



The League of Women Voters of Ohio Education Fund imPACT e-newsletter.

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2010 Judicial Elections Increase Pressure on Courts, Reform Groups Say

(Excerpted from the Justice At Stake release at http://www.justiceatstake.org/state/judicial_elections_2010/)

November 3, 2010

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NOVEMBER 3, 2010—Election Day 2010 brought a new round of special interest money, nasty ads and wedge issue politics into America’s courtrooms, breaking several spending records and spreading costly, ideological hardball campaigns into new states. The roar of this year’s national politics—which favored populists and partisans, and tilted against incumbents and the establishment—played out in judicial elections and referenda in a number of states.

In Michigan, Supreme Court candidates were vastly outspent by political parties and an out-of-state group in a TV ad war whose cost was estimated at \$5 million to \$8 million. In Alabama, combined spending exceeded \$3.2 million. Election costs remained modest in North Carolina, which offers public financing to qualifying appellate court candidates.

In Iowa, three Supreme Court justices were ousted after out-of-state interest groups spent nearly \$700,000 to unseat them over their votes in a 2009 gay marriage case. But organized efforts to unseat high court justices failed in Illinois, Colorado, Alaska, Kansas and Florida. Non-candidate groups spent heavily on TV ads in Michigan and Ohio, while Iowa and Illinois set records for the most expensive retention elections ever in their states.

As they have done several times over the last decade, voters rejected efforts to change judicial selection systems. In Nevada, Question 1, which would have replaced competitive elections with judicial appointments and retention contests, was defeated. But in Kansas, voters in District 1 also defeated efforts to scrap a merit selection system and switch to competitive contests.

“Pressure on impartial justice is growing,” said Bert Brandenburg, executive director of the Justice at Stake Campaign. “Judges are facing more demands to be accountable to interest groups and political campaigns instead of the law and the constitution.”

Through Monday, Nov. 1, 2010, slightly more than \$12 million was spent nationally on TV air time this year in state Supreme Court elections. Of that, nearly \$5.1 million — 42% of total

spending for the year — was spent in the week leading up to the election, between Oct. 26 and Nov. 1.

Including \$4.6 million spent on TV ads in 2009, the current total for the 2009-2010 election cycle is approximately \$16.6 million, about the same amount spent on judicial television advertising in the last non-presidential election cycle, 2005-2006.

“As in past years, judicial election campaigns featured substantial numbers of hard-hitting, mud-slinging attack ads – many of which were as nasty as those seen in any political campaigns,” said Adam Skaggs, Counsel at the Brennan Center for Justice at NYU School of Law.

Final estimates of TV ad spending, as recorded by TNS Media Intelligence/CMAG, are expected within a few days. Complete candidate fundraising data often are not fully available until weeks, and in some cases months, after the elections, meaning that total campaign cost totals tend to rise with time.

Three in four Americans believe that the special-interest money needed to finance such elections influences court decisions. From 2000 through 2009, fundraising by high-court candidates surged to \$206.9 million, more than double the \$83.3 million raised in the 1990s.

This year, heavy spending and angry TV ads spread to several states holding retention elections, which in 2000-2009 had accounted for barely 1 percent of spending in high court races. This year, high-court retention elections in Illinois, Iowa, Colorado and Alaska resulted in about \$4.6 million in total costs—more than twice the \$2.2 million raised for all retention elections nationally in 2000-2009.

In most of the 15 states where 37 justices stood in retention elections, however, campaign expenditures were far lower than in competitive election states.

Overall, 33 states held some type of election. In addition to the 15 states holding one-candidate retention elections, in which incumbents needed a “yes” vote to stay on the bench, 11 states held competitive elections for 18 seats. In seven other states, there were no challengers in elections that technically were competitive, granting automatic victory to the candidate on the ballot.

The following is a round-up of major trends in the 2009-10 judicial election campaign season, as identified by the Justice at Stake Campaign and the Brennan Center for Justice. Further information is available at the [Judicial Elections 2010](#) web site.

TV Ad Data

Television ads ran this year in fourteen states with elections for the state supreme court: Alabama, Alaska, Arkansas, Colorado, Idaho, Illinois, Iowa, Michigan, Montana, North Carolina, Ohio, Texas, Washington and West Virginia.

Michigan saw the highest overall spending on Supreme Court TV ads, with about \$5.1 million spent on airtime, according to TNS Media Intelligence/CMAG; Ohio is second with more than

\$1.9 million in airtime spending. In both of these states, four candidates competed for two Supreme Court seats. (An additional Ohio Justice, Paul Pfeifer, ran unopposed in a vote in which no TV advertising has aired.)

The highest level of spending in a single-candidate retention race was in Illinois, where incumbent Justice Thomas Kilbride spent more than \$1.6 million on TV airtime through Nov. 1.

For the year, spending on television advertising in Supreme Court races was evenly split between judicial candidates and non-candidate groups. Through Nov. 1, candidates spent more than \$6.1 million on television advertising, while non-candidate groups — including political parties and special interests — accounted for 49% of all television airtime, spending more than \$5.9 million.

Four of the top five spenders on TV airtime in Supreme Court elections are non-candidate groups. The Michigan Republican Party ranked first overall in TV spending (just over \$2 million). Kilbride ranked second (\$1.6 million); the Michigan State Democratic Party ranked third (\$1.4 million); the Partnership for Ohio's Future ranked fourth (about \$846,000); and the Law Enforcement Alliance of America, which spent more than \$780,000 in support of two Republican candidates for the Michigan Supreme Court, ranked fifth.

“Many of the harshest ads were aired by political parties and special interest groups, which accounted for about 49% of all spending on television ads in state Supreme Court elections,” Skaggs said.

Through Nov. 1, spending on TV airtime in states holding single-candidate retention elections has totaled approximately \$2.1 million — approximately 17.5% of all TV spending during that time. This level of spending in retention contests is the greatest since the Brennan Center for Justice began compiling judicial TV ad data in 2000.

Ohio, Alabama

Ohio and Alabama, the two most expensive states for the 2000-2009 decade, showed that high court campaigns can generate big numbers in even relatively quiet years.

Of the \$3.2 million reportedly raised by Alabama candidates through Oct. 19, Republicans outraised Democrats four to one.

In Ohio, the most recent reports showed that candidates had raised \$2.7 million, with the Republicans outraising the Democrats. In addition, the Chamber-related Partnership for Ohio's Future spent more than \$840,000, according to Brennan Center data.

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