



Koch Brothers and D.C. Conservatives Spending Big on Nonpartisan State Supreme Court Races

By Billy Corriher August 2014

Center for American Progress



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Introduction and summary

In his 2010 dissent in *Citizens United v. Federal Election Commission*, U.S. Supreme Court Justice John Paul Stevens warned that the majority had “unleashe[d] the floodgates of corporate and union general treasury spending” in judicial elections.¹ Justice Stevens wrote, “States ... after today, may no longer have the ability to place modest limits on corporate electioneering even if they believe such limits to be critical to maintaining the integrity of their judicial systems.”² As if to underscore his concerns, judicial campaign cash set a record in 2012, and for the first time, the type of independent spending unleashed by *Citizens United* and other federal court rulings nearly exceeded the amount spent by the candidates.³

The 2014 judicial elections could see even more campaign cash, thanks to unprecedented plans by national partisan groups to spend millions to influence this year’s judicial races. The Washington, D.C.-based Republican State Leadership Committee, or RSLC, is now the first national party organization focused on electing judges.⁴ The RSLC was the biggest spender in the May 5 North Carolina Supreme Court primary election,⁵ and four of the seven seats on the court are up for grabs in November.

The RSLC tried unsuccessfully to unseat three Tennessee Justices on August 7. The group’s opposition campaign was aided by its “strategic partner” group, the State Government Leadership Foundation, or SGLF, and the Koch brothers-affiliated Americans for Prosperity, or AFP, both of which are organized under Section 501(c)(4) of the Internal Revenue Code.⁶ Groups claiming this tax status are not legally required to disclose the source of their money. Although all of the funders for these groups are not disclosed, it is known that the Koch brothers founded and substantially fund AFP,⁷ and the brothers’ corporation—Koch Industries—is one of the biggest donors to the RSLC.⁸

The RSLC, organized under Section 527 of the Internal Revenue Code, describes itself as “the only national organization whose mission is electing Republicans” to statewide office.⁹ The RSLC recently announced that its Judicial Fairness Initiative would “educate” the public about judicial candidates.¹⁰ The RSLC, combined with its SGLF partner, was one of the biggest spenders in the August 7 Tennessee Supreme Court election. The race saw nearly \$1.5 million in cash for television ads, and two groups funded by RSLC—the Tennessee Forum and SGLF—spent more than \$500,000.¹¹ The RSLC helped fund attack ads in an unprecedented opposition campaign in which three judges were vying for new terms on the state supreme court.¹²

Unlike previous Tennessee judicial elections, the justices were forced to run ads funded by campaign cash from attorneys with a financial stake in the court’s rulings. Given its deep pockets, the RSLC could come to dominate nonpartisan judicial elections across the country—just as it has in Tennessee. More money means more attack ads and more fundraising by judicial candidates.

The Democratic Legislative Campaign Committee, or DLCC, is also working to elect state-level candidates, but it has raised much less money than its Republican counterpart in recent years. *Politico* reported that the DLCC “was only able to raise about a third as much” money as the RSLC for the 2010 elections.¹³ Pro-business and conservative groups accounted for 7 of the top 10 spenders in 2010 judicial elections.¹⁴ Although some national liberal groups have spent on judicial elections, no entity affiliated with the national Democratic Party has announced plans to make judicial elections a priority.

A *Washington Post* blogger reported in April that RSLC President Matt Walter predicts his organization will “spend north of \$5 million on judicial elections this year.”¹⁵ The RSLC spent \$27 million on state-level political races in 2012,¹⁶ and *Politico* noted that the RSLC raised a total of \$39 million that year.¹⁷ *The New York Times* described the RSLC’s then-President Ed Gillespie as playing “a central role in efforts to swing state legislatures to Republican control” in 2010.¹⁸

As the RSLC collects money for 2014, new revelations are raising questions about its massive 2010 campaign war chest. *Politico* published an internal RSLC investigation that determined that the RSLC and a prominent Alabama Republican “conspired improperly ... to use the RSLC as a pass-through for controversial Indian tribe donations, essentially laundering ‘toxic’ money from the gaming industry by routing it out of state and then back into Alabama.”¹⁹ The well-known law firm that

conducted the investigation warned the RSLC: “If these events are made public, the resulting media frenzy will be a political disaster for Alabama Republicans, a disaster with which RSLC will forever be associated.”²⁰ A report from ProPublica found that the RSLC also created a dark-money nonprofit group to fund its work on redistricting for GOP politicians.²¹

RSLC President Walter told *The New York Times* that his group had already raised \$24 million in the first half of 2014, which, according to the article, is “close to twice as much as it had raised by the same point in the 2010 election cycle, when his [Walter’s] party took control of 21 state legislative bodies.”²² In contrast, the DLCC raised just \$8.4 million through the end of June.²³ AFP spent more than \$100 million on federal elections in 2012,²⁴ and it has spent millions on state and local elections—including judicial races—in states, including Wisconsin and North Carolina.

Given the historically sleepy nature of nonpartisan judicial elections, why are national conservative groups suddenly spending so much on these races? RSLC President Walter provided some insight, telling *The Washington Post*: “Republicans have had a significant amount of success at the state level, not only being elected to offices but implementing bold conservative solutions. ... Unfortunately, that’s running into a hard stop with judges who aren’t in touch with the public.”²⁵

The RSLC plans to spend big to elect judges who share the group’s political leanings and conservative agenda. Walter’s remarks suggest that this plan is a direct response to judges striking down conservative statutes as unconstitutional.

This unprecedented campaign funding effort by the RSLC and other conservative groups comes as independent spending is playing an increasingly important role in judicial races. All state supreme court candidates raised a combined total of \$33 million in 2011 and 2012. According to a report released by Justice at Stake, the Brennan Center for Justice, and the National Institute on Money in State Politics, outside campaign cash could soon dwarf the amount of money raised by judicial candidates. The report noted, “When independent spending by political parties is also included, total non-candidate spending in 2011–12 was a record \$24.1 million, or 43 percent of total spending.”²⁶

The RSLC announced its national judicial elections initiative shortly after Tennessee Lt. Gov. Ron Ramsey (R) began organizing a campaign to unseat three Tennessee Supreme Court justices in an August 2014 election.²⁷ The three targeted justices—Sharon G. Lee, Cornelia Clark, and Gary R. Wade—were all named to the bench by former Gov. Phil Bredesen (TN-D).²⁸ Two years before the RSLC launched its ambitious judicial elections effort, the group spent more than \$1 million in the 2012 North Carolina Supreme Court race, far more than any other spender.²⁹ Barring unforeseen circumstances, the RSLC could spend even more money in this year’s state supreme court race in North Carolina.³⁰

Independent money dominated May’s Arkansas Supreme Court election as well. The race was overwhelmed by a group that pioneered dark money—campaign cash from undisclosed donors—and soft-on-crime attack ads in judicial elections. Years before the *Citizens United* decision, the secretive Law Enforcement Alliance of America, or LEAA, was running attack ads against judicial candidates it did not like.³¹ In the recently contested Arkansas race, the LEAA ran ads attacking candidate Tim Cullen for arguments he made years earlier while representing an accused criminal as a court-appointed attorney.³² Cullen lost to now-Justice Robin Wynne in a tight race.³³ The LEAA spent more than \$300,000, compared to just over \$40,000 in spending by the candidates.³⁴ Given the low salience of judicial elections, the LEAA’s barrage of attack ads must have made some difference.

The RSLC and AFP are now taking a page from LEAA’s playbook and funding soft-on-crime attack ads to scare the electorate into voting for their preferred judicial candidates. Even worse, these partisan groups are running ads in states where legislatures recently reformed judicial elections from partisan—where candidates appeared on the ballot with a party designation—to nonpartisan contests.

Arkansas, North Carolina, and Tennessee are the states that most recently changed from partisan to nonpartisan judicial elections.³⁵ (Mississippi also switched from partisan to nonpartisan judicial contests in recent years, but it is not included in this report.) Arkansas, North Carolina, and Tennessee witnessed a nationwide explosion of judicial election spending in the late 1990s and took steps to stem the tide of corporate campaign cash in their state elections. Tennessee lawmakers implemented a merit-selection system for appointing its high court justices in 1994. The “Tennessee Plan,” as it was dubbed, replaced a system in which judicial candidates were nominated by state political party committees and then went before the voters in partisan general elections.

Arkansas voters approved a constitutional amendment in 2000 that instituted nonpartisan judicial elections—a change that was supported by the state GOP and opposed by the state Democratic Party.³⁶ Likewise, North Carolina switched from partisan to nonpartisan judicial elections in 2004 through a successful and popular public-financing program for appellate court candidates. This program, however, was repealed by the Republican-dominated North Carolina legislature last year.³⁷

National conservative groups, most of which are headquartered in Washington, D.C., are now inundating the nonpartisan judicial elections in Arkansas, Tennessee, and North Carolina with partisan campaign cash. The 2012 Center for American Progress report “Partisan Judicial Elections and the Distorting Influence of Campaign Cash” asked why partisan judicial elections have seen significantly more total campaign contributions than nonpartisan races have. According to the report, in states with partisan elections:

There is a ready-built infrastructure for ‘bundling’ donations in place, with state parties acting as conduits for special interests. ... In partisan elections, campaign donors can be much more certain of a candidate’s views prior to donating money. ... Justice James Nelson of the Montana Supreme Court said that special interests want ‘their judge’ on the bench. ‘In partisan elections they have a leg up, as they already know the judge’s likely political philosophy.’³⁸

The report concluded, “When campaign costs rise, all judges feel the pressure to please interest groups that spend big on judicial races.”³⁹

The Koch brothers and the RSLC are pouring big money into these nonpartisan races. Increasing campaign cash will lead to more pressure on judges to issue rulings that please campaign contributors and more pressure to appear tough on crime. This increased interest in state judicial elections is simply an effort to protect conservative legislative agendas from legal challenges.

Politicians see state courts as a threat to their legislative agenda

Republicans are in control of both the governor's mansion and the state legislature in 23 states. In five of these states—Michigan, Florida, Ohio, Pennsylvania, and Wisconsin—voters elected⁴⁰ conservative state governments but also voted for President Barack Obama in 2012.⁴¹ Many pundits explain this seeming disconnect, at least in part, with this observation: Voter turnout by Democrats tends to drop in nonpresidential elections.⁴²

In some states, long-time political dominance by Democrats recently gave way to Republicans who, once in office, were enthusiastic about passing conservative legislation.⁴³ In Wisconsin, for example, the Republican Party gained control of all three branches of government in 2011. The state's newly elected Gov. Scott Walker (R) succeeded in passing a divisive union-busting bill that led to massive protests.⁴⁴

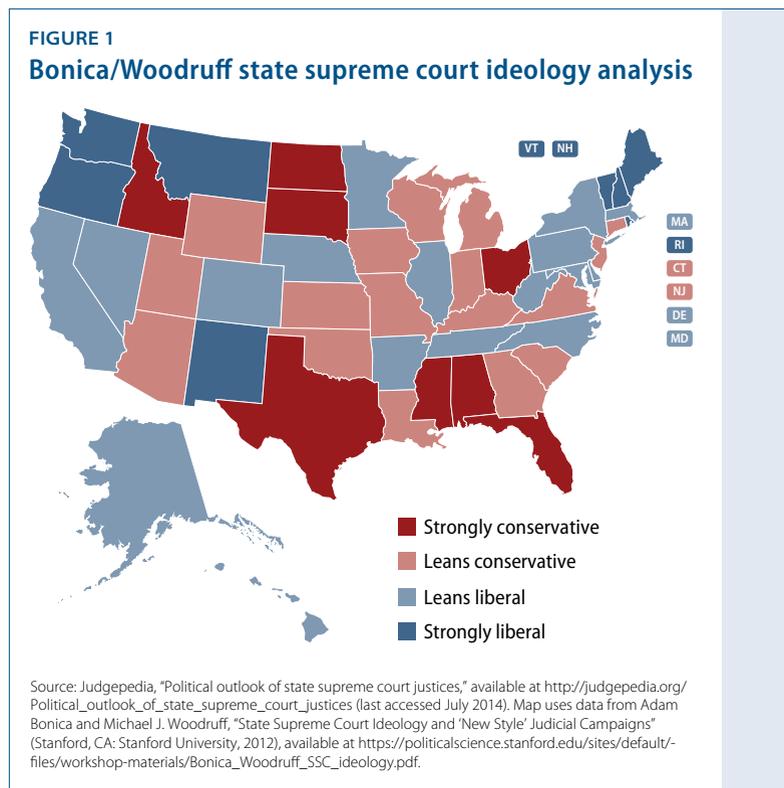
The trend of states going from blue to red has been most pronounced in the southeastern region of the United States, which includes the former Confederate states.⁴⁵ For more than a century after the end of the Civil War, state governments in the so-called solid South were reliably controlled by racist Democrats—who had dubbed themselves Dixiecrats by the late 1940s. Today, the opposite is true, and the Republican Party is in firm control.⁴⁶ In Georgia, Alabama, and Mississippi, the transition to complete GOP dominance took place more than a decade ago. With that shift in power has come a flood of bills to limit access to abortion, deny the facts of global warming, cut taxes on the wealthy, and other divisive measures. Since the U.S. Supreme Court struck down Section 4 of the Voting Rights Act with its 2013 *Shelby County v. Holder* decision,⁴⁷ a number of Southern states have also implemented tougher requirements for voting.⁴⁸ Data from the National Conference of State Legislatures shows the prevalence and severity of voter ID requirements in the Deep South.⁴⁹

In the states closer to the Mason-Dixon Line, the GOP takeover of government has been less swift.⁵⁰ In North Carolina, Republicans did not gain control of all three branches of government until 2012.⁵¹ Arkansas and Virginia currently have Democratic governors after stints with GOP governors. Tennessee Republicans have yet to take over one branch of government—the judiciary.

The all-Republican high courts in Alabama and Texas—two of a handful of states that still use partisan judicial elections—experienced an explosion of campaign cash starting in the 1990s.⁵² Before the high courts in the Deep South and Texas were flooded with corporate campaign cash, trial lawyers—who also have a financial interest in the courts’ rulings—were largely left to fund judicial campaigns. Money from big business began to overwhelm other sources of campaign cash in the 1990s. Since that time, the high courts in both Texas and Alabama have been reliably pro-business.⁵³

Much of this judicial campaign cash came from big corporations, funneled through local chambers of commerce or political parties. Money from the Alabama chapter of the U.S. Chamber of Commerce accounted for 40 percent of all contributions to that state’s supreme court candidates in 2010.⁵⁴ Between Alabama and Texas, there has been only one⁵⁵ Democratic justice in the past 16 years.⁵⁶

A study of state supreme courts on the eve of the 2012 elections sought to assess each court’s ideology based on the perceived ideology of campaign contributors or appointing legislators, as well as other factors.⁵⁷ As the map below clearly shows, three states—Arkansas, Tennessee, and North Carolina—are a belt of light blue, meaning that they “lean liberal,” surrounded entirely by red, or “leaning conservative,” and deep red, or “strongly conservative,” states.⁵⁸ Millions of dollars in campaign cash from the RSLC and the Koch brothers’ AFP aims to change the Southeast corner of this map into a solid, deep red region.



The study's "leans liberal" label for Tennessee and Arkansas could reflect appointments to the courts by Democratic governors, as well as long terms on the bench.⁵⁹ The authors of the study rated North Carolina as leaning liberal,⁶⁰ although four of the court's seven justices are now generally labeled "conservative" or "Republican-leaning" by North Carolina media.⁶¹ It should be noted that money from conservative and corporate-funded groups dominated the 2012 North Carolina Supreme Court election, just after the study was released.

The conservative legislatures in Arkansas, Tennessee, and North Carolina have passed controversial bills that are or will face legal challenges. As Republicans took over the legislatures in these three states, lawmakers passed bills that benefited the GOP, including redistricting orders and voter ID laws that disproportionately disenfranchise liberal voters and voters of color.⁶² A report from ProPublica—an independent, investigative news organization—described the RSLC as "the main Republican redistricting group" relying on "opaque nonprofits funded by dark money, supposedly nonpartisan campaign outfits, and millions in corporate donations to achieve Republican-friendly maps throughout the country."⁶³

Republican legislators have passed bills that benefit the party's big business campaign donors, including deregulation measures and limits on legal liability for negligence—so-called "tort reform." Lawmakers in North Carolina have, among other things: repealed a state Earned Income Tax Credit for the working poor; limited eligibility for Medicaid benefits; slashed unemployment benefits; and repealed the state's Racial Justice Act, which addressed discrimination in death penalty cases.⁶⁴

Many of these politically charged statutes will be challenged as unconstitutional, and as the ultimate arbiters of their state constitutions, the state supreme courts will likely have the final say. These are the states where, in the words of RSLC president Walter, politicians' "bold conservative solutions" could run "into a hard stop with judges."⁶⁵ As these lawsuits wind their way through the courts, national conservative groups are spending big to put conservative, pro-corporate judges on the bench in North Carolina, Arkansas, and Tennessee.

Until recently, nonpartisan elections and other reforms in these states had largely succeeded in keeping the high courts free from political pressure—whether coming from campaign donors or political parties. Now, national partisan groups are politicizing judicial contests by injecting mountains of campaign cash into these elections—all in an effort to insulate legislators' conservative agendas from legal challenges.

Spending big to save much more on negligence lawsuits

Bayer CropScience—a division of the German pharmaceutical and chemical company Bayer AG—developed a strand of genetically modified rice that was resistant to a popular insecticide.⁶⁶ The company tested the rice from 1999 to 2001 in Louisiana, but though the U.S. Food and Drug Administration had not approved it, strands of the rice were found in other types of rice across the United States in 2006.⁶⁷ At the time, American rice farmers were exporting more than half of their crops, but exports plummeted as countries around the world responded with emergency testing requirements for American rice.⁶⁸

Twelve rice farmers sued the company in an Arkansas state court, claiming Bayer was negligent and failed to take “adequate precautions during field trials to prevent crosspollination or the commingling of genetically modified rice seed with conventional seed.”⁶⁹ The court awarded the farmers damages to compensate for their lost income, ranging from \$44,000 to more than \$1.2 million.⁷⁰

The court also assessed a \$42 million punitive damages award against the corporation.⁷¹ Punitive damages, such as those issued in the Bayer case, are not intended to compensate the injured party. Instead, they penalize careless defendants and serve as a deterrent to misconduct. Given that Bayer CropScience had more than \$1.4 billion in profits in 2011,⁷² awarding a few million dollars to 12 Arkansas rice farmers would not have been a big deal. However, a punitive damages award of \$42 million probably got the attention of Bayer and other large corporations.

Unfortunately for the farmers, an Arkansas statute limited punitive damages to just slightly more than \$1 million, unless the defendant intentionally harmed the plaintiff.⁷³ When the farmers challenged this law in 2011, the Arkansas Supreme Court ruled it unconstitutional. The Arkansas Constitution states that “no law shall be enacted limiting the amount to be recovered for injuries resulting in death or for injuries to persons or property,” except for workers compensation laws.⁷⁴ Thus, the Arkansas Supreme Court concluded that the constitution gives the legislature “the power to limit the amount of recovery only in matters arising between employer and employee,” not in other tort cases.⁷⁵

The 2011 decision was not the first time the Arkansas Supreme Court had struck down provisions of the state’s 2003 tort-reform law. The health care industry was highly critical of a number of court decisions, some of which only applied to medical-malpractice claims. According to *Arkansas Business*, Arkansas Medical Society Executive Vice President David Wroten warned of “long-term consequences” from a 2007 ruling that struck down a law requiring a doctor in the defendant’s area of practice to file an affidavit saying the plaintiff has a case, essentially signing off on the malpractice lawsuit.⁷⁶ *Arkansas Business* reported, “Wroten said that while he doesn’t have the evidence in hand yet, he believes the number of claims against doctors is on the rise because of the high court’s rulings.”⁷⁷ Like so many tort-reform proponents over the years, Wroten had no facts to back up his dire warnings of frivolous lawsuits.

The Arkansas Medical Society submitted amicus briefs in the 2007 case and a similar 2009 case, urging the court to uphold the laws that limited liability for negligence.⁷⁸ The 2003 tort-reform bill was passed after an Arkansas jury awarded \$78 million in damages—including \$63 million in punitive damages—to the family of a deceased nursing home patient.⁷⁹

A 2013 report from the Center for American Progress explored the role of tort reform in judicial politics and found that rulings to strike down tort-reform laws were often followed by a flood of corporate campaign cash:

*Big corporations that did not like being sued began pouring money into tort-reform groups and corporate advocates such as the U.S. Chamber of Commerce. Those groups, in turn, gave money to the campaigns of judges, who then voted to uphold statutory caps on damages and limit citizens’ right to sue.*⁸⁰

The report examined thousands of decisions from the courts that have seen the most campaign cash and concluded: “In the span of a few short years, big business succeeded in transforming courts such as the Texas and Ohio supreme courts into forums where individuals face steep hurdles to holding corporations accountable.”⁸¹

The U.S. Chamber of Commerce and other pro-corporate groups have spent big to shape state courts. In a report by The Council of State Governments, the president of the Institute for Legal Reform at the U.S. Chamber of Commerce described his organization’s activity during the 2000 judicial elections: “Our focus was on states

where companies say they are plagued by frivolous lawsuits and there is a danger that courts might block tort reform.”⁸² However, the most common form of tort reform, caps on damages, does nothing to mitigate frivolous lawsuits.⁸³

Since the Arkansas Supreme Court began chipping away at tort reform a few years ago, the state’s health care providers have begun spending large sums of money in judicial elections. Arkansas blogger Max Brantley recently noted, “The Arkansas nursing home industry is spending a significant amount of money to win influence on Arkansas appeals courts. The record shows a friendly judge can justify such investments many times over.”⁸⁴ Brantley indicated that a campaign finance scandal involving an appeals court candidate erupted amid “the drive by the U.S. Chamber of Commerce, nursing homes and others to elect pro-‘tort reform’ candidates to the bench. The outlook isn’t bright for damage awards in Arkansas if you look at campaign contributions to Arkansas appellate judge races.”⁸⁵

Judge Mike Maggio withdrew from an Arkansas Court of Appeals race after he was revealed as the author of sexist, racist, and homophobic comments on a website for sports fans.⁸⁶ Maggio then found himself in the middle of a campaign finance controversy. ThinkProgress reported:

*[Judge Maggio’s] campaign received at least \$10,000 in contributions linked to a corporate chain of nursing homes that benefited from a major ruling in their favor by Maggio. The donation was made through several entities owned or controlled by Michael Morton, to several Political Action Committees (PACs) that were set up by the same entities. Just days after the entities donated thousands to these PACs, Maggio issued a ruling that lowered a verdict against Morton’s company from \$5.2 million to \$1 million. Several months after the ruling, the PACs contributed the funds to Maggio’s campaign. The lawsuit was filed by the family of a patient, Martha Bull, who died just days after being admitted to one of Morton’s nursing homes.*⁸⁷

The timing⁸⁸ of these contributions through independent spending groups—not the candidate’s campaign—suggests that Judge Maggio’s ruling was either corrupt⁸⁹ or appeared corrupt. Nevertheless, the U.S. Supreme Court stated in its *Citizens United* ruling that “independent expenditures ... do not give rise to corruption or the appearance of corruption.”⁹⁰ Another appeals court candidate, Judge Rhonda Wood, received more than half of her campaign contributions from the nursing home industry.⁹¹ The interests of these campaign donors—particularly in Judge Maggio’s case—are obvious.

In the only contested race for the Arkansas Supreme Court this year, the two candidates, Robin Wynne and Tim Cullen, spent more than \$40,000 on television ads. By far, the biggest spender in the race was the Law Enforcement Alliance of America,⁹² and Arkansas voters had no clue about what this group hoped to gain in return for spending more than \$300,000 to help elect a justice. But it was clear which candidate the organization supported. The LEAA spent hundreds of thousands of dollars on an ad accusing candidate Cullen of working to free a “repeat sexual predator.”⁹³ Cullen responded to LEAA’s attack ad with a positive campaign ad, but in the end, he lost.⁹⁴

During the recent Arkansas contest, Brad Hendricks, a well known attorney in the state, took issue with LEAA’s spending in the state supreme court race and asked the group to “come out of the shadows, identify yourselves, show us where the money’s coming from.”⁹⁵ Writing about the race and LEAA’s role, *The New York Times* described the organization as a “sketchy, out-of-state group” that “polluted” the Arkansas judicial election.⁹⁶

The antics of the LEAA in Arkansas follow a pattern it established in the 2008 Mississippi Supreme Court race, in which it spent more money than all the other groups and candidates combined—upward of \$500,000.⁹⁷ After the LEAA helped elect a Mississippi justice, some in the state speculated that the group was a front for the U.S. Chamber of Commerce.⁹⁸ Similar rumors surround the group’s spending in Texas.⁹⁹ In tax records, the National Rifle Association, or NRA, has revealed consistent funding for the group; however, the LEAA steadfastly refuses to disclose any information about its funders.¹⁰⁰

Brantley, the blogger who reported the Arkansas nursing home industry’s bank-rolling of judicial candidates, jumped on the on LEAA as well. “Electing judges is a bad idea precisely because of the corrosive power of money. And stealth money is even more corrosive,” wrote Brantley.¹⁰¹ In regard to the attack ad targeting Cullen, Brantley wrote, “Who really knows what this ad is about?”¹⁰² He went on to note that the LEAA has a history of supporting pro-tort-reform candidates and attacking plaintiffs’ lawyers. According to Texans for Public Justice, the LEAA attacked a Texas attorney general candidate by running ads claiming that he “made millions suing doctors, hospitals and small businesses.”¹⁰³ The voters who see the LEAA’s selective, out-of-context attack ads have no idea where the ads came from or who paid for them.

Tennessee politicians targeted state supreme court justices

Across the Mississippi River in Tennessee, the anti-retention campaign organized by Lt. Gov. Ron Ramsey (R) also received campaign cash from nursing homes with a financial interest in state court rulings. National HealthCare Corporation, a frequent defendant in Tennessee courts, donated around \$25,000 to the Republican State Leadership Committee.¹⁰⁴ A local media report noted that the company “operates nursing homes across Tennessee and has occasionally been hit with lawsuits alleging abuse or neglect. In such cases, the courts have not always been a friendly place for the nursing home giant.”¹⁰⁵ The RSLC’s spending tried unsuccessfully to change that.

Lt. Gov. Ramsey organized an unprecedented campaign to unseat the three justices who were on the on August 7 ballot. Nashville television reporter Phil Williams published¹⁰⁶ a copy of a presentation¹⁰⁷ that Ramsey composed and distributed to potential allies in his campaign against the three justices. In his pitch, Ramsey offered a variety of reasons to oppose the justices—from alleged “soft on crime” rulings to decisions in favor of injured individuals.¹⁰⁸ Ramsey warned potential allies that the Tennessee Supreme Court could strike down the state’s tort-reform bill, which limits the damages that injured plaintiffs can receive from negligent defendants.¹⁰⁹

Ramsey presented a map of states showing where supreme courts had struck down similar limits on damages for injured plaintiffs, and he summarized eight rulings that found such laws unconstitutional.¹¹⁰ He claimed that a constitutional challenge to Tennessee’s tort-reform legislation is “coming to [the] Tennessee Supreme Court.”¹¹¹

The challenge to which Ramsey was referring is an appeal in a lawsuit filed by Emil Sadowski, an elderly driver who sued State Farm, his insurer. An uninsured motorist struck Sadowski’s car in 2012—maiming him and killing his wife. State Farm sided with the uninsured motorist and attempted to blame 90-year-old Sadowski for the accident. After hearing the case, a jury awarded Sadowski \$3.2 million.¹¹²

The verdict included damages for pain and suffering that exceeded the legislature’s \$750,000 cap on such damages.¹¹³

In his presentation, Ramsey also criticized the Tennessee Supreme Court’s choice for attorney general, Democrat Robert E. Cooper Jr. As noted above, Tennessee is the only state in which the supreme court chooses the attorney general. Ramsey said of his opposition campaign to the three justices: “This is an opportunity for a group ... that wants to have a Republican, pro-business, anti-crime attorney general to elect them in a relatively cheap way.”¹¹⁴

Ramsey’s presentation went on to list seven of Attorney General’s prosecutions that have cost “job creators billions in settlements.”¹¹⁵ Excluding the National Mortgage Settlement—a \$25 billion settlement signed by 49 state attorneys general over fraud related to subprime mortgages¹¹⁶—Attorney General Cooper’s settlement of the cases noted by Ramsey have resulted in more than \$600 million in payments from corporate wrongdoers.¹¹⁷ Three health care corporations paid 78 percent of the \$600 million: Wyeth Pharmaceuticals, Abbott Laboratories, and Janssen Pharmaceuticals.¹¹⁸ The lawsuits against the pharmaceutical companies stemmed from deceptive marketing practices. The companies were accused of marketing drugs for off-label uses that were not approved by the U.S. Food and Drug Administration.¹¹⁹

As perhaps another enticement to rally potential health care donors to his cause, Lt. Gov. Ramsey’s presentation also criticized a medical-malpractice decision from the Tennessee Supreme Court.¹²⁰ In *Bridgett Hill v. NHC Healthcare/Nashville*, the children of a nursing home resident sued the home after their mother died from lack of oxygen while being transported to an ambulance. The plaintiffs claimed that although National HealthCare Corporation’s employees knew that Hill was oxygen dependent, they disconnected her oxygen while she was still in her room, and they failed to re-connect it despite their awareness that the Medic One EMT did not have oxygen to give her.”¹²¹

The deceased, prior to her death, had signed an arbitration agreement, which would have rendered her family unable to file a lawsuit.¹²² But the Tennessee Supreme Court ruled the agreement “unconscionable” and unenforceable. The court noted that when the agreement was signed the resident “clearly had no bargaining power, needed the care the nursing home offered, and would not have been admitted if she did not sign.”¹²³ The defendant in the case, National HealthCare Corporation, donated around \$25,000 to the RSLC to help unseat the justices.¹²⁴

The RSLC and the Tennessee chapter of Americans for Prosperity joined in Lt. Gov. Ramsey’s effort to unseat the justices, spending money on ads and mailers attacking the justices as “liberal.”¹²⁵ With the help of conservative dark-money groups in Washington, some Tennessee Republican leaders ran an unprecedented campaign to unseat three state supreme court justices. Former Tennessee Supreme Court Justice Penny J. White—who was voted out of office in 1996 after facing a soft-on-crime opposition campaign supported by then-Gov. Don Sundquist (R)—has warned voters about Ramsey’s campaign.¹²⁶ “A society that loses its independent judiciary because it is controlled or intimidated has lost the very vehicle intended to protect citizens from the abuses of power and to safeguard their freedoms against government overreaching,” said Justice White.¹²⁷

Some critics of Tennessee’s merit-selection commission claim that it is biased toward liberal judges.¹²⁸ At times, conservative critics of the court have alleged that the state’s trial lawyers exert too much influence on the state judicial selection process. A 2009 statute, however, removed the state bar association’s role in the nominating process.¹²⁹

Regardless of any official role for local lawyers in choosing judges, plaintiffs’ attorneys with a financial interest in court rulings will likely continue donating money to judicial candidates, including in Arkansas and Tennessee.¹³⁰ Not surprisingly, trial lawyers financially supported a 2012 North Carolina Supreme Court candidate,¹³¹ but these local special interest groups are now competing with national groups for influence.

Tennessee conservatives have long criticized the state’s merit-selection system for lacking democratic accountability or a real role for voters.¹³² What these critics are essentially complaining about is a lack of politics in the court. But when the justices did engage in the electoral process—by campaigning, raising money, and talking to the media—conservatives blasted them as being too political and claimed that they were violating ethics rules. Lt. Gov. Ramsey’s attacks forced the justices to respond, and then Ramsey and his allies wanted the Board of Judicial Conduct to sanction them for doing so. As former Tennessee Court of Appeals Judge Lew Conner, a Republican, recently observed, “It’s a witch-hunt. It was designed as a witch-hunt. ... I just find it a horrific infringement on the separation of powers.”¹³³

The three justices also found themselves targeted by Tennessee legislators. State Sen. Mike Bell (R) filed a complaint with the Board of Judicial Conduct alleging that Chief Justice Gary R. Wade violated ethics rules by endorsing judges who are up for reelection.¹³⁴ The board dismissed the complaint, but Lt. Gov. Ramsey inaccurately stated that the chief justice was “reprimanded if not censured.”¹³⁵

The Judicial Conduct Board’s dismissal of Bell’s complaint led the state senator to hold a senate hearing. One local reporter covering the hearing commented, “Republicans insisted the four hour hearing was not about politics. But, with control of the state’s high court up for grabs, politics were never far away.”¹³⁶

The hearing also focused on the Judicial Performance Evaluation Commission, or JPEC, an independent agency that rates judges before they face voters in retention elections. While the JPEC was assessing three appeals court judges, its initial negative ratings were leaked to Chief Justice Wade.¹³⁷ According to the *Chattanooga Times Free Press*, the chief justice “later voiced concerns about the negative evaluations.”¹³⁸ The Board of Judicial Conduct ruled that Chief Justice Wade’s comments defending the judges’ performances were not an “endorsement.” Some members of the JPEC, however, were “troubled” by reports that Chief Justice Wade had engaged in “active endorsement and public lobbying” for the judges.¹³⁹

While members of the JPEC denied hearing directly from the chief justice about its evaluations, JPEC Commissioner Chris Clem did email Republican leaders in the state senate regarding the evaluation of Justice William C. Koch Jr., who retired from the Tennessee Supreme Court instead of running for retention this year.¹⁴⁰ In the email, Clem criticized Justice Koch as too “liberal.”¹⁴¹ The JPEC’s chairman, himself a judge, admitted to the Associated Press that “there may have been some partisan effort to influence the commissioners’ votes, but he does not think his fellow commissioners actually let that lobbying affect their votes” in Justice Koch’s case.¹⁴²

Some Tennessee conservatives are also “questioning whether the three Supreme Court justices have violated their own ethics rules by running a joint campaign,” according to News Channel 5, a local television station.¹⁴³ George Scoville, a political consultant who vocally supported Lt. Gov. Ramsey’s anti-retention effort, filed another complaint with the Board of Judicial Conduct. Scoville’s complaint claimed the justices used state resources for campaigning by including pictures taken inside the court on their websites, and he said they had “endorsed” each

other by appearing in media interviews together.¹⁴⁴ This complaint, just like that of Sen. Bell, was dismissed by the Board of Judicial Conduct.¹⁴⁵ According to News Channel 5, Scoville admitted that he was hired by “clients ... in the Washington, DC area” who he would not identify, but he added that he is not being paid to work on any election.¹⁴⁶

Conservative critics of the court are arguing for a broad reading of the word “endorse” when it comes to the justices’ actions. But the same standard was not applied to Tennesseans for Judicial Accountability, a dark-money group that opposed the justices’ retention. The group distributed literature criticizing the justices and urged voters to “vote to replace them.”¹⁴⁷ At the same time, the group claimed that, as a tax-exempt social welfare organization, “we are not advocating whether or not someone should vote for or against retention.”¹⁴⁸

The three justices raised hundreds of thousands of dollars to counter Lt. Gov. Ramsey’s unprecedented attack. Much of this money came from trial lawyers, who also have an interest in the tort-reform battle and who is on the court. As Dahlia Lithwick, a well known blogger on the law and courts, notes:

*When politicians target elected judges and justices with political claims using political tactics (big money and inaccurate accusations), judges are forced to either respond like politicians or judges. Opting to do the former destroys the notion of impartial justice. Opting for the latter ends judicial careers.*¹⁴⁹

To that point, Lithwick concluded her article on Ramsey’s attack by lamenting the increasing politicization of judicial elections:

*When judicial races turn into spending races, what suffers most is not Democrats or Republicans, but judicial independence and integrity. As has been exhaustively chronicled by one nonpartisan study after another, judges don’t want to be dialing for dollars from the attorneys who litigate before them, and litigants don’t want to appear before judges who dial for dollars. All of the data shows that the effect is a decline in confidence in the independence of the judiciary and a spending arms race that spirals ever more out of control. That’s the paradox of course: Cynically preying on an unspecified public fear of out-of-control judges will ultimate result in actual jurists who are actually compromised, either by taking money they shouldn’t be taking, or making promises and pledges they are in no position to make.*¹⁵⁰

Republican State Leadership Committee spending big on courts where voting rights are at stake

Tennessee Attorney General Robert E. Cooper Jr. (D) issued an opinion in 2011 that found the state’s new voter ID law unconstitutional.¹⁵¹ Cooper described the bill as a poll tax due to the costs of obtaining an ID.¹⁵² He said that if the ID had been provided for free, the bill would pass constitutional muster.¹⁵³ In advance of the state’s 2012 primary election, the Memphis public library system began offering library cards with a photo included.¹⁵⁴ The Tennessee legislature responded by amending the voter ID bill to specify that municipal library IDs are insufficient.¹⁵⁵ Two Memphis voters challenged the law.

During early voting for the August 2012 primary election, Daphne Turner-Golden tried to vote using her Memphis library card.¹⁵⁶ Poll workers allowed her to cast a provisional ballot but required her to present an acceptable state ID by election day, or her vote would not count.¹⁵⁷

Turner-Golden told the court that “getting an acceptable photo ID would have required taking hours out of her day, while also balancing her career education program and caring for the two young grandchildren over whom she has custody, one of whom has special needs.”¹⁵⁸ She said that she made a two-and-a-half-hour trip to a state driver service center to obtain the photo ID and another separate trip to obtain a copy of her birth certificate. Turner-Golden also pointed out that most Tennessee counties—though not her home county—lack an office that issues free photo ID cards.¹⁵⁹

Because of the statutory amendment, which barred the use of municipal IDs, the Tennessee Supreme Court ruled that the issue of the validity of the Memphis Public Library cards was moot.¹⁶⁰ The court held that the voter ID bill in effect during the 2012 primary election was constitutional.¹⁶¹ The court concluded that the legislature has the prerogative to enact laws guarding against the potential risk of voter fraud and that the obstacles to voting were not so high that the bill vio-

lated the Tennessee Constitution.¹⁶² By way of explanation, the court noted, “measures that mitigate the impact of the photo ID requirement,” such as provisional ballots for those without an ID and the availability of free IDs from the state.¹⁶³

Although the court-appointed attorney general forced improvements to the bill, the Tennessee Supreme Court’s decision upheld one of the strictest voter ID laws in the country. The court downplayed the obstacles faced by voters such as Turner-Golden and those who live in rural counties without an office that provides IDs. The legislature’s callous decision to amend the law to preclude library IDs suggests a motive to suppress the vote. When the city of Memphis took action to help its citizens vote, the legislature stopped them. The court essentially gave the legislature carte blanche to disenfranchise certain voters for partisan gain.

The Republican State Leadership Committee has vocally¹⁶⁴ supported¹⁶⁵ voter disenfranchisement bills, and Lt. Gov. Ramsey was a proponent¹⁶⁶ of Tennessee’s voter ID bill. This decision illustrates what many Tennessee lawyers argued: The court has recently been moderate or conservative in its rulings.¹⁶⁷ This suggests that what Lt. Gov. Ramsey wants is a court that is “deep red,” to match the ideology of the legislature. Put simply, Ramsey wants a court that will be a rubber stamp for the legislature’s right-wing, pro-corporate agenda.

No state legislature, however, has done more to limit opportunities for voting than the North Carolina legislature.¹⁶⁸ A lawsuit against the state’s restrictive voter ID law is pending in state court.¹⁶⁹ The RSLC may have been encouraged to spend more money on judicial races, having been buoyed by its success in the 2012 North Carolina Supreme Court election, which was contested while the court was considering a challenge to the legislature’s redistricting map.¹⁷⁰ After helping to draw the new map in 2011, the RSLC created a dark-money nonprofit group to fund the process, according to a report from ProPublica.¹⁷¹

Art Pope, the governor’s budget director and the largest campaign contributor in the state, was hired as an advisor to the dark-money group.¹⁷² Citing documents revealed in a lawsuit over North Carolina’s redistricting, ProPublica described how legislators used a secretive, partisan process to draw the new legislative map.¹⁷³ At the same time that the North Carolina Supreme Court was deciding what documents the redistricting plaintiffs could access, the RSLC had donated more than \$1 million to support the 2012 reelection bid of conservative Justice Paul M. Newby.¹⁷⁴

The North Carolina voters who challenged the new maps noted that the legislature had “assigned approximately one-half of the State’s Black citizens to just three (3) of the State’s 13 Congressional Districts without regard for traditional redistricting standards.”¹⁷⁵ The plaintiffs argued that “race was the predominant factor” in drawing 10 state senate districts and eight state house districts.¹⁷⁶ The NAACP told the trial court:

*The 2011 redistricting plans rely on unconstitutional racial classifications to segregate black and white voters more than any previous redistricting plans, without regard to the core redistricting principles of compactness, respect for political subdivisions and communities of interest. ... As a result, there are dramatically fewer racially diverse districts with a [black voting age population] between 30 and 50 percent.*¹⁷⁷

Having helped elect a conservative legislature in North Carolina, the RSLC then helped these lawmakers draw legislative districts that favored Republicans, at the expense of African American voters.¹⁷⁸ The North Carolina Supreme Court, with Justice Newby returned to the bench, is expected to have the final say on whether the state legislature’s redistricting maps are constitutional.

To protect its legislative achievements, the RSLC is keeping its sights set on the judiciary—the supposedly apolitical third branch of government. The group is spending millions in dark money when it has an interest in protecting the agendas of conservative legislators.

The impact of attacking judges as being soft on crime

In all three of these states—North Carolina, Arkansas, and Tennessee—conservative interest groups are resorting to the hackneyed line of attack that so many interest groups exploit: The airing of scary and misleading attack ads that charge judges with being soft on crime. Groups such as the RSLC are running these ads with the intention of scaring voters into choosing judges who are pro-business and therefore good for corporate profits.

None of the judicial candidates in these states have yet resorted to negative attack ads, choosing instead to run positive campaigns. However, ads funded by independent groups and parties are much more likely to be negative in tone than ads from the candidates.¹⁷⁹ These ads attack judges for ruling in favor of criminal defendants. The ads will discuss a gruesome crime and imply that the judge somehow favored the violent criminal, ignoring the questions of constitutional rights involved and frequently misconstruing the facts.

Tennessee Lt. Gov. Ramsey, in his unsuccessful quest to remake the state's supreme court, listed votes by the justices that allegedly prove that they are soft on crime. He criticized Justice Sharon G. Lee for authoring a ruling that overturned a convicted murderer's sentence. But fellow Republican, Ramsey critic, and former judge Lew Conner said Ramsey's comments on the ruling were "misleading."¹⁸⁰ Conner pointed out that, in that case and another one on Ramsey's list, prosecutors decided on a plea deal for life imprisonment after problems with their death penalty cases arose.¹⁸¹

Lt. Gov. Ramsey's attack asked why there had been no executions in Tennessee since 2009, ignoring the widely known fact that the state had problems complying with its protocol for lethal injection drugs.¹⁸² Ramsey and other conservative critics also pointed out that there have only been six executions in the state since 1976. But the justices recently scheduled 10 executions.¹⁸³

Although a judge's reasons for casting a certain vote may never truly be known, there have been allegations of judges in neighboring Alabama sentencing defendants to death for political purposes. In a recent dissent from a decision to not hear an appeal, U.S. Supreme Court Justice Sonia Sotomayor asked why Alabama is the only state in which judges continue to override juries to impose the death penalty.¹⁸⁴ Justice Sotomayor concluded, "The only answer that is supported by empirical evidence is one that, in my view, casts a cloud of illegitimacy over the criminal justice system: Alabama judges, who are elected in partisan proceedings, appear to have succumbed to electoral pressures."¹⁸⁵

Critics of judicial elections point to studies showing that judges are more likely to rule against criminal defendants as elections near. The results of a 2013 study from the Center for American Progress suggest that some courts are responding to political pressure to appear "tough on crime" by ruling for prosecutors during big-money judicial elections.¹⁸⁶

The three justices on the Tennessee Supreme Court, who faced an unprecedented opposition campaign this year, gathered campaign cash to run ads countering criticism that they are soft on crime. Only one Tennessee Justice—Penny J. White—has ever been voted off the court in a retention election. As noted above, she was voted out of office in 1996 after facing allegations that she was soft on crime and refused to affirm death sentences.

Similarly, Arkansas Supreme Court candidate Tim Cullen was defeated after misleading Law Enforcement Alliance of America ads portrayed him as soft on crime.¹⁸⁷ According to a press release from the Brennan Center for Justice, the LEAA spent hundreds of thousands of dollars on an ad accusing candidate Cullen of arguing that child pornography is a "victimless crime" and saying that he worked to free a "repeat sexual predator."¹⁸⁸

Cullen, who practiced appellate law, was appointed by a court to represent a defendant caught in a police sting. Notwithstanding the fact that every accused criminal—no matter how bad the crime—deserves legal representation, the ad was highly misleading. Cullen did not describe child porn as "a victimless crime." He had argued for a lesser sentence because the defendant sent images to an undercover police officer, not an actual child.

An incumbent North Carolina Supreme Court justice faced a nasty attack involving child sex abuse before the state's May primary election. The ad, purchased by the Justice for All PAC, accused the justice of not being tough on child molesters, citing a dissent in a 2010 decision that allowed the legislature to require those convicted of child sex abuse to register in a new monitoring system, even if they had been convicted before the law was passed.¹⁸⁹ The dissenting justices argued it was unconstitutional to impose the requirement on those sentenced before the law took effect.¹⁹⁰

The RSLC was the largest contributor to the Justice for All PAC, which spent more than \$750,000 in the recent North Carolina primary.¹⁹¹ The RSLC spent hundreds of thousands of dollars to help keep North Carolina's conservative majority in place in 2012, but its money that year did not go toward attacking candidates.¹⁹² This reprieve was brief, however, and it is a safe bet that there is plenty of mudslinging to come this fall.

The November general election will be the first election since the North Carolina state legislature eliminated the public financing program for judicial candidates.¹⁹³ In addition, the legislature—after some lobbying by two conservative justices—passed a bill that weakens North Carolina's process for enforcing the ethics rules that apply to justices.¹⁹⁴ This has created a perfect storm for the injection of judicial campaign cash. Given the RSLC's role in the 2012 North Carolina Supreme Court race and the recently contested primary race, the Tar Heel State may very well be on the RSLC's hit list of states to target through its Judicial Fairness Initiative.

Conclusion: Keeping courts free from political pressure

With access to the national GOP fundraising network, the RSLC could potentially dominate judicial elections in several states. The RSLC spent more on state-level legislative races than was spent in all state supreme court races in 2011 and 2012. Justices around the country could soon face attack ads funded by national partisan groups. So far, the RSLC has targeted states that have not seen much campaign cash in judicial elections in the past. In states that have not traditionally seen much in the way of judicial campaign cash, a million dollars' worth of ads can be a game changer.

Perhaps the RSLC will spend its money in states where its donors face litigation. Corporations such as Duke Energy in North Carolina contributed to the RSLC in 2012.¹⁹⁵ At the time, the company was facing two lawsuits in North Carolina courts over its coal ash ponds.¹⁹⁶ One of those ponds spilled gallons of toxic coal ash into the Dan River in February, tainting the drinking water of more than 44,000 people.¹⁹⁷ In the wake of the spill, media reports showed that the administration of Gov. Pat McCrory (R), a former Duke Energy employee of 26 years, had failed to crack down on unsafe conditions at Duke's ponds.¹⁹⁸ If the RSLC's corporate donors have their way, Duke will face a state judiciary that was largely elected with the help of the company's own campaign cash.

The RSLC also received more than \$700,000 from tobacco company Altria Group and around half that amount from Koch Industries for the 2012 elections.¹⁹⁹ This year, the RSLC's largest donor is the huge health insurer Blue Cross Blue Shield, followed by tobacco company Reynolds American, the U.S. Chamber of Commerce and its affiliates, and GOP mega contributor Sheldon Adelson and his Las Vegas Sands casino and resort corporation.²⁰⁰ Wal-Mart and Koch Industries are also among the RSLC's top 10 donors, according to OpenSecrets.org.²⁰¹ The group also got huge contributions from pharmaceutical companies, though it should be noted that Big Pharma also contributed to political organizations on the left. Thanks to these contributors, the RSLC will likely have enough resources to overwhelm elections for state supreme courts.

However, the corrupting influence of money in judicial elections would not be a factor if judges were not elected. It cannot be stated strongly enough: Judicial elections are perverting justice. Individual rights are lost in civil and criminal cases as powerful institutions seek to influence state courts. Criminal defendants and their rights are thrown under the bus, victims of a cynical political strategy that often exploits racism by focusing on crimes involving black defendants and white victims.

Arkansas, Tennessee, and North Carolina had largely avoided these worrisome trends, thanks to recent reforms, but conservative groups headquartered in Washington, D.C., are intent on injecting big money into these nonpartisan races. The Wisconsin Supreme Court's experience shows how campaign cash can lead to partisan factions on the court.²⁰² In Wisconsin, this hyper-partisanship culminated in a physical altercation between justices, causing the public to lose faith in its judiciary.²⁰³

In the not too distant past, legislators in Arkansas, Tennessee, and North Carolina acted thoughtfully and responsibly to keep partisanship and big money out of their state judicial elections. The reforms in these states, however, are now under attack from special interests that want business-friendly, conservative-leaning state courts that will uphold recent statutes in the face of constitutional challenges. Voters must demand that their representatives defend the past reforms.

When North Carolina legislators switched to nonpartisan judicial elections in 2002, they also adopted a public financing system for appellate court candidates. A 2013 column released by the Center for American Progress lamented the repeal of the program by the North Carolina legislature:

*This program was enormously popular with judges and voters, and a recent study showed that it led voters to trust that rulings were not influenced by campaign contributions. ... Without public financing, North Carolina Supreme Court candidates will have to rely on campaign contributions from private sources—lawyers and corporations with an interest in cases pending before the high court.*²⁰⁴

North Carolina's public financing program was popular with both voters and participating judges. Although both state supreme court candidates in the 2012 judicial election received public funds, the system was overwhelmed by independent spending.²⁰⁵ Leading into that election, North Carolina's public financing system was hobbled by a 2011 U.S. Supreme Court decision that prohibited states from offering "matching" public campaign funds for independent spending.²⁰⁶

After North Carolina voters experience the impact of judicial campaign cash this year, they may push their representatives to implement another public financing program that is constitutional under U.S. Supreme Court precedents. Moreover, Arkansas citizens could ask for a similar plan after independent spending overwhelmed its most recent judicial election. It is worth noting that the Kentucky House of Representatives passed a bill to create a program similar to North Carolina's former system.²⁰⁷ However, the plain failed to win approval in the Kentucky Senate.

Advocates for fair courts and good-government groups should demand that dark-money groups—such as the Law Enforcement Alliance of America, Americans for Prosperity, Tennesseans for Judicial Accountability—disclose their donors. Without adequate disclosure, voters are deprived of information that is very useful in assessing the trustworthiness of out-of-state attack ads.

These reforms would help to keep courts fair. Dark money and partisan campaign cash are overwhelming nonpartisan judicial elections—all to protect a radical, right-wing legislative agenda. If citizens want to ensure that they can vindicate their constitutional rights in state court, they must fight to keep political pressure and campaign cash out of the courtroom.

About the author

Billy Corriher is the Director of Research for Legal Progress at the Center for American Progress, where his work focuses on state courts and the influence of political contributions on judges. Corriher joined CAP after serving as a weekly blogger for the Harvard Law & Policy Review blog, Notice and Comment, with a focus on federal appellate court cases and other legal and policy matters. He has also written op-eds and blog posts for the American Constitution Society and the Bill of Rights Defense Committee. Corriher received his bachelor's degree in political science from the University of North Carolina at Chapel Hill. He received a law degree and a master's in business from Georgia State University, graduating with honors in 2009. He is a member of the State Bar of Georgia.

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