



### **Judicial Campaigns: Money, Mudslinging and an Erosion of Public Trust**

Thirty-nine states elect their judges in some fashion. What once were “sleepy little affairs,” judicial campaigns have become high-stakes races, drawing in big money and increasingly negative advertising campaigns. In 2006, an estimated \$16 million was spent on advertising in supreme court races in 10 states, a record. If predictions hold true, contests in 2008 promise to be more expensive -- and nasty.

But big money and mudslinging are undermining public trust in the judiciary and the ability of judges to act independently and impartially.

To call attention to this trend and its consequences, the Annenberg Public Policy Center’s FactCheck.org ([www.factcheck.org](http://www.factcheck.org)) convened judges, political consultants, good-government watchdogs and journalists for a conference Wednesday in Washington.

“This is an under-reported issue,” said Viveca Novak, FactCheck’s deputy director, who organized the event.

Direct election of judges is extremely popular with Americans. “The public isn’t going to give up on the notion that they should be able to elect judges,” said Kathleen Hall Jamieson, director of the Annenberg Public Policy Center. Nearly 65 percent of Americans want to elect those who sit on the bench, according to a national survey by the Policy Center.

Even so, said Jamieson, seven of 10 of those polled in the Center’s 2006 survey said they believe the necessity to raise campaign funds will affect a judge’s rulings once in office. Sixty-three percent believe that pressures from past contributors would affect a judge’s fairness and impartiality to a great or moderate extent. Click [here](#) to read more findings.

“Money has a series of pernicious effects,” Jamieson told the conference. “The survey data suggest that once you destabilize the perception of impartiality and fairness, you begin to erode trust in the judiciary and confidence that judges work for the well-being of the public good.”

In 2006, television advertising was utilized in 10 of the 11 states with supreme court races. And in five of those races, negative ads were used. “Judicial races are now being run like any other race,” media consultant Allen Crow told the audience.

That creates a problem. Unlike other political contests, where candidates win votes by saying exactly how they will act once elected, judges are expected *not* to hold pre-conceived opinions. “The very nature of being a good judge means you will be unpredictable,” said Crow. Therefore, judges should not be staking out positions on issues. But that is exactly what much campaign advertising is about.

Crow, of Atlanta, developed ad campaigns for two Georgia Supreme Court justices. He has a simple message for his clients: “We stress to our candidates it very important that you define the race before your opponent does it for you.”

That message was echoed by David Browne, a Washington political consultant, who has handled a number of judicial campaigns around the country, including the 2006 election of Sue Bell Cobb to become Chief Justice of the Alabama Supreme Court.

Justice Cobb joined her consultant at the conference. She played a campaign ad Browne created to counter her opponent’s claims that Cobb was a “liberal” and out of touch with the values of Alabama voters. The ad featured Cobb playing the piano while her young daughter sang “This Little Light of Mine.”

“I wanted to define me before they maligned me,” said Cobb, who spent \$2.6 million compared to almost \$5 million spent by her opponent. Supreme Court candidates in Alabama raised a total of \$13.4 million, making it the second most expensive high court race in history.

The rise in judicial campaign advertising can put those seeking a seat on the bench in an awkward position.

“To beat an incumbent, you have to go negative,” said Browne. “You have to give a reason to fire him. You make a negative ad to tear someone down.”

Judicial ads share a trait with others in the political realm, noted Browne. “There’s always a skinny bit of truth and a whole lot of baloney.”

That is worrisome, said FactCheck’s Novak. “You’d think judges, of all people, would have a healthy respect for the facts, but that doesn’t always seem to be the case.” What will suffer as a result, she said, “is the public’s respect for the judiciary.”

Since 2006, FactCheck.org has been monitoring judicial ads for accuracy, just as it does political ads for other offices. That monitoring effort will be expanded during the 2008 election season.

Judicial races also attract the interest of third-party groups willing to pour money into a race to affect the outcome. Pro-business groups were responsible for more than 90 percent of all spending on special interest television advertisements in 2006, according to a [new study](#) by Justice at Stake, a nationwide, nonpartisan partnership of more than 30 judicial, legal and citizen organizations, including the American Bar Association, American Judicature Society, the League of Women Voters and the Brennan Center for Justice at New York University.

One of the most closely watched races that drew strong third-party interest was the 2004 race for a seat on the West Virginia Supreme Court of Appeals. In that race, challenger Brent Benjamin, a Republican, unseated Justice Warren McGraw, a Democrat, with millions of dollars in support from the CEO of a major coal company in the state, Massey Energy.

Justice Benjamin, who addressed the conference, said the role of third-party organizations in a campaign can confuse the voters. “How well does the public distinguish between what the candidate is doing and what an independent outside group is doing?” he asked.

Solutions to the rise in campaign spending and illegitimate attack advertising are elusive, panel members agreed. After listening to presentations by judges and media consultants, Spencer Noe, who headed the Kentucky Judicial Campaign Conduct Commission in 2006, observed, “I can say that Kentucky is truly a garden spot for judicial campaigning. All we talk about is cleaning up dockets.”

Because 100 of Kentucky’s statewide judicial races were contested in 2006, the commission was created to monitor campaigns. It was comprised of lawyers, journalists, educators and civic leaders, and operated with a \$25,000 budget. Candidates were asked to sign a pledge to eschew negative advertising. Although the commission had no legal authority, it used its influence to single out violations in local newspapers and elsewhere. Overall, said Noe, the effort was a success.

Bert Brandenburg, executive director of Justice at Stake, which was created six years ago, told the conference, “There is no excuse for not moving forward with reforms. The status quo has become completely untenable....We have to do something.”

Key to bringing about change, said Brandenburg, is voter education. “It’s unsexy, but it’s effective.”

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A video recording and transcript of the conference will be posted on [www.FactCheck.org](http://www.FactCheck.org) and [www.annenbergpublicpolicycenter.org](http://www.annenbergpublicpolicycenter.org) as soon as they become available.