



Criminals and Campaign Cash

The Impact of Judicial Campaign Spending on
Criminal Defendants

Billy Corriher October 2013

Center for American Progress



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Introduction and summary

As state supreme court campaigns become more expensive and more partisan, the fear of being portrayed as “soft on crime” is leading courts to rule more often for prosecutors and against criminal defendants.

That is the disturbing finding of this Center for American Progress study, which explores the impact on the criminal justice system of the explosion in judicial campaign cash and the growing use of political attack ads in state supreme court elections, which have increased pressure on elected judges to appear “tough on crime.” In carrying out this study, CAP collected data on supreme courts that, between 2000 and 2007, saw their first election in which the candidates and independent spenders spent more than \$3 million.¹ This includes high courts in Illinois, Mississippi, Washington, Georgia, Wisconsin, Nevada, and West Virginia. For each of these courts, CAP examined 4,684 rulings in criminal cases for a time period starting five years before a given state’s first \$3 million high court election and ending five years after that election.

The findings reveal a clear trend: As campaign cash increased, the courts studied began to rule more often in favor of prosecutors and against criminal defendants.

- The 2004 Illinois Supreme Court race broke judicial campaign spending records. As Illinois voters were bombarded with attack ads featuring violent criminals, the high court ruled in favor of the prosecution in 69 percent of its criminal cases—an 18 percent increase over the previous year.
- Some states saw a sharp increase in rulings for the state just after their first elections in which spending reached \$3 million. Mississippi’s high court, for example, saw its first \$3 million election in 2000 and some nasty political attack ads that same year. When the next judicial election rolled around two years later, in 2002, Mississippi’s justices ruled against criminal defendants in 90 percent of the high court’s criminal cases—a 20 percent increase from 2000.

- After two politically charged races in 2007 and 2008, the Wisconsin Supreme Court’s percentage of rulings for the state shot to 90 percent during the 2009 and 2011 election years.
- The correlations were strongest in years that saw more ads produced and paid for by independent groups unaffiliated with the candidates—ads that tended to be more negative than those of the candidates. The one court in the study that saw no independent spending, the Nevada Supreme Court, did not exhibit a tendency to rule for the state during big-money elections.
- The Washington and Georgia high courts saw a huge spike in independent spending in 2006, followed by a sharp decline. The percentage of rulings against criminal defendants in these courts also peaked in 2006 and then dropped precipitously as the campaign cash and attack ads disappeared.²

These results suggest that, just as judges are more likely to rule against criminal defendants as elections approach,³ state supreme courts are more likely to rule for the state as the amount of money in high court elections increases.

These findings have important implications for the debates over reforming our criminal justice system. In the past 50 years, the U.S. government has cracked down on drug crimes and provided financial incentives for states to do the same.⁴ The so-called War on Drugs has resulted in over-incarceration and the growth of private prisons, which has given certain companies a financial incentive in maintaining this status quo. But as the financial cost of the nation’s drug war has become clear, Americans are debating whether our punitive approach is working.⁵ The federal government is scaling back the use of harsh mandatory minimums,⁶ and some states, including Georgia, are experimenting with alternative sentencing.⁷ If reformers want to stop over-incarceration and ensure that criminal defendants are treated fairly, they must also speak out about the politicization of judicial elections and the tarring of judges as being soft on crime in attack ads, a practice that compels courts to rule for the state and against defendants.

The enormous sums of money spent in recent judicial elections have fueled an increase in attack ads targeting judges.⁸ State supreme court candidates raised more than \$200 million between 2000 and 2009—two and a half times more than in the 1990s.⁹ A record \$28 million was spent on television ads in 2012 high court

elections, with half of this money coming in the form of independent spending, according to Justice at Stake and the Brennan Center for Justice.¹⁰ These independent spenders are more likely than the candidates' campaigns to run attack ads.¹¹

Most of these attack ads allege that a certain judge is soft on crime, telling voters that he or she ruled in favor of a violent criminal without any context or discussion of the legal issue at stake. A single ruling in a case, replete with gruesome facts, can provide fodder for an attack ad. A 2012 candidate for the Ohio Supreme Court, for example, was attacked by the state Republican Party, which alleged in an ad that the judge—Democrat Bill O'Neill—had “expressed sympathy for rapists” in one of his opinions.¹² During the 2004 West Virginia Supreme Court election, a group funded by coal mogul Don Blankenship warned that an incumbent justice “voted to release” a “child rapist” and then “agreed to let this convicted child rapist work as a janitor in a West Virginia school.”¹³ Another campaign ad, this one in the 2012 Louisiana Supreme Court race, claimed that one of the candidates had “suspended the sentence of a cocaine dealer, of a man who killed a state trooper, two more drug dealers, and over half the sentence of a child rapist.”¹⁴

These attack ads distort rulings in criminal cases to play on voters' fears, and they create political pressure on judges to rule in favor of the state. Moreover, judicial candidates themselves are running ads that proclaim their tough-on-crime approach, even though judicial ethics rules prohibit candidates from expressing a bias for or against certain litigants, including criminal defendants.¹⁵

Stephen Bright of the Southern Center for Human Rights, an organization dedicated to criminal justice reform, said that, “Opponents criticize judges for a lack of cruelty. Judges seek public approval by announcing their delight in helping to extinguish human life. Constitutional rulings are dismissed as mere ‘technicalities.’”¹⁶ Former U.S. Supreme Court Justice John Paul Stevens warned in a dissent that “judges who covet higher office—or who merely wish to remain judges—must constantly profess their fealty to the death penalty.”¹⁷ Once a judge wins an election with such a message, how will those campaign promises affect his or her decisions in criminal cases?

Before answering that and other questions and discussing the study findings in greater depth, this report briefly outlines how media images shape attitudes on crime and describes how these attack ads became more prevalent. The report then looks at the special interests bankrolling these ads and profiles four of the states studied—Illinois, Mississippi, Washington, and Georgia—and the experiences of each high court with attack ads and their fallout.