

The Atlantic

The Big Money Propping Up Harsh Sentences

Special-interest groups are funneling millions of dollars into state-court elections, taking a toll on justice and public confidence in judges.





Steve Marcus / Reuters

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In November, Pennsylvania [set a national record](#) for spending on supreme court elections. Negative [ads](#) that painted candidates as issuing “lenient sentences” and “fail[ing] to protect a child” circulated the airwaves and consequently set the tone for the campaign. And while the election is over, the ads may have a long-lasting effect on how judges handle criminal cases moving forward.

Across the country, a common thread in supreme court campaigns is whether judges are sufficiently “tough on crime.” Recent elections have accused judges or candidates of having “[expressed sympathy for rapists](#),” having “[sided with the predators](#),” having gone “[liberal on crime](#)” and having [shielded a priest accused of molestation](#). Behind these ads are special interest groups—many with clear financial interests in cases that come before state courts—who appear to be coalescing around a strategy to exploit public-safety issues.

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“Tough on crime” was the most common political theme aired in recent state supreme court elections, with a record 56 percent of TV ad spots either criticizing or touting the records of judges and candidates, according to a report we recently coauthored, [Bankrolling the Bench: The New Politics of Judicial Elections](#)



The Most Expensive Judicial Election in U.S. History

2013-14. More often than not, however, the money behind such ads has little to do with criminal justice.

In Illinois last year, a state supreme court justice running for a retention election was faced with a **chilling ad** featuring his photo and a narrator intoning, “The worst of the worst. Predators abusing children. Rapists. Murderers. Let off easily.” The ad came from Campaign for 2016, a Super PAC primarily funded by plaintiffs’ lawyers and law firms involved in an ongoing civil case against tobacco giant Philip Morris.

In another 2014 election, a group called Justice for All North Carolina ran an ad alleging that a state supreme court justice, Robin Hudson, “**was not tough on child molesters, not fair to victims.**” The group received \$900,000 from the Washington, D.C.-based Republican State Leadership Committee, whose big donors include the U.S. Chamber of Commerce, Charlotte-based Duke Energy, and tobacco companies Reynolds American and Altria.

Of the 18 organizations that ran criminal-justice-themed ads in state supreme court elections from 2011 to 2014, only three have positions on the issue listed on their websites. Instead, many groups focus on taxes, the size of government, tort reform, or other business interests.

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Multi-million dollar spending on state supreme court races have become the norm. Special-interest groups like Campaign for 2016 and Justice for All North Carolina [accounted for a record 29 percent of overall expenditures](#) in 2013-2014, spurred in part by the Supreme Court's *Citizens United* decision in 2010. This new record suggests that ads geared toward criminal justice aren't likely to go away.

As a result, even as bipartisan consensus forms on reining in mass incarceration, politicized judicial elections nevertheless push judges toward tough-on-crime stances. A recent [study](#) suggested that more TV ads in supreme court races make judges less likely to side with criminal defendants. They also affect public confidence in the courts: In a [2013 poll](#), 87 percent of Americans said they believe that campaign donations and independent spending by outside groups affect judges' rulings.

In the U.S., 95 percent of all cases begin in state courts, heightening the concern of these elections. Thirty-eight states conduct some kind of election for their supreme courts—and these races are alarmingly indistinguishable from campaigns for legislatures or the executive branch. And nobody leaves a judicial election unscathed. As former Indiana Chief Justice Randall Shepard [put it](#): “Even the winners ... end up so tarnished and beaten up they are not in a position to evoke from the public the same level of confidence.”

Without reform, Americans appearing in court may legitimately ask whether judges are deciding their cases based on the law and constitution—or out of fear of future TV ads accusing them of having “sided with the predators” or having “expressed sympathy for rapists.”

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