

Comments to Board of Judicial Administration

Presentation by Washington Public Campaigns - January 15th
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John King, WPC Board of Directors, Chair of Policy Committee
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Thank you for a few minutes of your time..

We are here to brief you - and to invite your comments and questions - on a proposed bill to establish a pilot program of public financing as an option available to candidates for the state supreme court.

To set the stage: **We are increasingly alarmed at national trends** - both the growing financial "arms race" in campaigns, and also the tug-of-war among special-interest groups, to support their favored candidates for the bench, especially the state's highest court.

We take note of national trends, and some alarming cases, such as Massey-Caperton in West Virginia. As you recall, in that instance, a single donor - owner of a coal company - spent \$3 million in support of a candidate for state supreme court, and then that justice, upon election, refused to recuse himself, and created a 3-2 majority to absolve the coal company of a \$50 million penalty awarded by jury in a lower court. It's almost life imitating fiction as portrayed in John Grisham's recent novel, *The Appeal*.

Although we don't believe the court is unduly influenced or bought, **we do notice that the public is increasingly concerned about threats to judicial integrity and impartial justice.**

In Washington state, in 2006, \$4.2 million was spent in total (including direct spending by campaigns, and independent electioneering) seeking three seats on the supreme court. That year's record-setting campaign spending raised eyebrows in many quarters. It received attention and some scolding by the media, and it certainly raised concern among the public.

Remember that in response, Governor Gregoire proposed a bill for public financing of judicial campaigns, for the 2007 legislature. The bill received hearings that year, but no legislative action.

In general, it seems prudent to respond to potential problems before they become a public scandal. (to close the barn door before the horses escape).

And so, there seems no disagreement: we need a response to these trends and concerns.

We want to preserve public confidence in the integrity and impartiality of the courts - and we recognize that appearance of impartiality is significant to retaining public confidence.

Public financing of campaigns - always only as an option, not a requirement, for candidates - is not the only solution to these trends. But perhaps it is necessary as an option, so long as judges are elected. (Incidentally, WPC takes no formal position on how judges should be selected - election, or otherwise.)

This program works. Public campaign financing for judicial races has been working in North Carolina for several election cycles, with good success and popular support. Also, New Mexico has now adopted a similar program. A month ago, a program was signed into law in Wisconsin, the Impartial Justice Act.

We recognize the current awkwardness of financing judicial campaigns under current state law, practices and codes of judicial conduct: To finance a competitive campaign, candidates must raise significant amounts of money, yet cannot openly ask for contributions, and so at fund raising events, must step out of the room, and yet sign campaign PDC reports that the contributions as reported are accurate!

Now, to the challenge of establishing a program of public financing of supreme court campaigns in Washington state (noting that lawmaking requires finding common ground among concerned stakeholders): Perhaps the toughest challenge is how to finance a proposed program.

We believe a minimum of \$3 million per election cycle - and so \$1.5 million per year - is necessary to launch the proposed program on a pilot basis. And as drafted, the bill says the program won't launch until and unless \$3 million is available and appropriated, through a newly-created Judicial Election Reform Act fund.

There is always an issue of how to finance any proposed program - even without red ink deficits. This year, the state budget deficit creates an especially-difficult challenge.

Legislative leaders prefer that any such program be financed in a manner with nexus to the courts, somehow - and certainly in a manner that does not add to taxes or seek funding from the general fund, where there are other priorities. Yet, we know there are limited funding streams through the courts.

The least onerous option may be a small surcharge on court filing fees (please don't groan) - and that's what the proposed bill calls for, as currently drafted.

We recognize it's not the best. In a perfect world, we would prefer that a program simply be financed through the general fund - as in some other states. We acknowledge a value and a desire - probably shared by most if not all in this room - to preserve public access to justice and the courts by all comers - and not to erect or to further steepen any financial barriers, inadvertently chilling access to justice.

And we recognize a tendency for "bracket creep" - inadvertently "piling on", or adding to an undesirable precedent that's already there, such as surcharges to court filing fees.

With these concerns and values in mind, we are looking to tweak the proposed funding mechanism - so that any burden falls on those able to pay, without discouraging access to courts. It's a challenge not unlike a Rubik's Cube - where each tweak affects something else!

Yet - **an overriding concern is to preserve public confidence in the integrity and impartiality of the courts** - to alter the trajectory where judicial campaigns are increasingly financed by special-interests. If trends continue - and the public begins to believe that justice is simply "bought" by special-interests - that becomes a more serious problem than a \$1-2 increase in court filing fees.

And so, **we hope for action on this proposed program, ideally this year**, or soon. Ideally a program would be available on a pilot basis for the 2012 elections. If so, it must be financed somehow.

Even in a slumping economy, it's interesting that money for these campaigns always does seem to appear - albeit privately, perhaps with large sums from sources that seem to want something in return. We believe that is not how our judicial elections should be financed, in the main.

And so, we are urging consideration of the concept of public financing of campaigns for the state Supreme Court as an option for candidates. And, we're urging support for the proposed pilot program and these Senate and House bills, or some variation.

We invite your comments and suggestions regarding how best to finance any pilot program - if not as proposed in these bills, then perhaps through some other means that is practical and politically feasible. With such a short legislative session, we need to work it out soon.

Thank you for inviting us today, for your time and consideration. We are available for questions or comments, if time allows.