# Pennsylvanians for Modern Courts

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August 6, 1998

The Honorable Brett Feese
Chair, Task Force on Judicial Campaign Financing
c/o Brian J. Preski
Chief Counsel, House Judiciary Committee
P.O. Box 202217, Main Capitol Building
Harrisburg, PA 17120-2217

Dear Representative Feese:

It is with considerable regret that Pennsylvanians for Modern Courts (PMC) cannot be present to testify before the Task Force on Judicial Campaign Financing at its hearing on August 31st.

As you might expect, PMC has an intense interest in the efforts of the Special Commission To Limit Campaign Expenditures. PMC representatives testified before the Special Commission in Harrisburg and Pittsburgh. Our enclosed op-ed pieces on judicial campaign finance reform were printed in *The Philadelphia Inquirer*, *Pittsburgh Post-Gazette*, *The Patriot*, *The Daily Item*, *Pennsylvania Law Weekly*, *Centre Daily Times*, *Indiana Gazette* and *North Hills News Record*, among others. We are pleased to have served as a resource for several newspapers formulating editorial positions on the Special Commission's investigation of judicial elections and on its recommendations to the Supreme Court.

Brian Preski has kindly agreed to include PMC's attached written testimony as part of your Task Force's official hearing record. Should a future opportunity arise to testify before the Task Force, we hope you will consider allowing PMC to appear in person.

PMC is most anxious to hear about the August 31st hearing, as well as the results of any deliberations by your Task Force. In the meantime, we would be pleased to answer any questions or concerns raised by our testimony. Thank you, again, for inviting PMC to testify.

Sincerely,

Lynn A. Marks
Executive Director

Ellen Mattleman Kaplan
Associate Director

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## Testimony Presented to the House Judiciary Task Force on Judicial Campaign Financing

**Pennsylvanians for Modern Courts**
August 31, 1998

Thank you for allowing Pennsylvanians for Modern Courts (PMC)—a statewide, non-profit organization devoted to the improvement of the Pennsylvania courts—to submit this written testimony on issues surrounding the election of judges in Pennsylvania.

The Task Force is to be commended for convening this hearing and inviting public debate on the recommendations that have been made to the Pennsylvania Supreme Court by the Special Commission To Limit Campaign Expenditures. Indeed those recommendations, if adopted by the high Court, would have a dramatic impact on the future conduct on judicial campaigns.

No debate can begin without acknowledging the grim reality that led to the Supreme Court's appointment of the Special Commission in the first place: that public confidence in the integrity of the court system has been damaged by the money involved in judicial elections. The question before the Special Commission, and now before this Task Force, is how to mitigate that damage and restore the public's trust.

PMC will first address the Special Commission's recommendations and then discuss what it strongly believes is the only avenue of genuine reform: amending the Pennsylvania Constitution to provide that appellate judges should be selected and appointed on the basis of merit instead of partisan political elections.

## I. Recommendations To Improve The Current Elective Process

PMC supports the Commission's recommendations that judicial candidates should file campaign expenditure and contribution reports electronically and on an expedited schedule; that there should be computer access to all expenditure and contribution reports; that, depending on the contributions they receive, judges should recuse themselves; that compliance with the Pennsylvania Bar Association's judicial campaign advertising guidelines should be made mandatory for all judicial candidates, and that immediate and meaningful

sanctions should be imposed if the guidelines are violated; that candidates should be prohibited from encouraging or allowing court-appointed employees to engage in partisan political activity; that efforts be made to increase public awareness about the importance of judges and the qualifications of judicial candidates; and that disciplinary procedures, the lawyers' Rules of Professional Conduct, and the Code of Judicial Conduct should be amended accordingly.

While these measures would fall far short of eliminating the damage caused by the money raised and spent in judicial elections, they would at least be of some help.

## II. Recommendation to Limit Judicial Campaign Contributions

PMC opposes the Commission's recommendation that the Code of Judicial Conduct be amended to limit judicial campaign contributions. Such limitations may well survive constitutional scrutiny. However, they would not only fail to mitigate, but would in fact exacerbate, the current problems of campaign fundraising.

- Candidates able to bankroll their own campaigns would have an enormous advantage over less affluent opponents.
- Candidates who because of their high name recognition need less money to woo the electorate would have an enormous advantage over less recognizable opponents.
- A "fundraising frenzy" would ensue as contribution limitations force candidates to seek out an increased number of contributors.
- While the countermeasures of recusal and lawyer discipline that the Commission has recommended may serve to deter lawyers and clients from contributing in excess of the stated limitations, there is no "penalty" should other donors give to third parties engaged in their own efforts to support judicial candidacies.
- Contribution limitations have no bearing on the caliber and capabilities of candidates running for judicial office.

## III. Recommendation to Limit Judicial Campaign Expenditures

PMC opposes the Commission's recommendation that the Code of Judicial Conduct be amended to limit judicial campaign expenditures. These objections include:

- Expenditure limitations are unconstitutional, according to the United States Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1 (1976) and recently reaffirmed by the Sixth Circuit Court of Appeals in *Suster v. Marshall*, [Electronic citation: 1998 FED App. 0228P (6th Cir.)].
- Expenditure limitations encourage increased spending by third parties—such as political party organizations and special interest groups—on behalf of, but unaffiliated with, judicial candidates.

- Just as wealthy candidates can bankroll their own campaigns, so too can they freely spend their own money—again, to the detriment of less affluent opponents.
- Just as candidates with high name recognition need to raise less money, so too do they need to spend less money to become known—again, to the detriment of less recognizable candidates.
- Expenditure limitations have no bearing on the caliber and capabilities of candidates running for judicial office.

The Commission, in its report, has acknowledged that its recommendation to limit campaign expenditures may well be its "most controversial" because of "two major impediments" (Report pp. 9.18) that the Commission believes can be overcome. PMC strongly disagrees with this assertion.

### A. *Buckley v. Valeo*

The first, and most obvious, impediment is the United States Supreme Court's decision in *Buckley*.

The Commission takes solace in the fact that "formidable scholars" are "somewhat baffled" by the *Buckley* court's rationale, and that widespread support exists for the position taken by the defendants (judicial candidates) in the Ohio case of *Suster v. Marshall* that *Buckley* should either be overruled or at least distinguished for judicial races (Report, pp. 10-11). The Commission also offers its own view that the post-*Buckley* evidence confirming the insidious effect of skyrocketing campaign expenditures "may be sufficient" to cause the U.S. Supreme Court to "at least distinguish *Buckley*." (Report, p. 11).

Apparently the Sixth Circuit Court of Appeals believes otherwise. On July 30, 1998, that Court rendered its long awaited decision in the *Suster v. Marshall* case. Relying on *Buckley*, the Court unanimously and strongly stated that "the language of *Buckley* and its progeny have necessarily determined, irrespective of the *kind* of position sought, that any spending restriction in any *electoral* campaign process is an infringement on a candidate's First Amendment rights."

Thus, wherever one stands on the correctness of the *Buckley* decision, that case remains the law of the land. Unless and until the United States Supreme Court decides to the contrary, the imposition of spending caps by the Pennsylvania Supreme Court would likely be subject to legal challenge and equally likely found to be unconstitutional.

Unlike the Commission, PMC finds no encouragement in surmounting the impediment posed by *Buckley* by looking to the actions of other jurisdictions that have imposed campaign expenditure limitations. (Report pp. 9-10).

To PMC's knowledge, Ohio is the nation's only Supreme Court to enact—through its Code of Judicial Conduct—limitations on judicial campaign expenditures. Although

limitations similar to those imposed in Ohio were recommended in a March 1996 report by a Washington state Commission studying that state's judicial (non-partisan) selection system, those limitations have not been adopted.

The other three states cited in the Commission's report as having adopted campaign expenditure limitations—Michigan, Wisconsin and Texas—appear to have no relevance to what is being recommended for Pennsylvania. In the first place, all three states have imposed such limitations by *statute*, and not through their respective codes governing the conduct of members of the judiciary.

Moreover, in Michigan, campaign expenditure limits do not apply to judicial candidates. The enactment of its expenditure limitations—only applicable to gubernatorial candidates who receive public funding[1]—thus had nothing to do with the "apparent disastrous effect upon the perception of judicial integrity caused by [skyrocketing campaign expenditures]." (Report, p. 9).

In Wisconsin, candidates for justice of the state Supreme Court (selected through non-partisan elections) are eligible for public funding[2] and, as a condition for the acceptance of such funding, may be subject to campaign expenditure limitations.[3] If a Supreme Court candidate does not accept public funding, opponents who have accepted such funding are freed from abiding by applicable contribution and expenditure limitations.

In Texas, expenditure limitations—which are applicable to all judicial candidates (who, like Pennsylvania judges, are selected through partisan elections)—are not linked to public funding. They are, however, *voluntary,* and a candidate may file a declaration of intent not to comply. If a candidate elects not to comply with expenditure limitations, his or her opponents are released from the obligation to comply with limitations on contributions, expenditures or reimbursement of personal funds. The noncomplying candidate still remains subject to limitations on contributions and reimbursement of personal funds.

**B. Increased Spending by Third Parties**

The second impediment to judicial campaign expenditure limitations offered by the Commission is the likelihood of increased spending by third parties. As the Commission concedes, this was precisely what occurred in Ohio following that state's adoption of spending caps in its Code of Judicial Conduct (See attached article from the *Wall Street Journal*, May 27, 1997).

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[1]According to the Buckley court, it is constitutionally permissible to impose expenditure limitations on candidates who have accepted public campaign funding.

[2]Candidates for other levels of Wisconsin's judiciary are ineligible for public funding.

[3]See footnote 1.

Two antidotes to increased third party spending are offered by the Commission: (1) uncontestable recusal at the option of an opponent whenever a lawyer or a litigant exceeds the mandatory contribution limits, such limits to include donations said lawyer or litigant has directed to third parties dedicated to aiding the candidate's election campaign, and (2) subjecting to attorney discipline any lawyer who knowingly attempts to circumvent the contribution limits, again such limits to include any donations to third parties.

The concern that donations may come from persons who appear in the courtroom is, of course, deeply troubling. To the extent that the Commission's recommended antidotes may deter lawyers and their clients from donating in excess of the allowable limits, PMC believes them to be worth adopting.

One ought not be deluded, however, into thinking that there will be any decrease in the flow of money into the coffers of third parties working to promote judicial candidacies. There is every reason to believe that the cost of running for judge, on both the statewide and local levels, will continue its upward spiral. Candidates will therefore be forced to seek out however much it takes to afford that cost, and from any source. If they can't get it from a lawyer or the lawyer's client, there are an abundance of other "deep pockets" who do not appear in a courtroom and would not face any "discipline" for exceeding the allowable contribution limits.

In short, as long as third party spending can flourish, PMC does not believe that Pennsylvanians will soon reverse their belief, confirmed by the Commission's poll, that the "escalating costs of judicial elections have served to increase the public perception of corruption." (Report, p.12).

### C. Expenditure Limitations Should be Rejected Irrespective of Position on Judicial Selection Reform

PMC's opposition is not based solely on its commitment to achieving an appointive system for the selection of judges. In our judgment, the Commission's recommendation to limit campaign expenditures should be rejected whatever one's view on whether or not an appointive system is preferable to partisan elections. Assuming judges continue to be elected, we strongly believe that adoption of the recommendations would not enhance but would likely undermine public respect for the bench, because the public would recognize that judicial candidates were continuing to raise money, and that the limitations imposed by the Court were ineffective.[4]

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[4]Since PMC opposes the adoption of limitations on judicial campaign contributions and spending, we find no reason to reach the issue raised by Commission member Arthur L. Piccone, Esquire, that the power to impose limitations on judicial campaign expenditures resides only with the General Assembly.

## IV. The Need to Replace Partisan Elections of Appellate Judges with a Merit Appointment Process

It is no secret that PMC supports changing the state constitution to provide for a merit appointment process for appellate court judges. We will not belabor the many problems of partisan judicial elections, about which we have testified repeatedly before state House and Senate Committees and various Commissions empaneled to address judicial selection reform.

We do, however, invite this Task Force to look back only to November 1997 to find confirmation of just some of these problems.

In a stunning display of apathy, only 3 out of 10 registered voters came to the polls on November 4th. That figure would have been lower still had Southwestern Pennsylvania not featured a ballot question involving the financing of sports stadiums. Philadelphia posted the lowest turnout for a general election in the city's history.

It's not simply that voters don't care about judicial races. Most have absolutely no idea who's running. A survey of registered voters in Erie County taken just last May by the *Erie Morning News* showed that, when asked to name a candidate for an appellate court other than that county's own Michael Joyce (a Republican candidate for the Superior Court), only two percent of the 1,966 voters even knew another judge's name. *Erie Morning News* Editorial, May 22, 1997. See also attached article from *The Philadelphia Inquirer*, November 5, 1997.

While, much to the surprise of many political analysts, the general election winners hailed from different parts of the state (Thomas Saylor's victory marks the first election of a Supreme Court Justice from outside either the Pittsburgh or Philadelphia area since 1981), this certainly was not true in the Democratic primary that narrowed the field of candidates to only those from Allegheny county.

In actuality, of course, the field of candidates is narrowed long before the primary because a great many highly capable lawyers are either unable or unwilling to endure the politically partisan process through which all candidates must go to reach the bench. In this regard, we note with dismay the series of articles in the Harrisburg *Patriot* this spring reporting on the growing practice of numerous Democratic county party committees, not simply the state party apparatus, requiring payment of fees from judicial candidates in exchange for support.

The sampling of problems we have raised are immutable features of statewide judicial elections. Even assuming resolution of issues of constitutionality and practical enforcement likely to arise from limiting campaign expenditures or contributions, such piecemeal "reforms" would not accomplish true judicial selection reform. Voters would ***still*** be unfamiliar with candidates for statewide judgeships; judicial selection would ***still*** be based on geography and name recognition; there would ***still*** be little or no consideration paid to the candidates' qualifications; the pool of candidates would ***still*** be highly limited; and currying political favor would ***still*** be both expected and necessary.

In a statement made separately from its report to the Supreme Court, the Special Commission "recommended that the Pennsylvania General Assembly allow the electors of Pennsylvania to determine whether or not to adopt an appointive method of selection of statewide judges by placing a constitutional amendment on the ballot."

PMC endorses this recommendation in the strongest possible terms.

The concept of instituting a merit appointment process in place of partisan elections of appellate judges is not novel. Proposed constitutional amendments to this effect are introduced in virtually every session of the General Assembly. And they invariably die in Committee without reaching a floor vote.

There are many reasons for this that go beyond the scope of this hearing. But one reason is the inability to reach agreement on how a merit appointment process would operate.

There are, in fact, many different ways to devise a merit appointment process. No one way is "perfect" and no one way is "correct." PMC calls upon the Republicans and Democrats of the General Assembly to explore *together* a way to break the stalemate that has prevented a judicial selection constitutional amendment merit selection from being presented to the electorate in a statewide referendum.

It's time to let the voters decide. They have told us that they don't like the current system. They have told us, through the poll commissioned by the Special Commission, that 88% of the state's voters are convinced that judicial campaign contributions at least sometimes buy favorable decisions in the courtroom.

These findings are terribly disturbing to PMC, and should be terribly disturbing to this Task Force. We urge you to tackle the issue of judicial selection—not by endorsing campaign finance measures that are, at best, of limited efficacy but through genuine structural reform.

On a final note, PMC recognizes that its "all-or-nothing" posture may invite criticism from certain quarters, including some of its longstanding allies in the fight for merit selection. We accept this, so firmly are we convinced that a merit appointment process is the only reform that would allow appellate judges to be chosen first and foremost on the basis of their qualifications.

PMC hopes its testimony has been helpful to the Task Force in its consideration of the recommendations of the Special Commission To Limit Campaign Expenditures. We are grateful for the opportunity to participate in this dialogue.

**MIDWEEK PERSPECTIVES**

**EDMUND B. SPAETH JR. and LYNN A. MARKS**

# State courts: Make an appointment with reform

*A study of the role of money in judicial campaigns shows why judges shouldn't be elected. Now the Supreme Court must speak up*

PHILADELPHIA

Its name says it all: "Special Commission to Limit Campaign Expenditures." So it is not surprising that the commission's report, issued last week to the state Supreme Court, urges "improvements" of judicial elections, most notably limitations on what candidates can raise and spend.

The commission's effort is commendable. So too is the high court's grim recognition, demonstrated by its appointment of the commission, that the money involved in judicial elections has caused a "perceptual danger to the integrity of the judicial system."

Less commendable, however, is the Commission's belief that its recommendations would make any significant difference. In fact they would not. The commission's own findings — based on extensive information gathered from concerned citizens, former judicial candidates and recognized experts — bear this out.

That is why we hope that the commission's report will become the first step towards a constitutional amendment providing that judges — at least the justices and judges of the Supreme, Superior and Commonwealth courts — will be not elected but rather appointed on the basis of their qualifications.

The report acknowledges the truth of what every thoughtful observer of judicial elections has known, and has said, for a long time: to get elected, especially to an appellate court, judges have to raise so much money that, to quote the commission, the public's "perception of corruption in judicial elections and in the judicial process overall is so pervasive that the integrity of the system is at stake."

Philadelphia Mayor Edward G. Rendell told the commission: "The current system [of electing judges] is broken, broken, broken, and it desperately needs to be fixed." Committee of Seventy Executive Director Fred Voigt forecast a "disaster," a "nuclear war" because so much money will be needed to get elected in the next Supreme Court race.

The commission agreed with this testimony and, in fact, found Mr. Voigt's prediction "entirely plausible." Besides Mayor Rendell and Fred Voigt, many other witnesses, including representatives from Pennsylvanians for Modern Courts, the American and Philadelphia Bar Associations, the American Judicature Society and the American Civil Liberties Union testified that the only way to fix the judicial system is to stop electing judges. Appoint them. Then they won't have to raise money. And public confidence can be restored.

We hope, and respectfully urge, that in responding to the commission's report, the Supreme Court will do the following:

- First: Accept the commission's recommendations that judicial candidates should file campaign expenditure and contribution reports promptly and electronically; that, depending on the contributions they receive, judges should recuse themselves; and that disciplinary procedures, the lawyers' Rules of Professional Conduct, and the Code of Judicial Conduct be amended accordingly. While these measures would fall far short of fixing the judicial system, they would at least be of some help.
- Second: Reject the commission's recommendations that limit judicial campaign contributions and expenditures. As the commission admits, it is at least doubtful that judicial campaign expenditures can legally be limited. But even if they can be, there is no reason to suppose that public confidence in the integrity of the judicial system will be restored. So long as elections continue, judges must raise money — lots of it — and so long will the public think: the one who pays the piper, calls the tune.
- In fact, with contributions limited, judges will have to spend even more time raising the money needed to get elected. Dodges will be invented to get around the limits. And rich candidates will bankroll their own election. What the public wants, and deserves, are judges who ascend to the bench because of their qualifications, not because of their bank accounts.
- Third, and most important, the court must continue its leadership. While, of course, the court cannot by itself change the judicial system, as its leader and guardian the court can make all the difference in whether reform does or doesn't happen.

The president of the United States is responsible to report each year on the state of the union. If it is bad, that must be said. The president cannot fix it alone, but must suggest how Congress and others can. Skilled engineers responsible for reporting on the structural soundness of a building cannot fix the building. But they can, and should, say what has to be done to make it safe.

In appointing the commission, the court has already demonstrated its sense of responsibility for the soundness of our judicial system. Now that there is a public record demonstrating beyond question that judges must be relieved of the necessity of raising money to get elected, we hope the court will further demonstrate its statesmanship by urging the governor, General Assembly and every concerned civic group and private citizen, to get judges out of partisan political elections.

There are reasonable differences of opinion on exactly how appointed judges should be selected and confirmed. But those differences have been resolved in many other states. Without question, where there's a will, there's a way.

The court can provide the will. Others can provide the way. The court can say, with an authority no one else has, that confidence in the integrity of the judicial system requires that appellate judges not be elected. Then others can work to design and put in place the best way to appoint them.

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*Former Superior Court President Judge Edmund B. Spaeth, Jr. is state chair and Lynn A. Marks is executive director of Pennsylvanians for Modern Courts, a statewide nonpartisan court reform organization.*

THE PHILADELPHIA INQUIRER

Op-Ed Page (December 1, 1997)

# 'Reform' of the system isn't enough

By Lynn A. Marks
and Ellen Mattleman Kaplan

Critics of the money involved in judicial elections recently gained a powerful convert: the Pennsylvania Supreme Court.

Concerned that the escalating cost of running for judge has created a "perceptual danger to the integrity of the system," the court has named a special commission to recommend steps to mitigate that danger.

The court's concern is clearly justified: It is a continuing outrage that, to become a judge in Pennsylvania, candidates must raise money — any money — from lawyers and special-interest groups who regularly appear in court. Equally troubling are the staggering costs of campaigning — typically well over $1 million for a Supreme Court seat.

All too often these dollars pay for slick media ads featuring thinly disguised promises to be "tough on crime." (And this for positions that are supposed to be impartial!)

So at first the court's initiative seems promising and even progressive. But it's not. Good intentions notwithstanding, electing judges — particularly appellate judges — doesn't work and can't ever be made to work. We say this notwithstanding the fact that many fine judges have sat, and continue to sit, on the state's appellate bench.

The Nov. 4 statewide judicial elections once again demonstrated that anything short of eliminating statewide judicial elections entirely would be, to quote one Texas judge, "like putting lipstick on a pig."

Only three out of 10 registered voters statewide came to the polls. The numbers were even worse in Philadelphia, which had the lowest turnout for a general election in the city's history.

Some call this apathy, others call it intelligence, as polls confirm that most voters have no idea who's running and, therefore, no knowledge of anyone's qualifications. While some took issue with the candidate ratings by the Pennsylvania Judicial Evaluation Commission, the fact remains that some candidates the commission found to be less qualified beat out more highly rated opponents.

Everyone knows it's almost impossible for candidates who don't live in the Pittsburgh or Philadelphia areas to win seats on the appellate courts. Tom Saylor's election marked the first time in 16 years that an "outsider" reached the Supreme Court bench. But the Democratic primary election seemed true to form: Each winner was from Allegheny County.

*Electing judges doesn't work and can't ever be made to work.*

Let's not forget that the field of candidates is narrow to begin with. A great many highly capable lawyers lack either the access to money or proper political connections that are so often necessary to survive a politically partisan selection process. Certainly this includes many minorities and women, although both groups have increased their representation on county benches.

No matter what the special commission recommends, voters will still be unfamiliar with the candidates; selection will still be based on geography and name recognition; there will still be little or no consideration paid to the candidates' qualifications; the pool of contenders will still be highly limited; and currying political favor will still be both expected and necessary.

And there is even more that's wrong with "reforming" campaign fund-raising and spending practices. Among them:

- Reform won't work. The flow of money in judicial campaigns won't stop by limiting candidates' spending. Instead, special-interest groups and political parties will make so-called "independent" expenditures to promote favored candidates.
- "Reform" will make matters worse. Limiting contributions provides an unfair advantage to candidates who are wealthy or already well-known. And imagine the fund-raising frenzy as limits on donations force candidates to spend even more time seeking out a greater number of willing benefactors.
- "Reform" may not be legal. Court efforts to impose limits on judicial campaign spending may well violate the U.S. Constitution. Like it or not, the decision in ***Buckley v. Valeo*** prohibiting certain spending limitations is still the law of the land.

So forget the lipstick. Instead, we urge the special commission to go whole hog by recommending to the Supreme Court the only real solution: The General Assembly should submit to the voters a constitutional amendment replacing politically partisan elections for statewide judges with an appointive system based on merit. It's long overdue, and it's about time.

Lynn A. Marks is executive director and Ellen Mattleman Kaplan is associate director of Pennsylvanians for Modern Courts, a statewide nonpartisan court reform organization.

Wall Street Journal
May 27, 1997
Page A20

# Ohio Effort to Cap Election Spending In Judicial Races Triggers Challenge

By Dean Starkman
*Staff Reporter of* The Wall Street Journal

Dismayed by the growing influence of big money in judicial elections, Ohio's judges are trying to provide the nation with a model for limiting spending in their campaigns.

Predictably, Ohio's newly instituted spending caps for judicial elections are being challenged in court on First Amendment free-speech grounds. But attorneys general from 22 other states have joined in defending the Ohio experiment, saying that unlimited spending on judicial races "creates a perception of justice for sale."

The irony is that the Ohio restrictions haven't slowed the money flow. They were clearly a flop in last fall's judicial elections. Business interests, plaintiffs' lawyers and unions poured more than $600,000 into political action committees, which ran TV ads and sent mailings backing state Supreme Court candidates. That was in addition to the $1.2 million the four high court candidates spent themselves. "It was not a good scene," says Ohio Chief Justice Thomas Moyer.

Judicial campaign spending, particularly in state supreme court races, has soared in recent years as the political forces in the fight to overhaul the civil-justice system have shifted their attention from state legislatures to the courts that must rule on the constitutionality of new laws. In Texas, candidates for three supreme court seats spent a whopping $10.7 million in 1994, after the state legislature adopted limits on civil suits. Last year in Alabama, two candidates on opposite sides of the tort reform debate spent $4.3 million.

When legislation limiting lawsuits is challenged in court, "the interest in who sits on the court becomes very acute," says Norman D. Tucker, a plaintiffs' lawyer whose Southfield, Mich., firm contributed more than $100,000 to a candidate for the state's high court last year.

Ohio's chief justice started pushing for changes in the way judges are selected after spending $1.1 million in his first run for the high court in 1986. After a referendum calling for the appointment of judges failed, he started worrying about how much money would have to be spent in the 1996 race. Earlier that year, the Ohio legislature had adopted controversial limits on civil lawsuits that the state's high court is ultimately expected to review.

Chief Justice Moyer, who leads a group of three justices backed mostly by business, first proposed a rule that would cap contributions to judicial candidates at $1,000 per donor. Justice Moyer says he was concerned about the corrosive effects of campaign money on public confidence in the courts. "Many people think we can't separate the money from our decisions," Justice Moyer says.

But Justice Andrew Douglas, who often leads a four-vote majority on the court and is usually backed by unions and plaintiffs' lawyers, argued that contribution limits alone would favor candidates with wealthy donors.

So, pushed by Justice Douglas and his allies, the court two years ago amended its Code of Judicial Conduct to include both contribution limits and the nation's only mandatory limits on campaign spending.

With last fall's judicial elections looming, however, the rules were challenged by a candidate for trial judge in Cleveland who said the $75,000 cap in his race barely covered a single mailing. He sued, and a federal judge in Cleveland found that the spending caps were probably an unconstitutional infringement on the candidate's free-speech rights and blocked their enforcement in that race and several others.

In any event, with spending restricted to $350,000 per candidate in the Supreme Court races, plaintiffs' lawyers and unions formed a political action committee that raised $234,000. The pro-business side, along with the Republican Party, which contributed heavily to efforts supporting two candidates, responded and raised more than $400,000. Both sides filled the airwaves with TV and radio ads and sent out their own mailings.

So earlier this month, the high court adopted a plan to raise the cap to $500,000 for a Supreme Court candidate in the next general election and install a sliding scale of limits for trial court races based on the population of the county in which the race is held.

Today, Chief Justice Moyer says the spending caps only served to "put the big interest money right back into races." Justice Douglas acknowledges that they didn't work well. Still, the Ohio court is pressing its appeal of the federal judge's order limiting its rules. A federal appeals court in Cincinnati will hear oral arguments this summer.

# Name the judges you voted for

## *Even the conscientious Pa. voter had difficulty.*

By Rena Singer
INQUIRER STAFF WRITER

Lisa Pretecrum stays informed.

The Doylestown resident reads the papers, checks party leaflets, and looks up state bar association ratings before she votes for judgeships.

"I do my homework," Pretecrum said yesterday morning as she left her polling place at the borough hall.

But like a number of other Pennsylvania voters interviewed at the polls yesterday, she couldn't name one of the judicial candidates whom she'd just voted for.

"I voted for . . . oh, what *were* their names. Oh, wow. . . . boy!" said an embarrassed Pretecrum.

"I read the voters' guide," she said somewhat apologetically. "I voted based upon the information in that."

In her tiny backpack were her tools — the Pennsylvania Bar Association's judicial ratings and the League of Women Voters guide. Without those, she said, she would have been lost.

It's no wonder.

An even dozen candidates were on the statewide ballot, vying for seats on Pennsylvania's most powerful benches: the Supreme, Superior and Commonwealth Courts. That's to say nothing of numerous candidates for county Common Pleas Courts and Philadelphia's Municipal and Traffic Courts, plus county judges seeking retention.

Judicial candidates aren't allowed to say much about where they stand on issues that could come before the court.

That leads to simplistic law-and-order campaign commercials, and little opportunity for spirited debated among candidates. This is despite the fact that the Supreme Court justice, Commonwealth Court judge and four Superior Court judges being elected yesterday are likely to have a significant impact on issues ranging from auto insurance to teachers' salaries to property taxes to the death penalty.

That point was not lost on Doylestown attorney Betsy Tomlinson.

"These are probably some of the most important and powerful people in the state," Tomlinson said. "They deal with hundreds of important cases and really determine how the laws of the state are applied."

Nevertheless, she could not remember for whom she had voted minutes after exiting a blue-curtained booth at Doylestown Borough Fire Company No. 1 .

"This is bad," said Tomlinson. "I can't remember their names. If I looked at the ballot, I could tell you their names."

How did she decide for whom to vote in this "most important" race?

"Even people who are paying attention, like me, don't know very much about these judicial candidates," Tomlinson said with a shrug. "There's not a lot of information out there."

So she made up for lack of information with loyalty. She voted the straight party line.

In Philadelphia, about half an hour before the polls closed, Robert Martin emerged from the polling place at Community College of Philadelphia at 16th and Spring Garden Streets, looking a bit perplexed.

Martin, 67, a retired maintenance supervisor with a salt-and-pepper mustache, said he had voted for candidates for each judgeship. But did he know the candidates' credentials? No. Where they were from? No.

"I read about a few of them," Martin said. "But I think it's stupid to have them on there. People don't know who they are."

Martin added, "To me they're all good judges — as long as you don't have to go before them."

Over in Wayne, voter Helen Macklin said she just threw up her hands at the long list of unfamiliar names and judicial titles.

"I didn't vote for [the judges] because I wasn't informed enough," she said.

Some voters' understanding of the three statewide ballot questions was no better.

Banished, in some counties, to the far upper-right corner of the ballot, the referendum questions sometimes seem to be overlooked by rushed and nervous voters, poll workers said yesterday.

Voters who remembered to read the questions may have had to do so more than once. The homestead-exemption referendum on yesterday's ballot, for example, was a 75-word, single-sentence question that, some voters joked, must have been written by a bureaucrat who loves long lines at the polls.

"It's all twisted around," said Hilda Wendler of Doylestown. "So I skipped it. I don't understand what they were about, and I'm not about to vote for something I don't understand."

Norristown resident Elizabeth Wright said she was equally unfamiliar with the ballot questions. Wright, however, took a different approach in the voting booth — an approach that experts say is not uncommon when voters look at referendum questions.

Wright said she figured that politicians used referendums to "sneak things in that you don't want when they're trying to change things . . . so I voted no for all of them."

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Staff writer Suzette Parmley and correspondents Scott Cech, Richard Sine and Susan Weidener contributed to this article.

The Philadelphia Inquirer / TOM GRALISH

**Driving to the polls** on Cecil B. Moore Avenue at 20th Street wasn't an option. Election official Phyllis Metz sat outside.

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EDITORIAL

# Selecting our judges

When the *Morning News* recently surveyed registered voters in Erie County, one question stumped almost everyone: Name a candidate for an appellate court, other than Erie's own Michael Joyce.

Shockingly, only two percent of the 1,966 voters even knew another judge's name.

The poll is not a scientific survey (nor has it ever been touted as one). But such a miniscule percentage should cause alarm. It is obvious, voters select judges without knowing who they are.

It is time to change that.

Proposals to replace our current system with merit selection brings the charges of "politics" and of "undemocratic" from the groups and politicians who benefit from voter ignorance. Thus far they have managed to keep the system to their liking.

A "mixed" system would however satisfy truly reasonable objections. Local judges, the county judges who sit in Pennsylvania's county court houses, would still be elected. Local voters know local candidates. (That is why Joyce's name was known here. Was it known in, say, Philadelphia?) Appellate judges would be appointed, perhaps after public confirmation hearings before the Senate. They would however face retention elections, so the public would still have a direct say in the process.

This seems simple enough. Why not?