



DIVERSITY IN HIGH COURT CAMPAIGNS, 2005-2006

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The National Institute on Money in State Politics is a nonpartisan 501(c)3 tax-exempt charitable organization dedicated to accurate, comprehensive and unbiased documentation and research on campaign finance at the state level. It compiles campaign-contribution information on every state-level candidate, major party committee and non-bond ballot measure committee in the country.

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OVERVIEW

In this report, the Institute examines correlations between racial, ethnic and gender diversity and fund raising by candidates for state high court campaigns in the 2005 and 2006 elections.

Because high court elections vary so greatly from state to state in structure, cost and volatility, any cross-state comparisons should be viewed with caution. The small number of races and short candidate lists mean generalizations made against a national average are just that, generalizations. What is clear from the numbers, however, is that incumbency plays a powerful role in determining success in judicial elections involving racial or ethnic minorities, as it does for candidates in general.

In total, 115 candidates ran in high court races in the 2005 and 2006 general elections. Thirty-four candidates were female, constituting nearly 30 percent of the candidates. Females made up 34 percent of the candidates in retention races; 32 percent of the candidates in nonpartisan races; and 19 percent of the candidates in partisan races.

Fourteen of the candidates, or 12 percent, were members of a racial or ethnic minority group. Minorities made up 13 percent of the candidate pool in retention and nonpartisan races, while only 9.6 percent of candidates in partisan races were minorities. Of these 14, only three lost their races.

RACIAL AND ETHNIC DIVERSITY OF HIGH COURT CANDIDATES BY ELECTION TYPE, 2005-2006

ELECTION TYPE	# OF MINORITY CANDIDATES	# OF FEMALE CANDIDATES	TOTAL # OF CANDIDATES
Partisan	3	6	31
Nonpartisan	6	15	46
Retention	5	13	38
TOTAL	14	34	115

The Power of Incumbency in Fundraising and Electoral Success

The advantages of incumbency clearly played a role in the success of minority candidates: all of the 11 candidates who won their elections were incumbents. Of the three minority candidates who lost, two were running for an open seat and one was running against a sitting incumbent. Five of the 11 winning minorities competed in retention elections, or contests in which voters decide only whether to retain a sitting justice rather than choosing between two or more candidates for one seat.

Seventy-nine percent of female candidates won their elections, including 10 of the 15 female candidates in nonpartisan races and four of the six in partisan races. Twenty-two female winners were incumbents out of 27 candidates; three challengers defeated incumbents and two ran for open seats. Thirteen of the winners ran in retention elections.

Overall, 79 percent of minority candidates and the same percentage of women were successful in their high court campaigns. (When retention candidates, who generally win their up-or-down votes, are excluded from the calculations, the percentages of minority and female winners in contested elections drop slightly, to 67 percent for each group.)

Four female candidates were also members of a minority group. Three of the four were incumbents who won their races, while the fourth, a challenger to an incumbent, lost. Two of the winners ran in retention races. The only female minority to run and win in a contested election did so as an incumbent in North Carolina, where candidates can choose to use public financing to fund their campaigns.

METHODOLOGY

Gender identifications were made by searching state high court Web sites, candidates' own campaign Web sites, and news reports. To establish racial and ethnic identities, the Institute relied heavily on these sources:

- *The Directory of Minority Judges of the United States, 3rd Edition* published in August 2001 by the American Bar Association Standing Committee on Minorities in the Judiciary.
- State high court Web sites, which publish biographies of current justices.
- Candidate Web sites, which provide biographical information.
- News articles published during the 2006 election cycle.
- *The 2006 Nonpartisan Judicial Voter Guide*, published by the North Carolina State Board of Elections and provided to us by the North Carolina Center for Voter Education.
- North Carolina election results provided by Democracy North Carolina.

Candidates for whom no racial or ethnic identities were found are included in the white category. Candidates in North Carolina were the only ones actually identified by an outside source as white.

Once the identifications were complete, the Institute separated the races into three types based on method of election to be sure comparisons across state lines were accurate. Judicial elections fall into three categories:

- **Partisan races**, in which candidates identify with a party during the election cycle.
- **Nonpartisan races**, in which candidates run against an opponent, but are not listed on the ballot with a party affiliation.
- **Retention races**, in which sitting justices appear on the ballot in an up-or-down vote with no challengers. Justices in these types of races are generally first appointed to their office, but others have faced opponents. Some states, such as New Mexico, incorporate a mix of the three: A justice is first appointed, then runs in a contested race for the first election and then faces retention races thereafter. In Montana, incumbent judges run in retention elections if they draw no opposition.

Only candidates who participated in a state's general election — or the equivalent since many court races happen in the early spring or summer of an election year — were included in this study.

DIVERSITY IN PARTISAN RACES

Partisan races for state supreme courts have long been the most expensive judicial contests, at times matching gubernatorial and federal races in fund raising.¹

Five states held partisan high court elections in the 2006 cycle: Alabama, Louisiana, Michigan,² Ohio and Texas.

ETHNIC DIVERSITY

Of the 31 candidates campaigning in these five states, only three were minorities. All three were African American and two of the three lost their races. The winner was an incumbent whose opposition raised no funds.

On average, partisan candidates raised \$631,909 for their campaigns. (The average jumps to \$851,703 when eight candidates who raised no funds are excluded.) The average raised by the three African American candidates was almost half that, or \$323,329 with one candidate in Alabama raising significantly less than the other two.

The median amount raised by partisan candidates who raised any funds was \$441,065. The median raised by the three African American candidates was also \$441,065.

Chief Justice Wallace B. Jefferson was the only African American candidate to win in a partisan race when he won re-election in Texas. Jefferson raised slightly more than \$441,000, while his opponent, a Libertarian, did not raise funds. Jefferson became the first African American Chief Justice of the Texas Supreme Court in 2004, when Republican Gov. Rick Perry appointed him to the position.

Gwendolyn Thomas Kennedy — a Democrat running against a Republican incumbent justice in Alabama — raised \$25,900 compared to her opponent's \$481,000. Kennedy lost the race, garnering 43 percent of the vote. If elected, Kennedy would have been the first female African American on the Alabama high court.³

Ben Espy, a Democrat who lost his race for an open seat in Ohio, raised \$503,000, more than the median for all partisan candidates but nearly half the \$999,000 raised by his opponent, Republican appellate judge Robert Cupp. If elected, Espy — a former state Senate minority leader — would have become the only African American justice on the Ohio high court.⁴

¹ "The New Politics of Judicial Elections 2004" — co-authored by the Institute, the Brennan Center for Justice at NYU School of Law, and the Justice at Stake Campaign and available from <http://www.followthemoney.org/press/ReportView.phtml?r=207> — reports that one high court race in Illinois in 2004 generated \$9.3 million in campaign contributions, more than the amount raised in U.S. Senate races in 18 states that same year.

² Although Supreme Court candidates in Michigan appear on the ballot as nonpartisan, they are initially nominated by political parties.

³ Jay Reeves, "Democrats Try to Overcome GOP in High Court," *Associated Press*, Nov. 2, 2006.

⁴ Jim Provance, "Ohio Supreme Court: Incumbent, 3 Others Vie For 2 Positions on Bench," *Toledo Blade*, Nov. 5, 2006 [newspaper on-line]; available from: <http://toledoblade.com/apps/pbcs.dll/article?Date=20061105&Category=SRVOTERGUIDE06&ArtNo=61103054&SectionCat=&Template=printart>; Internet; accessed April 19, 2007.

GENDER DIVERSITY

Females accounted for only 19 percent, or six of 31 candidates who ran in partisan elections. Two-thirds of the females, four of six, were victorious in their races; only 48 percent of males, 12 of 25, in partisan elections were successful.

Females received an average of \$862,400, nearly 50 percent more than the average \$576,590 received by their male counterparts. Six male candidates raised no funds, compared to one female.

The median raised by female candidates was also higher at \$677,444, or 60 percent more than the \$422,790 median raised by male candidates.

AVERAGE RAISED BY MALE AND FEMALE CANDIDATES IN PARTISAN RACES, BY PARTY, 2005-2006

FEMALE	PARTY AFFILIATION	# OF CANDIDATES*	AVERAGE
	Democrat	4	\$676,277
	Republican	2	\$1,234,697
	AVERAGE	6	\$862,417
MALE			
	Democrat	6	\$266,414
	Republican	13	\$985,860
	Libertarian	6	\$0
	AVERAGE	25	\$576,587

*Includes Michigan candidates, who appear on the ballot as nonpartisan but are nominated by political parties.

Two female candidates in Alabama each raised more than \$1.7 million for their races. Democrat Sue Bell Cobb, a lower court judge at the time of the race, collected \$2.6 million on her way to becoming the first female chief justice in the state.⁵ Her opponent, then-Chief Justice Drayton Nabers, Jr., raised more than twice this amount — \$4.95 million — for his re-election campaign. However, Nabers faced a primary challenge from another sitting Republican Supreme Court justice, Tom Parker, who raised nearly \$619,000 for his primary race. Cobb, on the other hand, did not face primary opposition. Together, the three candidates for the chief justice seat raised nearly \$8.2 million, a record for a single court race in the state.

Lyn Stuart, a Republican, collected nearly \$1.8 million in contributions in her successful bid to be re-elected to the Alabama court. Her opponent, Democrat Albert L. Johnson, raised \$145,075, less than 10 percent of Stuart's total.

Incumbent Michigan Supreme Court Justice Maura Corrigan was the only other woman in a partisan race to gather more than \$500,000. She raised \$677,444 for her re-election campaign, almost twice what the other five candidates raised combined. Although appearing on the ballot as

⁵ Eric Velasco, "Chief Justice: Cobb Becomes First Woman to Lead State's Supreme Court," *The Birmingham News*, Nov. 8, 2006 [newspaper on-line]; available from <http://www.al.com/news/birminghamnews/index.ssf?/base/news/1162980934221460.xml&coll=2>; Internet; accessed April 20, 2007.

nonpartisan, the Republican Party nominated Corrigan for the race. Fellow Justice Michael Cavanagh, nominated by the Democratic Party, raised \$307,700 for his successful re-election bid.

The fourth victorious female candidate in the partisan category was Jeannette Theriot Knoll, a Democrat who ran unopposed for re-election in Louisiana and did not raise money.

DIVERSITY IN NONPARTISAN RACES

Although nonpartisan races have often been less expensive and contentious than their partisan counterparts, money and attention have increased over the past four cycles. In the 2000 cycle, the median amount raised by partisan candidates (including those who ran in the primaries) was \$735,400, more than five times the median raised by nonpartisan candidates: \$142,022. By 2006, the partisan races were less than two times more expensive than nonpartisan ones, with the median for partisan races equaling \$378,830 and the median for nonpartisan races slightly more than \$214,737.

Eleven states held nonpartisan high court races in the 2006 cycle: Arkansas, Georgia, Idaho, Kentucky, Minnesota, Nevada, North Carolina, North Dakota, Oregon, Washington and Wisconsin.⁶

ETHNIC DIVERSITY

Of the 46 candidates running in nonpartisan elections, six were members of a minority group. Five were African American and one was Hispanic. Only one of the six — and the only non-incumbent — lost in the general election.

On average, nonpartisan candidates raised \$251,536 for their campaigns. (The average jumps to \$269,085 when three candidates who raised no funds are excluded.) The median amount for nonpartisan candidates who raised funds is \$282,247. The five African American candidates raised \$224,000, on average, and the median for these candidates was \$256,288. The only Hispanic nonpartisan candidate — Chief Justice Paul De Muniz in Oregon — ran unopposed and raised no funds.

Justice Michael Douglas of Nevada was the top fund-raiser among African Americans running in nonpartisan elections. He raised \$419,425 for his successful re-election campaign, four times more than his opponent Cynthia Steel, who raised \$90,620. Justice Douglas was appointed to the court in 2004 and is the first African American justice in the state's history.⁷

Another ground-breaking justice up for re-election in 2006 was Justice William E. McAnulty, Jr. of Kentucky. McAnulty became the first African American on the Kentucky Supreme Court when he was appointed in June 2006.⁸ He also won re-election to his seat despite being outraised by his opponent, county judge Ann O'Malley Shake. McAnulty raised \$256,288, 25 percent less than the \$342,845 raised by Shake.

Associate Justice Patricia Timmons-Goodson of the North Carolina Supreme Court raised the second-largest amount among nonpartisan African American candidates: \$293,215. Timmons-Goodson won her first re-election campaign after being appointed to the court earlier in 2006.⁹ Since both Timmons-Goodson and her opponent participated in North Carolina's public-financing

⁶ Wisconsin held high court elections in both 2005 and 2006.

⁷ "Justices of the Nevada Supreme Court," *The Supreme Court of Nevada* [on-line]; available from <http://www.nvsupremecourt.us/info/about/justices/index.php?bio=yes&judgeID=2>; Internet; accessed April 23, 2007.

⁸ "Justice William E. McAnulty, Jr.," *Kentucky Court of Justice* [on-line]; available from <http://courts.ky.gov/courts/supreme/justices/mcanulty.htm>; Internet; accessed April 23, 2007.

⁹ "Patricia Timmons-Goodson," *The North Carolina Court System* [on-line]; available from <http://www.nccourts.org/Courts/Appellate/Supreme/Biographies/Biography.asp?Name=Goodson>; Internet; accessed April 23, 2007.

program that provides state funding for high court candidates, the fund-raising gap between the two was only \$1,729. More than 70 percent of each candidate's funds came from the public subsidy.

The only African American candidate to lose in a nonpartisan race was Wendell Griffen, an Arkansas Court of Appeals judge running for an open seat on the state Supreme Court. The eventual winner, Paul Danielson, raised \$176,700, more than twice as much as the \$71,200 Griffen raised.

A fifth African American, Harold Melton, won re-election to Georgia's Supreme Court without facing opposition. He raised \$80,160.

GENDER DIVERSITY

Thirty-two percent of the candidates running for nonpartisan court seats in the 2006 cycle were female. These 15 candidates raised an average of \$368,950, nearly twice as much as the \$194,722 raised, on average, by their 31 male counterparts. All nonpartisan female candidates raised funds, as did all but three of the male candidates.

Only one female candidate ran unopposed: Annabelle Clinton Imber, an incumbent justice seeking re-election in Arkansas. In comparison, nine men ran unopposed.¹⁰

AVERAGE RAISED BY MALE AND FEMALE CANDIDATES IN NONPARTISAN RACES, 2006

GENDER	# OF CANDIDATES	AVERAGE
Female	15	\$368,950
Male	31	\$194,722
AVERAGE	46	\$251,536

As with partisan races, two-thirds of the nonpartisan female candidates were successful in their elections: 10 of 15 females claimed victory. Nearly 68 percent of males in nonpartisan races won their contests. Six of the 10 female winners were incumbents, compared to 17 of 21 male winners. Two more females succeeded in contests for open seats and two defeated incumbents.

Despite being outraised, Mary Noble, a circuit court judge at the time of the campaign, defeated incumbent Justice John Roach in Kentucky. Roach raised \$509,670, two-thirds more than the \$304,000 raised by Noble. Controversial Kentucky Gov. Ernie Fletcher appointed Roach to the court in 2005,¹¹ which might have played a factor in his defeat. (However, Justice William McNulty, another incumbent appointed by Fletcher shortly before the campaigns began, did survive his re-election campaign.)

Another race in which a challenger defeated a sitting justice occurred in Nevada. Then-District Judge Nancy Saitta defeated Justice Nancy Becker in a fiery race, which saw the candidates trade

¹⁰ This figure includes two candidates in Washington state who faced opposition in the primary.

¹¹ Andrew Wolfson, "McAnulty Beats Shake to Keep Seat," *The Courier-Journal*, Nov. 8, 2006, sec. K, p. 5.

accusations that campaign contributors would exert too much influence over judicial decisions.¹² Saitta raised \$646,100, nearly \$100,000 more than Becker. Saitta won 46 percent of the vote, which was enough to take the election since 15 percent of voters preferred the option of “none of these candidates.” The race was also one of only two contests that featured two women squaring off against each other.

The other took place in North Carolina, where two female appeals court judges competed for an open seat on the state Supreme Court. Both candidates accepted public funding. Still, Robin Hudson narrowly won both the fund-raising battle — collecting \$292,200 to Ann Marie Calabria’s \$284,800 — and the election.

In one of the most vitriolic court contests of the 2006 election, Supreme Court Justice Carol Hunstein held off a challenge by Mike Wiggins. To retain her seat, Hunstein raised nearly \$1.4 million, nearly two times more than any other nonpartisan candidate — male or female. Wiggins raised \$310,700, four times less than Hunstein, but received substantial support from an independent committee that raised \$1.6 million to oppose Hunstein’s re-election.¹³ The race was the most expensive court race ever in Georgia.

¹² Sam Skolnik, “Who Owes Whom is Supreme Theme,” *Las Vegas Sun*, Aug. 27, 2006 [newspaper on-line]; available from <http://www.lasvegassun.com/sunbin/stories/sun/2006/aug/27/566670441.html>; Internet; accessed April 23, 2007.

¹³ Jill Young Miller and Jeremy Redmon, “Foes in Judicial Contest Go Dirty,” *Atlanta Journal-Constitution*, Oct. 31, 2006 [newspaper on-line]; Internet; available from <http://www.ajc.com/metro/content/printedition/2006/10/31/metsupreme1031b.html>; accessed April 23, 2007.

DIVERSITY IN RETENTION RACES

Retention elections tend to be quiet affairs in which candidates raise little, if any, money to promote themselves in the up-or-down contests. The 2006 cycle proved to be an exception to this rule: two Pennsylvania high court judges were targeted for defeat in 2005 by voters angry over the Court's involvement in a controversial pay raise for state legislators. Justices Sandra Schultz Newman and Russell Nigro raised \$356,758 and \$587,970, respectively. Newman narrowly retained her seat, while Nigro lost his race by a narrow margin. They were the only justices facing retention to raise significant cash. In fact, 33 of the 38 retention candidates raised no funds at all.

The other retention candidates to raise money were:

- Justice Edward Chavez of New Mexico, and that was only slightly more than \$1,000 from his personal funds.
- Justices Jim Rice and John Warner of Montana raised \$27,625 and \$25,460, respectively. In Montana, incumbent justices who draw no opposition in their nonpartisan races run in retention elections instead.

Sixteen states held retention elections in the 2006 cycle: Arizona, California, Florida, Indiana, Kansas, Maryland, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah and Wyoming.

ETHNIC DIVERSITY

Chavez of New Mexico was also one of only five minorities — and the only Hispanic — among the 38 retention candidates. Justice Joyce L. Kennard, an Asian Pacific Islander member of the California Supreme Court, won her race, as did the three African Americans in retention races:

- Justice Tom Colbert, the first African American justice on the Oklahoma Supreme Court.¹⁴
- Judge Clayton Green, Jr. of the Maryland Supreme Court.
- Justice Peggy A. Quince of the Florida Supreme Court.

GENDER DIVERSITY

Thirteen of the 38 retention candidates — or 34 percent — were female.

¹⁴ "Justice Tom Colbert, District No. 6," *Oklahoma State Courts Network* [on-line]; available from <http://www.oscn.net/oscn/schome/colbert.htm>; Internet; accessed April 23, 2007.