



FRINGE TACTICS
SPECIAL INTEREST GROUPS TARGET JUDICIAL RACES

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AUG. 25, 2005

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ACKNOWLEDGMENTS

The Institute would like to thank the Brennan Center for Justice at the New York University School of Law for generously providing storyboards and cost estimates for television advertising in judicial races. Research Associate Sarah Samis in particular provided assistance in tracking the advertising of independent expenditure committees.

This publication was made possible through a grant from the Open Society Institute. However, the views expressed and statements made are solely the responsibility of the Institute on Money in State Politics.

INTRODUCTION

Special interests have long been involved in the political game, often prompting complaints that they had the ears of politicians and could unduly influence the development of public policy. More and more, it appears that special interests are able to exert influence over elections as well, not just through large contributions to candidates, but also by spending money on advertising independently of candidates' campaigns. And because disclosure laws vary widely, some groups are able to operate independently of reporting requirements that regulate most political committees. By employing these tactics, interest groups are able to sway elections on the basis of issues important to them rather than on the merits of the candidates themselves.

The 2004 state Supreme Court elections are a prime example of special-interest involvement that went beyond giving campaign contributions. Justice at Stake, a national, nonpartisan coalition concerned about judicial elections, reports that interest groups in 2004 spent almost \$7.4 million in six states on television ads alone.¹ Two states, Illinois and West Virginia, drew national attention for the cost and nature of advertising purchased independently of the candidates' campaigns.

Many of the ads praised one candidate or attacked another, without being specific about the issues important to the groups that were buying the airtime. But an Institute analysis found that organizations with a financial stake in the debate over liability in lawsuits funded many of the independent committees. Four of the top five economic sectors, all with an interest in lawsuit liability, contributed 72 percent of the total money raised by independent expenditure groups in the six states.

These independent expenditure groups differ from state political party committees, which also were active in Supreme Court contests. The Georgia Democratic Party purchased TV ads for a candidate in the ostensibly nonpartisan race there.² The Ohio Democratic Party spent almost \$160,000 on ads supporting three judicial candidates.³ In Illinois, the Republican and Democratic parties invested heavily in their state's Supreme Court contest, spending more than \$4.2 million combined on television advertising for this race alone, according to the Brennan Center. While political parties spent large sums of money on the state judicial races, their funding sources and agendas are easier to identify and track than are the motives of other special-interest groups. State party committees must disclose their financial records to state agencies, while reporting requirements for independent groups often are looser.

THE FINDINGS

Uncovering and analyzing who finances the groups seeking to influence elections through independent expenditures, along with how those groups spend their funds, can give insight into their political motives. The Institute examined special-interest group activity in eight states holding Supreme Court elections in 2004 — Alabama, Georgia, Illinois, Mississippi, North Carolina, Ohio, Texas and West Virginia — and collected contribution information for 17 groups active in six of these states. The Institute uncovered little independent expenditure activity in the other two states: Georgia and North Carolina. Elsewhere, the groups active in the elections ranged from committees that formed under state laws and reported their finances to state disclosure agencies to various nonprofit groups governed by federal laws and regulations.

¹ Justice at Stake, "The New Politics of Judicial Elections 2004," June 2005, p. 7.

² Tom Baxter and Jim Galloway, "Political Insider: Legislator Alarmed at Judicial Politics," *The Atlanta Journal-Constitution*, Nov. 24, 2004, sec. Metro News.

³ Brennan Center for Justice at the New York University School of Law, Fair Courts Project, 2005.

Despite the variation in the types of groups making independent expenditures, the Institute’s analysis revealed that the driving interest of many of the players was to enact changes to lawsuit liability laws. Organizations on either side of this controversial issue spent large sums of money to influence the outcome of the 2004 judicial elections in the six study states. In all, the 17 groups raised \$19.3 million, with nearly all of the money coming from five economic sectors.

Four of the top five sectors — health, insurance, lawyers and lobbyists, and general business — are primary actors in the lawsuit liability debate. Some, such as the medical and business communities, seek to change tort laws to reduce large settlements that can increase their insurance costs or affect business opportunities. Others, such as plaintiff lawyers, hope to maintain a system that returns large awards and allows easy access to courts.

INDEPENDENT EXPENDITURE CONTRIBUTIONS BY SECTOR, 2004

SECTOR	AMOUNT
Health	\$3,846,927
Energy & Natural Resources	\$3,585,325
Finance, Insurance & Real Estate	\$3,483,150
Lawyers & Lobbyists	\$3,354,660
General Business	\$3,127,964
TOTAL	\$17,398,026

Even the second-ranking energy sector is not immune to difficulties with the legal system. All but \$1 million of the contributions from the energy and natural resources sector came from Don L. Blankenship, president of Massey Energy Company and member of the U.S. Chamber of Commerce Board of Directors.⁴ Massey Energy is the focus of a lawsuit to be heard by the West Virginia Supreme Court, giving Blankenship a clear interest in the outcome of that race, if not ties to the larger lawsuit liability issue.⁵

Three of the top five contributors to the study committees concentrated on the West Virginia Supreme Court race. Don Blankenship was the top giver, contributing more than \$2.5 million of his own money to three separate committees:

- And For the Sake of the Kids, \$2.46 million.
- Citizens for Quality Health Care, \$100,000.
- The West Virginia Chamber of Commerce PAC, \$2,000.

The Consumer Attorneys of West Virginia spent nearly \$2 million on the race. All of its money went to one committee that ran television ads supporting incumbent Justice Warren McGraw: West Virginia Consumers for Justice. Another large contributor, Doctors for Justice, gave \$745,000 in one lump-sum contribution to And For the Sake of the Kids, the committee funded primarily by Don Blankenship.

⁴ U.S. Chamber of Commerce [on-line]; available from <http://www.uschamber.com/about/board/all.htm>; Internet; accessed Aug. 1, 2005.

⁵ Paul Nyden, “Coal Companies Provide Big Campaign Bucks; Brent Benjamin Raking in Heaviest Contributions,” *The Charleston Gazette*, Oct. 15, 2004, p. 1A.

TOP CONTRIBUTORS TO INDEPENDENT EXPENDITURE COMMITTEES, 2004

CONTRIBUTOR	INDUSTRY	AMOUNT
Blankenship, Don L.	Mining	\$2,562,500
Consumer Attorneys of West Virginia	Lawyers & Lobbyists	\$1,899,200
U.S. Chamber of Commerce	Business Associations	\$1,251,000
American Tort Reform Association	Business Associations	\$765,000
Doctors for Justice	Health Professionals	\$745,000
American Insurance Association	Insurance	\$455,000
Bono, Randall A.	Lawyers & Lobbyists	\$450,000
Justice for All Foundation	Lawyers & Lobbyists	\$385,000
McNair, Robert C.	Electric Utilities	\$350,000
Perry, Bob J.	Home Builders	\$340,000

The U.S. Chamber of Commerce, long interested in judicial elections and so-called “tort reform,” gave \$1.25 million in three states. Most of the money — \$1 million — came via the Chamber’s Institute for Legal Reform. Another active participant with obvious interest in lawsuit liability was the American Tort Reform Association, which gave \$765,000 in two states. Robert C. McNair and Bob J. Perry, both Texas businessmen and long-time contributors to state-level and national Republican causes, gave \$690,000 to one committee, Texans for Lawsuit Reform. Although the group focused mainly on state legislative and federal races, it is concerned with the lawsuit liability issue and did spend some money on the Texas Supreme Court races.

Representing lawyers and others concerned with changes to the legal system on the top contributor list were Randall A. Bono and the Justice For All Foundation, giving a combined \$835,000 to one committee in Illinois. The committee then ran ads in favor of the Democratic candidate, whom they felt might be more sympathetic to their views. Randall Bono works for the Illinois plaintiff law firm SimmonsCooper LLC, known for representing clients in lucrative asbestos lawsuits.⁶

Organizations Spend Across State Lines

Although most of the independent expenditure committees concentrated their efforts on one state, the Institute was able to identify at least 19 contributors who donated to one or more active groups in different states. These contributors gave more than \$3.2 million, demonstrating their willingness to conduct broad campaigns to effect change.

CONTRIBUTORS TO COMMITTEES IN MULTIPLE STATES, 2004

CONTRIBUTOR	STATES	AMOUNT
U.S. Chamber of Commerce	IL/OH/WV	\$1,251,000
American Tort Reform Association	IL/MS	\$765,000
American Insurance Association	IL/OH	\$455,000
Nationwide Mutual Insurance	OH/WV	\$201,500
Westfield Group	IL/OH	\$110,500
Unitrin	AL/IL/MS	\$77,000
Ace American Insurance	IL/OH	\$60,000
Metropolitan Life Insurance/MetLife	AL/IL/WV	\$60,000

⁶ Terry Carter, “Mud and Money: Judicial Elections Turn to Big Bucks and Nasty Tactics,” *The ABA Journal*, Vol. 91, Feb. 2005, p. 44.

CONTRIBUTOR	STATES	AMOUNT
Allstate Insurance	IL/OH	\$55,000
United Services Automobile Association/USAA	OH/WV	\$51,000
Liberty Mutual Insurance	IL/OH	\$50,250
National Federation of Independent Businesses	IL/OH	\$29,000
CNA Insurance	IL/WV	\$26,000
Dow Chemical	IL/WV	\$16,000
Illinois Tool Works	IL/OH	\$15,000
International Paper	AL/IL	\$15,000
Sprint	IL/OH	\$10,500
Marathon Oil	IL/OH	\$10,250
Protective Life Corp.	AL/MS	\$7,500
Hartford Advocates Fund	AL/IL/MS	\$7,500
TOTAL		\$3,272,500

The U.S. Chamber of Commerce ranked third in contributions overall, but ranked on top of the multi-state giving list, making contributions in Illinois, Ohio, and West Virginia. The American Tort Reform Association, ranked fourth on the overall contributor list, gave \$765,000 total to two committees in Illinois and one in Mississippi.

The 19 multi-state contributors gave to only six committees. Citizens for a Strong Ohio was the top recipient among these committees, receiving almost \$2 million. The group seeks “to educate the public about the importance of the state judiciary and the effects judicial decisions have on Ohioans’ lives and the economic climate in Ohio.”⁷ In fact, all six committees listed below have at least some interest in the lawsuit liability issue.

RECIPIENTS OF MONEY FROM MULTI-STATE GIVERS, 2004

RECIPIENT	AMOUNT
Citizens for a Strong Ohio	\$1,919,000
Illinois Civil Justice League/JUSTPAC	\$849,000
Improve Mississippi PAC	\$325,000
Illinois Chamber PAC	\$146,000
Alabama Civil Justice Reform Committee	\$26,000
West Virginia Chamber of Commerce	\$7,500

CONCLUSION

While most of the special-interest groups express established political views, by advertising independently of the controls of a candidate’s campaign and at times without disclosure of funding sources, they are operating on the fringes of the election process. If a committee wishes to obscure its sources of funding, thus limiting the public’s ability to scrutinize its backers and motives, it can do so with little repercussion.

⁷ Citizens for a Strong Ohio [on-line]; available from <http://www.ohiochamber.com/Citizens/about.asp>; Internet; accessed July 28, 2005.

METHODOLOGY

The Institute researched 22 groups identified with help from the Brennan Center for Justice at the New York University School of Law. The groups ranged from those created specifically for the 2004 state Supreme Court elections to those established long prior and whose interests extend beyond a single office or race. In states such as West Virginia, Illinois and Ohio, identifying groups was simple because of extensive media coverage of the races and the high-profile nature of the ads the groups ran. In others like Texas, the active groups were low-profile, long-established groups that spent little on Supreme Court races as opposed to federal and state legislative contests.

While political candidates and party committees in every state must report their contributions and expenditures to state agencies, the groups spending money independently of the candidates often were working in a murkier area of regulation. Generally, they fell into three broad types of groups:

- **State-level political action committees** governed by state laws and regulations. These committees were required to file contribution and expenditure reports with a state disclosure agency. Thus the money they raised and spent was detailed on their campaign-finance reports.
- **Nonprofit groups** created under federal tax laws primarily for non-political purposes and governed by federal laws and regulations that specify what information they must report for public disclosure. Some are 501(c)4 committees, meaning they were organized to promote social welfare. Others are 501(c)6 groups, organized as business leagues. Both types of tax-exempt nonprofits are allowed to spend any amount of money on lobbying, but may not be “primarily engaged” in influencing elections.⁸ All are required to file an annual Form 990 with the Internal Revenue Service listing general revenue and expense information, as well as key personnel. But they do not have to release specific contributor information to the public.
- **So-called “527 committees”** named for the section of the IRS code under which they are formed. These committees also are formed as nonprofit groups, but with a primarily political purpose. They must report their contributions and expenditures to the IRS, as well as file an annual Form 990.

The Institute was unable to obtain detailed contribution information for one 501(c)4 committee — the American Taxpayers Alliance — and two 501(c)6 committees — Mississippians for Economic Progress and West Virginia Citizens Against Lawsuit Abuse. It also was unable to obtain contribution records for the Ohio law firm of Elk, Elk & Co., which paid for television ads exhorting voters to support two Ohio Supreme Court candidates. Although Ohio state law requires individuals and partnerships making independent expenditures on behalf of a candidate to file a report, the form does not include any areas to report specific contributors or contributions. A public awareness campaign called *Where Does It Hurt?*, organized by three county medical societies in Ohio, also did not file detailed disclosure records because its ads did not promote or oppose candidates. Rather, the group directed residents to talk to their physicians about medical malpractice insurance and lawsuit liability.

⁸ “The New Stealth PACs: Tracking 501(c) Non-Profit Groups Active in Elections,” *Public Citizen’s Congress Watch*, September 2004, Appendix IV: Tax and Legal Terms, p. 131.

ALABAMA

In Alabama, a state with a long history of expensive state Supreme Court races, vacancies in two of the three seats up for election would have been plenty to spur contentious races. Add in the continuing controversy over former Chief Justice Roy Moore — who was removed from office in 2003 for refusing a federal court order to remove a display of the Ten Commandments from the courthouse — and the stage was set for a hard-fought and nasty 2004 Supreme Court election.

In the end, Republican candidates won the three available seats, two of which had previously been held by Democrats. The one incumbent running for re-election, Republican Justice Jean Williams Brown, was defeated in the primary by the eventual winner, Tom Parker. Parker was Moore's former spokesman and part of the so-called "Roy Moore slate" of candidates that included Pam Baschab and Jerry Stokes. Both Baschab and Stokes lost in the primary election to candidates who went on to win the general election.

ACTIVE COMMITTEES

Such a colorful backdrop in a state where expensive judicial elections are routine made the activity of two independent expenditure committees hardly surprising. The Alabama Civil Justice Reform Committee (ACJRC) and the American Taxpayers Alliance (ATA), a 501(c)4 nonprofit, both bought TV ads in the primary election supporting winners Michael Bolin and Patti Smith. ACJRC also produced ads for Justice Brown, the sole incumbent running for re-election in 2004. Total cost of the airtime was estimated at just over \$560,000.⁹

The Alabama Civil Justice Reform Committee

The Alabama Civil Justice Reform Committee is a nonprofit corporation prominent in Alabama's lawsuit liability debate. ACJRC has a registered PAC with the Alabama Secretary of State. As such, it must file reports each year detailing the contributions it receives and the expenditures it makes. In Alabama, political action committees can give unlimited amounts to candidates.

During the 2004 election cycle, the ACJRC PAC reported collecting \$431,250 in contributions. The ACJRC also loaned its PAC \$50,000, which was paid back later in the cycle. According to the Brennan Center, the ACJRC spent an estimated \$224,663 on three television ads in 2004.

Disclosure reports filed by the PAC show that more than half of its contributions, \$230,500, came from the financial sector, which includes banks and insurance and real estate companies. General business sources made up the next largest group of contributors, giving \$52,500. Four of the top five contributors were banks that together gave \$203,500 — almost half the committee's total.

TOP CONTRIBUTORS TO THE ALABAMA CIVIL JUSTICE REFORM COMMITTEE

CONTRIBUTOR	AMOUNT
Alabama Bankers Association	\$77,000
Compass Bank	\$65,000
Southtrust	\$25,000
Alabama Retail Association	\$21,500
AmSouth Bank	\$15,000
TOTAL	\$203,500

⁹ Brennan Center for Justice at the NYU School of Law, Fair Courts Project, 2005.

American Taxpayers Alliance

This national 501(c)4 has a long history of controversial advertising expenditures in state-level campaigns. The group was first active in 2001, running ads blaming then-Gov. Gray Davis of California for that state's energy crisis. During 2002 and 2003, it paid for ads in Florida, Illinois, Mississippi and Missouri.¹⁰ The ATA does not limit itself to gubernatorial or state Supreme Court races; it has also run ads in contests for offices ranging from statewide positions such as lieutenant governor and attorney general to U.S. Senate races.¹¹

Despite these activities, ATA is not required to reveal its donors because of its nonprofit tax status. Although the Alliance's Form 990s are available from the IRS or the corporation itself upon request, the forms do not list specific contributors and amounts. However, the form does require organizations to list key personnel such as officers, directors and trustees. The Alliance's 2003 form lists Scott Reed as chairman and director. According to Public Citizen and *Forbes* magazine, Reed managed Bob Dole's 1996 presidential campaign and is a former executive director of the Republican National Committee.¹²

The Brennan Center reported that the Alliance ran ads costing \$344,164 on behalf of Mike Bolin and Patti Smith during the primary election. Both candidates went on to win in the general election. Alabama requires political committees to register a statement of organization with the Secretary of State and to file disclosure reports if they receive contributions or make expenditures of more than \$1,000 in a calendar year.¹³ A political committee is defined as "any political committee, club, association, principal campaign committee, political party, or other group of one or more persons which receives or anticipates receiving contributions or makes or anticipates making expenditures on behalf of any election official, proposition, candidate, principal campaign committee or other political committee."¹⁴

However, the American Taxpayers Alliance maintains that because the ads were not "express advocacy," the organization is not required to register with the state or provide information about its finances, as would a PAC.¹⁵ To qualify as express advocacy, an ad must use terms such as "vote for" or "vote against," "elect" or "defeat."¹⁶ Storyboards provided by the Brennan Center reveal ads that describe the candidates' actions on behalf of children's welfare.

¹⁰ "The New Stealth PACs: Tracking 501(c) Non-Profit Groups Active in Elections," Public Citizen's *Congress Watch*, September 2004, p. 85-6.

¹¹ *Ibid.*

¹² "The New Stealth PACs: Tracking 501(c) Non-Profit Groups Active in Elections," Public Citizen's *Congress Watch*, September 2004, p. 86; Robert Lenzer and Matthew Miller, "Buying Justice; For years trial lawyers owned state courts. Now big business is striking back," *Forbes*, July 21, 2003, [magazine on-line]; available from <http://www.forbes.com/forbes/2003/0721/064.html>; Internet; accessed Aug. 8, 2005.

¹³ Code of Alabama, Section 17-22A-5.

¹⁴ Code of Alabama, Section 17-22A-2.

¹⁵ Kyle Wingfield, "Secretive Conservative Group Runs Ads for Bolin, Smith," Associated Press Newswires, May 28, 2004.

¹⁶ L. Paige Whitaker, "Campaign Finance Reform: A Legal Analysis of Issue and Express Advocacy," Congressional Research Service Report for Congress, March 15, 2003, p. 2.

ILLINOIS

Illinois played host to one of the country's highest-profile state-level races in 2004. Not even a race for a statewide seat, the contest to represent District Five on the state Supreme Court generated an unusual amount of attention and money because of its implications for future civil cases. Although the outcome of the race would not change the overall partisan balance of the court, which rests in Democratic hands, the judge for the district has the power to fill vacancies on the circuit and appellate benches.¹⁷ Because District Five includes Madison County, known for returning large settlements to plaintiffs in civil lawsuits, the seat was seen as a prize for each side of the lawsuit liability issue.¹⁸

The candidates — Republican Lloyd Karmeier and Democrat Gordon Maag — raised more than \$9.3 million for the contest, a national record for a state Supreme Court contest. But it was the amount of money that independent committees spent that raised eyebrows in Illinois and around the nation. The three committees included in this study raised more than \$3.3 million and were responsible for nearly \$1.8 million in television advertising.¹⁹ Republican Karmeier won the race.

ACTIVE COMMITTEES

Although a number of committees spent money independently of direction from the candidates' committees, the Institute looked at only those buying television advertising as recorded by the Brennan Center for Justice. Many of the other committees raised and spent relatively small amounts of money, generally on mailings. When the Illinois State Board of Elections ranked the top 20 PACs by total funds expended in the 2004 elections, two of the three independent committees — JUSTPAC and the Illinois Chamber PAC — were included on that list. JUSTPAC was second; the Chamber PAC ranked seventh.²⁰

Illinois Chamber of Commerce/Chamber PAC

The Illinois Chamber of Commerce ran one television ad at a cost of \$175,756. The Chamber PAC reported contributions of \$611,932 for the 2004 election cycle. The state Chamber itself was the largest contributor, giving \$80,767. The American Tort Reform Association gave \$50,000. As to be expected, the PAC received contributions from a wide range of businesses and their lobbying arms. Fourteen businesses gave contributions totaling anywhere from \$10,000 to \$25,000, including Caterpillar, an Illinois-based manufacturer of heavy equipment; Altria, the parent company of tobacco giant Philip Morris; Pfizer, a pharmaceutical manufacturer; Dow Chemical; Harrah's, which operates casinos across the United States; and the National Federation of Independent Businesses.

¹⁷ Paul Hampel, "Big-money Race Sets Records for a US Judicial Contest," *St. Louis Post-Dispatch*, Nov. 1, 2004, sec. A, p. 1.

¹⁸ Trisha Howard, "Ads in High-Court Race Get Watchdogs," *St. Louis Post-Dispatch*, June 28, 2004, sec. Metro; Terry Carter, "Mud and Money: Judicial Elections Turn to Big Bucks and Nasty Tactics," *The ABA Journal*, Vol. 91, Feb. 2005, p. 44.

¹⁹ Brennan Center, 2005.

²⁰ Illinois State Board of Elections, "Money & Elections in Illinois 2004," May 2005, p. 25.

Illinois Civil Justice League/JUSTPAC

According to its Web site, the Illinois Civil Justice League (ICJL) is “a coalition of Illinois citizens, small and large businesses, associations, professional societies, not-for-profit organizations and local governments that have joined together to work for fairness in the Illinois civil justice system.”²¹ Its political committee, JUSTPAC, spent \$609,257 on three television ads. JUSTPAC reported raising more than \$1.4 million in contributions during the 2003-2004 cycle, with more than two-thirds of that money coming from its top five contributors.

The chairman of JUSTPAC, Todd Maisch, is also the executive director of the Chamber PAC.²² Not surprisingly, the Illinois Chamber of Commerce gave JUSTPAC contributions of \$132,000. In fact, most of JUSTPAC’s money came from the national and state Chambers of Commerce and other groups with ties to them. The American Tort Reform Association, a large contributor to the Illinois Chamber of Commerce, gave JUSTPAC \$415,000. The Illinois Coalition for Jobs, Growth and Prosperity PAC, directed in part by the Illinois Chamber of Commerce, gave \$150,000.

TOP CONTRIBUTORS TO THE ILLINOIS CIVIL JUSTICE LEAGUE/JUSTPAC

CONTRIBUTOR	AMOUNT
American Tort Reform Association	\$415,000
U.S. Chamber of Commerce	\$200,000
Illinois Coalition for Jobs, Growth and Prosperity	\$150,000
Illinois Chamber of Commerce	\$132,000
Caterpillar	\$90,000
TOTAL	\$987,000

Justice For All PAC

The Justice For All PAC is the political committee of the Justice For All Foundation, another Illinois nonprofit corporation. The PAC received all of its nearly \$1.3 million from just six donors. Five of them were lawyers or law firms.

CONTRIBUTORS TO JUSTICE FOR ALL PAC

CONTRIBUTOR	INDUSTRY	AMOUNT
Bono, Randall A.	Lawyers & Lobbyists	\$450,000
Justice For All Foundation	Lawyers & Lobbyists	\$385,000
SimmonsCooper LLC	Lawyers & Lobbyists	\$275,000
Tillery, Stephen N.	Lawyers & Lobbyists	\$91,000
Julian, Barry	Lawyers & Lobbyists	\$50,000
Baron & Budd	Lawyers & Lobbyists	\$25,000
TOTAL		\$1,276,500

²¹ Illinois Civil Justice League [on-line]; available from http://www.icjl.org/league_mission.htm; Internet; accessed June 6, 2005.

²² Illinois Chamber of Commerce [on-line]; available from <http://www.ilchamber.org/ga/gaPAC1.asp>; Internet; accessed July 12, 2005.

Randall A. Bono, a former Madison county judge and current plaintiffs' attorney,²³ was the top contributor, giving \$450,000. SimmonsCooper LLC, where Bono is an attorney, gave \$275,000, while prominent Texas law firm Baron & Budd gave \$25,000.

The Justice for All PAC spent \$995,095 on four television ads for Democrat Gordon Maag, according to the Brennan Center. Its filings with the Illinois State Board of Elections show two labor representatives, Mike Flutz and George Machino, Jr., as officers of the PAC.²⁴ The Justice For All Foundation lists Machino as its agent on documents filed with the Secretary of State's database of corporations registered in Illinois.

Contributions Draw Complaints

The Justice For All Foundation, which gave \$385,000 to its PAC, was one of two subjects of a complaint filed with the Illinois State Board of Disclosure in early 2005. The Illinois Coalition for Jobs, Growth and Prosperity Foundation was the other. Through its PAC of the same name, the coalition gave \$150,000 to JUSTPAC. The coalition PAC received all its money from the foundation, which is not required to disclose its contributors on forms filed with the IRS.

The organizations filing the complaints claim that both the Justice for All Foundation and the Coalition for Jobs, Growth and Prosperity Foundation should file disclosure documents just as PACs must, because both seemed to channel money through their affiliated PACs to influence the 2004 election.²⁵

²³ Terry Carter, "Mud and Money: Judicial Elections Turn to Big Bucks and Nasty Tactics," *The ABA Journal*, Vol. 91, Feb. 2005, p. 44.

²⁴ Press Release, Illinois Campaign for Political Reform (ICPR), Feb. 20, 2005.

²⁵ *Ibid.*

MISSISSIPPI

Mississippi had four Supreme Court seats up for election in 2004. While all four nonpartisan races included the current incumbent, the races were still hotly contested. The state has a history of contentious and expensive Supreme Court races with special-interest groups, such as the U.S. Chamber of Commerce, spending millions of dollars to influence races.²⁶ The November election offered no major upsets, and all four incumbents returned to their seats.

ACTIVE COMMITTEES

Improve Mississippi PAC

The Improve Mississippi PAC (IMPAC) is affiliated with the Business and Industry Political Education Committee (BIPEC), a nonprofit 501(c)6 organization. According to the BIPEC Web site, the group is “comprised of individuals, trade associations and companies who unite to protect and advance free enterprise through research, education, and member action.”²⁷ IMPAC ran two television ads, one supporting Samac Richardson, a challenger who lost to incumbent Justice James Graves, and the other supporting Justice Michael Randolph, an incumbent who successfully ran for re-election. The Brennan Center estimated the cost of the ads at \$159,680.

As a registered political committee, IMPAC files disclosure reports that detail contributions and expenditures with the Mississippi Secretary of State’s office. The records show IMPAC received the bulk of its \$488,550 in contributions from the American Tort Reform Association, which gave \$300,000 in the span of just five days in October 2004. It made one contribution of \$150,000 on Oct. 14 and another on Oct. 19. On Oct. 20, IMPAC aired the first two of its three ads. The second-largest contributor was Unitrin, a Chicago-based insurance company that gave \$25,000. The other contributors mainly represented businesses; seven gave between \$10,000 and \$20,000, including associations representing the state’s bankers, manufacturers, realtors and restaurants.

Mississippians for Economic Progress

Mississippians for Economic Progress (MFEP) is a nonprofit 501(c)6 organization with almost 50 members from all sectors of the business community.²⁸ According to an article in the *Clarion-Ledger*, MFEP sent out cards supporting Samac Richardson.²⁹

MFEP is organized around the principle of changing Mississippi’s tort system to limit damages paid by businesses and insurance companies. Because it is a nonprofit organization, it is not required to disclose its donors on the Form 990 it files with the IRS. However, members of MFEP include a wide range of business interests such as the U.S. Oil and Gas Association, the Business and Industry Political Education Committee (BIPEC), the American Insurance Association, and other Mississippi trade groups.³⁰

²⁶ Lynne Jeter, “Shifting Political Landscape,” *Mississippi Business Journal*, Oct. 11, 2004, p. 1.

²⁷ Business and Industry Political Education Committee [on-line]; available from <http://www.bipec.org/WhoWeAreMission.html>; Internet; accessed July 8, 2005.

²⁸ Mississippians for Economic Progress [on-line]; available from http://www.mfep.org/MFEP_Members.htm; Internet; accessed June 28, 2005.

²⁹ Jerry Mitchell, “New Attitude for Miss. Supreme Court,” *Clarion-Ledger*, Oct. 30, 2004 [newspaper on-line]; available from <http://clarionledger.com/apps/pbcs.dll/article?AID=/20041030/SPECIAL02/410300344/1224>; Internet; accessed July 28, 2005.

³⁰ Mississippians for Economic Progress [on-line]; available from http://www.mfep.org/MFEP_Members.htm; Internet; accessed June 28, 2005.

OHIO

In 2004, Ohio had four Supreme Court seats up for election. Two races included sitting justices — Chief Justice Thomas Moyer and Justice Terrence O’Donnell. Another incumbent, Justice Paul Pfeifer, ran unopposed. The fourth seat was an open seat for which two lower-court judges were running. All four winners — Moyer, O’Donnell, Pfeifer and Toledo Appeals Court Judge Judith Lanzinger — were Republicans.

While the 2004 election was not as controversial as Ohio’s 2000 judicial election, it did feature a large number of interest groups seeking to sway the outcome of the election by spending money independently of the candidates’ campaigns.

ACTIVE COMMITTEES

Citizens for a Strong Ohio

An affiliate of the Ohio Chamber of Commerce, Citizens for a Strong Ohio has a history of involvement in the state’s judicial elections. In 2000, the nonprofit 501(c)4 group collected \$4.2 million to attack Democratic Supreme Court Justice Alice Resnick while refusing to disclose its donors.³¹ Eventually, a lower court ruled that the committee must release its donor list, which revealed large contributions from businesses, insurance companies and the Ohio Chamber of Commerce

In 2004, Citizens for a Strong Ohio ran one ad praising Lanzinger and O’Donnell and one touting the credentials of Lanzinger alone.³² The group maintains it is not required to file as a PAC under Ohio’s disclosure laws because it “does not engage in advocacy for the election or defeat of political candidates.”³³ However, it did choose to maintain a list of contributions on its Web site, and they totaled slightly more than \$3 million. Nearly two-thirds of the money came from the top six contributors.

TOP CONTRIBUTORS TO CITIZENS FOR A STRONG OHIO, 2004

CONTRIBUTOR	AMOUNT
U.S. Chamber of Commerce/Institute for Legal Reform	\$1,000,000
American Insurance Association	\$375,000
Nationwide Mutual Insurance	\$200,000
Proctor & Gamble	\$160,000
Westfield Group	\$110,000
Ohio Chamber of Commerce	\$105,000
TOTAL	\$1,950,000

The other contributors ranged from oil companies to telecommunications firms, but the bulk of the remaining money came from businesses or lobby groups in the finance, insurance and real estate sector. Three insurance companies — Grange Insurance, Ohio Casualty Group and State Farm

³¹ Mandy Zatynski, “Release of Names Settles Part of Political Dispute; Ads Against Resnick in 2000 at Heart of Controversy,” *Dayton Daily News*, Feb. 6, 2005, sec. B, p. 3.

³² Brennan Center, 2005.

³³ Citizens for a Strong Ohio [on-line]; available from <http://www.ohiochamber.com/Citizens/about.asp>; Internet; accessed July 6, 2005.

Insurance — gave \$100,000 each. Another 10 contributors gave \$50,000 each; nine of them were insurance companies.

Because the organization did not file as a PAC, no detailed expenditure information was available. However, the Brennan Center for Justice estimates that Citizens for a Strong Ohio spent \$1 million on its television advertising.

Elk, Elk & Co

This plaintiff law firm ran one ad asking voters to “Elect Connally, Fuerst, and O’Neill,” all Democratic candidates. The ad cost an estimated \$12,362.³⁴ Ohio disclosure law at the time required any individual or partnership making an independent expenditure of more than \$100 to file a Form 30-E with the Ohio Secretary of State’s office if it does not normally file campaign-finance reports. However, this form does not require the filer to disclose the source of the funds used to support or to oppose a candidate.

Elk & Elk also gave \$1,000 in direct campaign contributions to both O’Neill and Connally, while a lawyer with the firm, David J. Elk, gave \$4,275 to Fuerst’s campaign.

Ohio Hospital Association/Friends of Ohio Hospitals PAC

The Ohio Hospital Association spent just under \$1 million on an ad describing how medical malpractice rates have risen in recent years. The ad directed voters to *AskYourDoctorOhio.com*, a Web site dedicated to the medical malpractice issue as seen from the view of physicians and hospitals. The Hospital Association did not have to file disclosure reports because of its nonprofit status and the nature of the commercials. However, it does manage the Friends of Ohio Hospitals PAC, which files disclosure reports with the Ohio Secretary of State’s office. Even though the PAC itself did not finance the commercials, these reports provide useful information on who might donate to the Hospital Association.

Friends of Ohio Hospitals reported almost \$221,000 in contributions during the 2004 election cycle. More than \$170,000, could not be traced to a specific industry. The Hospital Association’s Web site lists suggested contribution amounts for various types of health care professionals, so much of the unclassified money likely is from those working in or affiliated with hospitals.³⁵ Most of the identifiable money came from hospitals and hospital executives (\$22,855) or doctors (\$12,185). A small amount, \$2,390, came from lawyers and law firms. Friends of Ohio Hospitals estimated about 13 percent of its 2004 expenditures funded activities related to the Supreme Court race.³⁶

Ohio Patients for a Fair Court/Ohio State Medical Association

Ohio Patients for a Fair Court is the “political arm” of the Ohio State Medical Association.³⁷ While it did not run any television ads promoting candidates, the political committee did conduct a campaign supporting three of the Republican candidates: Moyer, Lanzinger and O’Donnell. As a PAC, Ohio Patients for a Fair Court must file disclosure reports with the Secretary of State’s

³⁴ Brennan Center, 2005.

³⁵ Friends of Ohio Hospitals [on-line]; available from <http://www.friendsofohiohospitals.org/contributors/>; Internet; accessed July 13, 2005.

³⁶ Friends of Ohio Hospitals, *2004 Report to Stakeholders*, p. 2.

³⁷ Jon Craig, “Republicans Split \$9 Million,” *The Columbus Dispatch*, Oct. 20, 2004, Sec. B, p. 2.

office. The filings show contributions of only \$14,185, with \$10,000 coming from PACs representing various types of doctors and other medical professionals.

Expenditure records show most of the money went to printing and distribution of marketing items such as notepads and pens for doctors and patients. Money was also spent on Web site development.

Where Does It Hurt?/Tri-County Physicians for Patients' Rights

The television ad paid for by Where Does it Hurt?, a public awareness campaign run by the Tri-County Physicians for Patients' Rights, does not list any candidates by name. Instead, it encourages patients to contact their doctors for voting recommendations and to visit the Web site www.wheredoesithurt.org to learn about medical malpractice and lawsuit liability issues. For this reason, Where Does It Hurt? was not required under Ohio's 2004 disclosure laws to file reports.

The Tri-County Physicians for Patients' Rights is comprised of three medical societies in Mahoning, Trumbull and Columbiana counties. Its main focus is to deliver information about rising medical malpractice insurance costs for doctors.³⁸

³⁸ Where Does It Hurt? [on-line]; available from <http://www.wheredoesithurt.org/about.html>; Internet; accessed July 9, 2005.

TEXAS

Texas has a history of contentious, expensive state Supreme Court races. In 2004, however, only the Republican primary race for Place Five was noteworthy; the other two races provided little controversy. In the end, 4th District Court of Appeals Justice Paul Green defeated sitting Justice Steven Wayne Smith in the primary for Place Five, and two Republican incumbents handily won the other seats.

ACTIVE COMMITTEES

Texans for Lawsuit Reform

This organization dedicated to changing lawsuit laws sent out an endorsement list including the name of Place Nine candidate, Justice Scott Brister, a Republican. The list also included numerous state and federal candidates. In Texas, any group making independent expenditures on behalf of candidates must send the candidate's committee a notice of the expense. The candidate must then include this notice in his or her filing with the Texas Ethics Commission.

Texans for Lawsuit Reform reported receiving more than \$3.2 million in contributions for the 2004 election cycle. The largest contributor was Robert C. McNair, owner of the Houston Texans football team and former owner and founder of Cogen Technologies, a power-generating company bought by Enron. He contributed \$350,000. Bob J. Perry, a Texas homebuilder now widely known for his involvement in the 2004 presidential election with the 527 committee Swift Boat Veterans for Truth, gave \$340,000. Two real estate developers, Richard W. Weekley and Harlan Crow, both gave in excess of \$200,000.

Texans for Lawsuit Reform is a generous contributor to candidates on both the state and federal level. Thus, the bulk of its giving and expenses were directed towards these candidates, not the Supreme Court races. The group did, however, give \$10,000 in direct contributions to Justice Brister.

Texas Civil Justice League

The Texas Civil Justice League also did mailings on behalf of Justice Brister, as well as Republican Justice Harriet O'Neill and challenger Paul Green. While some of the mailings were listed as in-kind contributions to the candidates, two small mailing expenses from late October were not reported as in-kind.

The League reported contributions of \$108,808 for the 2004 cycle. The largest contribution of \$10,000 came from Oklahoma City oil executive Henry Hood, Sr.

Texas Medical Association/TEXPAC

Like Texans for Lawsuit Reform, the Texas Medical Association was active in both Supreme Court and other races. TEXPAC did mailings for all three Republican judicial candidates, but the total cost was small. Not surprisingly, the Texas Medical Association was the biggest contributor to its PAC, giving more than \$278,687 of the \$2.1 million raised by the political committee. The American Medical Association gave \$41,732. The rest of the contributions were small and given by doctors and other health professionals.

WEST VIRGINIA

West Virginia had more active committees than any other state included in the study, even though only one judicial seat was up for election. Seven committees ran TV or radio ads for or against the judicial candidates. Incumbent Justice Warren McGraw, a Democrat, was targeted by a coal company executive who funded a 527 committee, *And For the Sake of the Kids*, to defeat him. The race was a nasty, drawn-out affair as McGraw was challenged first in the spring primary by Greenbrier Circuit Court Judge Jim Rowe and then by eventual winner Republican attorney Brent Benjamin in the general election. Coal companies, business interests, doctors and lawyers were large contributors not only to the candidates themselves, but also to the independent committees involved in the race.

ACTIVE COMMITTEES

And For the Sake of the Kids

This 527 committee was established late in the 2004 election cycle — Aug. 20 — and funded largely by one man, Massey Energy CEO Don Blankenship. He gave \$2.46 million to the 527 committee, representing more than two-thirds of the committee's total contributions of \$3.6 million. Doctors for Justice, a committee formed in mid-September by a former president of the state medical association, gave \$745,000.³⁹ The West Virginia Coal Association gave \$223,000, with another \$44,000 coming in from other coal industry groups and executives.

At least \$606,200 of the committee's funds went to purchase television airtime for 10 anti-McGraw ads.⁴⁰ The group's 2004 Form 990 filed with the IRS in late May shows that most of the rest went for newspaper ads, billboards, yard signs and surveys.

Citizens for Quality Health Care

Citizens for Quality Health Care was another 527 committee established late in the 2004 election cycle — Oct. 19. It was also funded in part by Don Blankenship, who gave \$100,000 of the committee's \$370,000 in contributions. The rest came from three sources: the West Virginia Health Care Association, giving \$160,000; the West Virginia Chamber of Commerce, giving \$85,000; and the West Virginia Medical Association, giving \$25,000.

Expenditure records filed with the IRS show that the group spent all of its \$370,000 on "marketing and placement of ads." At least \$34,900 of that was spent to develop and run one general-election television ad attacking Justice McGraw, according to the Brennan Center.

West Virginia Chamber of Commerce

According to the Brennan Center, the West Virginia Chamber of Commerce spent \$648,840 on five television ads in the primary and general elections. Three attacked the Supreme Court as a lawsuit-friendly institution driving doctors out of West Virginia. One supported the challenger, Brent Benjamin; one attacked Justice McGraw.

While the West Virginia Chamber of Commerce is a nonprofit 501(c)6 organization whose IRS financial records provide little contribution information, it also has a PAC, which files disclosure reports with the West Virginia Secretary of State's office. The Chamber PAC reported receiving

³⁹ Lawrence Messina, "Massey CEO, doctors fund anti-McGraw Group," *Associated Press*, Oct. 15, 2004.

⁴⁰ Brennan Center, 2005.

almost \$124,000 for the 2004 election cycle. While the records do not show any expenditures for television advertising on the Supreme Court election, they at least provide a glimpse into the financing of the organization.

The energy and natural resources sector was the largest contributor to the Chamber PAC, giving \$27,200. Contributors in the finance, insurance and real estate sector gave \$22,850. Because many of the contributors were listed by name only, with no additional information such as address or employer, many of the contributions were difficult to classify. Almost \$47,500 came from organizations or individuals whose economic interest was unknown.

West Virginia Citizens Against Lawsuit Abuse

West Virginia Citizens Against Lawsuit Abuse is a nonprofit 501(c)6 organization in favor of limits on lawsuit damages and other changes to the judicial system. The group ran a general-election television ad critical of Justice McGraw at a cost estimated by the Brennan Center to be around \$43,862. Because of its tax status, it files a Form 990 with the Internal Revenue Service.

West Virginia Consumers for Justice

A 527 committee organized in April 2004, West Virginia Consumers for Justice filed reports with the IRS disclosing nearly \$2 million in contributions. The Consumer Attorneys of West Virginia, a plaintiffs' attorney organization, gave \$1.9 million of that amount.⁴¹ The remainder came from assorted labor groups and a coal operator who was suing Don L. Blankenship in a case that has been appealed to the Supreme Court.⁴²

The West Virginia Consumers for Justice was the only independent expenditure committee running television ads on behalf of Justice McGraw — two ads during the primary election and four during the general election. The disclosure records filed with the IRS show it spent more than \$1.7 million on producing and broadcasting these ads. It spent the rest of its money on polls, radio and newspaper advertising, consultant fees and other miscellaneous items.

West Virginia Families for Change

This West Virginia PAC raised \$13,620 and spent all but \$121 on radio ads opposing Justice McGraw. The contributions were mainly in amounts of \$1,000 or smaller. Despite its name, many of the largest contributors represented businesses and doctors. Contributors of \$1,000 included the West Virginia Chamber of Commerce and several PACs representing the medical community, one representing car and truck dealers, and one representing Pennsylvania-based Consol Energy.

West Virginia State Medical Association

The West Virginia Medical Association ran one television ad on behalf of Jim Rowe, who opposed Justice McGraw in the primary election. The doctors' organization filed disclosure reports as a PAC with the Secretary of State's office, and reported contributions of \$206,440. Nearly all of the money came from West Virginia doctors. Expenditure records show the group spent at least \$90,000 on television and radio time, some of which was labeled as an independent expenditure on behalf of Brent Benjamin, McGraw's general-election opponent and the winner of the race. The group also gave \$1,000 to West Virginia Families for Change.

⁴¹ Toby Coleman, "Massey CEO Gives \$1.7 Million to Anti-Warren McGraw Group," *The Charleston Gazette*, Oct. 15, 2004, p. 1A.

⁴² Paul Nyden, "Third Suit Filed Against Massey; Report Shows Companies Seek Resolution in Courts over Shipping Contract Disputes," *The Charleston Gazette*, May 12, 2005, p. 6A.

GEORGIA AND NORTH CAROLINA: LITTLE ACTIVITY

In two states, North Carolina and Georgia, the Institute was unable to identify any special-interest groups outside of party committees that spent money on advertising.

The 2004 state Supreme Court election in Georgia featured incumbent Justice Leah Sears facing former Cobb County Superior Court Judge Grant Brantley. Supreme Court elections in Georgia are nonpartisan, but both candidates received support from a political party: Sears from the Democrats and Brantley from the Republicans. The Democrats spent \$191,456 on television ads supporting Sears, according to the Brennan Center. Republican Gov. Sonny Perdue recorded automated phone messages asking voters to support Brantley.⁴³ Also, the political director of the Georgia Republican Party managed Brantley's campaign during a leave of absence.⁴⁴

Although the Democratic Party did run ads, independent groups seemed more interested in ferreting out the candidates' opinions on hot-button issues by sending out questionnaires. This was the first election in Georgia after two federal-court rulings permitted judicial candidates to announce their positions on issues of interest to the public.⁴⁵ Before, candidates limited their speech to avoid taking positions on issues they might face someday in court. The Christian Coalition was active in sending out surveys and asking candidates to take positions; when they declined, as Sears did, that information was noted in a voter's guide sent out to potential voters.

The race was over after the July 20 primary election, which Sears won.

In North Carolina, a late retirement by one Supreme Court justice meant two seats were up for election. Justice Sarah Parker retained her seat and Paul Newby won an eight-candidate race for the open seat. The 2004 election in North Carolina was a test run of the nation's first-ever system of full public financing of judicial races. For this reason, it was included in the study. The Brennan Center reported no ads purchased by independent groups, and the Institute was unable to uncover any other active committees spending money independently of candidates' campaigns.

North Carolina offers an interesting case study for the states plagued by expensive, contentious judicial elections in 2004. When it created its public-financing program for judicial races, the state also included tough new laws on independent expenditures for broadcast advertising, as well as a provision offering "rescue funds" to any candidate targeted by special-interest groups. Any independent expenditures totaling more than \$201,000 that are made in opposition to a publicly funded candidate would trigger the provision, allowing the State Board of Elections to grant the candidate extra campaign money. The law includes expenditures made by party committees. Bob Hall, research director at Democracy North Carolina, credits these reforms with forestalling excessive interest-group involvement in North Carolina's 2004 Supreme Court election.

⁴³Allison Shirreffs, "Future of Judicial Elections a Point of Contention," *Atlanta Business Chronicle*, Jan. 28, 2005 [newspaper online]; available from <http://atlanta.bizjournals.com/atlanta/stories/2005/01/31/focus2.html>; Internet; accessed July 28, 2005.

⁴⁴Bill Rankin, "Big Bucks Buy Blitz in Judge's Race," *The Atlanta Journal-Constitution*, Oct. 22, 2004, sec. A, p. 1.

⁴⁵The cases, both decided in 2002, were *Republican Party of Minnesota v. White* and *Weaver v. Bonner*. The first case was decided by the U.S. Supreme Court and the second by the 11th Circuit Court of Appeals. See Deborah Goldberg & Samantha Sanchez, "The New Politics of Judicial Elections 2002," p. 23 (Justice at Stake 2002) and Steven H. Pollak, "Christian Coalition Tests Judicial Candidates," *Fulton County Daily Record*, May 14, 2004 [newspaper on-line]; available from <http://www.law.com/jsp/article.jsp?id=1084316026302>; Internet, accessed July 28, 2005.