

THE NEW POLITICS OF JUDICIAL ELECTIONS 2006

**How 2006 Was the Most Threatening Year Yet to the Fairness and
Impartiality of Our Courts—and How Americans are Fighting Back**



Justice at Stake
c a m p a i g n

717 D Street, NW, Suite 203
Washington, D.C. 20004
Phone (202) 588-9700 • Fax (202) 588-9485
info@justiceatstake.org
www.justiceatstake.org

by

James Sample and Lauren Jones

Brennan Center for Justice at NYU School of Law

Rachel Weiss

National Institute on Money in State Politics

Jesse Rutledge, Editor

Justice at Stake Campaign

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Executive Summary

This fourth edition of “The New Politics of Judicial Elections” shows how 2006 was the most threatening year yet to the fairness of America’s state courts. Special interest pressure is metastasizing into a permanent national campaign against impartial justice: High court elections featured broadcast television advertisements in more than 91 percent of states with contested campaigns, median candidate fundraising hit an all-time high, special interests began to pour money into lower court campaigns, and pushy questionnaires sought to make judges accountable to special interests instead of the law and the Constitution.

As we explain, defenders of fair and impartial courts are fighting back. More states are considering reforms to insulate their courts from special-interest excesses by reforming their judicial elections or advancing proposals to scrap them entirely. Many of America’s judges used the 2006 campaigns to stand up to special interest bullying tactics. Civic and legal organizations are stepping up their efforts to educate Americans about the threat to impartial justice. And when Americans understand the threat, they want to protect the courts that protect their rights: A series of ballot measures that sought to politicize the courts all met defeat at the hands of voters.

TV Ads Continue to Dominate Supreme Court Races

TV Ads Appear in 10 of 11 States. In 2006 television advertisements ran in 10 of 11 states with contested Supreme Court elections, compared to four of 18 states in 2000.

Average State Spending on TV Ads Sets Record. In 2006 average spending on TV airtime per state surpassed \$1.6 million, up from \$1.5 million two years ago.

Television Advertising in Primary Elections is Increasingly the Norm. In 2006 television ads appeared during primary elections in seven of the 10 states in which advertising occurred. Nearly one third of all spots throughout the campaign cycle were in primary campaigns, totaling more than \$4.6 million

Pro-Business Groups Dominate the Airwaves. Business and pro-Republican television advertisements dominated the airwaves in 2006. Pro-business groups were responsible for more than 90 percent of all spending on special interest television advertisements.

Candidates Go Negative. In 2006 the candidates themselves went on the attack, sponsoring 60 percent of all negative ads; two years earlier, they had sponsored only 10 percent of the attack ads, leaving the dirty work to interest groups and political parties.

Candidates Return to Traditional Themes—Sometimes. Slightly more than half of all television ads in 2006 had traditional themes—that is, they focused on the candidate’s qualifications, experience or temperament.

Changing Channels? The Power of Television Advertising Drops in 2006. The candidate with the most on-air support won 67 percent of the time, a modest drop from 85 percent in 2004.

The Judicial Money Chase Spreads to More States

2006 Brings the Priciest Race Ever to Five States. Of the 10 states that had entirely privately financed contested Supreme Court campaigns in 2006, five set fundraising records. Candidates in Alabama combined to raise \$13.4 million, smashing the previous state record by more than a million dollars.

Business Interests Donate Twice as Much as Lawyers. Donors from the business community gave \$15.3 million to high court candidates—more than twice the \$7.4 million given by attorneys.

Interest Groups Bring Their Checkbooks. Third-party interest groups pumped at least \$8.5 million more into independent expenditure campaigns to support or oppose their candidates. About \$2.7 million of that was spent in Washington state alone.

Big Money No Longer Guarantees Success at the Ballot Box. In 2006 the candidate raising more money won 68 percent of the time, down from 85 percent in 2004.

Watch Out Below! Big Money Seeps Down-Ballot. Trial lawyers and corporate interests in a southern Illinois race combined to give more than \$3.3 million to two candidates for a seat on the state court of appeals, quadrupling the state record. Madison County witnessed a \$500,000 trial court campaign, and a Missouri trial court judge was defeated after an out-of-state group poured \$175,000 into a campaign to defeat him.

When Judicial Candidates Speak Out, Who Wins?

Interest Groups Ratchet Up High-Pressure Questionnaires—But Many Judges Refuse to Play Along. Special interests tried to pressure candidates into making statements on the campaign trail that could appear to bias the judges before they take their seats on the bench. A backlash is underway, with many judges and judicial candidates refusing to be trapped by special interest questionnaires.

When Judicial Candidates Speak Out, Who Wins? In 2006 judicial candidates who sought to put disputed political and legal issues at the center of their candidacy lost more often than they won. In state after state, when judicial campaigns began to sound like politics as usual, many voters seemed wary.

Growing Interest in Reforms to Keep Courts Fair and Impartial

Public Financing of Judicial Campaigns. North Carolina's innovative approach to public campaign financing has been a success, and in April 2007 New Mexico passed legislation to become the second state to offer full public financing.

Defense of Merit Selection. In states that use merit selection and retention elections to choose high court judges, two Justice at Stake partners—the Committee for Economic Development and the American Judicature Society—have helped lead the fight to preserve the systems from special-interest and partisan attacks.

Defining Proper Judicial Accountability. The Institute for the Advancement of the American Legal System at the University of Denver recently released two publications that provide the tools to establish or improve judicial performance standards and metrics. If voters have access to the output of a comprehensive and fair evaluation process, everyone wins. And when voters better understand their judges' records, special interests will have less clout to distort them.

Moving Towards Merit Selection. Former Minnesota Governor Al Quie recently led a policy review commission examining how to protect the state's courts from growing special interest pressure. In early 2007, the "Quie Commission" released a report suggesting the state move to a modified "Missouri Plan" system of merit selection with retention elections.

Stronger Recusal Standards. In order to reduce the potential link between interest group pressure and case decisions, many observers believe that the time has come for judges to recuse themselves from at least some cases where contributors argue before them in court—or when campaign trail speech calls their impartiality into question.

Voters Reject Political Tampering with the Courts

Colorado: Amendment 40. Two sides combined to spend over \$2.5 million on a citizen ballot initiative that would have limited the number of terms that appellate judges can serve. The measure was defeated.

Hawaii: Measure 3. Voters rejected a constitutional amendment passed by the Democratic-controlled legislature to lift the mandatory retirement age of state judges in order to deny the Republican governor open slots to fill.

Montana: Constitutional Initiative 98. After a pervasive pattern of fraudulent signature gathering was found, a judicial recall measure was thrown off the Montana ballot.

Oregon: Constitutional Amendment 40. For the second time in four years, voters rejected a proposal to move from statewide to district-based judicial elections for their appellate courts.

South Dakota: Amendment E. By a landslide vote of 89-11, voters dealt a body blow to the "J.A.I.L. 4 JUDGES" movement that proposed to strip immunity from judges and other public officials.

TV Ads Continue to Dominate Supreme Court Races

Broadcast television advertising has rapidly become prominent in the vast majority of state Supreme Court elections.¹ Candidates and groups now almost invariably rely on the airwaves to boost—or bash—contenders for judicial office. Not surprisingly, candidates look to television ads to increase their name recognition to combat voter “roll-off” in judicial elections.² In an ideal world, television ads would help arm voters with information they can use to elect the most qualified, experienced judge. But in reality, television advertising is often used to misrepresent or distort facts, and mislead or scare voters.

Television Advertising Spreads — Since 2000, the percentage of state Supreme Court campaigns featuring television advertising has increased dramatically. That year, television advertisements ran in less than one quarter of states with contested Supreme Court elections. By 2006, television advertising ran in 91 percent of states with contested Supreme Court campaigns (all but Texas).

Business Groups Drown Out the Opposition — Special interest campaigns have often featured a battle between rival camps: business against labor, plaintiffs against business, pro-development against pro-conservation. But in 2006, interest group advertising overwhelmingly favored pro-business, pro-Republican interests: 85 percent of special interest television advertisements were sponsored by groups on the political right. In fact, nationwide, only two Democratic-leaning groups sponsored television advertising in Supreme Court elections.

Candidates Go Negative — Negative advertising in state Supreme Court campaigns by special interest groups in recent years appears to have paved the way for negative advertising by judicial candidates themselves. Whereas in 2004 special interest groups and political parties sponsored nearly nine of ten negative ads, candidates sponsored 60 percent of all negative ads in the 2006 cycle.

¹ The estimated costs of airtime in this report are supported by television advertising data from the nation's 100 largest media markets. The estimates were calculated and supplied by TNS Media Intelligence/CMAG. The calculations do not include either ad agency commission or the costs of production. The costs reported here therefore understate expenditures, and the estimates are useful principally for purposes of comparison within each state.

² Voters who select presidential, gubernatorial, congressional and even local candidates often fail to vote for Supreme Court candidates. A study of 478 state Supreme Court elections held between 1980 and 1994 in 35 states found that in some cases voter roll-off for Supreme Court elections was as high as 65 percent. (Melinda Gann Hall, *Mobilizing Voters in State Supreme Court Elections: Competition and Other Contextual Forces as Democratic Incentives*, Sixth Annual State Politics and Policy Conference, Texas Tech University, at <http://www.depts.ttu.edu/politicalscience/2006Conference/SPP/Mobilizing%20Voters%20in%20Supreme%20Court%20Elections.%20M%20Gann%20Hall.pdf>.)

Percentage of States with Contested Supreme Court Elections
Featuring TV Advertising, 2000–2006

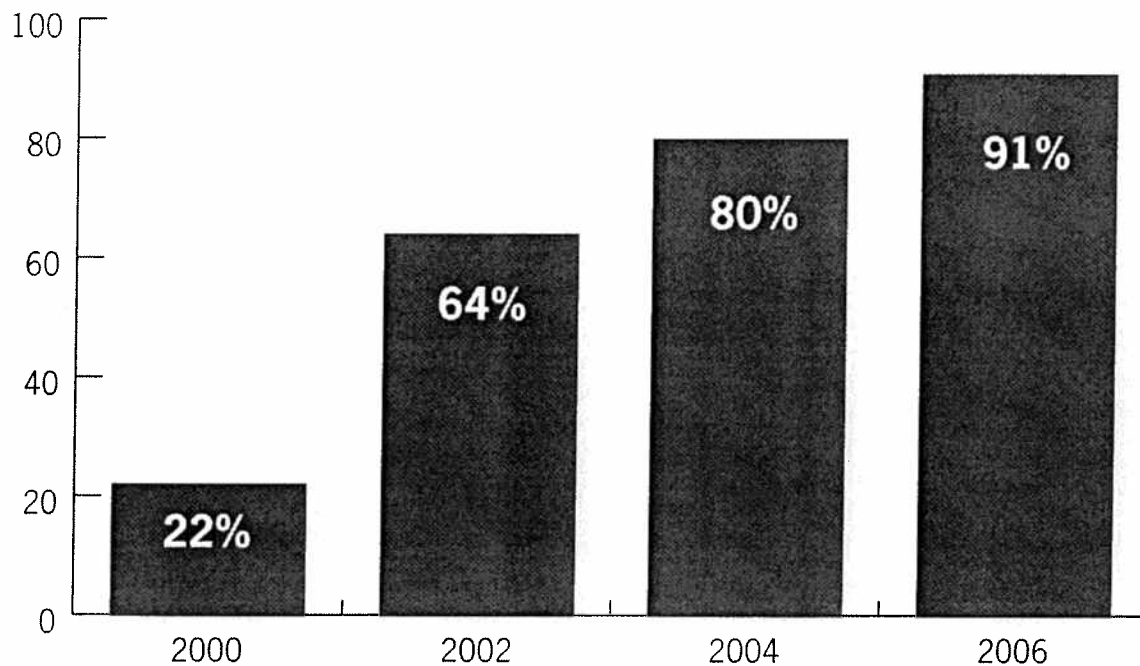


Figure 1.

TV Ads Appear in Supreme Court Races in 10 of 11 States with Contested Elections

In barely half a decade, TV ads have become the norm in Supreme Court races. Although there were contested Supreme Court elections in 18 states in 2000, television advertisements ran in only four. Two years later, television advertisements ran in nine of the 14 states with contested Supreme Court elections. By 2004 viewers in 16 of 20 states with contested Supreme Court elections witnessed television advertisements about high court candidates. In 2006 television advertisements ran in 10 of 11 states with contested Supreme Court elections. Of states with contested Supreme Court elections in 2006, only Texas lacked television advertising. Since our nationwide tracking of TV ads began in 2000, only two states with contested high court elections—Minnesota and North Dakota—have remained free of network television advertising.

State in Focus: Alabama

On January 1, 2006 Alabama Supreme Court Justice Tom Parker publicly excoriated his fellow justices for following U.S. Supreme Court precedent and setting aside the death penalty for Renaldo Adams, a juvenile. Justice Parker had recused himself from the Adams case, because he had participated in Adams' prosecution. In an op-ed published in the *Birmingham News*, Parker stated that his "fellow Alabama justices freed Adams from death row not because of any error of our courts but because they chose to passively accommodate—rather than actively resist—the unconstitutional opinion of five liberal justices on the U.S. Supreme Court." Justice Parker's suggested defiance of U.S. Supreme Court precedent and his outspoken criticism of his fellow justices landed him in the national news and kick-started his campaign for chief justice.

With this controversy in the background, the Republican primary campaign for chief justice between Justice Parker and incumbent Chief Justice Drayton Nabers proved extremely contentious. Justice Parker ran one television ad that featured a hand holding a knife and a voiceover that said, "Convicted of rape and murder, Renaldo Adams was sentenced to death, but now Adams is off death row thanks to Chief Justice Drayton Nabers and the Alabama Supreme Court using a 5 to 4 decision based on foreign law and unratified UN treaties."



[Announcer]: Nine years ago a vicious thug raped and repeatedly stabbed a pregnant woman leaving her and her



unborn child to die. Convicted of rape and murder Renaldo Adams was sentenced to



death, but now Adams is off death row thanks to Chief Justice



Chief Justice Drayton Nabers

Drayton Nabers and the Alabama Supreme Court using a 5 to 4 decision

Figure 3. Copyright 2006 TNS Media Intelligence/CMAG

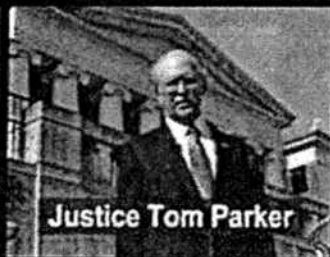
Alabama viewers saw a staggering 17,830 spots in the 2006 high court campaigns—more than the total number of spots aired in the 2000, 2002 and 2004 Alabama campaigns combined—and the highest number of spots ever aired in one state's Supreme Court election cycle.

Records fell on the fundraising side, too: Sue Bell Cobb—the eventual victor—and Chief Justice Nabers engaged in a fundraising arms race in the general election. While he raised \$4,958,156 for the primary and general elections combined, she raised \$2,621,838 in the general alone. Combined with the \$618,962 raised by Parker, the campaign for the Alabama Chief Justice's seat totaled \$8.2 million, making that race the most expensive in state history, the most expensive campaign anywhere in the nation in 2006, and the second most expensive judicial race in American history.

Four other races for the state's highest court brought in \$5.2 million in campaign donations. The sum total for all the races—\$13.4 million—set a state record for aggregate high court fundraising. Since 1993, candidates for the Alabama Supreme Court have raised \$54 million.



based on foreign law and unratified UN treaties.



[Parker]: "Alabama courts need to stand up for American Law not foreign law.



Some things are worth fighting for."
[Announcer]: Tom Parker for Chief Justice. Fair, balanced, unafraid.



[PFB]: Parker for Chief Justice

Average State Spending on TV Ads Sets Record

In 2006 candidates, special interest groups, and political parties combined to spend almost \$16.1 million on television advertising in high court campaigns. In 2004 average spending per state on TV ads was a little over \$1.5 million. In 2006 average spending surpassed \$1.6 million. As Figure 2 illustrates, three states—Alabama, Georgia and Ohio—featured more than \$2 million in television advertising in 2006 Supreme Court races.

Airtime Summary, 2006 Supreme Court Elections

State	Candidate		Group		Party		Total	
	Airings	Cost	Airings	Cost	Airings	Cost	Airings	Cost
Alabama	15,760	\$5,310,330	2,070	\$993,080	0	\$0	17,830	\$6,303,410
Arkansas	84	\$49,125	0	\$0	0	\$0	84	\$49,125
Georgia	757	\$960,554	1,073	\$1,321,494	570	\$550,003	2,400	\$2,832,051
Kentucky	2,357	\$772,563	0	\$0	0	\$0	2,357	\$772,563
Michigan	83	\$97,871	551	\$709,058	0	\$0	634	\$806,929
Nevada	845	\$447,712	50	\$39,929	0	\$0	895	\$487,641
North Carolina	2,746	\$914,800	327	\$272,715	0	\$0	3,073	\$1,187,515
Ohio	4,260	\$1,196,718	1,220	\$799,396	283	\$94,986	5,763	\$2,091,100
Oregon	995	\$470,970	0	\$0	0	\$0	995	\$470,970
Washington	0	\$0	1,081	\$1,055,148	0	\$0	1,081	\$1,055,148
Total	27,887	\$10,220,643	6,372	\$5,190,820	853	\$644,989	35,112	\$16,056,452

Figure 2.

Voters are seeing an increasing number of ads as well (see Figure 4). In 2006 voters in seven states—Alabama, Georgia, Kentucky, Nevada, North Carolina, Oregon, and Washington—saw more total spots than ever before.

Television Advertising in Primary Elections Is Increasingly the Norm

In 2006 television ads appeared during primary elections in seven of the 10 states in which advertising occurred. Nationwide, nearly one third of all spots throughout the campaign cycle ran in primary campaigns, totaling more than \$4.6 million. That slightly eclipses the \$4.3 million spent on primary advertising in 2004, and is almost 48 times the \$96,000 spent airing primary TV ads in 2002.

Of the 10 states with television advertising in 2006, seven (Arkansas, Georgia, Kentucky, Nevada, North Carolina, Oregon, and Washington) hold nonpartisan elections.³ But 71 percent of all of those primary election spots ran in Alabama, one of a handful of states with partisan elections.

Number of Television Ad Airings by State and Election Cycle, 2000-2006

	AL	AR	GA	ID	IL	KY	LA	MI	MS	NV	NM
2000	4,758	0	U	0	0	0	0	5,763	218	0	U
2002	3,594	U	0	133	1,473	U	U	1,030	1,479	233	0
2004	9,377	242	453	U	7,500	205	315	1,512	1,479	867	326
2006	17,830	84	2,400	U	N/A	2,357	U	634	N/A	895	N/A
Total	35,559	326	2,853	133	8,973	2,562	315	8,939	3,176	1,995	326

Figure 4. A U indicates uncontested elections. N/A indicates there were no open judicial seats.⁴

³ Although party affiliations are not listed on the ballot in general elections in Michigan or Ohio, we classify them as partisan contests for purposes of analysis. In Michigan candidates are nominated in political party conventions and in Ohio justices run in partisan primary elections. In states with nonpartisan elections, the primary sometimes decides the winner outright. Other times, the primary serves the more traditional role of reducing the number of candidates on the general election ballot.

⁴ Data is gathered from the top 100 media markets nationally. TV airings data for Pennsylvania and Wisconsin, which hold odd-year elections, have not been analyzed over these four cycles. Data for Montana are unavailable because the state does not have a media market in the top 100. Minnesota and North Dakota have not yet seen broadcasting advertising in their high court campaigns. Accordingly they are not included in this chart.

Pro-Business Groups Dominate the Airwaves

Business and pro-Republican television advertisements dominated the airwaves in 2006. Pro-business groups were responsible for more than 90 percent of all spending on special interest television advertisements (accounting for 85 percent of interest groups spots). FAIRJUDGES.NET, a North Carolina 527 group backed by trial attorneys and major Democratic Party donors, and CITIZENS TO UPHOLD THE CONSTITUTION, a Washington state coalition of labor, environmental, tribal, and trial lawyers, were the only two progressive groups to advertise. In addition, one trial lawyer in Ohio, Michael Dyer, independently funded TV ads to support A.J. Wagner's campaign. The dominance of advertising by business groups has increased since 2000 (see Figure 5). Similarly, the Republican Party sponsored more than two-thirds of all party advertisements.

Whereas in 2004 special interest groups went head-to-head in four states, accounting for 90 percent of the special interest spending, in 2006 special interest groups only faced off against each other in Washington state (see Washington feature on pages 12–13).⁵ Television spending by interest groups in other states was literally entirely one-sided.

	NC	OH	OR	TX	WA	WV	Total
	0	11,907	0	0	0	0	22,646
	0	13,105	U	555	37	N/A	21,639
	284	14,139	181	0	273	5,096	42,249
	3,073	5,763	995	0	1,081	N/A	35,112
	3,357	44,914	1,176	555	1,391	5,096	121,646

⁵ The PARTNERSHIP FOR OHIO'S FUTURE—which shares a mailing address and has key overlapping staff members with the Ohio Chamber of Commerce—sponsored advertisements to support incumbent Justice Terrence O'Donnell and Robert Cupp. Trial lawyer Michael Dyer sponsored advertisements to support A.J. Wagner, who lost a Democratic primary.

Comparative Airtime Spending by Interest Groups, 2000–2006

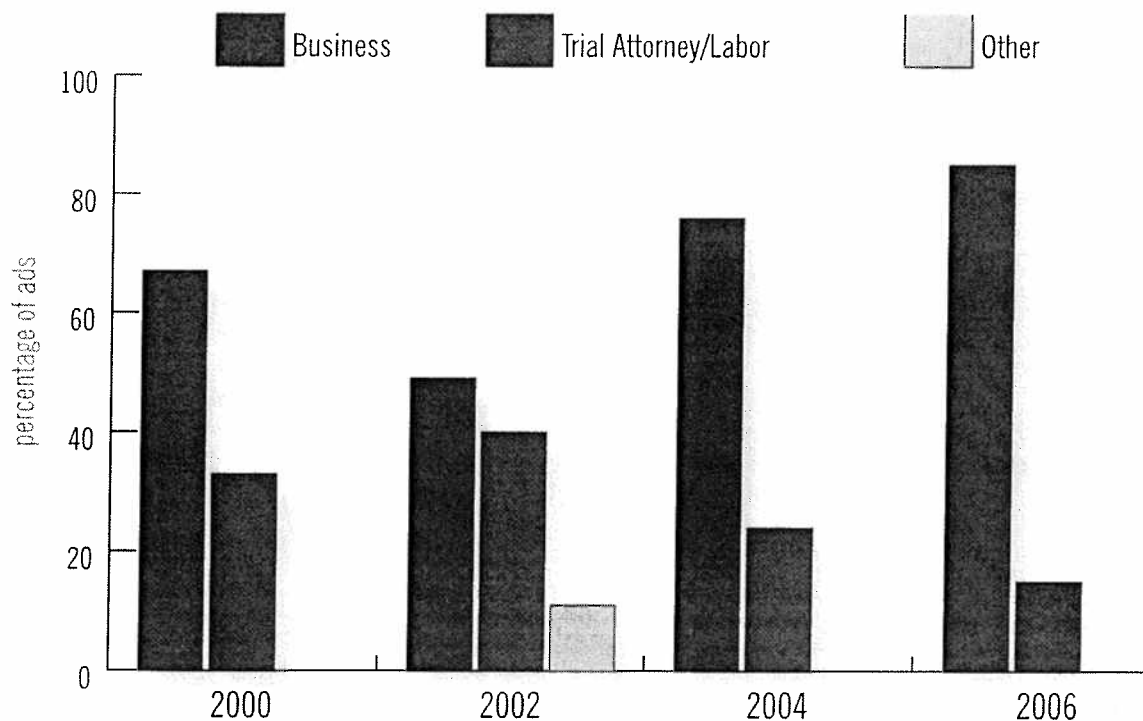


Figure 5.

Candidates Go Negative

Historically, special interest groups and political parties have proven to be the attack dogs of Supreme Court campaigns. In 2004 special interest groups and political parties sponsored almost nine out of ten negative ads. In 2006 however, it was the candidates themselves who went on the attack, sponsoring 60 percent of all negative ads.⁶ In Alabama, Georgia, and Nevada candidates hurled insults and accusations that would have been unbecoming even in congressional campaigns, much less in campaigns by individuals whose judicial temperament is an important qualification for office.

- In **Alabama** the campaign for Chief Justice turned extremely negative in the early days of a primary between the incumbent and his challenger, an associate justice on the court. An ad sponsored by challenger Justice Tom Parker featured an ominous photo of a hand holding a knife and newspaper headlines about a murder. Said the narrator, “Convicted of rape and murder, Renaldo Adams was sentenced to death, but now Adams is off death row thanks to Chief Justice Drayton Nabers and the Alabama

⁶ In both 2006 and 2004, negative ads represented about 20 percent of the total ads aired.

Supreme Court.” Nabers countered with an ad that said, “Tom Parker doesn’t do his job. He wrote only one opinion for the court in his first year as a judge.”

- Nabers defeated Parker, but the general election campaign against Judge Sue Bell Cobb soon turned negative as well. Nabers ran ads accusing Cobb of being bankrolled by gambling bosses and trial lawyers. Cobb ran ads accusing Nabers of being in the pocket of oil and insurance companies.
- In **Georgia** Justice Carol Hunstein ran an ad that said, “Mike Wiggins was sued by his own mother for taking her money. He sued his only sister. She said he threatened to kill her while she was eight months pregnant. A judge ordered Wiggins never to have contact with her again.”
- THE SAFETY AND PROSPERITY COALITION simultaneously ran an ad accusing Hunstein of legislating from the bench. After characterizing several of her rulings, the ad said, “If liberal Carol Hunstein wants to make laws, she should run for the legislature instead of judge.”
- In **Nevada** Justice Nancy Becker ran an ad with her opponent’s picture and a voiceover that said, “First she took thousands in contributions from two convicted topless club owners. Then she slashed bail for gang bangers who brutalized an MGM employee.”

Candidates Return to Traditional Themes—Sometimes

Slightly more than half of all television ads in 2006 had traditional themes—that is, they focused on the candidate’s qualifications, experience or temperament. Nevertheless, family and conservative values continued to be a major point of emphasis. Almost 30 percent of TV ads nationwide mentioned family values, and 38 percent touted the candidate’s conservative values.

- In **Alabama** candidates competed for the badge of most conservative. One ad sponsored by Chief Justice Drayton Nabers said, “Drayton Nabers is a conservative leader, fighting for our values. A family man and the author of a book on the importance of biblical character.” Another ad said that Judge Sue Bell Cobb was “too liberal for Alabama.” Cobb, a Democrat, countered with an ad that lauded her work to defend abused children and imprison criminals. After each characteristic she defended, “That doesn’t make me liberal.”

Topics of Ads, 2006 Supreme Court Elections

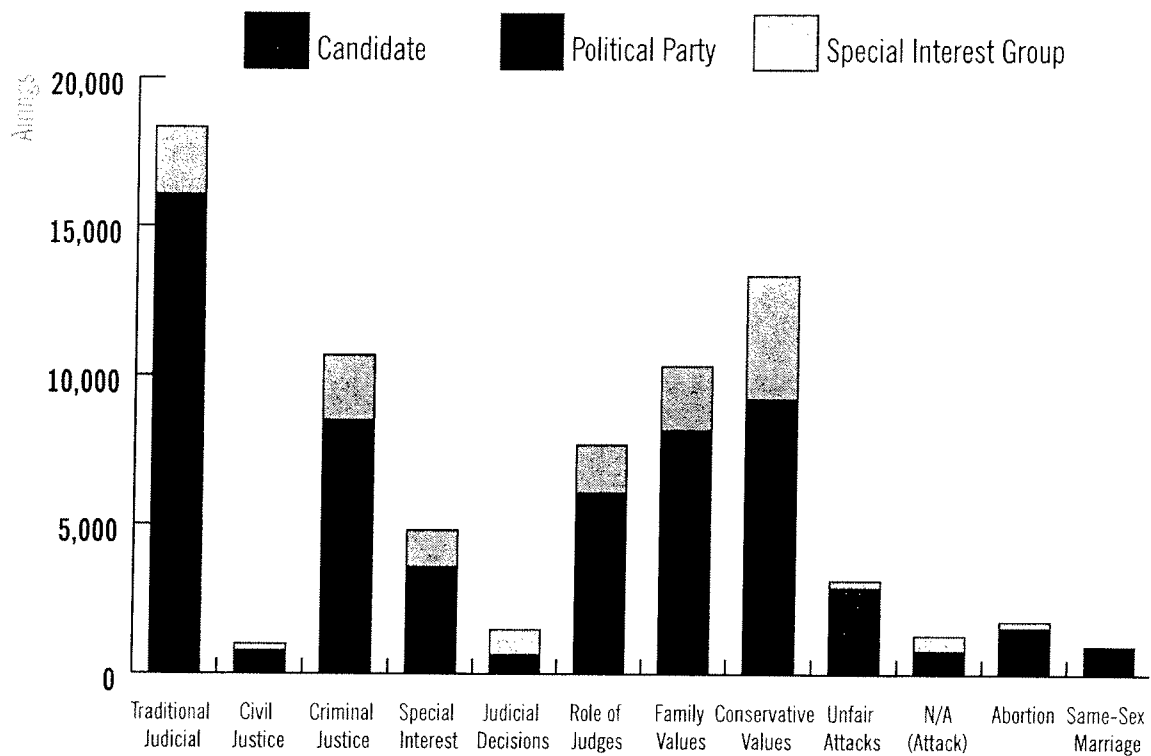


Figure 6.7

- In **Ohio** an ad sponsored by THE PARTNERSHIP FOR OHIO'S FUTURE—which shares a mailing address and has key overlapping staff members with the OHIO CHAMBER OF COMMERCE—said, “Bob Cupp is a man of principle who led the fight against liberal activists to preserve Ohio’s motto, ‘With God, all things are possible.’”

Interestingly, ads arguing that small businesses and working people need a fair shot in the courtroom—one of the top three themes in 2004—virtually disappeared from the airwaves in 2006. But the role of judges re-emerged as a major issue. More than one in five ads nationwide discussed how judges should act while on the bench.

- In **North Carolina** an ad sponsored by Chief Justice Sarah Parker explained, “I believe a judge has the obligation to be hard working, fair minded, and willing to make tough decisions.”

7 Ads can address more than one topic. Ads coded as “Not Applicable” addressed issues irrelevant to the judiciary. For example, in Alabama Justice Tom Parker ran an ad that said, “Alabama taxes are the lowest in the country, and that’s no thanks to Drayton Nabers. Does anyone think he won’t force them higher if he wins a six-year term?”

With the influx of negative ads by candidates, perhaps it is unsurprising that nearly 10 percent of ads claimed that the candidate was being unfairly attacked by his or her opponent.

- In **Nevada** Nancy Saitta ran an ad that said, “I’m sick and tired of negative ads, aren’t you? My opponent has chosen the words of a convicted felon to attack me. It might sell newspapers, but it’s just not true.”

Changing Channels?

The Power of Television Advertising Drops in 2006

In 2004, of the 34 races that featured TV ads, 29 were won by the candidate with the most on-air support—an 85 percent success rate. In 2006 the ad war winners won less frequently. In the 21 races featuring TV advertising, the candidate with the most on-air support still won 14 times, lowering the winning percentage to 67 percent. Business groups who advertised also saw their success rate drop. To be sure, pro-business special interest groups outspent progressive interest groups by more than nine-to-one on television advertising in Supreme Court elections in 2006. But only 71 percent of candidates for whom pro-business groups sponsored ads won a seat on the bench.⁸ All five candidates supported by television advertising by progressive groups won election.

The highest spending interest group, the SAFETY AND PROSPERITY COALITION—a Georgia group that received the majority of its funding from the AMERICAN JUSTICE PARTNERSHIP, an arm of the NATIONAL ASSOCIATION OF MANUFACTURERS—spent more than \$1.3 million on advertisements that supported Mike Wiggins and attacked his opponent, Justice Carol Hunstein. THE GEORGIA REPUBLICAN PARTY spent an additional \$550,003 to support Wiggins. Hunstein sponsored her own advertising, spending \$960,000. Because Hunstein’s advertisements were paid for by her campaign, Georgia law limited contributions to \$5,000 each. Outside groups, like those supporting Wiggins, were not subject to similar limitations. Hunstein was re-elected. (See the Georgia profile on pages 22–23.)

Watch Supreme Court television ads at justiceatstake.org.



⁸ In North Carolina FAIRJUDGES.NET ran one advertisement supporting Sarah Parker, Mark Martin, Patricia Timmons-Goodson, and Robin Hudson. Mark Martin is a Republican; the other three are Democrats. All four candidates won election.

State in Focus: Washington

In Washington special interest groups were the only advertisers in the high court races, running fierce attacks against Chief Justice Gerry Alexander and challenger John Groen. Although only four unique ads ran in the primary and the airwaves were silent during the general election, the messages they sent provide a stark warning about what can happen when campaigns descend into mudslinging. On the right, two special interest groups portrayed 70-year-old Alexander as too old for the job, questioned his character, and implied that he would trample voters' property rights. Meanwhile, a group on the left accused Groen of pandering to far-right extremists.

One ad funded by IT'S TIME FOR A CHANGE, a political action committee affiliated with the BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, accused Alexander of inappropriately supporting Justice Bobbe J. Bridge after she was arrested for drunk driving. The implication was that Alexander was more interested in protecting a friend than in upholding justice.

Perhaps the most inflammatory advertisement in Washington state in 2006 was sponsored by AMERICANS TIRED OF LAWSUIT ABUSE, a national interest group based in Virginia, that featured a woman whose son was murdered saying, "The Andress decision let my son's killer walk free. . . if Justice Alexander hadn't voted for this

Percentage of Ads Sponsored by Interest Groups in
2006 Supreme Court Elections, by State

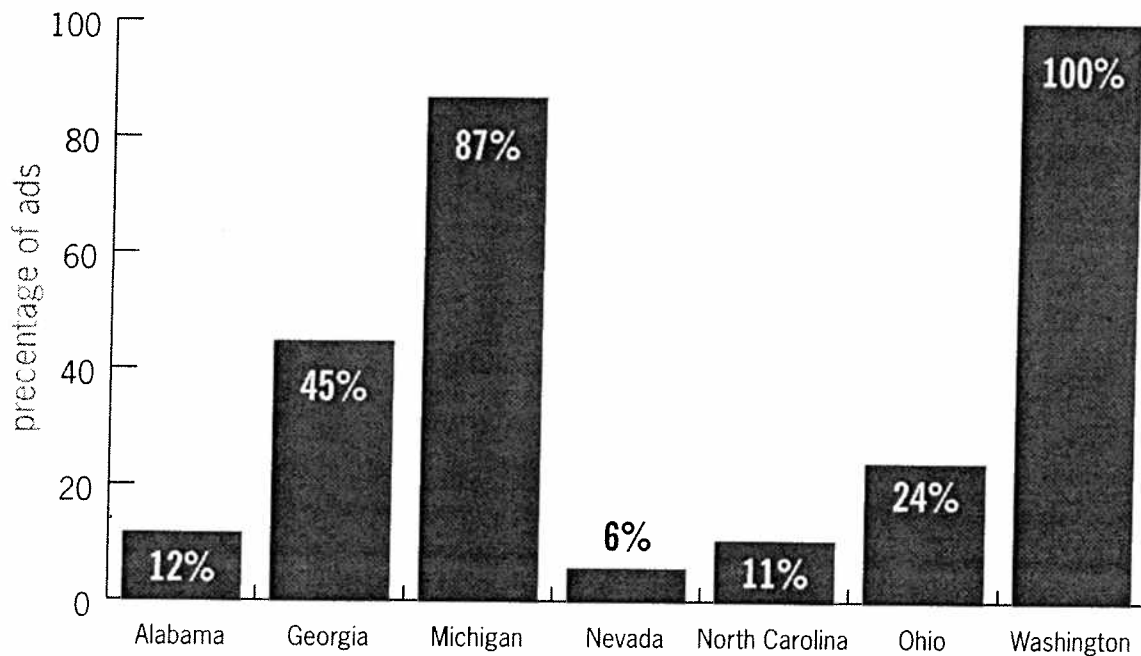


Figure 7.

decision, this wouldn't have happened." The ad did not explain the basis or context of the Andress decision or mention that four other justices voted with Alexander.

On the other side, CITIZENS TO UPHOLD THE CONSTITUTION, a coalition of trial lawyers and labor, environmental, and tribal groups ran an ad saying, "John Groen and far right extremists are trying to buy our Supreme Court. So extreme they gut protections for our clean air and water. They oppose stem cell research and a woman's right to choose." Groen had never taken a position on any of the issues mentioned.⁹

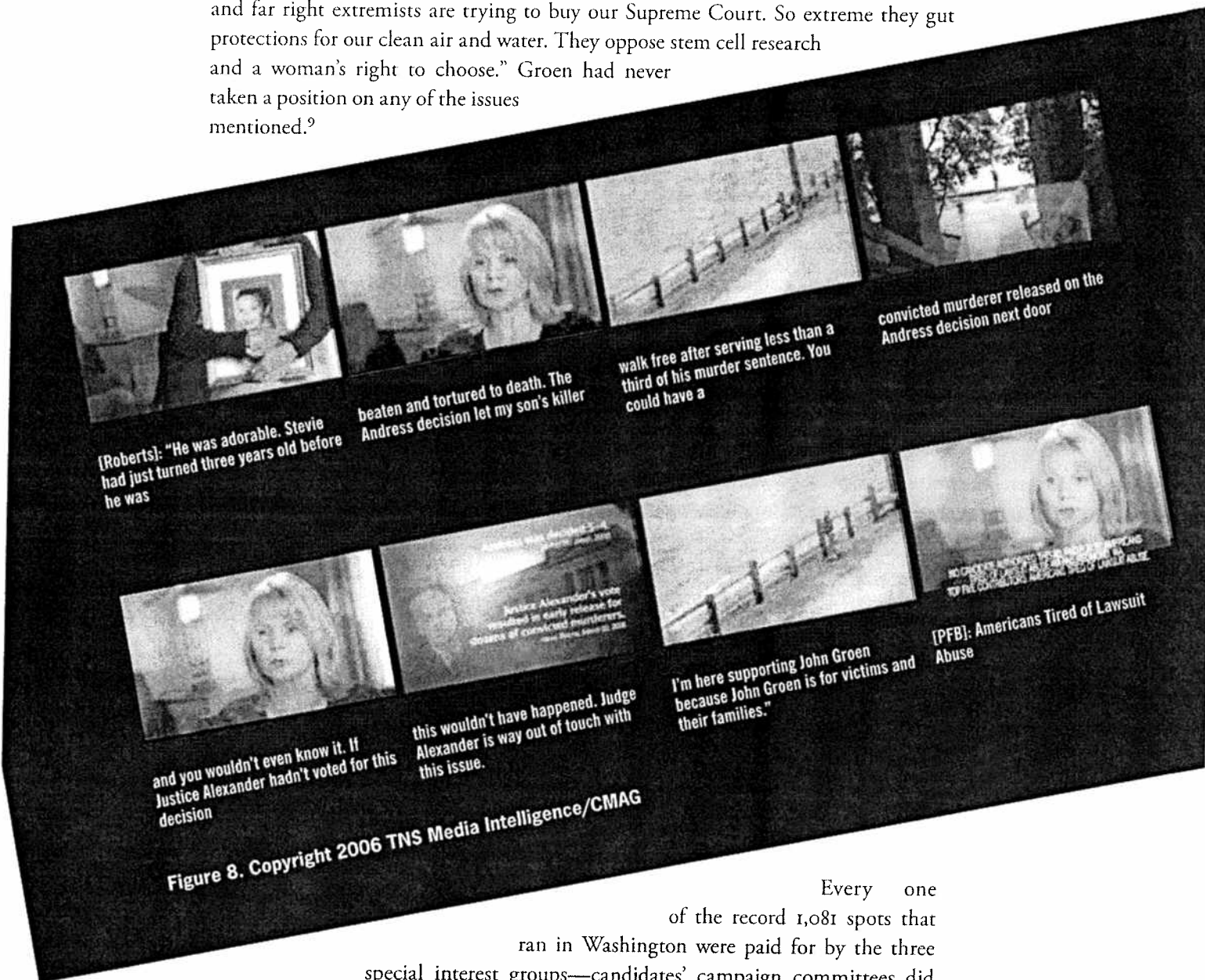


Figure 8. Copyright 2006 TNS Media Intelligence/CMAG

Every one of the record 1,081 spots that ran in Washington were paid for by the three special interest groups—candidates' campaign committees did not directly purchase a single television advertisement in Washington in 2006. Although the pro-business groups outspent the opposition on airtime by almost four to one, Groen lost.

⁹ "Odious Ads Smell Up Supreme Court Race," *Seattle Times*, September 17, 2006.

The Judicial Money Chase Spreads to More States

High-dollar court campaigns were once seen as abnormal battles in the ongoing state tort liability wars between trial lawyers and business groups. Now these costly campaigns are the norm. In the new politics of judicial elections, elected high court justices must routinely raise big money from special interests and attorneys whose cases they may later decide.

Since 1999 candidates for America's state high courts have raised over \$157 million, nearly double the amount raised by candidates in the four cycles prior. In the 2005-2006 cycle, candidates for state Supreme Court seats combined to raise \$34.4 million.¹⁰ The median amount raised in 2006 was \$243,910, up from \$201,623 in the 2004 election cycle. Third-party interest groups pumped at least \$8.5 million more into independent expenditure campaigns to support or oppose their candidates. In short, getting on to the bench has never been so expensive for so many.

2006 Brings Priciest Race Ever to Most States

Of the 10 states that had entirely privately financed contested Supreme Court campaigns in 2006, five (AL, GA, KY, OR, and WA) set state records for candidate fundraising in a single court race, as well as records for total fundraising by all high court candidates. Once independent expenditures are factored in, the dollar figures in many states climb much higher.

Candidates in **Alabama** combined to raise \$13.4 million, smashing the previous state record by more than a million dollars.¹¹ Three candidates for chief justice combined to raise \$8.2 million, setting a state record for the most expensive single race, and leading the winner to press for reform.¹² Since 1993, candidates running for Alabama's Supreme Court have raised more than \$54 million, and three of the four most expensive court races in American history have been fought out in Alabama. More details on the Alabama campaigns can be found on pages 4-5.

¹⁰ The aggregate decreased from the \$46.8 million raised in 2004, in large part because there were 27 contested races for state Supreme Court seats in 2006, compared to 33 in 2004.

¹¹ A previous edition of *The New Politics of Judicial Elections* incorrectly reported that candidates in the 2000 Alabama Supreme Court elections combined to raise over \$13 million. Records on file with the Alabama Secretary of State and the National Institute on Money in State Politics indicate that the correct figure for 2000 was \$12.3 million.

¹² This race also ranks as the second most expensive court campaign in American history, outpaced only by the \$9.3 million raised in a 2004 Illinois Supreme Court campaign.

Total Candidate Fundraising, 2005–2006 Supreme Court Elections

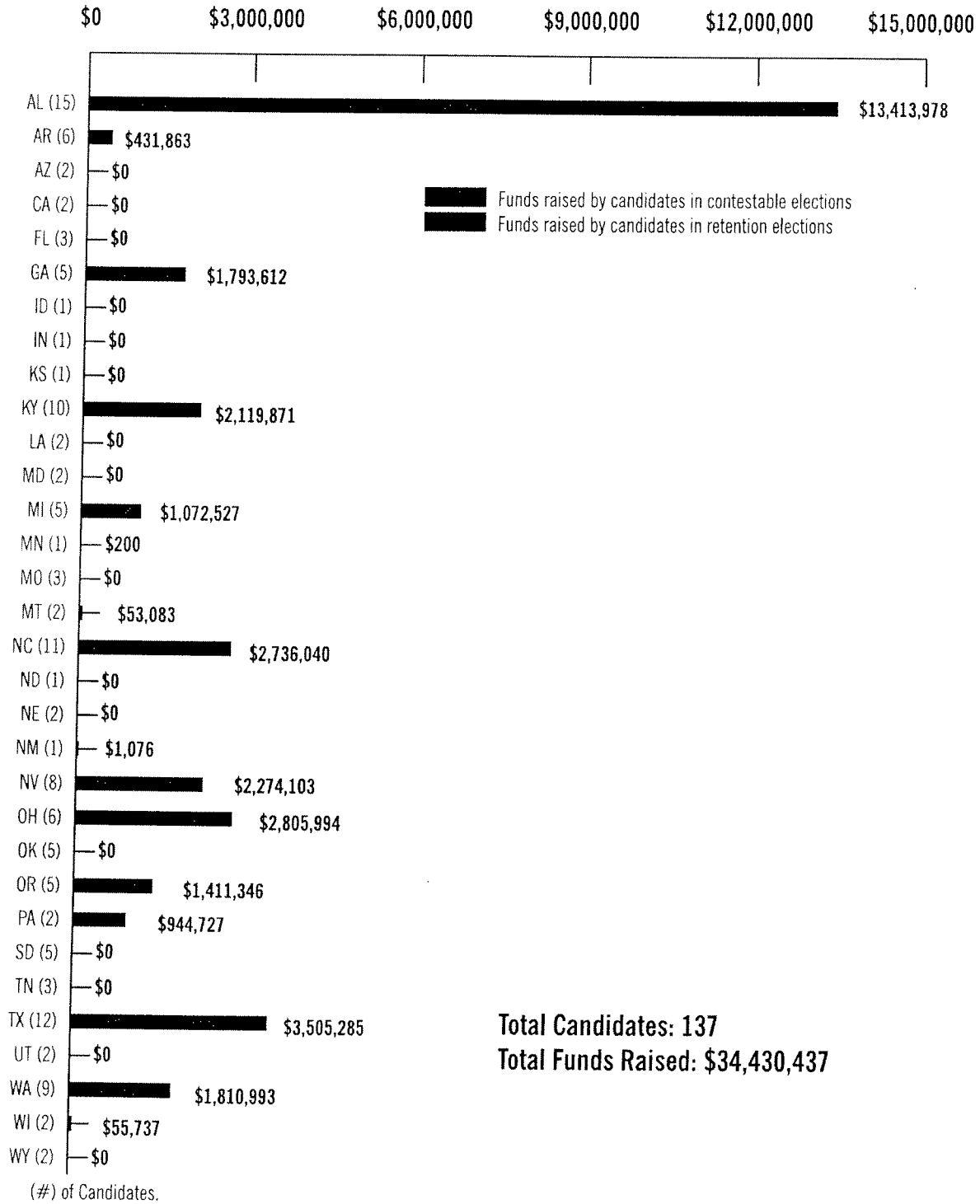


Figure 9.

Median Candidate Fundraising, 1999-2006 Supreme Court Elections

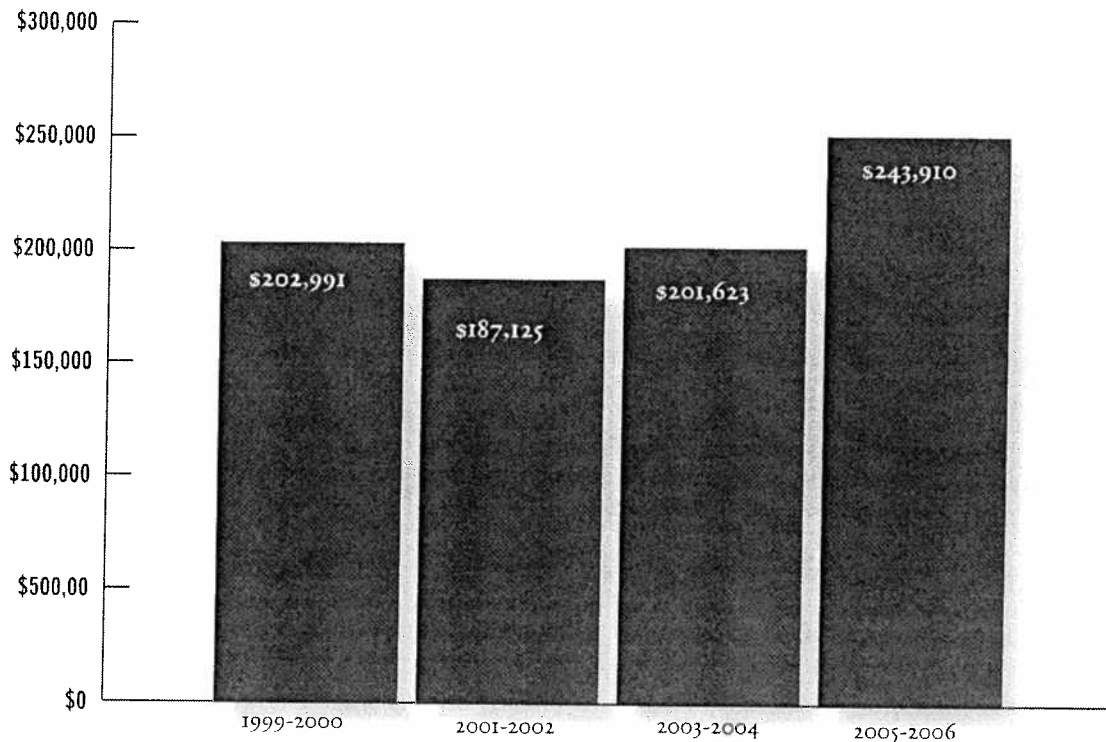


Figure 10. This figure shows the median amount raised by candidates for state Supreme Court seats who raised any money in their election campaign. A detailed breakdown by election type is shown on page 25.

Justice Carol Hunstein in **Georgia**, facing an assault from national business groups, raised \$1.38 million in her successful effort to hold her seat. In doing so, she more than doubled the record for fundraising by a candidate for the Georgia Supreme Court, which had been set in 2004. She's the first judicial candidate to break the \$1 million barrier in Georgia.

Three incumbents on the **Washington** Supreme Court attracted six challengers (though only half raised any money). The six candidates that did raise money combined to pull in \$1.8 million—a 31 percent jump in candidate fundraising from Washington's 2004 campaign. In 2006, about \$2.7 million more was spent by independent groups, far outstripping the candidates themselves.

In "Missouri Plan" states none of the 38 sitting state Supreme Court justices were targeted in their retention election campaigns in 2006 and only three raised any money. However, in November of 2005, two high court judges faced the wrath of **Pennsylvania** voters angry over a pay raise upheld by the court. Facing noisy and angry "Vote No" campaigns, Justice Russell Nigro raised \$587,970 and Justice Sandra Schultz Newman raised \$356,758 to defend themselves. Nigro narrowly lost, while Newman retained her seat by the slimmest of margins.

Source of Contributions to 2005–2006 Supreme Court Candidates

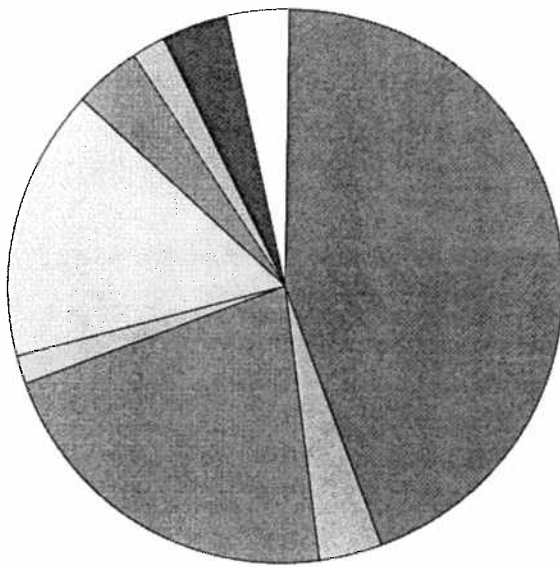


Figure 11.

Sector	Amount	Percent
Business	\$15,261,577	44%
Lawyers	\$7,358,826	21%
Unknown	\$5,419,367	16%
Party	\$1,376,455	4%
Candidate	\$1,296,748	4%
Other	\$1,232,306	4%
Public Subsidy	\$1,222,848	4%
Small Contributions	\$680,865	2%
Labor	\$581,445	2%
Total	\$34,430,437	100%

Business Interests Donate Twice as Much as Lawyers

This chart describes total contributions of \$34,430,437 to the 88 candidates who raised funds in the 2005–2006 state Supreme Court elections. Research by the National Institute on Money in State Politics has identified 84 percent of the funds by interest. The \$15,261,577 donated from business interests in 2005–2006 represents 44 percent of all donated funds—the most ever donated from any one single sector since the Institute began its recordkeeping in 1989. In 2005–2006, contributions from lawyers—\$7,358,826 or 21 percent—amounted to less than half of what business gave. Donations from political parties also dropped precipitously from 14 percent in 2003–2004 to only four percent in 2005–2006.

Relative Share of Contributions by Donor Interest, 1999–2006 Supreme Court Elections

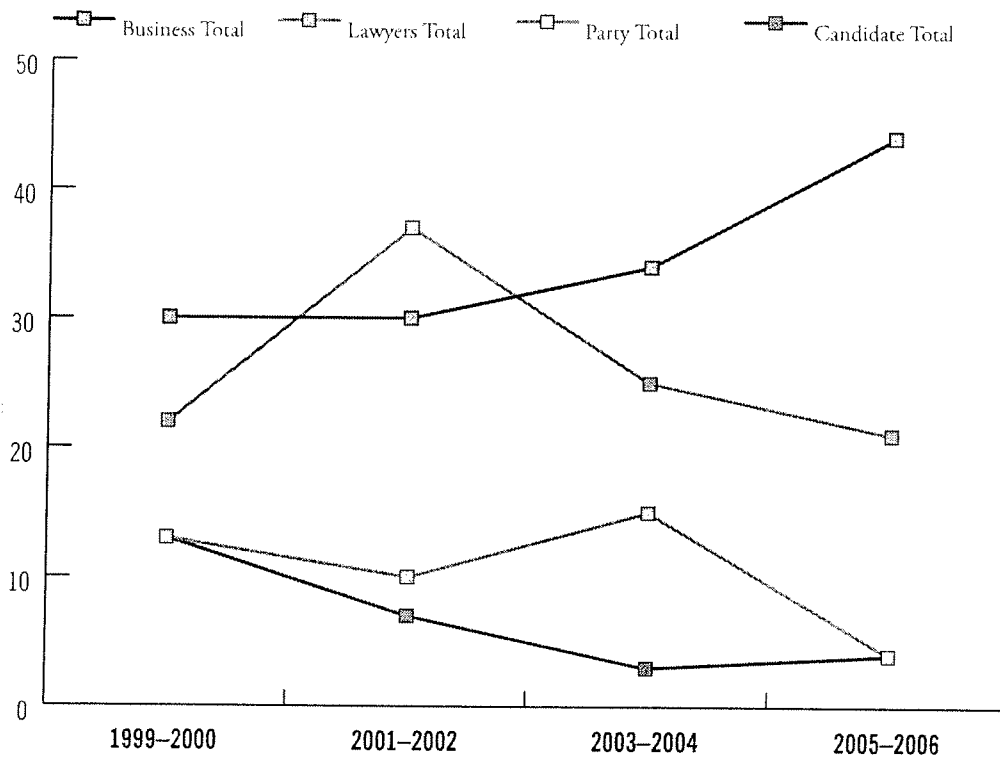


Figure 12.

Interest Groups Bring Their Checkbooks

Wealthy special interests also spent millions more to sway judicial elections, above and beyond their contributions to candidates. In many cases, independent expenditures from special interests significantly outpaced the candidate they were opposing. Third party groups are empowered by an absence of campaign finance regulation in many states, though in some they must disclose their donors. Absent contribution limits, which few states impose on independent expenditure committees, these groups routinely raise money in chunks of \$100,000 and up (see Figure 13).

In **Ohio** and **Michigan** organizations established by the U.S. Chamber of Commerce spent millions of dollars to support four candidates: Two incumbents in Michigan, and one incumbent and a candidate for an open seat in Ohio.

The **PARTNERSHIP FOR OHIO'S FUTURE**—which shares a mailing address and staff with the **OHIO CHAMBER OF COMMERCE**—raised \$1.3 million, according to campaign finance records, to back Justice Terrence O'Donnell and Robert Cupp. **Ohio's** campaign finance law allows unlimited corporate and union expenditures to support or oppose judicial candidates.

Despite token opposition in **Michigan**, two incumbent justices combined to raise close to \$1 million. Justice Maura Corrigan raised \$677,444 but also received over \$700,000 in television advertising support from the MICHIGAN CHAMBER OF COMMERCE.¹³

The NATIONAL ASSOCIATION OF MANUFACTURERS made a national splash in early 2005 when it announced that it would begin to support and oppose candidates for state judicial office through its AMERICAN JUSTICE PARTNERSHIP.¹⁴ Jack Roberts, an unsuccessful candidate for the Oregon Supreme Court, received two \$150,000 checks from the PARTNERSHIP.¹⁵ But the new business tiger's biggest investment was in **Georgia**, where the PARTNERSHIP-supported SAFETY AND PROSPERITY COALITION spent \$1.75 million on an independent campaign backing Mike Wiggins, a former deputy associate attorney general in the Justice Department, against incumbent Justice Carol Hunstein (see Georgia state profile on pages 22–23).

While candidates in **Washington** were busy breaking a fundraising record set just two years before, interest groups there provided nearly two dollars in independent expenditures for every one dollar raised by a high court candidate. Independent expenditures in Washington's Supreme Court campaigns totaled more than \$2.7 million: \$2.1 million in the primary (when two of three races were decided) and more than \$600,000 in the general election, prompting calls from Washington's governor for judicial public financing.¹⁶ IT'S TIME FOR A CHANGE—a political committee established by the BUILDING INDUSTRY ASSOCIATION OF WASHINGTON—was the largest such group, spending \$1.4 million to oppose the re-election of Chief Justice Gerry Alexander. IT'S TIME FOR A CHANGE's disclosure report shows six contributions—including one of \$530,000—from CHANGE PAC, whose contributors, in turn, are a veritable who's who of Republican donors. AMERICANS TIRED OF LAWSUIT ABUSE, an Alexandria, Virginia-based interest group, raised and spent \$400,000 opposing Alexander and backing challenger John Groen. Alexander received backing from CITIZENS TO UPHOLD THE CONSTITUTION, which raised over \$850,000, including 29 contributions of more than \$10,000 each (many from labor, education and tribal interests).

Big Money No Longer Guarantees Success at the Ballot Box

Since 2000, the correlation between winning the fundraising battle and winning election to the Supreme Court has exceeded 80 percent. In 2006 the candidate raising

¹³ Justice Corrigan's re-election campaign received contributions of \$20,000 each from the MICHIGAN CHAMBER OF COMMERCE, the MICHIGAN ASSOCIATION OF REALTORS, the MICHIGAN BANKERS ASSOCIATION, the MICHIGAN HEALTH AND HOSPITAL ASSOCIATION and the MICHIGAN RESTAURANT ASSOCIATION.

¹⁴ Tom Hamburger and Peter Wallsten, "Business lobby to get behind judicial bids," *Los Angeles Times*, January 6, 2005.

¹⁵ The PARTNERSHIP also made sizeable contributions to a candidate for the Illinois Court of Appeals.

¹⁶ Rachel La Corte, "Gregoire wants to try public financing of appeals court races," *Associated Press*, December 20, 2006.