



Campaign Contributors and the Nevada Supreme Court

This November, Nevada voters will decide whether to continue choosing their judges in nonpartisan elections or to move to a merit selection system with retention elections and performance evaluation. The proposed constitutional amendment will appear as Question 1 on the ballot. Originally known as Senate Joint Resolution (SJR) 2, the measure was sponsored by Senate Minority Leader Bill Raggio, a Republican from Reno, and Assembly Speaker Barbara Buckley, a Democrat from Las Vegas. SJR 2 was approved by legislative majorities in 2007 and 2009, as required for constitutional amendments proposed by the legislature. Nevada has used a merit selection process to fill judicial vacancies that arise between elections since 1976, but voters rejected proposals that would have instituted merit selection for all judgeships on three past occasions—in 1972, 1988, and 1996.

A new report, “The New Politics of Judicial Elections, 2000-2009: Decade of Change,” documents the transformation of judicial elections over the last decade, particularly when it comes to fundraising.¹ Nearly \$207 million was raised across the country by state supreme court candidates from 2000 to 2009—more than double the \$83.3 million raised from 1990 to 1999. Nevada ranked eighth among states with contested high court races, with candidates for the supreme court raising a record-breaking \$9.8 million. Approximately \$3.1 million was raised in the 2008 election cycle alone.

Recent national polling suggests a growing concern among the public that justice may be for sale in state courts. According to a poll conducted earlier this year, seven in ten Americans believe that judicial campaign money has a significant impact on courtroom decisions. Supporters of Question 1, who believe that reform is necessary to preserve public confidence in the state’s courts, hope that recent judicial election trends both nationally and in Nevada will help to generate support for the measure.

¹ This report, written by the Justice at Stake Campaign, the Brennan Center for Justice at NYU School of Law, the National Institute on Money in State Politics, and Hofstra University law professor James Sample, is available at www.justiceatstake.org.

The American Judicature Society is working with a coalition known as Nevadans for Qualified Judges to educate voters about the benefits of merit selection, retention elections, and performance evaluation over contested elections. One aspect of this work is an examination of whether Nevada citizens have reason to worry that campaign contributions may influence judicial decisions. AJS analyzed the frequency with which contributors to the campaigns of Nevada Supreme Court justices later appeared before the court. The study examined civil cases decided by the court in 2008 and 2009, and determined the number of cases in which at least one of the litigants, attorneys, or law firms involved made a contribution to at least one justice.²

The Nevada Supreme Court decided 112 civil cases with published opinions in 2008 and 2009.³ Eighty-one of these were decided by the court en banc and 31 were decided by a three-judge panel. Cases involving campaign contributors were the rule rather than the exception.

- In 67 of the 112 cases (60 percent), at least one of the litigants, attorneys, or firms involved had contributed to the most recent election campaign of at least one justice.
- In 36 cases (32 percent), a contribution had been made by more than one of the parties in the case.

It was also common for a single party—typically a large law firm—to have made a contribution to more than one of the justices deciding the case.

- In 47 of the 112 cases (42 percent), at least one litigant, attorney, or firm involved in the case had contributed to a majority of the justices deciding the case.
- In 10 of the 112 cases, two participants had made contributions to a majority of the justices deciding their cases; in 4 cases, three participants had done so.

This analysis does not establish, nor does it attempt to establish, that campaign contributions influenced the court's decisions—that the justices either favored contributors or disfavored non-contributors. But it does suggest that citizens and litigants may have reason to question the fairness and impartiality of the court's decisions based on the frequency with which contributors to the justices' election campaigns later appear before them.

Question 1 on the Nevada ballot, which calls for merit selection, retention elections, and performance evaluation, is a promising solution to the problem of money in judicial elections and the threat it presents to judicial legitimacy. Merit selection identifies highly qualified

² The analysis is limited to “major” contributors—i.e., those who contributed at least \$1000—to the justices' most recent election campaigns. The eight justices who served on the Nevada Supreme Court in 2008 and 2009 raised more than \$5 million collectively in their most recent campaigns. Campaign contribution data was provided by the National Institute on Money in State Politics.

³ The analysis is confined to civil cases, as these are the cases where litigants on both sides may be private parties and potential contributors to judicial campaigns. Criminal cases and cases involving judge or attorney discipline are excluded. The Nevada Supreme Court issues both published opinions and unpublished orders, but this analysis is limited to cases decided with published opinions.

judicial candidates, retention elections substantially reduce the need for judges to raise campaign contributions, and performance evaluation ensures that judges are held appropriately accountable to the public.