel Bagenstos, a Democrat; attorney Megan Cavanagh, a Democrat; attorney Doug Dern, the Natural Law Party candidate; and attorney Kerry Lee Morgan, nominated by the Libertarian Party. Bagenstos raised \$1 million, more than any other candidate in the race, but failed to finish as one of the top two vote getters. Clement ultimately received the most votes, and Cavanagh, who benefited from more than \$200,000 in digital ads and mailers by progressive outside groups, finished second, unseating Wilder.

Minnesota

Four justices on the Minnesota Supreme Court ran in nonpartisan elections to keep their seats on the bench. Justice Lorie Gildea, Justice Barry Anderson, and Justice Anne K. McKeig ran unopposed. Justice Margaret Chutich, running for her first full term since her 2016 appointment, defeated attorney Michelle L. MacDonald with 56 percent of the vote. Justice Chutich spent nearly half of her \$109,000 in contributions on Facebook ads, making her one of the top purchasers of Facebook ads in the country among state supreme court candidates.

Montana

Justice Beth Baker and Justice Ingrid Gustafson stood for retention election, and they both retained their seats on the Montana Supreme Court with more than 83 percent of the vote. Gustafson won her first full term on the bench after Gov. Steve Bullock appointed her in 2017. The candidates combined raised only \$52,000.

Nevada

A large field of candidates competed in nonpartisan elections for an open seat on the Nevada Supreme Court. After advancing from a five-candidate primary, District Judge Elissa F. Cadish defeated Court of Appeals Judge Jerome T. Tao in the general election, outraising him by \$670,000 to \$120,000. Justice Lidia Stiglich held the seat Gov. Brian Sandoval appointed her to in 2016, raising \$827,000 in the process of defeating District Court Judge Mathew Harter. Chief Judge of the Nevada Court of Appeals Abbi Silver ran unopposed for the seat of retiring Justice Michael Douglas.

Michigan

	TOTAL	RANK
Total spending	\$4,199,346	3
Candidate fundraising	\$2,993,393	2
Group spending	\$704,737	5
Party spending	\$501,216	1
TV spending	\$1,170,710	5

Minnesota

	TOTAL	RANK
Total spending	\$142,644	18
Candidate fundraising	\$142,644	18
Group spending	\$0	N/A
Party spending	\$0	N/A
TV spending	\$0	N/A

Montana

	TOTAL	RANK
Total spending	\$52,426	21
Candidate fundraising	\$52,426	21
Group spending	\$0	N/A
Party spending	\$0	N/A
TV spending	\$0	N/A

Nevada

	TOTAL	RANK
Total spending	\$1,718,162	10
Candidate fundraising	\$1,718,111	7
Group spending	\$51	12
Party spending	\$0	N/A
TV spending	\$529,750	8

New Mexico

After Gov. Susana Martinez appointed Justice Gary L. Clingman to the New Mexico Supreme Court in 2018, he had to stand in a partisan election in order to serve a full term on the bench. Judge Michael Vigil, who participated in the state's public financing program for judicial candidates, defeated Clingman. Vigil benefited from over \$175,000 in outside group spending.

North Carolina

Three candidates competed for Republican Justice Barbara Jackson's seat on the North Carolina Supreme Court, with attorney Anita Earls, a Democrat, defeating Jackson and Democrat-turned-Republican attorney Christopher Anglin. There was no primary election and the race was partisan because of recent changes made by the North Carolina General Assembly. Earls raised nearly \$1.6 million, more than three times what Jackson raised, and received \$1.2 million in outside support, primarily in the form of TV ads run by North Carolina Families First, which reports large contributions from nontransparent groups.

North Dakota

Justice Lisa Fair McEvers ran in a nonpartisan election to remain on the North Dakota Supreme Court. She defeated attorney Robert V. Bolinske with 66 percent of the vote and raised \$71,065, while Bolinske did not report raising or spending any money. McEvers won her first full term on the bench after first being appointed to the bench in 2013 to fill an interim vacancy and winning election to complete her predecessor's term in 2016.

Ohio

Democratic candidates won both partisan elections for the Ohio Supreme Court in 2018. Cuyahoga County Common Pleas Court Judge Michael P. Donnelly defeated Court of Appeals Judge Craig Baldwin for the vacancy created by the retirement of Justice Terrence O'Donnell, a Republican. Court of Appeals Judge Melody Stewart defeated sitting Justice Mary DeGenaro, a Republican, to become the first African American woman elected to the Ohio Supreme Court. Each of the candidates raised substantial sums, with Baldwin, DeGenaro, and Donnelly raising more than \$400,000 each. Stewart and Donnelly won despite \$293,000 in digital ads and other support by the Ohioans for a Healthy Economy, a 501(c)4 nonprofit with a pro-business mission, for the Republican candidates.

New Mexico

	TOTAL	RANK
Total spending	\$572,639	12
Candidate fundraising	\$395,995	15
Group spending	\$176,644	8
Party spending	\$0	N/A
TV spending	\$147,050	9

North Carolina

	TOTAL	RANK
Total spending	\$3,273,809	6
Candidate fundraising	\$2,025,130	6
Group spending	\$1,248,679	4
Party spending	\$0	N/A
TV spending	\$1,582,520	3

North Dakota

	TOTAL	RANK
Total spending	\$71,065	19
Candidate fundraising	\$71,065	12
Group spending	\$0	N/A
Party spending	\$0	N/A
TV spending	\$0	N/A

Ohio

	TOTAL	RANK
Total spending	\$1,915,357	9
Candidate fundraising	\$1,618,157	8
Group spending	\$297,200	6
Party spending	\$0	N/A
TV spending	\$0	N/A

Oregon

Three recently appointed Oregon Supreme Court justices stood in nonpartisan elections to remain on the court. Justice Rebecca A. Duncan and Justice Adrienne Nelson ran unopposed, while Justice Meagan A. Flynn defeated government attorney Van Pounds with 74 percent of the vote. Nelson and Flynn each raised approximately \$30,000.

Pennsylvania

In 2017, two candidates competed in a partisan election for one spot on the Pennsylvania Supreme Court and two justices faced retention elections. Appointed in 2016 by Governor Wolf, a Democrat, Justice Sallie Mundy, a Republican, won a partisan election to serve her first full term. Mundy was the year's biggest fundraiser, taking in \$1.7 million, including \$600,000 from the Philadelphia Trial Lawyers Association's PAC, and benefited from \$45,000 in mailers from the Republican State Leadership Committee's Judicial Fairness Initiative. Mundy narrowly defeated District Judge Dwayne D. Woodruff, a Democrat. Chief Justice Thomas Saylor and Justice Debra Todd both won their retention elections with more than two-thirds of the vote.

Texas

Three sitting Republican justices on the Texas Supreme Court stood in partisan elections and held their seats on the court. Recently appointed Justice Jimmy Blacklock defeated Texas District Court Judge Steven Kirkland, a Democrat; Justice John Devine defeated District Court Judge R.K. Sandill, a Democrat; and Justice Jeff Brown defeated attorney Kathy Cheng, also a Democrat. Each of the sitting justices and Sandill raised more than half a million dollars, and the incumbents benefited from the support of numerous outside groups, though lax disclosure rules obscure the full cost of that support. Shortly after the election, President Trump nominated, and the Senate confirmed, Brown to the U.S. District Court for the Southern District of Texas.

Washington

Competitive challenges never materialized for three incumbent Washington Supreme Court justices standing for reelection. Justice Susan Owens and Justice Sheryl Gordon McCloud ran unopposed after their challengers either withdrew or were disqualified. Justice Steven González defeated attorney Nathan Choi with 68 percent of the vote. González raised \$335,000 for the campaign, while McCloud and Owens raised \$63,000 and \$8,600, respectively. Fuse Votes, a political committee backed by trial lawyers and labor, spent \$21,000 on digital ads supporting the incumbents.

Oregon

	TOTAL	RANK
Total spending	\$61,678	20
Candidate fundraising	\$61,627	20
Group spending	\$51	12
Party spending	\$0	N/A
TV spending	\$0	N/A

Pennsylvania

	TOTAL	RANK
Total spending	\$2,913,790	7
Candidate fundraising	\$2,773,411	3
Group spending	\$121,219	9
Party spending	\$19,160	2
TV spending	\$1,154,400	6

Texas

	TOTAL	RANK
Total spending	\$2,904,330	8
Candidate fundraising	\$2,643,362	5
Group spending	\$260,968	7
Party spending	\$0	N/A
TV spending	\$0	N/A

Washington

	TOTAL	RANK
Total spending	\$431,233	14
Candidate fundraising	\$409,302	14
Group spending	\$21,931	10
Party spending	\$0	N/A
TV spending	\$0	N/A

West Virginia

No elections were scheduled to take place in West Virginia in 2018 until two seats on the West Virginia Supreme Court became vacant as a result of an ethics scandal and subsequent impeachment effort by the West Virginia House of Delegates. While two justices resigned in time to trigger special elections to fill their seats, Gov. Jim Justice appointed former West Virginia House Speaker Tim Armstead and former U.S. Representative Evan Jenkins, both Republicans, to fill the seats until the election. Armstead and Jenkins each ran against nine other candidates and won the election with just 26 percent and 36 percent of the vote, respectively. While Armstead raised \$117,000 and Jenkins, \$119,000, they received a combined \$1.9 million in outside support. The Republican State Leadership Committee's Judicial Fairness Initiative spent \$1.7 million on digital, TV, and radio ads.

Wisconsin (2017)

Justice Annette Ziegler ran unopposed for another 10-year term on the Wisconsin Supreme Court, resulting in an uncharacteristically quiet election.

Wisconsin (2018)

With anticipation that this election could determine the ideological balance of the court in future years, Wisconsin saw one of the most expensive supreme court elections in its history in 2018. Attorney Tim Burns, Circuit Judge Rebecca Dallet, and Circuit Judge Michael Srenock competed in the nonpartisan primary for retiring Justice Michael Gableman's seat. Dallet defeated Srenock in the general election, and each candidate raised more than \$1 million dollars and received more than \$1 million in additional support from outside groups. Wisconsin Manufacturers and Commerce, the state's chamber of commerce, spent an estimated \$1.1 million on TV and radio ads attacking Dallet and supporting Srenock, while the Greater Wisconsin Committee's two arms spent an estimated \$980,000 doing the opposite. Eric Holder's National Democratic Redistricting Committee spent \$165,000 supporting Dallet, highlighting the importance of state supreme courts in the 2020 round of redistricting.

West Virginia

	TOTAL	RANK
Total spending	\$3,767,767	4
Candidate fundraising	\$1,333,126	9
Group spending	\$2,434,641	3
Party spending	\$0	N/A
TV spending	\$588,360	7

Wisconsin (2017)

	TOTAL	RANK
Total spending	\$151,140	17
Candidate fundraising	\$151,140	17
Group spending	\$0	N/A
Party spending	\$0	N/A
TV spending	\$0	N/A

Wisconsin (2018)

	TOTAL	RANK
Total spending	\$5,336,710	2
Candidate fundraising	\$2,711,636	4
Group spending	\$2,623,754	2
Party spending	\$1,320	3
TV spending	\$2,415,340	2

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► **National Institute on Money in Politics** collects, analyzes, and publishes data on campaign money in state and federal elections. Its 50-state database, which is comprehensive since the 1999–2000 elections, includes campaign contributions for all state high-court judicial races. For more information, visit www.followthemoney.org.



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