

**WASHINGTON JUDICIAL ELECTIONS:  
TO ELECT OR NOT TO ELECT?**

By

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“...It is more proper that law should govern than any one of the citizens: upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servants of the laws...”

-Aristotle

## **Abstract**

This report examines the relationship between money and electoral success in Washington State. Election expenditures have risen dramatically in recent years, along with growing concern that large contributors command undue influence over lawmakers and more recently, the judiciary.

Using public disclosure reports, judicial conduct reports, election results and financial data collected between 2000 and 2008, I will examine the role that money plays in our current judicial election system and highlight problems with the way the judiciary is selected. I will also assess the viability and cost of running a publicly financing program for judicial races.

## **I. Introduction**

Political theorist Joseph Raz vindicates the rule of law as ‘government by law and not by men’. He maintains that among other principles, an independent judiciary is necessary for a sound legal system<sup>1</sup>. In order to preserve the rule of law, the method of selecting judges and maintaining their tenure must be designed to preserve an independent judiciary.

Judicial election systems are important because it changes the individuals on the bench and the incentives they face. Different individuals lead to different outcomes and behavior is often influenced by the necessity to be re-elected or re-appointed. A court’s judgment conclusively establishes the law with respect to the case before it, making it critical for judges to apply the law correctly and not form decisions around irrelevant considerations.

Prevalent selection methods for U.S. judges include partisan or non-partisan elections and appointment systems with conditions for retention elections.

At the time of this study, thirty-nine states held elections for courts of general jurisdiction and each had its own policies for financing and re-election. Sixteen states operated under a peer-reviewed re-election system where judges are initially appointed by the governor (or state legislature) and face a vote by a nominating commission to retain their seat once their first term has expired. Thirteen of twenty-one states elected Supreme Court judges through non-partisan elections and the remaining eight states used a partisan election system<sup>2</sup>. In Washington State, most judges are chosen through a non-partisan election system though some are nominated by the governor.

## **II. Elections and Appointment Systems**

Proponents of partisan elections for judicial offices maintain that party labels raise a candidate’s accountability to the public, informs the public of the candidate’s positions on issues, and stirs interest in judicial elections. They argue that non-partisan races nurture competitiveness and prohibit the public from attaining a clear sense of who they elect to the bench. Information deficiency isn’t the only problem with non-partisan judicial elections; studies have shown that removing the party variable makes everything else—especially money—more important<sup>3</sup>.

Alternatively, advocates of non-partisan elections attest that removing party labels promotes impartiality and the concept of ‘blind justice’. Under this system, candidates are prohibited from expressing opinions on issues, associating with a party, and raising contributions themselves, thereby minimizing the influence of lawmakers and party-affiliated funds. They argue that in spite of party labels, endorsements and rating agencies

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<sup>1</sup> Raz, Joseph. *The Authority of Law*. New York: Oxford UP, USA, 1983.

<sup>2</sup> Hall, Joshua C. "Judicial Selection Methods and Legal System Quality." *The Rule of Law: Perspectives on Legal and Judicial Reform in West Virginia*. By Russell S. Sobel. The Public Policy Foundation of West Virginia, 2009. p.54.

<sup>3</sup> Arrington, Theodore S., and Gerald L. Ingalls. "Effects of Campaign Spending On Local Elections " *American Politics Research* 12 (1984).

serve as an informational hub that does not preclude voters from making informed choices. Further, non-partisan elections are often less expensive than partisan ones<sup>4</sup>.

Supporters of appointment systems claim appointed judges are less influenced the public and are more independent, making them likelier to promote minority interests that may conflict with majority preferences<sup>5</sup>. Others argue that appointed judges are actually no less vulnerable to political pressure than elected ones and it would be unwise for presidents and governors to select all judges, for they themselves are elected officials.

Conventional wisdom would have you believe that an appointed judge is a better judge because they make more independent decisions than an elected judge would. Yet studies suggest that appointed judges are no better than elected judges because the two are inherently different: Appointed judges often wrote higher quality opinions, but elected judges wrote *more* opinions such that quantity made up for quality<sup>6</sup>.

If this is true, then both approaches serve the basic purpose of merit screening, though there may be subtle differences in the content and number of opinions issued by judges selected by different methods. As it stands, there is little research that indicates whether judicial selection mechanisms demonstrate a substantive difference in judicial performance at all. Thus, reports for judges that appear on the Washington State Commission on Judicial Conduct website will be scrupulously examined for indications of performance-related differences between appointed and elected judges.

### III. Judicial Selection in Washington State

There are four levels of courts in Washington State: the Supreme Court, the Washington Court of Appeals, county Superior Courts, and courts of limited jurisdiction (district and municipal courts). In 1907, the state legislature replaced party conventions and established a non-partisan elective system for nominating judges. Currently, all Washington judges are chosen through this non-partisan election system or by appointment from the Governor.

There are over 3.6 million registered voters in Washington State and roughly 84% cast valid ballots. Yet interest in judicial races, especially among young votes, remains low and more often than not, voters select judicial candidates at random or leave the ballot blank.

Take the 2008 election for example. In this election, some 1 of 3 million— or 35% of voters — did not vote for a Supreme Court justice. Similarly, 640,000 of 930,000 — or 68% of voters — did not vote for a King County Superior Court justice. Despite these low figures, interest in elections for other offices remains high; 98% of voters cast a

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<sup>4</sup> Streb, Matthew. *Running for Judge The Rising Political, Financial, and Legal Stakes of Judicial Elections*. New York: NYU P, 2007. 13 May 2009 <<http://books.google.com/books?id=DKlrPWtyDUC>>.

<sup>5</sup> Hall, Joshua C. "Judicial Selection Methods and Legal System Quality." *The Rule of Law: Perspectives on Legal and Judicial Reform in West Virginia*. By Russell S. Sobel. The Public Policy Foundation of West Virginia, 2009. pp. 25+.

<sup>6</sup> Choi, Stephen J., Gulati, G. Mitu and Posner, Eric A., *Professionals or Politicians: The Uncertain Empirical Case for an Elected Rather Than Appointed Judiciary*. University of Chicago Law & Economics, Olin Working Paper No. 357; 2nd Annual Conference on Empirical Legal Studies Paper, 2007. 15 May 2009. <<http://ssrn.com/abstract=1008989>>.

ballot for a state governor, 92.5% voted for an attorney general, and 96.5% voted on a statewide initiative<sup>7</sup>.

What could behind low judicial turnout? The likely culprit is campaign regulations.

There is a clear difference in rules that judicial candidates and those running for other statewide offices are bound to. For one thing, judicial candidates in Washington are prohibited from expressing a position on issues such as abortion or the death penalty, raising or having knowledge of contribution sources and identifying with a political party.

For these reasons, the average voter often has scarce information about a candidate and their positions on various issues are ambiguous at best (voters must thumb through endorsements and contributors as the only way to grasp a candidate's personal ideology). Even if the candidate has adequate financing to promote visibility, candidates are barred from expressing personal views, thereby leaving few talking points to stimulate voter interest. Campaigns have therefore embraced the Internet and have resorted to new ways to garnish contributions and gain exposure.

Technological advances in recent years have led to a surge in advertising expenses as campaigns exhaust sizeable sums on mailings, broadcast media, and other communicative tools. Anyone that's been through the process can validate that contributions are the engine of any campaign machine.

Researchers have long attempted to explain the impetus behind campaign contributions. Traditionally, campaign contributions were perceived to allow the donor to support candidates that share a similar ideology to the donor. A more cynical approach argues that contributions are nothing more than a sophisticated form of bribery which presents donors the opportunity to present information and influence lawmakers<sup>8</sup>.

Though fundamental to informing the public of one's candidacy, contributions have attributed to the wide public perception that large contributors, usually consisting of interest groups and corporations, hold a disproportionate influence over elected officials and will expect illicit favors in return for donations<sup>9</sup>.

This concern has prompted organizations like the Justice at Stake Campaign and American Bar Association to examine the possibility of publicly financing judicial elections to reduce fundraising and lower the cost of campaigns. Similarly, a proposal prepared by Washington Public Campaigns will attempt to determine whether partial or

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<sup>7</sup> "Elections & Voting." General Election Results. Washington Secretary of State. 10 Mar. 2009 <<http://www.secstate.wa.gov/elections/default.aspx>>.

<sup>8</sup> Smurzynski, Kenneth C. Contributions: The Market for Access and its Implications for. Regulation. 1891.

<sup>9</sup> A survey by Justice at Stake suggests that the majority of the public believes that campaign contributions can buy access to lawmakers and influence decisions.

Hall, Charles. "Poll: Huge Majority Wants Firewall Between Judges, Election Backers." JAS Press Releases. 22 Feb. 2009. Justice at Stake Campaign. 13 May 2009 <<http://www.justiceatstake.org/node/125>>.

full public financing will mitigate problems with judicial election financing<sup>10</sup>. The group aims to launch a statewide conversation about limiting the influence of money, establishing public financing requirements and ensuring fairness in elections by allowing ordinary citizens the same access to lawmakers as large donors do.

#### **IV. Public Financing**

Public financing programs aim to limit the amount of influence of donors by allowing public funds to be used once specific requirements are met. Efforts at campaign finance reform can generally be divided into six categories: spending regulations, contribution limits, financial disclosure provisions, public financing requirements, limiting party contributions, and ethics or oversight commissions<sup>11</sup>. As will be discussed in later sections of this report, these tools have had varying degrees of success, but it is generally confirmed that the most successful reform strategies were the result of strong financing behind the program.

The current state election system mandates that the Secretary of the State and Public Disclosure Commission (PDC) publicly display all campaign-related activity for candidates running for elected office. Article IV of the Washington Constitution and Chapter 2.06 of the Revised Code of Washington asserts that judges are to be elected and any change in the state's judicial process would require a constitutional amendment<sup>12</sup>.

This begs the question: Are benefits from publicly financing judicial elections worth changing the state constitution for?

Proponents of public financing reforms argue that private contributions distort the election process by possibly assisting the wrong people— those with large contributions and low support— to become candidates. It is a common concern that money corrupts and those able to contribute more funds will have a greater chance to have their voices heard. It is also claimed that public financing levels the playing field and provides more opportunities for people from diverse demographics groups to run for office. A public financing system would also reduce the burden of time and effort that goes into collecting contributions.

Critics of a public financing program argue that those who are least dependent on contributions and are able to substitute inputs into campaigning, such as donated labor or outside expenditures, would benefit at the expense of those unable to do so. Another argument against public financing programs is cost—taxpayers are the likely source of funding. A cost estimate for a public financing program for state-level political offices and appellate judicial offices released in 2007 examined candidate expenditures,

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<sup>10</sup> "Why do we need Public Financing?" Washington Public Campaigns. 13 May 2009  
<<http://www.washclean.org/whypublicfunding.htm>>.

<sup>11</sup> Warren, Kenneth F. Encyclopedia of U.S. campaigns, elections, and electoral behavior. Los Angeles: Sage, 2008. 12 May 2009  
<<http://books.google.com/books?id=zP4wDcT3PeQC&pg>>.

<sup>12</sup> "Washington State Constitution." Washington State Legislature Home Page. 10 Mar. 2009  
<<http://www.leg.wa.gov/LawsAndAgencyRules/constitution.htm>>.

independent expenditures, administration, enforcement, and voter education costs. It was estimated that a public financing program for *all statewide elections* would cost roughly \$3.58 per Washington resident per year, or \$22,513,455.

While that may seem high at first, consider that candidates running for 11 offices between 2000 and 2008 spent over \$30,000,000 in 2004 and nearly \$40,000,000 in 2008. Refer to the Appendix for detailed spending totals by office and year.

Financial reform for judicial elections in particular has become a popular topic due to growing concern that elections cause a judge to be more focused on providing services to voters in a similar way to politicians. Studies suggest that Washingtonians tend to believe that judges are accountable to the public, fair in impartial in their judgments, can be relied upon to be honest and trustworthy, and are generally qualified to serve. Criticism about the current judiciary involves the overly political influence present in the timing of resignations and interim appointments.

In 2008, a statewide survey of 1,185 registered voters was conducted by Washington State University faculty to assess citizen perceptions about how the state's judges were selected. The survey was designed and tested for factual accuracy and neutrality and provided respondents with definitions of how the system has worked over the course of recent years as well as selection methods laid out in statute. The current system was described as follows<sup>13</sup>:

*There are 218 Supreme Court, courts of appeal, and superior court judges in Washington State. These judges take office in one of two ways; Judges are either:*

- a. Elected by voters in non-partisan elections, or*
- b. Appointed by the Governor to fill a vacancy due to retirement or death of a current judge.*

*Currently, 87 judges (40%) reached the bench by non-partisan election, and 131 judges (60%) reached the bench by being appointed by the Governor.*

*No matter how judges first reach office, at the end of the terms, they must run in a contested election to keep their position. However, if no one challenges a judge, he or she automatically remains in office for another term.*

*In 2008, 84% of judicial elections are uncontested.*

Results from the survey showed that in general, registered voters had a negative view of the current system of selecting judges; about a quarter of survey respondents rated the current system as "good" or "very good" while over a third rated the current system as either "bad" or very bad". Primary areas of concern included the large number of judges that were appointed and the lack of information available to voters. Over 61% of survey

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<sup>13</sup> Brody, David. "Washingtonians Voice Support for Merit Selection of Judges." Research News & Features. Washington State University. 16 June 2009 <<http://researchnews.wsu.edu/society/229.html>>.

respondents rated the commission (merit) system described below as being either “good” or “very good”<sup>14</sup>:

*Under the Commission system method, a bipartisan, broad-based commission (made up equally of lawyers and non-lawyers from across the state) interviews and evaluates the candidates for judicial positions and recommends the most highly qualified to the Governor. The Governor is then required to appoint one of the people recommended by the commission. This system is sometimes referred to as “merit selection”.*

*Under this system, all judges would face periodic retention elections in which voters decide whether each judge should remain in office.*

Elections are expensive, as evidenced by the \$132,979,272 spent and \$137,958,723 donated to campaigns between 2000 and 2008. Although expenditures fluctuate from year-to-year, a straight average of the past nine elections indicate an average spending of roughly \$15 million per year.

As expenses continue to rise, the viability of public funding is becoming more of a reality, especially when specifically targeted at judicial offices. A commission or ‘merit-selection’ system appears to be well-received and will also dramatically reduce the cost of elections if implemented properly.

## **V. Election Results, 2000-2008**

### **Appellate Court**

The Washington court of appeals was created in 1969. There are 22 appellate court judges spread throughout the 9 districts in Washington State. Appellate court justices are selected through non-partisan election and have terms of 6 years before having to run for re-election. In order to run for appellate court, a candidate must have 5 years of experience within the state and must be a resident of that district for at least 1 year<sup>15</sup>.

There are three divisions of Court of Appeals: Division I in Seattle, Division II in Tacoma, and Division III in Spokane. Candidates running for the Court of Appeals typically spend \$50,000 or less on their campaign.

The average expenditure amount that 20 appellate court candidates spent between 2000 and 2008 was \$47,790.79. The largest spender was Robert Leach, who dedicated \$172,645 for his 2005 campaign. Leach spent 81% of his total expenditures in the general election. There were 7 candidates in that particular race and Leach’s expenditures accounted for 42% of the total spending. Despite being a high spender, the position

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<sup>14</sup> Brody, David. "Washingtonians Voice Support for Merit Selection of Judges." Research News & Features. Washington State University. 16 June 2009 <<http://researchnews.wsu.edu/society/229.html>>.

<sup>15</sup> "Methods of Judicial Selection - Washington." Judicial Selection in the States. 11 June 2009 <[http://www.judicialselection.us/judicial\\_selection/methods/selection\\_of\\_judges.cfm?state=WA](http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state=WA)>.

ultimately went to Stephen Dwyer who defeated Leach by 19,191 votes on November 8, 2005.

Despite electoral defeat, Gov. Gregoire appointed Leach to the Division I, District II Court of Appeals in January 2008<sup>16</sup>. He was retained by voters in November and will continue his term of office until 2014. There have been no complaints filed against Judge Leach from the Commission on Judicial Conduct to-date.

In this case, it made no difference whether Leach was appointed or elected to the bench. Despite spending nearly three times the average expenditure for the position in 2005, he still lost the election. It was only after his appointment from the governor that he was swept into office by voters—though it admittedly helped that he ran unopposed for the position.

### **District Court**

In Washington State, district courts are of limited jurisdiction. There are 49 courts in 61 locations established in the 39 counties. Candidates running for district court often spend less than \$50,000.

The average expenditure amount that 63 district court candidates spent between 2000 and 2008 was \$25,586.40. It is interesting to note that 7 of the top 10 spenders in this time period were running for Spokane county district court judge in district 32. Gregory Tripp ran for this district in 2002 and 2006, spending \$86,952.95 and \$78,925 respectively. Tripp took the top two slots for highest expenditures from 2000 and 2008 and won both elections. There were two candidates in the race for Spokane County District Court position five. Tripp was deemed the most qualified by both Spokane County Bar Association Judicial Evaluation Panel and Washington Women Lawyers and won the endorsement of the Spokesman-Review newspaper. Judge Tripp continues to serve his district and there have been no complaints filed against him from the Commission on Judicial Conduct to-date—evidence of a successful election.

### **Municipal Court**

The average expenditure that 12 municipal court candidates spent between 2000 and 2008 was \$17,998.94. The largest spender was Michael Morgan who spent \$40,607.67 in his 2005 campaign for Federal Way Municipal Court judge position 1. Unsuccessful in his candidacy for Superior Court in 2000, Morgan was elected as the first full-time judge for the Federal Way Municipal Court in November 2005.

Morgan is criticized for creating a hostile work environment, displaying inappropriate behavior, and for suing the city and The News Tribune with over \$80,000 of taxpayer funds for the purpose of covering up a potentially embarrassing report<sup>17</sup>. In an unrelated

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<sup>16</sup> "Gov. Gregoire Appoints J. Robert Leach to Division I Court of Appeals." Governor Chris Gregoire's official state website. 23 Jan. 2008. 11 June 2009 <<http://www.governor.wa.gov/news/news-view.asp?pressRelease=768&newsType=1>>.

<sup>17</sup> Hobbs, Andy. "Federal Way judge negotiated language of allegations found in reprimand." Federal Way Mirror 16 Dec. 2008. Sound Publishing. 22 June 2009 <[http://www.pnwlocalnews.com/south\\_king/fwm/news/36271584.html](http://www.pnwlocalnews.com/south_king/fwm/news/36271584.html)>.

issue last December, Morgan was reprimanded by the Commission on Judicial Conduct (CJC) for inappropriate behavior. He was cited for swearing at the city's police chief, making threatening comments to court employees and discussing matters of a sexual nature with his staff.<sup>18</sup>

Morgan ran for re-election this year against six candidates: James A. Santucci, Mark S. Knapp, Rebecca C. Robertson, Williams Jarvis, Michael Morgan, and Matthew York<sup>19</sup>. However, PDC official allege that Morgan violated state election laws when his city computer was used to post items criticizing two of his opponents in the primary election. Morgan lost his bid for re-election and his term will end beginning 2010.

In Washington State, there are two ways that a judge may be removed from office<sup>20</sup>:

1. A joint resolution of the legislature, in which three fourths of the members of each house must concur that a justice should be removed from office
2. The Commission on Judicial Conduct investigates complaints of judicial misconduct or disability would make a recommendation to the Supreme Court that a judge be suspended, removed, or retired. The Supreme Court makes the final decision after reviewing the commission's records.

In this rare case, Morgan was elected to office and continually performed poorly. Despite being reprimanded by the Commission on Judicial Conduct and being asked to step down from the position several times, it was only until the third offense that he his bid for re-election was denied. (Interestingly enough, he even signed an agreement stipulating that he violated state election laws, but withdrew the document two days later.)

This case showed how difficult it is in practice to remove a bad judge from the bench, despite having ample evidence documenting poor performance. Morgan spent more than double the amount typically spent by municipal court candidates and essentially 'bought' his position. As a municipal court judge, Morgan makes an annual salary of \$134,623 plus full benefits and has been on the bench since 2006. He intends to continue practicing law following the end of his term.

## **Superior Court**

Each of the 39 counties in the state has a Superior Court grouped into 30 single or multi-county districts. Currently, there are 143 Washington Superior Court judges who serve four year terms<sup>21</sup>.

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<sup>18</sup> Maynard, Steve. "Despite reprimand, Federal Way judge seeks re-election." The News Tribune 2 June 2009. Tacoma News, Inc. 4 June 2009 <<http://www.thenewstribune.com/topstories/story/763932.html>>.

<sup>19</sup> "King County Judicial Elections | 2009 Primary." Federal Way Municipal Court. Voting for Judges.org. 18 June 2009 <<http://www.votingforjudges.org/09pri/div1/king/index.html>>.

<sup>20</sup> "Methods of Judicial Selection - Washington." Judicial Selection in the States. 11 June 2009 <[http://www.judicialselection.us/judicial\\_selection/methods/removal\\_of\\_judges.cfm?state=WA](http://www.judicialselection.us/judicial_selection/methods/removal_of_judges.cfm?state=WA)>.

<sup>21</sup> Washington Courts. 10 Mar. 2009

<[http://www.courts.wa.gov/newsinfo/resources/index.cfm?fa=newsinfo\\_jury.display&altMenu=Citi&folderID=jury\\_guide&fileID=superior](http://www.courts.wa.gov/newsinfo/resources/index.cfm?fa=newsinfo_jury.display&altMenu=Citi&folderID=jury_guide&fileID=superior)>.

In 2000, one hundred seventy-eight candidates filed for open positions within the 39 counties of the state, raising roughly \$1.9 million and spending \$1.8 million. Financing figures were roughly the same in 2004, where one hundred fifty-nine candidates filed for positions on the Superior Court. Contributions and spending skyrocketed in 2008, where one hundred eighty-one candidates filed with the PDC and reported campaign expenditures of \$2.8 million.

The average expenditure amount that 129 superior court candidates spent between 2000 and 2008 was \$34,489. The largest spender was Holly Hill who dedicated \$175,198.33 to her judicial campaign. Hill was one of three candidates in the non-partisan race for King County Superior Court judge position 22, but was the only candidate who did not come from a prosecutor background. Moreover, she was one of the two ‘likely democrat’ candidates in the race and had to compete for endorsements from legislative districts democrats. More money needs to be spent in races with more than two candidates, especially when candidates are barred from disclosing party associations or positions.

In a separate race for the same county, the King County Bar Association found that in the August 2008 primary election, candidate Jean Rietschel printed campaign materials that were misleading to voters and implicated that she might have been an incumbent Superior Court Judge<sup>22</sup>. Rietschel won the primary with 107,235 votes over challenger Barbara Mack who garnered 98,754 votes, but was issued a warning by the county bar association and changed her signs in compliance by the general election. In the general election, she received 307,399 votes and spent \$75,076. She ultimately lost to Mack, who received 327,476 votes and spent a mere \$49,851.78. Like the examples above, this serves as another cautionary tale of the dangers that may arise from disproportionate campaign spending and having the misinformed public electing their judges.

## **Supreme Court**

Since 1889, Supreme Court judges are elected by the people to six year terms. These races occur every two years, but voters often lean towards incumbent judges.

There were fourteen Supreme Court candidates running for four open positions in 2000, nine candidates running for three positions in 2002, fourteen candidates running for three positions in 2004, nine candidates running for three positions in 2006, and 6 candidates running for three positions in 2008. This past election, all three incumbents received more than 50% of votes in the Primary election and went unopposed in the General election. As a result, campaign spending this year was \$400,000— less than half of the usual \$1+ million spent in past Supreme Court elections<sup>23</sup>.

The average expenditure amount that 30 Supreme Court candidates spent between 2000 and 2008 was \$124,392.08. The largest spender was James Johnson who dedicated \$533,455.32 to his 2004 campaign for position 1. Though he was unsuccessful in his

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<sup>22</sup> Prazuch, Andrew. Bar Group Finds Misleading Judicial Campaign Materials. Rep. 14 Aug. 2008. King County Bar Association. 5 June 2009 <<http://votingforjudges.org/08gen/div1/king/king37kcba.pdf>>.

<sup>23</sup> "Candidate Data." Public Disclosure Commission. 10 Mar. 2009 <<http://www.pdc.wa.gov/querysystem/candidates/candidatedata.aspx>>.

candidacy for position 3 in 2002, he won his campaign in 2004 for position 1, defeating Mary Kay Becker by a slim margin of 91,875 votes.

Judge Johnson continues to serve on the Washington Supreme Court until his term expires in 2010. There have been no complaints filed against him from the Commission on Judicial Conduct.

## **VI. Conclusion**

Data from the Washington Public Disclosure Commission, Secretary of State and Commission on Judicial Conduct between 2000 and 2008 were compiled to determine the effect of money on elections.

More often than not, candidates with the most money won. In rare circumstances, large spenders sometimes lost due to high personal spending, several candidates of similar ideology in the same race, running against an incumbent, or a poorly managed campaign.

Recent increases in special interest contributions have some wondering if justice is for sale. Business and legal groups are seen to be the biggest threat to the integrity of an independent judiciary. A poll of judges and the public indicates that spending has at least *some* influence on judicial decision-making. As one judge noted, “trying to ignore big money in judicial elections is like trying to ignore the crocodile in your bathtub.”<sup>24</sup>

As the cost of judicial elections continue to rise, the possibility of public financing programs is becoming more viable. Though no study has determined the cost of implementing a program strictly for judicial elections, research on publicly financing all elections indicate that these programs may have been cheaper to implement than the 2004 and 2008 elections, where candidates spent between \$30-40 million on campaigns. Surveys indicate positive responses to ‘merit-selection’ systems, which would also be cheaper than non-partisan elections.

Nonpartisan judicial elections, like those currently implemented in Washington State, attempt to shield candidates by imposing regulations, such as those that restrict them from knowing the source of contributions or expressing positions on issues. Although judges should restrain personal ideology from affecting decision-making *in the courtroom*, the inability to express fundamental views and philosophies while campaigning precludes voters from getting an idea of the decisions a candidate will make on the bench and encourages voters to elect candidates based on irrelevant factors.

Being a judge is a prestigious role that requires decisiveness, ethics and professionalism. From health care, schools, employment, and housing rights, judges play a pivotal role in society and their decisions are too important to be left to irrelevant factors or the highest bidder.

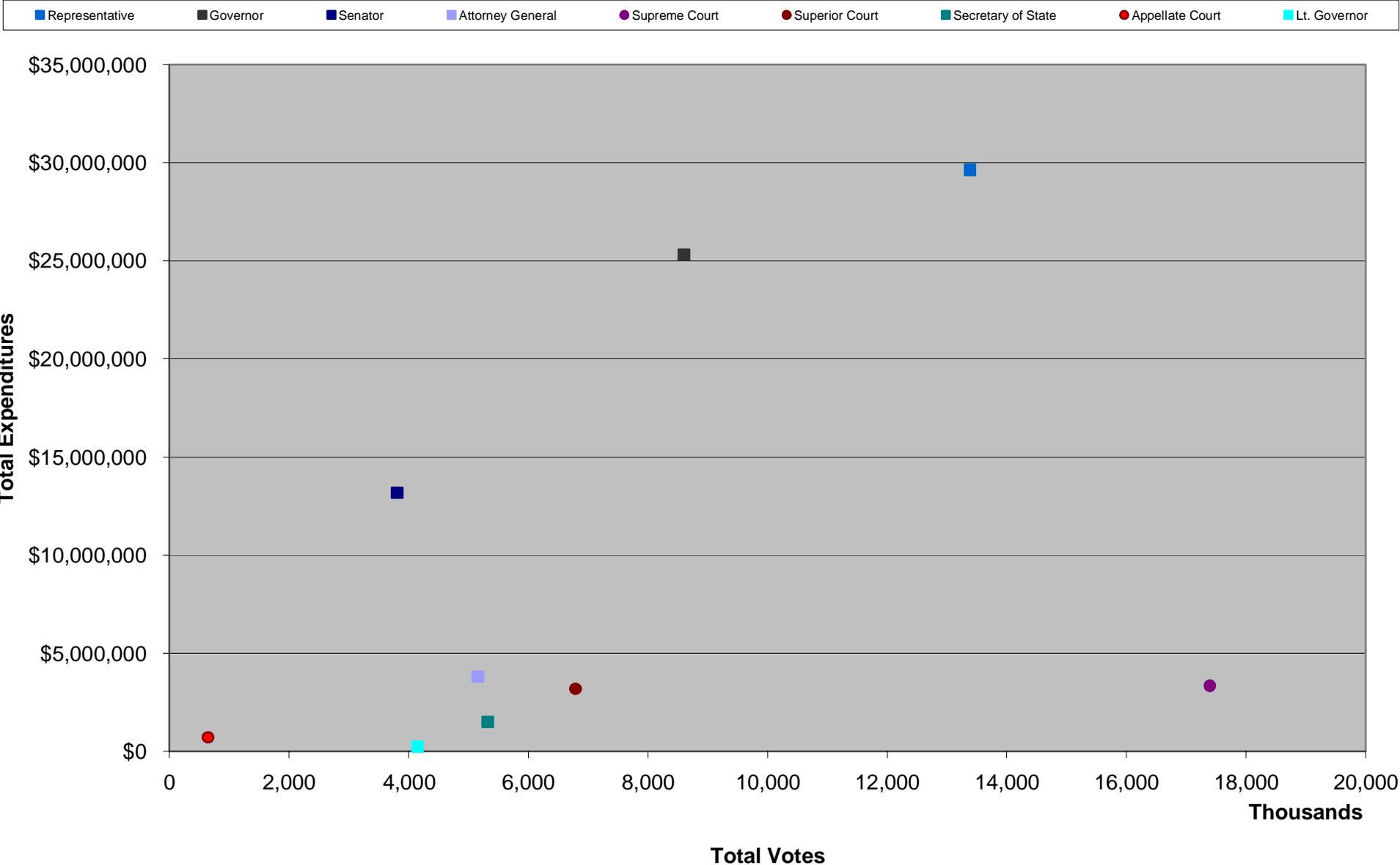
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<sup>24</sup> Totenberg, Nina. "Report: Spending on Judicial Elections Soaring." Legal Affairs 18 May 2007. NPR. 11 Mar. 2009 <<http://www.npr.org/templates/story/story.php?storyId=10253213>>.

Changes to these regulations are worth considering because current rules undermine the system of justice and fairness. High spenders elected to the bench often stay there, because of greater chance of incumbent re-election and access to information. The inability to swiftly remove an incompetent judge further complicates our system of justice.

Until these regulations are re-evaluated, this will keep happening. And if one thing's for sure, it's not getting any cheaper.

# WA Expenditures and Votes: 2000-2008



*As shown above, less than \$5 million was spent on all judicial races between 2000 and 2008, though turnout varied by type of judicial race. Highest campaign expenditures for this period went to governor and state representative races.*

# Contributions & Expenditures by Race and Year

Race Type	Data	2000	2001	2002	2003	2004	2005	2006	2007	2008	Grand Total
Appellate Court	Contributions			\$ 71,712		\$ -	\$ 183,305	\$ 160,989	\$ 9,000	\$ 107,611	\$ 532,616
	Expenditures			\$ 101,635		\$ 1,000	\$ 408,899	\$ 231,417	\$ 7,072	\$ 205,792	\$ 955,816
District Court	Contributions			\$ 272,560	\$ 2,000	\$ 56,714		\$ 314,229		\$ 56,610	\$ 702,113
	Expenditures			\$ 503,136	\$ -	\$ 103,436		\$ 896,610		\$ 108,761	\$ 1,611,943
Municipal Court	Contributions	\$ 100		\$ -		\$ 500	\$ 110,811	\$ 20,470			\$ 131,881
	Expenditures	\$ -		\$ 345		\$ -	\$ 202,569	\$ 13,073			\$ 215,987
Superior Court	Contributions	\$ 17,485	\$ 36,520	\$ 46,507	\$ 75,419	\$ 863,299	\$ 1,850	\$ 83,755	\$ 39,063	\$ 1,142,012	\$ 2,305,910
	Expenditures	\$ 21,125	\$ 87,328	\$ 121,211	\$ 112,697	\$ 1,499,990	\$ 5,161	\$ 160,601	\$ 92,012	\$ 2,349,037	\$ 4,449,162
Attorney General	Contributions	\$ 161,511			\$ 319,217	\$ 2,745,646	\$ 63,435	\$ 127,603	\$ 467,729	\$ 1,598,405	\$ 5,483,546
	Expenditures	\$ 40,356			\$ -	\$ 3,252,414	\$ -	\$ -	\$ 266,209	\$ 2,129,685	\$ 5,688,664
Governor	Contributions	\$ 5,049,544	\$ 185,435	\$ 3,575	\$ 2,156,636	\$ 10,357,312	\$ 386,637	\$ 1,166,534	\$ 4,061,593	\$ 15,900,599	\$ 39,267,865
	Expenditures	\$ 6,067,897	\$ -	\$ -	\$ -	\$ 13,794,829	\$ -	\$ -	\$ 1,455,685	\$ 21,918,105	\$ 43,236,516
Lieutenant Governor	Contributions	\$ 111,990	\$ 2,788	\$ 300	\$ 45,855	\$ 84,613	\$ 2,000	\$ 6,450	\$ 49,484	\$ 166,930	\$ 470,409
	Expenditures	\$ 142,660	\$ -	\$ -	\$ -	\$ 205,062	\$ -	\$ -	\$ 14,825	\$ 165,153	\$ 527,699
Supreme Court	Contributions	\$ 36,290		\$ 722,371	\$ 7,061	\$ 1,133,992		\$ 1,203,892		\$ 386,000	\$ 3,489,606
	Expenditures	\$ 91,165		\$ 733,435	\$ -	\$ 1,300,919		\$ 1,249,674		\$ 356,570	\$ 3,731,762
Senator	Contributions	\$ 2,720,189	\$ 393,181	\$ 2,902,946	\$ 756,165	\$ 4,481,338	\$ 681,002	\$ 4,187,362	\$ 1,211,812	\$ 3,737,465	\$ 21,071,459
	Expenditures	\$ 420,459	\$ -	\$ 3,456,670	\$ 158,533	\$ 5,705,416	\$ -	\$ 4,983,942	\$ 404,076	\$ 4,557,488	\$ 19,686,584
State Representative	Contributions	\$ 9,403,179	\$ 1,458,743	\$ 8,798,289	\$ 1,025,413	\$ 9,030,852	\$ 1,355,802	\$ 9,787,524	\$ 1,630,393	\$ 11,122,080	\$ 53,612,275
	Expenditures	\$ 908,614	\$ 464,357	\$ 9,988,476	\$ 116,817	\$ 10,851,406	\$ 89,689	\$ 11,714,381	\$ 439,590	\$ 12,649,893	\$ 47,223,222
Secretary of the State	Contributions	\$ 547,710	\$ 25,134	\$ 62,106	\$ 196,453	\$ 898,183	\$ 22,050	\$ 47,551	\$ 142,940	\$ 118,773	\$ 2,060,901
	Expenditures	\$ 335,079	\$ -	\$ -	\$ -	\$ 1,222,026	\$ -	\$ -	\$ 58,116	\$ 123,456	\$ 1,738,676
Total Contributions		\$ 18,047,999	\$ 2,101,801	\$ 12,880,366	\$ 4,584,218	\$ 29,652,449	\$ 2,806,892	\$ 17,106,359	\$ 7,612,014	\$ 34,336,485	\$ 129,128,582
Total Expenditures		\$ 8,027,352	\$ 551,685	\$ 14,904,907	\$ 388,046	\$ 37,936,498	\$ 706,318	\$ 19,249,699	\$ 2,737,584	\$ 44,563,940	\$ 129,066,032

# Expenditures by Race, Year, Election

Race Type	2000		2001		2002		2003		2004	
	General	Primary	General	Primary	General	Primary	General	Primary	General	Primary
Appellate Court					\$ 27,974	\$ 73,661				\$ 1,000
District Court					\$ 285,603	\$ 217,533			\$ 52,855	\$ 50,581
Municipal Court										
Superior Court	\$ 11,742	\$ 9,383	\$ 41,551	\$ 45,777	\$ 4,979	\$ 116,232	\$ 39,649	\$ 73,048	\$ 247,913	\$ 1,252,077
Attorney General		\$ 40,356							\$ 1,410,254	\$ 1,842,160
Governor	\$ 3,200,852	\$ 2,867,045							\$ 6,954,659	\$ 6,840,170
Lieutenant Governor	\$ 95,957	\$ 46,703							\$ 120,381	\$ 84,681
Supreme Court	\$ 73,631	\$ 17,534			\$ 290,068	\$ 443,367			\$ 564,171	\$ 736,748
Senator	\$ 224,312	\$ 164,090			\$ 1,607,351	\$ 1,876,344	\$ 100,281	\$ 58,252	\$ 3,327,435	\$ 2,383,012
State Representative	\$ 523,720	\$ 384,894	\$ 243,667	\$ 220,690	\$ 4,191,330	\$ 5,797,146	\$ 46,928	\$ 69,889	\$ 5,419,260	\$ 5,432,146
Secretary of the State	\$ 112,023	\$ 223,056							\$ 719,755	\$ 502,271
<b>Grand Total</b>	\$ 4,242,237	\$ 3,753,060	\$ 285,218	\$ 266,467	\$ 6,407,304	\$ 8,524,284	\$ 186,857	\$ 201,189	\$ 18,816,682	\$ 19,124,847
Percentage of Total Contributions	53.06%	46.94%	51.70%	48.30%	42.91%	57.09%	48.15%	51.85%	49.59%	50.41%

Race Type	2005		2006		2007		2008		Grand Total
	General	Primary	General	Primary	General	Primary	General	Primary	
Appellate Court	\$ 331,308	\$ 77,592	\$ 23,820	\$ 207,597	\$ 2,772	\$ 4,300	\$ 24,753	\$ 181,039	\$ 955,816
District Court			\$ 421,422	\$ 475,188			\$ 66,771	\$ 41,990	\$ 1,611,943
Municipal Court	\$ 192,288	\$ 10,626	\$ 249	\$ 12,825					\$ 215,987
Superior Court	\$ 4,164	\$ 996	\$ 34,681	\$ 125,921	\$ 76,888	\$ 5,543	\$ 541,666	\$ 1,816,952	\$ 4,449,162
Attorney General							\$ 1,745,497	\$ 650,397	\$ 5,688,664
Governor							\$ 15,174,234	\$ 8,199,556	\$ 43,236,516
Lieutenant Governor							\$ 85,566	\$ 94,411	\$ 527,699
Supreme Court			\$ 318,902	\$ 930,772			\$ 37,800	\$ 318,770	\$ 3,731,762
Senator			\$ 3,473,037	\$ 1,510,905	\$ 257,512	\$ 42,777	\$ 3,366,362	\$ 1,294,912	\$ 19,686,584
State Representative	\$ 85,678	\$ 4,011	\$ 8,054,316	\$ 3,660,065			\$ 9,103,730	\$ 3,985,753	\$ 47,223,222
Secretary of the State							\$ 131,218	\$ 50,353	\$ 1,738,676
<b>Grand Total</b>	\$ 613,438	\$ 93,225	\$ 12,326,427	\$ 6,923,272	\$ 337,172	\$ 52,620	\$ 30,277,598	\$ 16,634,135	\$ 129,066,032
Percentage of Total Contributions	86.81%	13.19%	64.03%	35.97%	86.50%	13.50%	64.54%	35.46%	

# Contributions by Race, Year, Election

Race Type	2000		2001		2002		2003		2004	
	General	Primary	General	Primary	General	Primary	General	Primary	General	Primary
Appellate Court					\$ 7,400	\$ 64,312				
District Court					\$ 179,651	\$ 92,908			\$ 18,185	\$ 40,529
Municipal Court		\$ 100								
Superior Court	\$ 4,450	\$ 11,710	\$ 21,280	\$ 15,240	\$ 5,425	\$ 41,082	\$ 25,220	\$ 50,149	\$ 100,672	\$ 762,627
Attorney General	\$ 42,852	\$ 118,659							\$ 1,129,594	\$ 1,998,704
Governor	\$ 2,303,348	\$ 2,931,631							\$ 5,133,844	\$ 7,770,316
Lieutenant Governor	\$ 64,155	\$ 50,623							\$ 48,815	\$ 83,953
Supreme Court	\$ 15,765	\$ 20,525			\$ 343,953	\$ 379,368			\$ 465,249	\$ 674,854
Senator	\$ 1,529,042	\$ 1,237,527			\$ 1,264,260	\$ 1,934,607	\$ 69,518	\$ 78,886	\$ 2,051,834	\$ 3,165,966
State Representative	\$ 5,199,391	\$ 4,201,248	\$ 407,981	\$ 436,528	\$ 3,626,732	\$ 5,787,942	\$ 43,158	\$ 66,413	\$ 3,807,518	\$ 6,136,260
Secretary of the State	\$ 278,792	\$ 294,052							\$ 502,791	\$ 675,876
<b>Grand Total</b>	\$ 9,437,795	\$ 8,866,075	\$ 429,261	\$ 451,768	\$ 5,427,421	\$ 8,300,220	\$ 137,896	\$ 195,448	\$ 13,258,501	\$ 21,309,086
Percentage of Total Contributions	51.56%	48.44%	48.72%	51.28%	39.54%	60.46%	41.37%	58.63%	38.36%	61.64%

Race Type	2005		2006		2007		2008		Grand Total
	General	Primary	General	Primary	General	Primary	General	Primary	
Appellate Court	\$ 159,755	\$ 23,050	\$ 6,236	\$ 155,253	\$ 9,000		\$ 1,735	\$ 105,876	\$ 532,616
District Court			\$ 96,526	\$ 217,703			\$ 23,735	\$ 32,875	\$ 702,113
Municipal Court	\$ 109,086	\$ 2,225	\$ 815	\$ 19,655					\$ 131,881
Superior Court	\$ 1,350		\$ 16,296	\$ 67,509	\$ 36,513	\$ 900	\$ 179,220	\$ 966,267	\$ 2,305,910
Attorney General							\$ 861,774	\$ 1,331,963	\$ 5,483,546
Governor							\$ 9,430,463	\$ 11,698,263	\$ 39,267,865
Lieutenant Governor							\$ 90,905	\$ 131,959	\$ 470,409
Supreme Court			\$ 138,380	\$ 1,065,512			\$ 7,095	\$ 378,905	\$ 3,489,606
Senator			\$ 2,138,743	\$ 2,763,444	\$ 279,718	\$ 28,650	\$ 2,181,306	\$ 2,347,958	\$ 21,071,459
State Representative	\$ 90,200	\$ 4,225	\$ 4,636,140	\$ 6,422,936			\$ 5,978,674	\$ 6,766,929	\$ 53,612,275
Secretary of the State							\$ 155,860	\$ 153,530	\$ 2,060,901
<b>Grand Total</b>	\$ 360,391	\$ 29,500	\$ 7,033,135	\$ 10,712,013	\$ 325,232	\$ 29,550	\$ 18,910,767	\$ 23,914,524	\$ 129,128,582
Percentage of Total Contributions	92.43%	7.57%	39.63%	60.37%	91.67%	8.33%	44.16%	55.84%	