

Campaign Money Patterns Entering New Phase in 2012 Judicial Races

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“Special Interests Are Spending Millions to Capture Our Courts, And They Are Succeeding”

Judicial candidates spent more than \$4.6 million in television advertisements this primary season, according to data released by the Brennan Center for Justice and the Justice at Stake Campaign, in an election cycle where changing spending patterns could signal a new phase in the decade-long spending battle to influence America’s state courts.

Ironically, the cumulative effects of a decade of record-setting spending could lead to less spending in some states. Early reports suggest that some traditionally high-spending states will see less competitive elections, due to the increasing domination of their state courts by a single party after a decade of record spending.

At the same time, traditionally low-cost retention elections will see high levels of spending as interest groups pour money into unseating judges. Super PACs are also poised to inject money into judicial races, with the potential to transform how campaigns are fought.

“Money and special interests continue to transform judicial elections around the country,” said Alicia Bannon, counsel in the Brennan Center’s Democracy Program. “We are seeing uncontested races in traditionally high-spending states like Alabama and Ohio, where big money over the past decade delivered the high court to a single party. In these states, overall spending is likely to be down this year.”

“The new politics of judicial elections is playing out differently in different states, but the threat everywhere is the same,” said Bert Brandenburg, executive director of Justice at Stake. “Special interests are spending millions to capture our courts, and they are succeeding.”

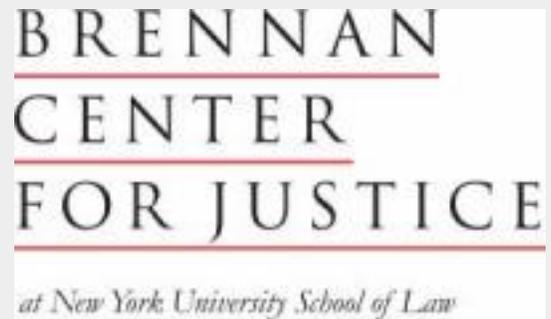
Nationally, there are 20 states with contestable state Supreme Court seats in 2012, with a total of 46 seats at stake, while 25 high court judges in 13 states face one-candidate retention elections, in which voters choose whether to give incumbents another term.

National TV spending data for judicial races, as well as links to ads, are available at “[Judicial Elections 2012](#),” a new web page jointly hosted by the Brennan Center for Justice and the Justice at Stake Campaign. The site will provide regular updates on TV ads, fundraising, and key political players in 2012 state high-court elections. Additional analysis is also available at the Brennan Center’s “[Buying Time 2012](#)” web page.

EARLY FINDINGS IN 2012

1. Primary spending on TV advertisements reached new heights, but some traditionally high-spending states are expected to see lower spending overall.

Based on estimates from TNS Media Intelligence/CMAG, TV advertisements this primary season surpassed \$4.6



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million, with advertisements appearing in seven states (AL, AK, IL, MT, OR, TX, WV). These figures are more than quadruple the estimated TV spending in 2010's primaries, when candidates in three states spent just over \$1 million, and top the previous record \$3.8 million spent in 2004 in nine state primaries.

But a different picture is emerging for the November general elections in Alabama and Ohio, two traditionally high-spending states. While both states have led the nation in judicial election spending over the past decade, there has recently been a significant drop in Democratic candidates with strong financial backing as Republicans have taken control of both states' supreme courts ([see charts](#)). November election spending began falling in both states in the latter part of the decade, and spending on this year's November election almost certainly will continue to fall compared with previous years.

Since 2006 in Ohio, and since 2010 in Alabama, Democrats in Alabama and Ohio have fielded only a few modestly funded candidates. In Alabama, Republicans hold all nine of the high court's seats, and Democrats this year have chosen to put forward a candidate for only one of five contested seats. In Ohio, the only Democrat among the high court's seven justices gained her seat through a governor's appointment, and she faces a stiff challenge from a GOP candidate.*

At the same time, winning justices in these states continue to depend heavily on a small number of super-spender groups backing their elections. In Alabama, for instance, the Business Council of Alabama is a top financial supporter of seven of the court's nine justices, while the Ohio Chamber of Commerce has spent heavily to elect five of the Ohio Supreme Court's seven justices. According to a [recent study](#) by the progressive Center for American Progress, rulings in Alabama and Ohio have swung sharply toward business interests as candidates backed by the business lobby gained a decisive advantage in state court elections over the last 10-15 years.

"The similarities in Alabama and Ohio suggest that spending on judicial elections may occur in stages," said Adam Skaggs, senior counsel at the Brennan Center. "Spending spikes while opposing sides battle for control in key states, and then falls sharply, along with electoral competition, when the court elections lead to a clear winner and a clear loser over several cycles. In states with captured courts, a decline in overall election spending does not mean that special interests have abandoned their efforts to influence the courts; it just means that one side has won the current phase of the arms race."

2. While some states are falling back in spending, others are stepping up to take their place.

Despite expected reduced spending in states with captured courts, high-cost judicial races are likely to continue to be seen across the country.

Judicial races will likely remain costly in states where high courts remain closely divided, such as Michigan, which had the nation's most expensive judicial elections in 2010, and which has three races for Supreme Court seats this year. In West Virginia, campaign finance disclosures indicate that candidates have already raised more than \$2.5 million in connection with races for two Supreme Court seats.

Traditionally low-cost retention election races are also poised to attract special-interest dollars, including in Iowa and Florida. In Iowa, three state high court Justices lost their seats in 2010 following a \$1 million "Vote No" campaign, launched after the court's unanimous decision legalizing marriage for same-sex couples. This year, Justice David Wiggins, who also participated in the marriage decision, faces a retention election. Opponents have announced their intention to campaign for Wiggins' ouster.

In Florida, a tea party-linked group Restore Justice 2012 has announced a campaign against three Justices who voted with the majority in a ruling rejecting a constitutional amendment to allow the state to opt-out of federal health care reform. This announcement has already triggered unprecedented fundraising: While no Florida Justices reported receiving campaign contributions between 2002 and 2010, the three Justices facing this year's retention elections have already reported raising \$974,826.

3. Super PACS may influence judicial elections

This election cycle may also see super PACs playing a role in judicial races. In Illinois, the pro-choice group Personal PAC created the state's first super PAC in May, following a court victory challenging Illinois's campaign finance laws. Prior to the creation of its super PAC, Personal PAC reportedly spent \$200,000 in ads in Illinois's judicial primary, according to the Center for Public Integrity. And in North Carolina – one of the few states to provide public financing for judicial elections – a super PAC was recently formed in support of conservative incumbent Justice Paul M. Newby, who is also accepting public financing for his race. With the Court's 4-3 conservative balance on the line, this race has the potential to attract significant dollars, and usher in a new role for outside money in judicial campaigns.

Spending on TV Ads in 2012 Judicial Primaries

State	Total Spent	Candidates	Candidate Spent
Alabama	\$1,391,530	Tommy Bryan	\$271,440
		Charlie Graddick	\$412,810
		Chuck Malone	\$598,750
		Roy Moore	\$108,530
Illinois	\$1,334,170	Joy Cunningham	\$135,580
		Mary Jane Theis	\$1,198,590
Texas	\$1,167,930	Don Willett	\$1,167,930
West Virginia	\$586,050	Letitia Chafin	\$325,110
		Robin Davis	\$181,350
		Louis Palmer	\$28,790
		Jim Rowe	\$50,800
Arkansas	\$168,410	Raymond Abramson	\$103,980
		Jo Hart	\$64,430
Montana	\$22,110	Elizabeth Best	\$22,110
Oregon	\$3,170	Nena Cook	\$3,170
TOTAL SPENDING	\$4,673,370		

Highlights from the Primary Season: Million Dollar Races

- In Illinois**, Justice Mary Jane Theis spent close to \$1.2 million on TV advertisements in successfully defending her seat in the Democratic primary, compared with about \$136,000 in spending by her opponent Judge Joy Cunningham, and no TV spending by her other two opponents. The pro-choice group Personal PAC also reportedly spent \$200,000 in print ads attacking Theis's opponent Aurelia Pucinski, according to the Center for Public Integrity. Theis will face Judge James G. Riley, who ran unopposed in the Republican primary, in the general election. Sitting Justice Rita Garman will also face a retention election this November.
- In Texas**, Justice Don Willett spent more than \$1.1 million successfully defending his seat in a Republican primary. His opponent, former Supreme Court Justice Steve Smith - who challenged Justice Willett in the 2006 Republican primary and narrowly lost by 1% of the vote - did not spend any money on TV advertisements. Willett will face Libertarian candidate Robert Stuart Koelsch in the general election; he will

not have a Democratic challenger. In another contested primary, John Devine won the Republican nod following a primary and runoff election. Neither Devine nor his opponents spent money on TV advertisements; Devine will not have a Democratic challenger in the general election. In a third race, sitting Justice Nathan Hecht did not face a primary challenger, but will face San Antonio lawyer Michele Petty in the general election.

- **In Alabama**, four candidates spent money on judicial advertisements in two primary races, with expenditures ranging from approximately \$109,000 to \$599,000. Big spending did not necessarily translate to a win, however: In the hotly contested race for Chief Justice, former Chief Justice Roy Moore won the nomination while being outspent by his two opponents, incumbent Charles Malone and former Attorney General Charles Graddick. Moore gained notoriety when he was removed from office in 2003 after refusing to follow a federal judge's order to remove a Ten Commandments monument from the state judicial building. In the other contested primary, Judge Tommy Bryan spent \$271,440 in defeating his opponent Judge Debra Jones, who did not run any TV advertisements. Bryan will run unopposed in the general election. Three other Justices are also seeking reelection unopposed in both the primary and general elections; none of these candidates spent money on judicial advertisements.

TV Methodology

All data on ad airings and spending on ads are calculated and prepared by TNS Media Intelligence/CMAG, which captures satellite data in that nation's largest media markets. CMAG's calculations do not reflect ad agency commissions or the costs of producing advertisements. The costs reported here therefore understate actual expenditures.

The Justice at Stake Campaign is a nonpartisan, nonprofit campaign working to keep America's courts fair and impartial. Justice at Stake and its 50-plus state and national partners educate the public, and work for reforms to keep politics and special interests out of the courtroom - so judges can protect our Constitution, our rights and the Rule of Law. For more about Justice at Stake, go to www.justiceatstake.org, or www.gavelgrab.org.

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* The original press release erroneously stated that no Democrats are challenging two Republican incumbents. The release has been updated from its original version.

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