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**To:** "Legislative-Contacts" <legislative-contacts@mobarlist.org>  
**Date:** 5/21/2007 12:25:21 PM  
**Subject:** [legislative-contacts] Fw: National Report Highlights Missouri Trial Court Campaign Targeted By Special Interest Group

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05/21/2007 11:45 AM <jrutledge@justiceatstake.org>  
cc  
Subject  
National Report Highlights Missouri  
Trial Court Campaign Targeted By  
Special Interest Group

For Immediate Release

May 21, 2007

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National Report Highlights Missouri Trial Court Campaign Targeted By  
Special Interest Group  
Retired Justice O'Connor Decries "Political Prizefights" in Growing Number  
of Nation's Supreme Court Campaigns

WASHINGTON, DC – Though it does not have contestable Supreme Court  
campaigns, Missouri may sit on the frontier of the next battle over the  
courts — the targeting of lower court judges — according to a major new  
report from the Justice at Stake Campaign and its partners, the Brennan  
Center for Justice at NYU School of Law and the National Institute for  
Money in State Politics.

As special interests muscle their way into court campaigns around the  
country, the report notes that Chicago-based Americans for Limited  
Government poured \$175,000 into a front group called "Citizens for Judicial  
Reform" in a successful campaign to evict Cole County Circuit Judge Tom  
Brown. According to the report, the danger of such efforts is the message

such groups aim to send: "Judges who want to keep their jobs must answer to interest groups and political partisans." The other examples of special interest targeting of lower court judges come from neighboring Illinois, where interest groups pumped money into trial and appeals court campaigns, two years after fueling a \$9.3 million race for that state's highest court.

"The problems infecting campaigns for many of this nation's highest courts appear ready to spread to lower courts, and the Missouri example is particularly troubling," said Bert Brandenburg, executive director of the Justice at Stake Campaign. "If Missouri starts going the way of Illinois, its judicial elections will soon be overrun."

"Justice at Stake's report shows how 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," said former U.S. Supreme Court Justice Sandra Day O'Connor. "I hope that every state that elects judges in partisan elections will consider reforms."

The report also identifies Missouri as a battleground state in ongoing efforts by partisans and interest groups to undo merit selection with retention elections (known widely in Missouri as the "nonpartisan court plan."). Such systems — adopted by more than 30 other states for choosing at least some members of their state courts — largely mitigate the worst side effects of contestable elections, while leaving voters with a final say on who sits on the bench.

Among the key national findings of *The New Politics of Judicial Elections 2006*, which focuses largely on the 11 states that had contested Supreme Court campaigns in 2006:

- \* TV ads in high court campaigns ran in 10 of 11 states with contested elections, compared with four of 18 states in 2000. Average television spending per state was \$1.6 million, a new record. An overwhelming majority of independent expenditure television advertising was sponsored by groups on the political right.

- \* Median fundraising by candidates for state high courts hit a record high of \$243,910. In other words, getting to the bench has never been so expensive for so many. Five states (AL, GA, KY, OR, WA) set aggregate candidate fundraising records for high court campaigns.

- \* State Supreme Court elections attracted record sums from business interests, a reflection of the importance of state courts in setting corporate damage payments. Campaign finance analysis shows that business gave \$2 for every \$1 donated by lawyers directly to candidates, and independent committees aligned with business interests dramatically outspent groups on the left.

- \* Judicial candidates presented a united front in overwhelmingly rejecting pressure-filled questionnaires from special interest groups. For example, only 17 percent of candidates for seats on Florida's trial courts responded to a question demanding their position on same-sex marriage.

- \* Judicial candidates who chose to put their political views front and center in their campaigns fared poorly at the ballot box.

- \* An array of ballot measures that sought to transform state courts for short-term partisan gain, all failed.

According to a national survey of business leaders by Zogby International,

79 percent believe that campaign contributions made to judges have at least some influence on their decisions in the courtroom. Fully 90 percent are concerned that campaign contributions and political pressure will make judges accountable to politicians and special interest groups instead of to the law and the Constitution. Most significantly, the poll showed strong support for finding ways to decrease the fundraising arms race now common in many state high court campaigns.

Both the report and related supplemental materials as well as the Zogby national survey of business leaders are available online at [www.justiceatstake.org](http://www.justiceatstake.org) or by calling 202-588-9454.

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**From:** <Kelley.Carpenter@courts.mo.gov>  
**Date:** 5/30/2007 10:25:31 AM  
**Subject:** Washington Post article

The Attack Ads Will Come to Order

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By Ruth Marcus  
Wednesday, May 30, 2007; A13

Sue Bell Cobb's first campaign, in 1982, cost \$5,000. Last year's price tag was \$2.6 million -- and Cobb, a Democrat, wasn't the big spender. Her opponent, Republican Drayton Nabers, raised nearly \$5 million for the primary and general elections.

"A conservative leader, fighting for our values. A family man and the author of a book on the importance of biblical character," one of Nabers's television ads proclaimed. Not all the commercials were so uplifting. Nabers's primary challenger labeled him soft on crime in an ad that featured an ominous photo of a hand holding a knife.

The general election was equally slashing: Nabers's ads accused Cobb of being "bankrolled by liberal personal injury trial lawyers and casino interests." Cobb, who won, said that Nabers had been "caught taking tens of thousands from PACs controlled by Exxon's lobbyists."

Modern-day politics as usual? Sadly, yes -- except that the campaign was for chief justice of the Alabama Supreme Court. And while the race was particularly noisy -- almost 18,000 television ads, more than in the three previous elections combined -- it wasn't particularly surprising. Judicial elections have taken on the trappings of ordinary political campaigns, complete with consultants, slick mailings and big media buys. A 2006 Georgia Supreme Court race featured robo-calls by former attorney general John Ashcroft.

Things are getting worse by the election cycle. Television ads ran in 10 of 11 states with contested Supreme Court races, compared with four of 18 states in 2000, according to a report by Justice at Stake, the Brennan Center for Justice and the National Institute on Money in State Politics.

Time was that judicial candidates left the really nasty stuff to outside groups and political parties. In 2006, judicial candidates ran 60 percent of the negative ads, compared with 10 percent two years earlier. At a conference last week by FactCheck.org, campaign consultants reported with satisfaction that their once diffident clients had realized they couldn't hide behind their robes.

"Elections for the judiciary have become like all other elections," said Allan Crow, who helped Georgia Supreme Court Justice Carol Hunstein win reelection. "You either allow the opposition to win by running their negative ads or you fight back."

"Negative" is too pallid to capture the nasty tone of some ads. They pluck out and twist individual rulings, some dictated by precedent, to smear candidates. In the Kentucky Supreme Court race, one candidate said Circuit Judge Bill Cunningham "tried to make six rapists eligible for parole. One had been out on parole for only 12 hours when he raped a 14-year-old and made her mother watch." The ad made it appear that Cunningham was responsible for the rape, when that crime had occurred years earlier. This is Willie Horton Goes to Court.

Not that the positive spots are especially comforting. They trot out qualities that ought to be irrelevant -- does it matter that Cobb plays piano for her church? -- and make assertions problematic for those pledged to not prejudice cases. "I'm pro-life," Nabers assured Alabama voters. "Abortion on demand is a tragedy, and the liberal judicial opinions that support it are wrong."

You might hope that spending by business groups and trial lawyers would at least cancel each other out. But business groups, particularly the U.S. Chamber of Commerce and the National Association of Manufacturers, have become outsize players in judicial campaigns. In 2006, business interests contributed 44 percent of the money raised by state Supreme Court candidates.

The paradox of judicial elections is that voters simultaneously demand this system and distrust it. The Annenberg Public Policy Center found that nearly two in three preferred to elect judges rather than have a merit system in which governors choose from a list developed by a nonpartisan committee. Yet seven in 10 believed that the need to raise campaign funds would affect a judge's rulings. Even without the impact of campaign cash, it's easy to see how judges facing reelection might think twice before issuing a decision that could be fodder for a 30-second spot.

There are some hopeful signs amid the sludge. Judicial candidates raising more money won 68 percent of the time in 2006, down from 85 percent in 2004. Last month, New Mexico followed North Carolina's lead in adopting public financing for judicial campaigns.

Yet the judicial arms race is creeping further down the ballot. Illinois last year saw a \$3.3 million campaign for a seat on the state's intermediate appeals court, and a \$500,000 trial court race. "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," warns former U.S. Supreme Court justice

Sandra Day O'Connor.

Prizefight is right -- except in these brawls, the legal system ends up with the black eye.

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