



**Justice at Stake**  
c a m p a i g n

**Matt Berg, Interim Director of State Affairs**  
**Testimony to the Pennsylvania House Judiciary Committee**  
**Public Hearing on HB 1815 and HB 1816**  
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Good afternoon, and thank you for having me here today. My name is Matt Berg, and I currently serve as the Director of State Affairs for the Justice at Stake Campaign. I am pleased to be here this afternoon to provide testimony on behalf of Justice at Stake.

Justice at Stake is a nonpartisan organization working to keep our courts fair and impartial. We lead a national coalition of concerned civic and legal leaders, promoting substantive and procedural reforms for the court system. We seek in particular to reduce situations where judicial campaign conduct, campaign cash, or special interest pressure could cast the impartiality of judges into doubt. Our board consists of judges, academics, business and political leaders, both Democrats and Republicans. We have more than 50 partner organizations from across America and from across the political spectrum. Pennsylvanians for Modern Courts is one of our many partners. I must note that, while our views often overlap, the views of Justice at Stake and my testimony here today do not necessarily reflect the positions of all of our partner organizations or board members.

We also do not endorse candidates for judicial office or any one system of selecting judges. Instead, we educate the public and work for reforms, including merit selection, that keep politics and special interests out of the courtroom. We want judges to be able to do their job: to protect our Constitution, our rights, and the rule of law.

Justice at Stake has been active in monitoring and reporting the rapid rise in spending on judicial elections across the country. Over the last ten years we have seen judicial elections grow increasingly expensive and alarmingly politicized. Across America, attorneys and special interest groups with cases in court have been pouring millions into judicial contests, mostly for state high courts, but increasingly for state appellate and even trial courts.

In our decade report, *The New Politics of Judicial Elections*, which we coauthored with the Brennan Center for Justice at the New York University School of Law and the National Institute on Money in State Politics, we noted that candidate

fundraising in state Supreme Court elections between 2000 and 2009 skyrocketed to 206.9 million dollars. That is more than double – and nearly triple – the 83.3 million dollars raised for the same purpose in the 1990s. And during the same period, 20 of the 22 states that hold high court elections, including Pennsylvania, set new fundraising records.

After factoring in independent expenditures, these figures climb much higher. Broadcast television ads have pushed wedge-issue politics into state high court elections. These television ads, along with aggressive questionnaires from special interest groups, have pressured judges to take stands on controversial issues. As retired Supreme Court Justice Sandra Day O'Connor recently warned: "In too many states, judicial elections are becoming political prizefights where partisans and special interests seek to install judges who will answer to them instead of the law and the Constitution."

The trend of skyrocketing spending on state supreme court elections has touched Pennsylvania as well. From 2000 to 2009, candidates for seats on the Pennsylvania Supreme Court raised 21.2 million dollars, second only to Alabama over that time. An additional 1.3 million dollars was spent independently on television advertising in Pennsylvania over the same period. The total spending of 22.7 million dollars from 2000 to 2009 ranks third nationally behind only Alabama and Ohio.

In our most recent edition of the report, we noted that Pennsylvania's 5.4 million dollars spent on judicial candidates in 2009 and 2010 trailed only Michigan, which saw 9.2 million dollars spent on its judicial elections. Approximately 3.35 million dollars of the total spending in these two years was on television advertisements. Since 2007, Pennsylvania candidates and interest groups have spent a total of 15.5 million dollars, the highest nationally from 2007 to 2010. And in 2009, just two groups accounted for more than half of all candidate fundraising in Pennsylvania. The state Republican Party poured 1.4 million dollars into the campaign of eventual winner, Justice Joan Orié Melvin, while the Philadelphia Trial Lawyers Association donated 1.37 million dollars to Judge Jack Panella.

Pennsylvania is part of a national trend of campaign spending on court races by attorneys and special interests. These groups frequently view their spending as a litigation investment, and fundraising records have been broken in almost every state with a competitive high court election. And, along with this rapid increase in spending, we have noted a rapid decrease in the quality of debate and the tenor of judicial elections. Illinois Justice Lloyd Karmeier described this conundrum best after a particularly expensive race in Illinois in 2004. He called the level of spending on judicial elections "obscene," and asked: "How can people have faith in the system?"

In fact, these new politics of judicial elections have had a corrosive effect on public confidence in the courts. In a 2001 national poll conducted on behalf of Justice at Stake, 68 percent of the respondents expressed a favorable rating of the United States Supreme Court. In a similar poll conducted last fall, that number had fallen to 50 percent. And a recent Gallup Poll put the United States Supreme Court's approval rating at 46 percent. Finally, in Wisconsin, where state supreme court elections have become among the ugliest in the nation, confidence in the state supreme court dropped from 52 percent just three years ago to 33 percent last summer.

Public opinion surveys conducted between 2001 and 2004 found that more than 70 percent of Americans believe that campaign contributions influence judges' decisions. Only five percent, meanwhile, believe that contributions have no influence whatsoever. Little has changed since 2004. In 2008, 78 percent of Wisconsin voters said they believed campaign contributions influence the results in the courtroom. In 2010, 78 percent of West Virginians reached the same conclusion. And in May of 2010, a poll we conducted along with Pennsylvanians for Modern Courts showed that 76 percent of Pennsylvanians believe that campaign contributions influence judicial decision-making.

Many judges often feel trapped in a bad system, forced to raise money from the parties who appear before them, and looking over their shoulders for interest groups who might unseat them. In 2002, 26 percent of state court judges surveyed said they believe campaign contributions have at least "some influence" on court decisions. Former California Supreme Court Justice Otto Kaus famously observed that, for an elected judge, setting aside the political implications of high-profile decisions is "like ignoring a crocodile in your bathtub." And Ohio Supreme Court Justice Paul Pfeifer opined, "Everyone interested in contributing [to judges] has very specific interests. They mean to be buying a vote."

The United States Supreme Court has also recognized that this spending on judicial elections can jeopardize due process. *Caperton v. Massey* demonstrated the damaging effects of special interest money on public trust in the courts. The case involved a West Virginia Supreme Court justice who refused to recuse himself from a case involving a coal company whose CEO spent 3 million dollars of his own funds to help elect him. Ruling that the judge had a constitutional obligation to step aside, the United States Supreme Court noted: "Just as no man is allowed to be a judge in his own case, similar fears of bias can arise when – without the other parties' consent – a man chooses the judge in his own case."

In its amicus brief to the Court, the Conference of Chief Justices, which represents the top jurists in every state and U.S. territory, wrote:

As judicial election campaigns become costlier and more politicized, public confidence in the fairness and integrity of the nation's elected judges may be imperiled. ... The quaint notion that "judicial campaigns must focus their solicitations for funds on members of the bar" ... has given way to high-dollar, free-for-alls marked by dueling campaign salvos by organized interest groups, often located outside the state [where the election takes place].

There is evidence that these concerns have renewed public interest in – and support for – merit selection as one way to protect the integrity and reputation of the courts. The survey we conducted here in 2010 showed that 62 percent of Pennsylvanians favor merit selection as a way for choosing appellate judges. Moreover, 73 percent believe the most qualified candidate does not win in judicial elections, and an astounding 93 percent agreed that the voters should at least be given an opportunity to decide whether Pennsylvania should change the way it selects its judges.

Many Pennsylvania newspapers have editorialized in favor of merit selection, and support has also been voiced by some of the nation's largest papers. The *Washington Post* has called for merit selection, saying: "States should consider abolishing judicial elections in favor of an appointment system that distances jurists from politics and fundraising." A *USA Today* editorial also said merit selection was one of several reforms that would protect state courts from a special-interest takeover. It concluded by saying, "Every system has drawbacks, but nothing could be worse than putting 'for sale' signs on the doors of the nation's courts."

We believe that every American deserves a fair day in court, without fear that the other side can buy favorable treatment by spending freely to elect a judge. States that use merit selection along with retention elections experience significantly lower levels of election spending than the 22 states that choose their supreme court justices through competitive elections. Between 2000 and 2009, candidates in retention elections raised only 2.2 million dollars, barely one percent of the total raised over that period. As a result, their citizens have far better faith in their court systems.

For these reasons, Justice at Stake supports the efforts of Pennsylvanians for Modern Courts to move Pennsylvania from judicial elections to a merit selection system that promotes transparency, quality, and participation.

Thank you very much for your time.