Dishonorable

Oregon's process of electing judges is flawed, critics say, with the judicial system vulnerable to special interests

BY EMILY GREEN
STAFF WRITER

Oregon's method for hiring and retaining state court judges has left its judicial branch highly susceptible to the influence of outside special interests.

If the trend in other states that also hold judicial elections is any indication of where Oregon might be headed, it won't be long before dark money begins to flow into Oregon Supreme Court campaigns and voters are bombarded with ads attacking judges whose ideologies don't align with corporate interests.

In a state such as Oregon, where voters are provided with wholly inadequate information before being asked to elect or reinstate a judge, it would be easy for political action committees to come in, fill the information void and shape voters' opinions.

To see how quickly judicial elections can be tainted, look north, where a handful of billionaires are skimming from their deep pockets in an attempt to unseat a Washington Supreme Court justice they view as problematic.

By forming a PAC and dumping close to $1 million into it in a matter of weeks, Bill Gates, Paul Allen and a handful of other affluent individuals are working to defeat a judge who issued a decision they didn't like against funding charter schools with money dedicated to public schools.

Similar attempts by special interests to shape supreme courts in other states have proved successful. In Texas, doctors and insurance companies seeking to cap the amount of damages awarded in tort claims have reshaped that state's Supreme Court in recent decades, and earlier this year in West Virginia, coal interests helped elect a business-friendly justice by pouring $2.5 million into the state Supreme Court election.

"All around the country, special-interest groups are outspending the candidates themselves," said Malia Reddick, a national leader in judicial reform efforts. "To an increasing degree, a lot of the money is so-called dark money – money that we don't know where it comes from."

Special-interest spending on advertisements in judicial elections has hit an all-time high, with outside groups investing $14 million on TV ads in current state supreme court elections, the Brennan Center for Justice reported on Oct. 26.

The center said its report underscores "the expanding influence of secret money in targeting judges unfavorable to corporate agendas and other special interests," adding that these millions of dollars spent "pose a troubling threat to core values of fairness and judicial integrity."

At the time that report was released, Election Day was still two weeks out, and total spending on judicial races nationwide had already reached nearly $30 million, the report revealed.

"A lot of this money is going toward attack ads – really ugly ads that focus on a single decision, where a judge upheld the law, but it may have resulted in a criminal being set free or needing to be retried," Reddick said. She said in election environments where voters have very little information to go on, this misuse of information can be a real problem.

Reddick manages the Quality Judges Initiative at the Institute for the Advancement of the American Legal System, or IAALS, housed at the University of Denver. Before that, she was the director of research and programs at the American Judiciary Society.

She said it was during the Jacksonian era, the mid-1800s, when the U.S. saw a shift away from appointed judges and toward judicial elections. Then in the early 1900s, there was a shift toward nonpartisan elections, which Oregon still practices today. But it wasn't until the 21st century that judicial elections saw an "explosion of campaign money," she said.

"We have seen, since 2000, this money has increasingly been coming from special-interest groups, and it's more and more dark money, and it's more and more being spent on these nasty attack ads."

Spending in Oregon's 2016 judicial campaigns is paltry in comparison to states such as Ohio, Michigan, Louisiana, Mississippi, Kansas and North Carolina, where hundreds of thousands of dollars have been spent on TV ads.

Ted Sims, the incumbent in a Washington County Circuit Court race, has raised more money than any other judicial candidate in Oregon this year, with $38,414 in campaign contributions. This includes a $7,000 loan and $15,130 from his own bank account. Several attorneys and law firms also contributed to his campaign.

Many judicial campaigns in Oregon have spent nothing or next to nothing, although 11 candidates for circuit court judicial positions raised $5,000 to $15,000 each.

In 2012, however, the race between Richard Baldwin and Nena Cook for a position on the Oregon Supreme Court saw cash contributions exceed a half-million dollars, and some of that money came from PACs, although not at the level seen in other states.

Judicial reform advocates think Oregon should change the way it appoints judges before its courts are compromised.

An in-depth evaluation of Oregon's judicial system in 2007 concluded there is an urgent need "to protect the judiciary from efforts that would politicize the courts for the benefit of a few, to the detriment of the many."

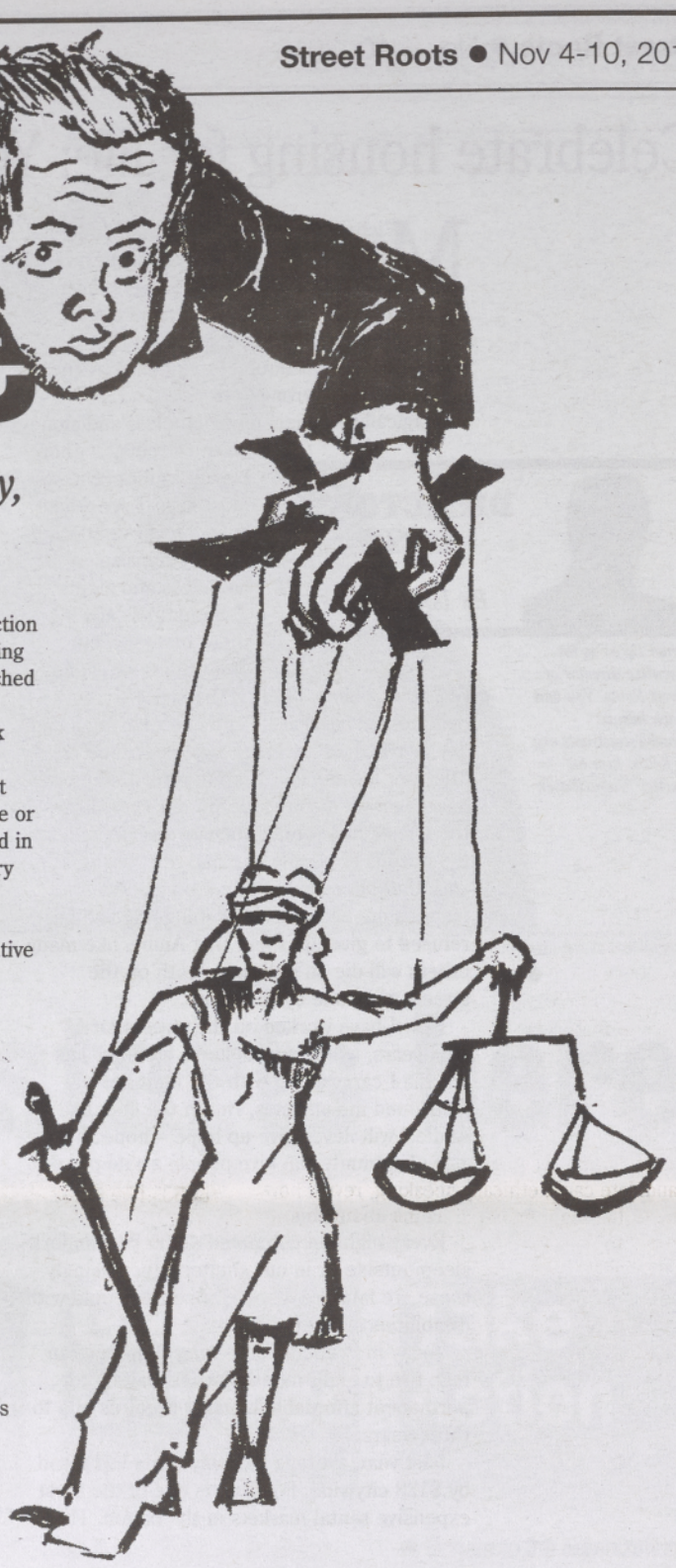

ILLUSTRATION BY APALA BARCLAY

The report, authored by the League of Women Voters of Oregon, noted that 39 states regulated the financing of judicial campaigns in some way; however, in Oregon there are no limits on campaign contributions, including in the judiciary.

But susceptibility to special interests is not the only trouble with the way Oregon elects its Supreme Court, Court of Appeals and Circuit Court judges. Oregonians often face judicial selections on the ballot without any of the tools necessary to make an informed vote.

Eleven other states provide voters – or the body responsible for appointing judges – with detailed, independent evaluations of how an incumbent judge is performing his or her duties.

In Colorado, that information is available online and is included in the widely distributed voters guide called the Blue Book, along with recommendations on whether the judges should keep or lose their seats at the bench.

On the Colorado Office of Judicial Performance Evaluation website, voters can find

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RESOURCES FOR OREGON VOTERS

Oregon Voters' Pamphlet: sos.oregon.gov/voting/Pages/current-election.aspx

Oregon Bar Association's Judicial Candidate Voting Guide: osbar.org/judicial/judicialquestionaire16.html