



Public Thinks Campaign Cash Sways Judges

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TAMPA - As candidates in Hillsborough County's four judicial races work to convince voters they have integrity, the money fueling their campaigns may be undermining that message.

Although Americans trust the courts more than other branches of government, the public thinks judges are influenced by campaign fundraising, according to a recent survey by the Annenberg Public Policy Center at the University of Pennsylvania.

The survey found that 70 percent of the public think campaign contributions affect judges' rulings.

Even some judges agree. A 2002 survey found that 30 percent of Florida judges and 26 percent of state judges nationwide think campaign contributions influence judges.

In Hillsborough County circuit judge elections, fundraising is on the increase. The eight candidates for four runoff races have raised an average of \$57,800 in contributions each, not counting loans they made to themselves. That's an increase of 21 percent from the average of \$47,814 raised by the four candidates who ran in circuit judge runoff elections in 2002, the last time runoffs were held.

Counting loans they made to themselves, the eight candidates for judge in Hillsborough runoff races have raised a total of more than \$1.2 million, according to state election records. When the candidates' own money is subtracted, the total campaign contributions are about \$460,000, the vast majority coming from lawyers. State law limits individual contributions to \$500.

"I can tell you unequivocally that it appears these numbers are quite substantial and they reflect a growing trend in Florida and nationally," said Tom Scarritt, chairman of the Hillsborough County Judicial Campaign Practices Committee. Judicial elections "are becoming more and more like every other political race. The numbers are becoming obscene."

Scarritt, whose committee was deactivated this year, said he has served as campaign finance director and treasurer in past judicial races. "I find it completely awkward and unseemly that judges have to, through others, walk out and stick their hand out to the lawyers that come before them. That just doesn't work. But that's the system we have."

'Something's Wrong'

"When it takes money to get to the bench in that way, something's wrong," said Bert Brandenburg, executive director of Justice at Stake, which he described as a nonpartisan national partnership of more than 40 judicial and good-government organizations. "Getting the best judge should not be a race for dollars."

"It bothers me that we have a system that includes judges receiving campaign contributions," said Henry M. Cox III, president of The Florida Bar.

With nearly \$100,000 in campaign contributions, Bernard C. Silver has raised the most money of any of candidate in the four Hillsborough judicial runoff elections.

Silver isn't worried that the contributions will affect his ability to be a fair judge if he wins Tuesday's election. "That would never be an issue with me in terms of whether or not a lawyer has contributed to my campaign," he said.

Silver said the amount of contributions he received is really evidence of his ability to be fair. "Those people that contribute to my campaign believe, I think, in my honesty and integrity," he said.

His comments were echoed by other judicial candidates, some of whom pointed out that campaign contributions are public record, available to anyone on the Internet.

One candidate, Paul Jeske, admitted he had "sticker shock" when he realized how much money was needed to run a judicial campaign.

Jeske, who has raised \$71,390, not counting loans to himself, said he "could not criticize" the public opinion that campaign contributions influence judges. "I can certainly understand it," he said, adding, "If I thought I was ever in a position where it became a question in my mind that I was biased for or against someone, then I would be the first to bring it up."

During a recent meeting of The Florida Bar Committee on Judicial Independence, Cox, the Bar's president, asked participants how litigants can trust judges when campaign contributions are involved, according to The Florida Bar News. "How does Joe Plumbing Co. think, 'I'm getting a fair shake,' if the other side's lawyer gave the judge \$500 and his lawyer didn't contribute?"

Contributions And Recusal

Judges are required to recuse themselves from ruling in cases in which their impartiality may reasonably be questioned. But Florida courts have held that campaign contributions alone - or even a lawyer's service on a judge's campaign committee - are not sufficient to require recusal.

"Lots of attorneys give lots of judges money," said Ana Cruz, campaign manager for judicial candidate Kim Fernandez. "They spend their lives in these courthouses, and they know these people. A lot of them are friends ... If a judge wanted to recuse him or herself every time someone who gave them a campaign contribution appeared before them, I can't imagine how the docket would run. Very slow, I would imagine."

Hillsborough Circuit Judge Robert Foster, who won re-election in September, said recusal over campaign contributions has never been an issue for him. He said no one has ever asked him to recuse himself because of them. But if someone asked him to remove himself from a case on that basis, he would. "If someone thought I could not be fair and impartial that's appearing in front of me, why create an issue?" he said.

Judge Gary M. Farmer of the 4th District Court of Appeal is worried that the current system creates problems. "Any reasonable person could understandably fear a judge's impartiality when the opposition gave money or served on her election committee," Farmer wrote in a 2005 opinion.

Farmer urged judges to recuse themselves in cases in which attorneys have made campaign contributions.

"If such a regime is too disruptive to the operation of courts, well then maybe we should rethink our dedication to the direct election of judges," he wrote.

The vast majority of states have elected judges, and those elections are "unlikely to go away," said James Sample, associate counsel for the Democracy Program at the Brennan Center for Justice at New York University School of Law. "The prevailing view is citizens in those states believe judicial elections give them a means of holding their judiciaries accountable."

Floridians rejected a ballot initiative in 2000 that would have changed the system to have judges appointed by the governor.

"If judicial elections are going to be expensive, and that seems to be the trend, then candidates are going to be faced with a Catch 22: Either they go out and raise money, or they risk losing," Sample said. "It's almost like an arms race, and it's very difficult to sit it out."

"The question is what can be done in a narrowly tailored, targeted way to improve judicial elections and to improve public confidence in the court," Sample said.

Public Funding

One answer is public funding of judicial campaigns, but that hasn't caught on, except in North Carolina, which has adopted public financing for appellate judicial races.

Florida appeals court judges and Supreme Court justices do not face opponents for re-election. Instead, voters decide whether they should be retained.

Sample said one possible reform would be the creation of internal oversight bodies that can apply recusal requirements "without the sort of gamesmanship that would affect judicial independence."

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