Spending in Judicial Elections:

State Trends in the Wake of *Citizens United*

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CAPSULE SUMMARY

This report was prepared at the request of the California Assembly Judiciary Committee to explore the ways in which states have responded to *Citizens United* to protect the independence of their judiciaries, and to analyze the applicability of those responses to California. The report summarizes the results of a 50 state survey of state responses and identifies eight common proposals in state legislation, which are ranked in order from the most expedient and politically feasible for California to the least: (1) reporting and disclosure requirements, (2) recusal and disqualification rules, (3) contribution limits, (4) banning foreign contributions, (5) shareholder or board consent requirements, (6) public financing of judicial campaigns, (7) merit selection, and (8) resolutions calling for a federal constitutional amendment to reverse *Citizens United*. This report considers each of type of proposal, its benefits and limitations, its constitutionality and feasibility, and its applicability to California. The report concludes with candid recommendations pertaining to each category of legislation.

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I. EXECUTIVE SUMMARY

This report examines common proposals among states to mitigate the impact of spending in judicial elections and preserve the integrity of the states' judiciaries in the wake of *Citizens United v. FEC*. The U.S. Supreme Court in *Citizens United* held that government may not restrict corporations or unions from making independent expenditures to support or oppose individual candidates in an election. In so holding, *Citizens United* magnified an already growing debate regarding the impact and propriety of spending in the 39 states that use some form of judicial election. Critics of the decision contend that spending in judicial elections threatens an elected judge's ability to remain fair and impartial, and increases the public perception that justice is for sale to the highest bidder.

Campaign Spending

Spending in judicial elections increased dramatically over the past two decades and continues to increase in the wake of *Citizens United*, with the large majority of the increased spending in 2010 and 2011 by corporations. The increase occurred in all types of judicial elections, including retention elections. In 2010 alone, twice the amount of money was spent in retention elections in four states than was raised nationally for all retention elections during the preceding decade. Nevertheless, spending did not increase in every state since *Citizens United*, with California in particular not experiencing increased spending during its 2010 retention election.

Common Proposals and Emerging Trends

This report identifies eight common post-*Citizens United* proposals by states that aim at reducing the impact of spending in judicial elections on the states' judiciaries.

- **Reporting/Disclosure Requirements:**
  Many states' legislatures have proposed enacting reporting rules that require judges and contributors to file reports disclosing the money raised and spent in judicial elections. These rules include "paid for" designations on political communications, and disclosing of political contributions either during the time of contribution, or at the time of a court proceeding.
  - **Benefit**: Stringent disclosure requirements would address potential problems related to transparency in judicial campaigns and could help voters make informed decisions during judicial elections. Proponents argue that adequate disclosures, coupled with recusal rules, will also promote fair trials before a neutral decision-maker.
  - **Limitation**: Disclosure requirements do not prevent money from being contributed to judicial elections, and may do little to address the public view of judicial impartiality.
  - **Constitutionality**: These requirements should not pose a constitutionality problem because *Citizens United* specifically upheld disclosure of independent expenditures and electioneering communications.

- **California**: California recently passed AB 2487 which requires that each judge disclose on the record whether he or she has received a campaign contribution from any party or counsel in a matter that is before the court. California has not seen an increase in spending in judicial elections, but it may want to consider even more stringent laws for disclosure for meaningful recusals to be available to litigants.

- **Recusal and Disqualification of Judges**

  At least thirteen states have proposed stricter disqualification standards for judges that require a judge's recusal when a party before the court contributed a threshold amount to the judge, or require an independent third party to review recusal motions.
  - **Benefits and Limitations:** Disqualification rules may reduce the risk to actual and perceived judicial impropriety. However, these rules may only address the risk posed by contributions, require strong disclosure rules to be effective, and may restrain a judge's ability to raise campaign funds.
  - **Constitutionality:** Stringent disqualification rules are very likely to be found constitutional.
  - **California**: California could enact mandatory disqualification rules for appellate justices and could require a neutral adjudicator to determine motions for disqualification or review denied motions.

- **Contribution Limits**

  Eleven states have made forty proposals that would limit the amount of money a person or corporation could contribute to a judicial candidate.
  - **Benefits and Limitations**: Contributions limits help avoid *quid pro quo* arrangements and enhance public perception of the judiciary. However, these rules may only address the risk posed by contributions, require strong disclosure rules to be effective, and may restrain a judge's ability to raise campaign funds.
  - **Constitutionality**: Contribution limits are likely to be found constitutional, even if the limit is very low.
  - **California**: California could enact contribution limits to enhance the public's perception of the judiciary.

- **Shareholder or Board Consent**

  Three states have enacted laws requiring corporations to report and seek approval from their Boards of Directors before making political campaign contributions.
  - **Benefits and Limitations**: These requirements could increase transparency, provide a check on improper corporate political spending, and ultimately help prevent the actual or perceived undermining of an independent judiciary. Political opposition might present an insurmountable barrier to shareholder consent. No state has passed such a law.
  - **Constitutionality**: Thus far, the only court to consider the constitutionality of a board approval requirement since *Citizens United* upheld the law.
  - **California**: While a creative and potentially effective response to *Citizens United*, implementing shareholder or board reporting and consent requirements may not be politically feasible.

- **Banning Foreign Corporation Contributions**
  President Obama brought significant attention to the decision during his 2010 State of the Union speech when he said, "I don't think American elections should be bankrolled by . . . foreign entities." Responding to such concerns, Tennessee, Iowa, and Alaska have passed laws prohibiting political campaign contributions of any kind by a corporation based outside the United States.
    - **Benefits and Limitations**: Banning foreign corporations from making donations to American candidates in elections addresses perhaps the gravest threat to the perception that the judiciary could become beholden to improper interests. *Citizens United* did not overturn the portion of the McCain-Feingold Act prohibiting foreign corporations from contributing to campaigns and foreign nationals' involvement in decisions regarding political spending by U.S. subsidiaries. Therefore, a state law prohibiting foreign corporate or individual campaign contributions may prove duplicative.
    - **Constitutionality**: The majority opinion in *Citizens United* noted that whether the ban on foreign contributions is justified by a compelling government interest is unclear. First Amendment scholars are unsure if the Court intends to overturn the ban.
    - **California**: Should the FEC prove too lax in enforcing federal standards, a state law banning foreign corporate contributions in California judicial elections could be a useful tool against the actual and perceived influence of foreign corporate wealth on the California judiciary.

- **Public Financing of Election Campaigns**
  Ten states and roughly a dozen cities publicly finance campaigns, and the practice is becoming increasingly popular. A state government might directly subsidize all candidates, establish a trust from which qualified candidates may fund their campaigns, or might seek to even the playing field among candidates whose personal wealth is disproportionate.
    - **Benefits and Limitations**: Public financing removes or restricts the impact of private wealth in elections. Its supporters believe that the system reduces corruption and increases the public's faith in the political process. The practical concern militating against adopting public financing of election campaigns in California has to do with the budget. Without the funds to support an ambitious system, it likely has to be tabled.
    - **Constitutionality**: Long presumed to be constitutional, the U.S. Supreme Court heard argument this term in a case challenging Arizona's Citizens Clean Elections Act. Commentators predict that the Court will limit at least the form of public campaign financing embodied in that act.
    - **California**: The state's pressing budget limitations foreclose the possibility of implementing a system of public financing at the state level for the time being.

- **Merit Selection System:**
  At least fifteen state legislatures have proposed legislation that would change the states' judicial selection process from an electoral system to a merit selection system. Many of

these changes include creating a nonpartisan nominating commission, a judicial performance review commission, and/or moving towards retention elections.

- **Benefit**: Proponents argue that changing the system of judicial selection from popular elections to merit selection eliminates any possibility for judicial elections to threaten judicial impartiality.
- **Limitation**: Critics of merit selection argue that the problems stemming from popular elections are simply shifted into the nominating commissions, and that judges will not be held accountable for their actions because they are no longer subject to direct election.
- **Constitutionality**: Changing the method of judicial selection would not pose constitutionality problems. The majority of states currently have some aspects of a merit selection system in place at some level of their court
- **California**: Currently, appellate judges in California are nominated by the governor, and confirmed by the Commission on Judicial Appointments. This state could create a nominating committee that uses a transparent process to make a list of potential candidates for the governor to appoint. Additionally, California could abandon the nonpartisan election system for its trial court judges and adopt a merit selection system.

- **Legislative Resolutions Requesting U.S. Congressional Action:**
  A handful of states have proposed legislative resolutions to express discontent with the *Citizens United* ruling, and/or called on the U.S. Congress to either make amendments to the U.S. Constitution or to pass federal legislation that would prevent the negative consequences of the decision.
  - **Benefit**: These resolutions voice states' discontent with the decision, and request Congress to amend the U.S. Constitution or pass federal legislation to prevent unlimited corporate and union spending, effectively overturning *Citizens United*.
  - **Limitation**: A state legislature expressing opposition to the decision is not affirmative action that would address potential problems to judicial impartiality — it merely creates a record of the opposition. Additionally, it is unlikely that an amendment to the U.S. Constitution will be passed and sent to the states because the process is onerous and rarely succeeds.
  - **California**: In 2010, the California legislature debated Assembly Joint Resolution 3, which memorialized the legislature's disagreement with the *Citizens United* opinion and asked for the U.S. Congress to pass and send an amendment to the Constitution that would allow limits on campaign contributions. This resolution failed to pass. This report does not recommend pursuing another resolution because despite similar bills passing in other states, the protest has not proven to be effective.

II. **Introduction**

Concerns have been increasing over the past two decades about the impact of spending — specifically in the forms of political contributions and independent expenditures — on the elections of public officials. With thirty-nine states electing their judges, this concern poses a unique problem for judicial elections since judges are constitutionally mandated to be fair and impartial decision-makers.

These concerns over the impact and propriety of increased spending in judicial elections were amplified after the U.S. Supreme Court decided *Citizens United v. FEC* on January 21, 2010, holding that corporations and unions have a First Amendment right to spend money to support or oppose candidates in an election. After *Citizens United*, corporations and unions may seek to influence elections by spending unlimited amounts in the form of independent expenditures. Critics argue that this threatens an elected judge's ability to remain fair and impartial, invites suspicions of bias and corruption, and perpetuates the already growing public concern that justice is for sale to the highest bidder.

a. **Purpose**

This report was prepared at the request of the California Assembly Judiciary Committee to explore the ways in which states have responded to *Citizens United* to protect the independence of their judiciaries, and to analyze the applicability of those responses to California. This report summarizes the results of a 50 state survey of state responses and identifies eight common proposals in state legislation. The report considers each of these trends responding to *Citizens United*, their benefits and limitations, constitutionality, feasibility, and applicability to California.

b. **Methodology**

The 50 state survey conducted for this report covers all proposed and enacted state legislation concerning the impartiality of state judiciaries after the *Citizens United* decision. First, a comprehensive search was done on the following databases, each of which contains extensive information regarding states' efforts to preserve the integrity and independence of the judiciary.

- People for the American Way, *Legislation to Fix Citizens United*, *available at* https://www.pfaw.org/issues/fair-and-just-courts/legislation-to-fix-citizens-united.
- National Center for State Courts, Gavel to Gavel Database, *available at* http://www.ncsconline.org/D_Research/gaveltogavel/Bills.asp.
- National Conference of State Legislatures, *Life After Citizens United*, http://www.ncsl.org/default.aspx?tabid=19607 (lasted updated Jan. 4, 2011).

The information found on these websites were then cross-referenced with each state legislature's website for up-to-date information about the statutory language and status of the legislation. All relevant proposed and enacted legislation were compiled into an excel spreadsheet and identified by type of legislation. This survey is attached at Appendix A.

III. Background

a. **Early Campaign Finance Law and the First Amendment**

In 1971, Congress consolidated federal campaign finance statutes into the Federal Election Campaign Act ("the FECA"), subsequently amended in 1974, which included regulations of campaign spending and bars against corporate contributions.[1] In *Buckley v. Valeo,*[2] the U.S. Supreme Court considered challenges to several provisions of the FECA, including challenges to contribution and expenditure limits. The Court recognized that all campaign finance restrictions implicate fundamental First Amendment interests of political

expression, but drew a sharp line between the protections afforded to contributions and expenditures because, unlike contribution limits, expenditure limits directly restrict the ability of persons to expend money and engage in political expression.[3]

The *Buckley* Court established a two-part framework. First, contribution limitations do not limit direct political speech, are subject to a lesser judicial scrutiny, implicate concerns of quid pro quo corruption, and are generally upheld. By contrast, expenditure limitations restrict speech at the core of First Amendment protection, are subject to strict scrutiny, do not implicate anticorruption concerns, and are generally invalidated unless that government can justify the restriction showing by a compelling interest the restriction is narrowly tailored to serve that interest. Applying this framework, the Court upheld the contribution limits in the FECA but invalidated the expenditure limits.

Then in *Austin v. Michigan Chamber of Commerce*,[4] the U.S. Supreme Court changed the approach to constitutional review of campaign finance laws. The Court in *Austin* moved beyond *Buckley*'s focus on quid pro quo corruption and upheld a ban on independent expenditures made by corporations. The Court reasoned that these restrictions served a compelling governmental interest in preventing a different type of corruption: "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."[5] Under *Austin*, independent expenditure restrictions based on the speaker's corporate identity were constitutionally permissible if narrowly tailored to serve a compelling governmental interest in preventing corruption of the integrity of the democratic system.

In 2002, the Bipartisan Campaign Reform Act ("BCRA" or "McCain-Feingold") amended the FECA to prohibit corporations and unions from using their general treasury funds

to finance electioneering communications.[6] Several key provisions of the BCRA were challenged and upheld in the case of *McConnell v. FEC,*[7] including the provision recently struck down in *Citizens United*. Relying upon the holding of *Austin*, the Court in *McConnell* upheld limits on electioneering communications, finding that time, place, and manner restrictions of independent expenditures are constitutionally permissible, so long as the restrictions do not completely ban political advertisement.[8] The Court reasoned that the government had a legitimate interest in preventing both actual corruption and the appearance of corruption, including preventing "access corruption" under which contributors receive preferential access to candidates by virtue of their contributions.

b. ***Citizens United v. Federal Election Commission***

In January 2008, Citizens United, a nonprofit corporation, released a documentary criticizing Hillary Clinton, a candidate for the Democratic Presidential nomination. Concerned that broadcasting the documentary on cable television through video-on-demand may be an electioneering communication, prohibited under the BCRA, Citizens United sought declaratory and injunctive relief that their documentary did not violate the BCRA.

On appeal, the U.S. Supreme Court declared unconstitutional the BCRA provision prohibiting corporations or unions from using their general treasury funds to pay for electioneering communications advocating the election or defeat of a candidate in certain federal elections.[9] In so doing, the Court criticized the expansive theories of corruption that had previously upheld — specifically, *Austin*'s anti-distortion theory of corruption and *McConnell*'s access theory of corruption — and embraced *Buckley*'s focus on quid pro quo corruption.

Applying *Buckley*'s theory of corruption, the Court held that independent expenditures, including those made by corporations, do not implicate quid pro quo corruption. The Court

explained that independent expenditures are direct political speech, and that the restriction prohibiting independent expenditures by corporations and unions abridged those First Amendment rights. The Court rejected the claim that corporations do not warrant the same First Amendment protections as natural persons.[10] A speaker, whether a natural person or a corporation, may not be treated different under the First Amendment simply because of the speaker's identity.

The dissent strongly disagreed with the majority opinion equating corporate speech to speech by natural persons.[11] The dissent reasoned that restrictions on independent expenditures by corporations have been upheld for a long time on many theories, including the state interest of avoiding corruption or the appearance of corruption in government.

The majority opinion, however, held that those justifications are no longer pertinent: independent expenditures, including those made by corporations, do not implicate corruption or the appearance of corruption.[12] The Court noted that the 26 states that do not restrict independent expenditures by corporations have not claimed that those expenditures corrupted the political process in those states.[13] An independent expenditure, by definition, is political speech that is made independently and not coordinated with a candidate.[14] Therefore, the Court held that the government has no anti-corruption interest in limiting independent expenditures, and BCRA's bans on corporate independent expenditures are unconstitutional.

c. **Judicial Elections in the Wake of *Citizens United***

Citizens United invalidated a provision of the BCRA that restricted independent expenditures by corporations, but did not directly affect any state law. However, the decision put into question the constitutionality of laws in twenty-four states that restricted corporate spending in judicial elections.[15] Since 2010, many state legislatures have been repealing their laws

prohibiting independent expenditures by corporations. In addition, several state courts have invalidated such laws as violations of the First Amendment to the U.S. Constitution.[16]

Critics of the *Citizens United* decision are concerned that corporations and unions, who can now spending unlimited amounts in elections, will flood the electorate with political advertisements and have a disproportionate and corrupting influence on elections. With thirty-nine states using some form of election to select judges, this concern poses a unique problem for judicial elections since judges are constitutionally mandated to be fair and impartial decision-makers. Some are especially concerned that increased spending and the potential for such spending will cause actual corruption and the appearance of corruption in the judiciary.

1. **Perceived Bias**

Increased spending in judicial elections may invite suspicions of bias or impropriety in judicial decision-making and undermine public confidence in the judiciary. The Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship.[17] That reputation is eroded when the public believes the judiciary is subject to actual and perceived bias or corruption.[18] In response to these concerns, nearly all states — including both states that use judicial elections and those that do not — have considered proposals to protect the independence and impartiality of their state's judiciary from corruption and the appearance of corruption.

The public's perception of impropriety in the judiciary, even without actual impropriety, greatly undermines the foundation of judges as impartial adjudicators of law. "When judges have to rely on campaign donors to get or keep their jobs, there is an inevitable public perception of judicial bias or favoritism."[19] Public confidence in the judiciary is key to our system of justice — specifically the judiciary's ability to properly resolve disputes and perform its task of protecting individual rights. Surveys consistently show that the majority of the public believes

that campaign contributions and independent expenditures influence judicial outcomes and judges often give spenders favored treatment.[20]

- A 2010 survey found that 70% of Democrats and 70% of Republicans believe campaign expenditures have a significant impact on courtroom decisions.[21] Only 23% of voters believe campaign expenditures have little or no influence on elected judges.[22] The survey also found that 69% of all adults support reforms, such as switching to an appointment system for judicial selection or public financing of state court elections, to reduce special interest influence in the courtroom.[23]

- A February 2009 survey found that 89% of respondents "believed the influence of campaign contributions on judges' rulings is a problem," with 52% believing the issue is a "major problem."[24]

- One survey found that 46% of state court judges believed that campaign contributions influence judicial decisions, with only 5% believing that campaign contributions have no influence.[25]

In addition, many high-profile cases across the country involving large amounts of spending in judicial elections have shaken the public's trust and confidence in the judiciary.[26]

2. **Actual Bias**

The integrity of the judiciary is also diminished when actual bias or impropriety is evident in judicial decision-making. Empirical studies suggest that campaign contributions may influence judicial decisions in practice.[27] For example, several academic studies conclude that judges' decision-making behavior changes as reelection approaches, with judges deviating from earlier voting patterns.[28] A different study of decisions by state supreme court justices reveals that "justices vote in line with the source of their campaign funds significantly more than half the time,"—with the votes in favor of contributors ranging for 70% of the time to 91% of the time.[29]

A few state supreme court justices have also commented on the risk of actual bias. For example, one retired West Virginia Supreme Court justice admitted that his reelections impacted his decisions, stating that "[a]s long as I am allowed to redistribute wealth from out-of-state companies to in-state plaintiffs, I shall continue to do so. Not only is my sleep enhanced when I

give someone else's money away, but so is my job security, because the in-state plaintiffs, their families, and their friends will reelect me."[30] Ohio Supreme Court Justice Paul Pfeifer also commented on the pressure placed on justices by contributors, stating that he "never felt so much like a hooker down by the bus station . . . as [he] did in a judicial race."[31] Justice Pfeifer noted that "[e]veryone interested in contributing has very specific interests . . . [and] mean to be buying a vote."[32] He concluded that it is uncertain whether contributors succeed in buying favorable votes.[33]

Moreover, many high-profile cases highlight the risks spending poses to the actual propriety of the judiciary and the public's perception of the judiciary. For example, in *Avery v. State Farm Mutual Insurance Company*,[34] an Illinois judge received millions of dollars in contributions from the defendant and entities associated with a defendant and refused to disqualify himself from hearing the matter and decided the matter in favor of the defendant, awarding over $450 million.

In the highly publicized case of *Caperton v. A.T. Massey Coal Company*,[35] a recently elected West Virginia Supreme Court justice refused to recuse himself from hearing the appeal in a matter in which the defendant — the CEO of Massey Coal Company — contributed $1,000 to the judge's campaign, spent $500,000 in independent expenditures supporting the judge, and spent $2.5 million to oppose the judge's opponent in the election.[36] On appeal, the U.S. Supreme Court held that due process required the justice to recuse himself.[37] The Court reasoned that by spending over $3 million in contributions and independent expenditures shortly before the election, Massey Coal had a "significant and disproportionate influence" on the judge's placement on the case.[38] This amount "eclipsed the total amount spent by all other

supporters," and was three times the amount that the judge had spent on his own election campaign.[39]

With the public generally believing that money influences judicial decisions, and with evidence suggesting that money has actually influenced judicial decisions, the concerns over increased spending in judicial elections that were amplified by *Citizens United* warrant close attention.

d. **California**

In September 2007, former Chief Justice Ronald M. George of the California Supreme Court, and the Judicial Council of California established the Commission for Impartial Courts ("CIC") in response to growing concern in other states of partisan and special interests attacking and influencing judicial decision-making.[40] The CIC sought to identify specific problems that California was currently facing, and provide proposals to preserve judicial impartiality, quality, and accountability. The CIC was comprised of a steering committee, chaired by Justice Ming W. Chin, and four task forces each charged with a specific area of concern: (1) judicial candidate campaign conduct; (2) judicial campaign finance; (3) public information and education; and (4) judicial selection and retention. Membership in the CIC totaled eighty-eight people from broad and diverse backgrounds, including judges, members of the Legislature, leaders of business, the media, the legal community, educational institutions, and civic groups.

On December 15, 2009, the CIC presented its final report with seventy-one recommendations to improve judicial impartiality and quality in California. The recommendations spanned various types of proposals, from public outreach and voter education, to amending California's Constitution to require a judge to serve two years before his or her first election. Implementation of the proposals required actions from different governmental bodies.

Some of the recommendations required the Judicial Council and Supreme Court to change the Code of Judicial Ethics, while others required legislation or a Constitutional amendment. Though the reforms were varied and numerous, all the proposals sought to ensure judicial independence and to promote public confidence in California's judiciary.

The U.S. Supreme Court's decision in *Citizens United* heightened concerns over judicial independence, and prompted immediate action by the California Legislature to preserve judicial impartiality. Several bills were introduced to require more stringent disclosure and reporting requirements, and to call on the U.S. Congress to amend the U.S. Constitution. The most successful of these bills was AB 2487, introduced by Assembly Member Mike Feurer in February of 2010. AB 2487 adopted several of the CIC's recommendations for mandatory disqualification and disclosure for superior court judges. The bill received extensive bipartisan support, passing unanimously in both the Assembly and the Senate. Under AB 2487, a judge who receives a contribution of $1,500 or more from a party or lawyer in a proceeding must be disqualified.[41] The bill also provides for disqualification measures for smaller amounts in specified circumstances. A judge must disclose on the record any contribution amount from a party or lawyer in a matter, even if that amount would not require disqualification.

e. **Methods of Judicial Selection**

States select their judges primarily through elective or appointive systems. Some states select all judges through popular election, but most states employ a hybrid of the two systems.[42] Appointive systems generally include merit selection, or appointment by the governor or legislature. Currently, twenty-five states utilize a merit selection system through a nominating commission, two states select judges through legislative appointments, and another five provide for gubernatorial appointment.[43] The methods of retention of judges in appointive systems are

usually retention elections for a set term of office, or reappointment. Under a retention election, the judge runs unopposed and voters choose whether or not to elect the incumbent judge into another term of office. Under elective systems, judges are selected through partisan or non-partisan popular elections. Currently, fifteen states use partisan elections to choose at least some of their judges, while nineteen use non-partisan elections.

California utilizes a hybrid system consisting of gubernatorial appointment and retention elections for appellate judges and non-partisan elections for trial court judges. For the Supreme Court and Courts of Appeal, the California Constitution provides that the judges are chosen through gubernatorial appointment, with confirmation by the Commission on Judicial Appointments.[44] First, the Governor submits a person's name to the Commission on Judicial Nominees Evaluation — a committee comprised of lawyers and public members. After the Commission on Judicial Nominees has conducted a character review of the nominee, an evaluation is submitted to the Governor, who may nominate the person to be an appellate or Supreme Court justice. The nominee is then reviewed by the Commission on Judicial Appointments, which consists of the chief justice, the attorney general, and a presiding justice of the courts of appeal. The Commission holds a public hearing to review the merits of the appointee, and confirms or vetoes the appointment based on its review the appointee's qualifications. At the end of their initial term of twelve years, all appellate justices — those serving on the Courts of Appeal and the Supreme Court — must stand for retention election, where voters decide whether the justice should continue in the office. If the justice receives a majority of yes votes, then he or she will be re-appointed. If the justice receives a No vote, then the governor appoints a replacement, to be confirmed by the Commission on Judicial Appointments. Appellate justices only appear on the November ballot if they are running a

retention election after the expiration of the terms, or if they were appointed after the last gubernatorial election.

At the superior court level, judges are elected in non-partisan elections for six-year terms.[45] At the end of the six-year term, the judge must stand for reelection. The Governor fills vacancies with appointments, and the Commission on Judicial Nominees Evaluation first investigates all nominees. Most superior court judges reach the bench through appointment by the Governor, and most are not challenged for reelection.

IV. Spending in State Judicial Elections

Spending in judicial elections has increased among some states in the wake of *Citizens United*. However, this increase was not directly caused by *Citizens United*. Rather, it is part of more general increase in spending over the past two decades. Most of the increase has occurred in partisan and nonpartisan judicial elections. Retention elections, in general, experienced almost no increase, with a few notable exceptions.

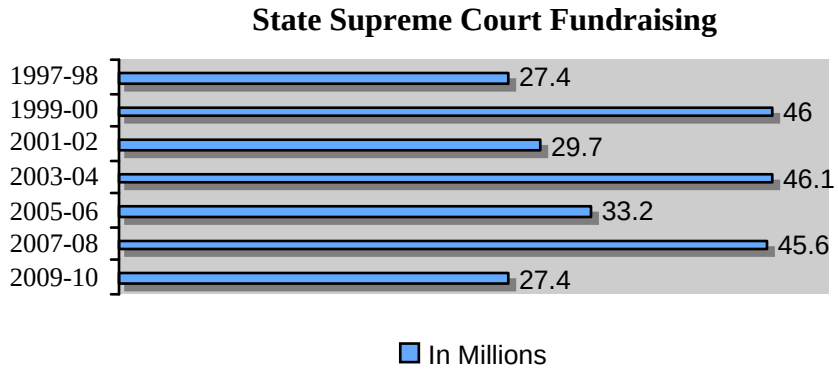
a. **Increase in Contributions and Candidate Expenditures**

Over the past two decades, spending in judicial elections has drastically increased. Between 1990 and 1999, state supreme court candidates raised and spent more than $83.3 million in expenditures in judicial elections.[46] Between 2000 and 2009, that amount more than doubled, with state supreme court candidates spending more than $206.9 million.[47] While most states experienced an overall increase in spending during these time periods, much of the increased spending was concentrated in a small number of judicial races.

- In the 2004 Illinois Supreme Court election, a total of $9.3 million was spent, amounting to "the most expensive contested judicial election in American history."[48]

- In Pennsylvania, Wisconsin, and Louisiana, a combined total of $8.7 million was spent on judicial elections in 2009, a portion of which the candidates used to run attack advertisements their opponents.[49]

In 2010, state supreme court candidates in the 19 states that held a judicial election for that office raised and spent nearly $20 million. The amount is less than the amount spent in prior years which had a comparable number of state supreme court elections.



Moreover, states varied significantly in 2010 in the amounts raised by state supreme court candidates. Candidates in several states, including California, did not report receiving any funds in support of their elections. However, of the states with candidates who reported receiving funds in 2010, there was a wide range of reported amounts, with candidates in some states receiving $1,300 and candidates in other states receiving well over $3 million. Appendix C lists the total amount raised by each state supreme court in 2010.

b. **Increase in Independent Expenditures**

Candidate expenditures in judicial elections are frequently exceeded by third-party independent expenditures.[50] For example, in the 2008 Wisconsin Supreme Court election, "third-party interest groups outspent candidates four-to-one," and "were responsible for almost nine out of every ten dollars spent during the campaign."[51] Because there is no required authoritative reporting of independent spending, it is difficult to know how much is actually

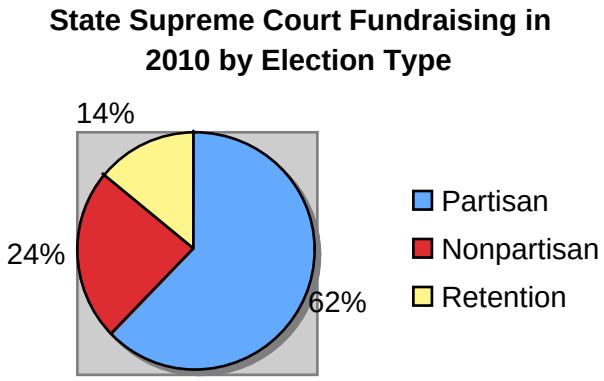
spent. Nevertheless, the available reports of independent expenditures during 2010 indicate that this type of spending was significant. For example, non-candidate groups in 2010 spent more than $5.9 million on television advertising in an attempt to influence judicial elections, amounting to 49% of the total spent on television advertising.[52]

The risk posed by large amounts of independent expenditures in judicial elections is illustrated by the 2010 Supreme Court retention election in Iowa. There, five out-of-state organizations spent almost $1 million in independent expenditures to oppose the retention of three state supreme court justices. These groups targeted the Court because of its unanimous decision in 2009 that invalidated Iowa's Defense of Marriage Act and legalized same-sex marriage.[53] The money paid for television ads that described the justices as "activist" and accused them of "becom[ing] political and ignoring the will of voters."[54] "Not wanting to politicize the judiciary in Iowa, the justices did not raise campaign money and made few public appearances during the election."[55] After being recalled, the justices noted that "[t]he preservation of our state's fair and impartial courts will require more than the integrity and fortitude of individual judges, it will require the steadfast support of the people."[56]

c. **Increase of Spending in Retention Elections**

While Iowa illustrates the potential for large increases in spending in retention elections, retention elections are generally the least impacted by increased spending in judicial elections. Spending in retention elections is low because the elections are uncontested and voters only decide whether a justice should remain on the bench or be removed — the voters have no ability to affect who the unseated justice's successor will be. For example, between 2000 and 2009, state supreme court candidates raised $153.8 million in partisan elections, $50.9 million in nonpartisan elections, but only $2.2 million in retention elections.[57]

State supreme court candidates in 2010 retention elections did not receive any contributions, with one exception. In Illinois, over $4.7 million was reported in contributions from retention election candidates, with one candidate raising 98% of that amount. By comparison, all state supreme court candidates in 2010 raised nearly $20 million in 2010 — 62.2% ($12,402,827) raised by partisan election candidates in six states,[58] 23.7% ($4,715,930) by nonpartisan election candidates in twelve states,[59] and 14.1% ($2,818,345) by retention election candidates in Illinois.



Even though campaign contributions were minimal in the fifteen states that held retention elections in 2010, independent expenditures were at center stage in the four of those elections.[60] As discussed above, three Iowa Supreme Court justices were unseated in 2010 after a handful of out-of-state interest groups spent almost $1 million in independent expenditures to oppose the justices' retention.[61] These Iowa justices did not report receiving any funds in support of their retention. Interest groups also attempted unsuccessfully to unseat state supreme court justices in the 2010 retention elections in Illinois, Alaska, and Colorado.[62] The large majority of the spending in those states was from special interest groups, such as the Tea Party activists, who sought to unseat the justices who disagree with their views.[63]

d. **The Wisconsin Example**

The "nastiest" judicial election in history[64] recently occurred in Wisconsin during the 2011 Supreme Court race between incumbent Justice David Prosser and challenger assistant Attorney General JoAnne Kloppenburg. In that election, independent expenditures by special interest groups flooded the airwaves with negative attack advertisements on the candidates.[65] Five special interest groups spent almost $3.6 million on television advertisements directly advocating for the election or defeat of a candidate — an all-time high for a judicial election in the state.[66]

Yet, the $3.6 million spent represents only a tiny fraction of all the spending in the race.[67] Like most states, special interest groups under Wisconsin campaign finance law are only required to disclose spending that expressly advocated for the election or defeat of a candidate, but are not required to disclosure money spent on issue ads that discuss issues surrounding the race but do not use the "magic words" like "vote for," "elect," or "defeat." Therefore, the actual amount spent by these interest groups in attempting to influence the election is significantly higher than the $3.6 million.[68]

Many commentators attribute the cause of the dramatic rise in special interest advertisements to the political battle over the Governor's proposal.[69] The 2011 election came shortly after a highly publicized political battle between the legislature and governor's office and the state's public employee unions over the Governor's proposal to strip public employees of their collective bargaining rights.[70] Interest groups seeking to overturn the law focused their attention on ousting the sitting justice who many believe to be a referendum on the Governor.[71] Wisconsin's judicial election became a forum for special interest groups to achieve a broader political objective at the expense of further politicizing the state's judiciary.

e. **Spending in California Judicial Elections**

Historically, spending in California judicial retention elections generally has been very low. Reported contributions and candidate expenditures have been almost non-existent. Between 1986 and 2010 there were no reported contributions to appellate justices, with the exception of 2002, when a total of $225,298 in contributions was reported for the Supreme Court election.[72] The lack of money raised by justices in California is the product of the state's retention election system in which justices generally raise no money unless there is an effort to defeat their retention through independent expenditures.[73] However, when an independent campaign is launched to oppose a justice's retention, the justice often needs to raise very large amounts to support his or her retention.[74]

While California's retention elections are unlikely to experience high influxes of contributions or independent expenditures, its judicial elections are still vulnerable to dramatic spending increases. Iowa's retention election in 2010, where a few out-of-state interest groups spent record amounts in independent expenditures to oust judges who issued a controversial opinion, serves as an example of the potential for spending in retention elections. California has experienced a similar event during the 1986 retention elections, where Chief Justice Rose Bird, Justice Cruz Reynoso, and Justice Joseph Grodin were recalled after an independent expenditure campaign of over $11 million attacked the justices for overturning death sentences.[75]

It is interesting to note, however, that the risk of increased spending in California's judicial elections is not the result of *Citizens United*. California state law, unlike the federal law invalidated in *Citizens United*, has always allowed corporations and union to spend as much as they want in political campaigns, as long as the spending is not coordinated with the candidates.[76]

V. State Trends

In the wake of *Citizens United*, states have made a variety of proposals designed to mitigate the risks to the judiciary posed by increased amounts of spending in judicial elections. A comprehensive list of these proposals is provided in Appendix A.

This report identifies eight common proposals: (1) reporting and disclosure requirements, (2) recusal and disqualification rules, (3) contribution limits, (4) banning foreign contributions, (5) shareholder or board consent requirements, (6) public financing of judicial campaigns, (7) merit selection, and (8) resolutions calling for a federal constitutional amendment to reverse *Citizens United*. The charts in Appendix D illustrate the proportion in which each of these eight trends was proposed and passed. These proposals are ranked in order of their feasibility and applicability to California. This report discusses, in turn, each trend, its benefits and limitations, its constitutionality, and its applicability to California.

a. Reporting and Disclosure Requirements

When *Citizens United* was decided, twenty-four states had laws banning contributions and independent expenditures from corporations or unions. Since the decision, twenty-seven states have proposed more stringent disclosure and disclaimer laws, and thirteen states, including California, have successfully passed these laws.[77] To curtail any potential negative effects from increased corporate and union spending in judicial elections, states proposed various types of stringent campaign finance reporting laws. For example, North Carolina passed HB 748 in 2010, replacing the outright ban on corporate political campaign contributions and electioneering communications with stringent disclosure requirements.[78] In Connecticut, the state legislature passed HB 5471 in 2010, which removed the prohibition on independent expenditures made by

businesses and organizations.[79] In turn, the law established disclosure and disclaimer requirements for independent expenditures made by corporations.

The recently passed disclosure laws focused on providing information to the public about the amount of money spent, and attributing the funds to a specific organization. For example, Iowa passed SF 2354 in 2010, which required a "paid for by" disclosure on all political communications.[80] West Virginia passed HB 4647 that required disclosure for any organization running an advertisement advocating the election or defeat of any candidate.[81] The West Virginia law required a corporation to submit a form stating which candidate it was supporting or opposing and the amount of money spent. The law further requires that the statement be filed electronically with the Secretary of State within 48 hours of the expenditure so that it is available to the public.

Most of the recently proposed laws focused on independent expenditures because of the particular concerns related to large advertising efforts in judicial campaigns. Though some laws provided disclosure rules focused on better informing corporate shareholders, most proposed laws focused on disclosure of spending information to the public at large. For example, in the infamous case of *Caperton v. Massey*, the U.S. Supreme Court held that the West Virginia Supreme Court Justice should have recused himself because of the campaign money he received from the CEO of Massey Coal Co. Aside from a direct contribution, the CEO was able to contribute almost $2.5 million to a political organization called "And for the Sake of the Kids," which spent money on advertisements to oppose the justice's opponent.[82] Without stringent disclosure laws related to these types of expenditures, corporations are able to circumvent campaign spending limitations and place money into the campaign system without accountability.

1. **Benefits and Limitations**

Proponents for stringent disclosure and disclaimer requirements focus on these laws' benefits for increased voter information. The Supreme Court noted in *Citizens United* that "prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions."[83] Disclosure also "permits citizens and shareholders to react to the speech of corporate entities in a proper way. . . [and to] give proper weight to different speakers and messages." [84] The transparency that disclosure and disclaimer laws provide allows the electorate the chance to make informed decisions at the ballot box.

Disclosure laws also serve an interest in deterring corruption or the appearance of corruption since information on contributions and expenditures are made public. This information allows the public to police the candidates' actions. Stringent disclosure laws are also key to enforcing other campaign rules like contribution limits and recusal laws for judges.[85] It is necessary to gather data and know the amount of money provided in a contribution in order for limits to be effectively enforced. These provisions are key to the implementation of recusal rules, because it is unlikely that litigants before a judge who had received campaign contributions would be able to move successfully for recusal without public information on political contributions and independent expenditures.

Critics of disclosure rules argue that disclosure requirements may impinge on an individual's privacy rights and cause donors to face retaliation by others if they contribute to a particular candidate or group.[86] Some donors may want to remain anonymous if they are contributing to a highly political cause. Additionally, business professionals, and others whose careers depend on reputation, are at risk of alienating customers if their political views become

public.[87] The risk of retaliation may have a chilling effect on potential donors. In a 2007 survey, 60% of people polled said that they would be reluctant to contribute if their name and address would be disclosed, and 56% objected to having their names and addresses listed on the Internet as a contributor.[88]

2. **Constitutionality**

Enacting more stringent disclosure laws for campaign spending should not pose a constitutionality concern for California because the U.S. Supreme Court has consistently upheld these laws. However, disclosure requirements are viewed as a limitation on speech, so the level of burden placed on speech must be compared to the government interest behind the laws under "exacting scrutiny." [89] Specifically in *Buckley v. Valeo*, the U.S. Supreme Court found that three government interests were sufficient to justify disclosure requirements: 1) a voter informational interest; 2) an anti-corruption interest to deter actual corruption and its appearance; and 3) enforcement interest in detecting violations to contribution limits.

3. **Application to California**

California currently has stringent disclosure and disclaimer laws, and has been nationally recognized for its comprehensiveness and ease of public access to that information.[90] Additionally, the California legislature recently passed AB 2487 that strengthened recusal and reporting rules for superior court judges. California could adopt more rules for disclosure at the appellate levels, but this may not be as effective as at the trial court level because no mechanism currently exists for the recusal of appellate level judges. However, requiring appellate judges to disclose campaign finance information may increase transparency in the system, which has the benefit in itself of improving at least the public appearance of impartiality.

California's system of retention elections may cause candidates to be the subjects of last-minute attacks by groups utilizing independent expenditures. Judicial candidates generally do not raise funds in retention elections, making them even more vulnerable to these attacks because current law only requires reporting when the communication is made. Also, as described above, corporations may use independent expenditures to hide behind names that are not descriptive of the actual contributor. Like other states with the same concerns, California could enact more stringent laws on independent expenditures because of the specific dangers to judicial impartiality that this type of campaign spending poses. As the CIC recommended in its original draft, California could expand the current definition of independent expenditure to be broader to prevent these types of spending.[91] However, as the CIC acknowledged in withdrawing its draft recommendation, expanding the definition of independent expenditure may have unintended consequences beyond judicial elections.[92] If California wanted to adopt a law requiring more stringent disclosures for independent expenditures, it would need to research the best way to do so without causing unintended effects outside of judicial campaigns.

b. **Recusal and Disqualification Rules**

Recusal is the disqualification of a judge from a hearing because of a bias or conflict of interest that calls the judge's impartiality into question. In determining whether to enact disqualification rules, states must balance between two competing interests: the interest in maintaining public trust and confidence in impartial judicial decision-making, and that of allowing judicial candidates to engage in necessary fundraising.

Over the past decade, reforms of recusal standards have increased, prompted by highly publicized examples such as *Caperton*, where a justice decided a dispute in favor of a coal company whose CEO spent over $3 million to support the justice's election.[93] Following

Caperton, due process may require judicial recusal where large campaign contributions by parties or attorneys appearing before the judge give rise to actual or perceived bias. Bias may exist "when a person with a personal stake in a particular case had a significant and disproportionate influence placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent."[94] Courts must consider "whether, under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented."[95] However, as noted in *Caperton*, recusal will not be required in every situation where a judge received contributions from a party, but only in extreme cases.[96]

Since 2010, thirteen states have proposed or enacted heightened recusal and disqualification standards for judges. Several state legislatures also have appointed special committees to study their state's current system of judicial recusal and recommend changes to the law as needed.[97] This report's survey found two common proposals for reform of judicial recusal standards: (1) setting specific cut-off limits for contributions, which, when exceeded, automatically require recusal, and (2) requiring independent adjudication or review of recusal motions.[98]

First, at least five states[99] have proposed or enacted rules that automatically disqualify a judge where a party or attorney who has contributed over a threshold amount to the judge's election comes before that judge in a matter.[100] These rules, often described as *per se* rules for disqualification, "address the concern about judges who decline to recuse themselves when their campaign finances reasonably call into question their impartiality."[101] The American Bar Association recommends that states enact these mandatory disqualification standards and

automatically disqualify any judge who has accepted a large contribution, as determined by the state, from a party appearing before him or her.[102] By enacting these standards, states decrease the potential for judges to hear matters in which there is a risk of impropriety.

To illustrate, in 2010, the Georgia legislature considered a bill that would have required recusal of a judge if a party before the judge, or the party's attorney, contributed over a threshold amount to the judge's elected.[103] Similarly, the Texas legislature is currently considering a bill that would require recusal of appellate justices whenever a justice's campaign receives $2,500 or more over the prior four years from a party to a case, an attorney in the case, or other related parties.

Second, at least five states have proposed or enacted rules that provide for a different judge to determine disqualification motions against a challenged judge, or allow for an immediate appeal of a denied disqualification motion.[104] Until recently, most states had lenient recusal and disqualification practices, allowing judges to decide motions for their own recusal.[105] Prompted by the increasing tide of spending in judicial elections and high profile recusal cases such as *Caperton*, many states have reconsidered whether a challenged judge should be the sole adjudicator of whether bias or the appearance of bias requires recusal. Proponents of independent review argue that judges are psychologically prone to underestimate their own biases, often fail to recognize conflicts of interest, and are concerned with their reputations.[106]

In Oklahoma, a retention election state, the legislature is considering a bill that would require the appeal of a judge's denial of a recusal motion to go directly to the state supreme court.[107] In Tennessee, another retention election state, the legislature is considering two bills that would allow a party to have another judge determine whether a disqualification motion should be granted or denied.[108]

4. **Benefits and Limitations**

Enacting heightened recusal standards recognizes the threat to judicial independence and impartiality that can occur when contributors to judicial election campaigns appear in court. These rules reduce the risk of actual and perceived judicial bias by automatically disqualifying a judge from hearing certain matters and providing for a neutral adjudicator to determine whether a judge must be disqualified. Proponents of recusal reform contend that such reform "is necessary to defeat the growing perception that judges' decisions in the courtroom are influenced by partisan political concerns and — in the 39 states that elect judges — judicial campaign spending."[109]

However, heightened recusal standards also have their limitations. Opponents of mandatory recusal contend that rigid disqualification rules are unnecessary to avoid judicial impropriety, and less strict recusal rules will achieve the same objective without the additional hassle.[110] Mandatory disqualification rules place restraints on judges' ability to raise campaign funds and on voters' right to support favored candidates financially.[111] In addition, mandatory disqualification rules risk creating "an incentive for a lawyer or party to contribute only to the worst candidates so that they would be disqualified from any future case" — or so-called "gaming" of the system.[112] Moreover, while disqualification prevents judges from hearing matters involving large contributors, in practice, it cannot be applied in every situation where a party or lawyer contributed to the judge's campaign.

5. **Constitutionality**

Heightened recusal standards are likely to be found constitutional. The U.S. Supreme Court repeatedly has held that states can set stringent recusal rules — even more stringent than due process requires — to protect the reputation and integrity of their courts.[113] The Supreme

Court affirmed this again in *Caperton*. States have a compelling interest in ensuring an independent and impartial judiciary and the public's perception of one. Moreover, while persons have a First Amendment right to spend money to attempt to influence judicial elections, those persons do not have a right to have a particular judge hear their matters, and due process may require a particular judge be disqualified from a matter where there is an appearance of impropriety.

6. **Application to California**

The recent trend for states to enact statutes or rules requiring mandatory disqualification of judges could be implemented in California Courts of Appeal and the state's Supreme Court. At the trial court level, California presently has a statutory scheme requiring disqualification of superior court judges if a judge has a financial interest in a party over a threshold amount or when the judge's impartiality may reasonably be questioned.[114] However, the state's disqualification rules as applied to appellate justices are not mandatory, and each appellate justice makes an individual determination if recusal is necessary.

Enacting mandatory disqualification rules at the appellate level in California would better protect the actual and perceived integrity of the judiciary. Under *Caperton*, the discretion of appellate justices in disqualification matters is limited by due process, and disqualification will be required when there is a serious, objective risk of actual bias. However, the application of *Caperton* is limited to "extraordinary" examples and will not mandate disqualification where there is a serious — albeit not extraordinary — risk of actual bias, nor where there is a serious risk to the public's perception of bias. With *Caperton* of limited applicability, mandatory disqualification rules would protect the California judiciary against actual and perceived bias.[115]

Moreover, California could mitigate the impact of large independent expenditures by mandating the state's current guidelines for disqualification set forth in the California Code of Judicial Ethics.[116] Under these guidelines, an independent expenditure in support of a judicial retention candidate may be sufficient to trigger disqualification. Specifically, an independent expenditure may require recusal if, because of the expenditure, the justice believes there is substantial doubt as to his or her capacity to be impartial, or a reasonable person would doubt the justice's ability to be impartial. If these guidelines were mandatory, the risk to judicial propriety posed by moneyed interests coming before the court would likely be reduced.

One issue with enacting mandatory disqualification rules for appellate justices is what monetary amount should trigger disqualification. The threshold amount could be set at $1,500, which is the amount that trigger trial court judge disqualification in California. However, since appellate justices have significantly larger constituencies than trial judges, setting the trigger amount at the same level may restrain a justice's ability to run a successful campaign. Moreover, while California justices are subject to only a nonpartisan retention election and often receive no contributions, a justice may need to raise large amounts for funds for his or her retention campaign if a group or groups spend large amounts to attempt to unseat the justice. The retention election that unseated Chief Justice Bird, Justice Reynoso, and Justice Grodin, discussed *supra*, is an example of the potential for increased spending. But the commission notes that a $1,500 trigger amount is likely the best balance between preserving public confidence in the judiciary and allowing judicial candidates to fundraise.

The recent trend for states to provide a neutral adjudicator or for review of denied disqualification motions could also be implemented in at the appellate and Supreme Court levels in California. Currently, California law, in line with the trend in other states, provides for a

separate trial judge to review a disqualification motion denied by the challenged trial judge.[117] However, appellate justices determine for themselves whether to grant or deny a disqualification motions against them, and there seems to be no process to review the determination of a justice on a disqualification motion. Recently, states have enacted laws that permit de novo review by the appellate court as to whether a particular justice should be disqualified. These rules allow a majority of justices on the court to disqualify the challenge justice if they find that the ethical conflicts warrant disqualification. Enacting similar rules in California would protect against the risk of actual and perceived bias, and would strengthen the public's confidence in the judiciary.

c. **Contribution Limitations**

Since *Citizens United*, at least forty proposals by thirteen states have been made to enact limitations on contributions made directly to judicial campaigns in an attempt to limit the influence of spending on judicial decision-making. Contribution limits restrict the amount of money various persons or entities can give directly to a candidate. These limits may be applied uniformly to all types of contributors, or may restrict contributions by a particular group of contributors. This report's survey has identified two common contribution limit proposals: (1) uniform limits on the amount any person or entity may contribute to a judicial candidate; and (2) specific limits on the amount corporations may contribute. In addition, one unique proposal limits contributions by attorneys.

Since 2010, at least eight states have proposed or enacted limitations on the amount of money a contributor may give to a judicial candidate in support of the candidate's election or re-election. For example, Minnesota enacted limitations on contributions to candidates for judicial office for the first time in 2010, with a limit of $2,000 in an election year for the office sought and $500 in other years.[118] Wisconsin enacted limitations on contributions to state supreme

court candidates at $1,000.[119] In addition, the Oregon legislature considered a $1,000 limitation,[120] and the Alabama legislature considered limitations ranging from $500 to $5,000,[121] but neither of these proposals passed. Notably, the states that proposed contribution limit legislation in 2010 were overwhelmingly used partisan or nonpartisan elections to select and retain their justices, as opposed to retention elections.

State proposals to enact contribution limits have continued in 2011 with states that use retention elections proposing contribution limit legislation. For example, the Missouri legislature is considering a proposal that would establish contribution limits to judicial candidates at $325, $650, or $1,275, depending on the size of the candidate's district,[122] a proposal which the legislature has previously considered in 2010.[123]

At least five states have also considered proposals to bar contributions by corporations to judicial candidates altogether.[124] Banning corporate contributions restricts the amount of money given to judicial candidates by corporation, which in turn enhances public confidence in the judiciary. For example, Florida, a state that retains judges through retention elections, considered a proposal in 2010 that would have barred corporations from making political contributions but provided for unrestricted independent expenditures.[125] To date, no recent proposals to ban corporate contributions to judicial candidates have been enacted into law.

In a unique proposal, New Mexico's legislature is considering a flat ban on contributions by attorneys. New Mexico's current proposal would prohibit attorneys from contributing to judicial elections or endorsing judicial candidates, and would prohibit an attorney from endorsing or supporting the election of a judge or judicial candidate.[126] The theory behind this bill is that attorney contributions have a higher risk of leading to actual or perceived judicial impropriety because attorneys frequently appear in court and judges regularly make decisions

concerning the attorneys and their clients. Eliminating attorney contributions may reduce the risk of favoritism in judicial decision-making.

7. **Benefits and Limitations**

By restricting the amount of money that contributors may give to judicial candidates, contribution limits help to mitigate the risk of judicial impropriety and enhance public confidence in the judiciary. Contributions pose a greater risk to the judiciary because the opportunity of quid pro quo arrangement is an inherent danger in contributions to candidates.[127] Absent contribution limits, a person or entity may contribute an unlimited amount of money directly to a judicial candidate. Large contributions to judicial candidates may cause actual impropriety, and could create the public perception that justice is for sale. Data supports that both the public and many judges believe that contributions to judges, especially in large amounts, can affect judicial decision-making.[128] Contribution limits mitigate the risks of actual or perceived impropriety of the judiciary by controlling the amount of influence that contributors may have on judicial candidates through direct donations.

Contribution limits, however, have some drawbacks. First, low contribution limits may unduly limit the ability of judicial candidates to raise necessary funds, especially considering judicial candidates have less of an established voter base from which they gather contributions.[129] Second, absent stringent disclosure laws, the benefits of contribution limits are not very extensive. If contributors are not required to disclose their contributions to judicial candidates, then a state cannot effectively enforce contributions limits. Moreover, while contribution limits may restrict direct donations to candidates, these limits do not restrict the amount of money a person or corporation may spend on independent expenditures. Evidence shows that when contribution limits are enacted, spending in the form of independent

expenditures dramatically rises.[130] Therefore, enacting contribution limits may potentially increase independent expenditures.

8. **Constitutionality**

Statutes that limit the amount of money a contributor can give to a judicial candidate generally will be found constitutional. The U.S. Supreme Court consistently has upheld limits on contribution amounts given to candidates, even very low limitations, recognizing that campaign contribution limitations implicate the most fundamental First Amendment activities.[131] Contribution limits restrict a contributor's to provide a candidate with direct financial support, and therefore marginally restrict speech.[132] Contributors are still free to associate with the candidate or separately spend in support of the candidate. To survive constitutional review, laws restricting contributions must be narrowly drawn to serve a sufficiently important governmental interest.[133] The Supreme Court in *Citizens United* upheld the anticorruption interest as a legitimate reason to restrict campaign contributions.[134] Limitations on contributions to judicial candidates will likely be held to be sufficiently narrow to achieve a state's important interest in protecting the judiciary from actual corruption and the appearance of impropriety.

Moreover, *Citizens United* held that corporations and unions are free to spend money to influence elections, but the decision pertained specifically to independent expenditures, not contributions. Independent expenditures and contributions are different forms of speech that receive separate levels of protection, with courts reviewing contribution limits under the less rigorous intermediate scrutiny review.[135] Restrictions on independent expenditures are subject to strict scrutiny review, and the restriction will only be upheld if the government has a compelling interest that outweighs the First Amendment interests. On the other hand, contribution limits are subject to a less rigorous intermediate scrutiny.

The constitutionality of complete bans on contributions by corporations is less certain, but these bans likely will pass constitutional muster. A state's anti-corruption interest in preventing the actuality or appearance of corruption in the judiciary will likely be found to outweigh corporations' First Amendment right to contribute to judicial candidates. In fact, since *Citizens United*, several federal courts have upheld previously enacted bans on direct contributions to candidates by corporations.[136]

New Mexico's ban on attorney contributions, however, is less likely to survive judicial review. New Mexico's attorney general's office has suggested that this proposal is unconstitutional, and cites to a similar overturned provision in California that banned political parties from endorsing judges.[137] A court may find the restriction to be an unconstitutional prohibition on campaign speech.[138] Yet, there is potential for the law to be upheld since some courts have recently upheld bans on contributions by specific groups if the bans are closely drawn to serve the state's important anticorruption interest. One court recently upheld contribution bans by state contractors to candidates for state office that were enacted to address actual instances of corruption, but simultaneously invalidated the law restricting lobbyists from contributing to state office candidates, reasoning that lobbyist contributions would not necessarily give rise to an appearance of influence.[139] Thus, a ban on attorney contributions, like that proposed in New Mexico, may be upheld if such a ban is necessary to prevent actual corruption from attorney's contributing to judges.

9. **Application to California**

Under current California law, there are no limits on the amount of money a contributor can give to a judicial candidate.[140] However, California justices, who are subject only to nonpartisan retention elections, have reported receiving minimal, if any, contributions in recent

years.[141] Yet, many supporters of enacting contribution limits in California are concerned that the absence of contribution limits could result in a growing public perception that judges can be "bought" by contributions, a concern that data supports.[142] Contribution limits could help enhance the public's perception of a judiciary free from outside moneyed influence. Therefore, while California does not necessarily need contribution limits to protect the judiciary from the actual influence of contributions, contribution limits may help enhance the public's perception of the judiciary.

While most attempts to influence the judiciary through contributions occur in partisan or nonpartisan contested elections, nonpartisan retention elections are still susceptible to the actual or perceived influence of campaign contributions. Many states, including retention election states, have enacted or considered enacting contribution limits. California could follow this trend and consider enacting these limits.

One issue to consider in enacting contribution limits is what type of limits would best serve California. First, California could enact uniform contribution limits that apply to all contributors. Uniform contribution limits have the greatest potential of reducing the influence of contributions by restricting the maximum amount of money every contributor can give. These limits also evenly regulate all contributors, both natural persons and corporation, which precludes an equal protection challenge that the law treats similarly situated parties differently. However, these limits also may unduly restrict the ability of judicial candidates to raise funds.

Second, California could enact specific contribution limits that restrict the ability of certain groups, like corporations, to contribute to judicial candidates. Specific contribution limits have great potential to reduce the influence of the contributors that are subject to the restriction by limiting those contributors ability to give. These limits are also lesser restrictive than uniform

limits on the ability of judicial candidates to raise funds. However, specific contribution limits may be held unconstitutional if not narrowly drawn.

d. **Banning Foreign Contributions**

In 1966 Congress banned political contributions and expenditures by foreign nationals as part of the Foreign Agents Registration Act. The Federal Election Commission ("FEC") received jurisdiction over the law's application in 1974 when it was incorporated into Commission's governing statute, the Federal Election Campaign Act ("FECA"). The FECA prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election. The law also prohibits knowingly and willfully helping foreign nationals violate the ban, or to solicit, receive, or accept contributions from them.[143] As discussed below in the Constitutionality subsection, this part of the FECA may no longer be valid. However, if it is, the FEC continues to issue advisory opinions in support of the ban on foreign contributions, and any state law banning foreign money in politics would merely serve as a backstop should federal enforcement eventually fail.

President Obama fanned the fires of public outcry against *Citizens United* when he stated, "I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities."[144] Justice Alito, a member of the majority on the opinion, was seen mouthing the words "that's not right" in response to the President's State of the Union remarks. It remains to be seen whether the ban on foreign corporate political contributions[145] survived *Citizens United*.

Tennessee, Iowa, and most recently Alaska have responded by passing laws banning contributions by foreign nationals.[146] These laws expressly define "foreign national" to include

corporations. Maryland and Michigan also proposed bans on expenditures by foreign corporations, but these measures failed to pass.[147]

10. **Benefits and Limitations**

Money tends to influence the political process through elections and legislation. Campaign spenders focused on elections try to convince the electorate to vote for a certain candidate, while others achieve greater access to the legislative process by supporting a grateful candidate. Allowing foreign funding of U.S. elections could corrupt our elected officials, affect who is elected, and undermine public confidence in the integrity of government. Because public perception of the independence of the judiciary may be a serious concern after the decision, and President Obama's comments raised the specter of foreign money influencing U.S. democratic decisions, a ban on foreign corporate expenditures in elections could greatly bolster public confidence in judicial elections.

The essential limitation to banning foreign contributions with a state law is that the FEC already prohibits expenditures by foreign individuals and corporations. If the FEC's practice is still constitutional after *Citizens United*, passing a state law that does the same would be duplicative. Although banning out-of-state (as opposed to internationally foreign) corporations might be an option to protect state interests, it would raise other constitutional concerns and cost the state considerable money to defend in court.

11. **Constitutionality**

Without a single court case ruling on the constitutionality of the Tennessee, Iowa, or Alaska bans on foreign corporation spending, First Amendment scholars have admitted that the *Citizens United* majority opinion leaves questions about whether such bans are valid. The majority tacked onto its discussion of the government's asserted anticorruption interest a brief

statement that it would reserve the question of whether foreign spending limits in elections is constitutional.[148] Therefore scholars have been engaging in guesswork to determine whether a compelling government interest justifies the federal ban on foreign contributions. Professor Richard Hasen of Loyola Law School has opined that the Supreme Court is unlikely to take its reasoning in *Citizens United* to that extreme, even if language and reasoning in the majority opinion would tend to lead to that result.

12. **Application to California**

Should the state choose to protect its elections from the potential influence of foreign money in elections, there are ways it could enhance the likelihood that a law be found constitutional after *Citizens United*. First, the legislature could engage in fact finding to support the assertion that keeping foreign money out of elections is a compelling government interest and thus satisfies strict scrutiny. Second, the state could limit its regulation of foreign corporate expenditures by excluding the money from judicial retention elections specifically, or by allowing foreign corporations to make expenditures but only up to a limited amount. These steps might influence a reviewing court to hold that the law was narrowly tailored.

e. **Shareholder or Board Consent Requirements**

In the United States, the Missouri Campaign Finance Disclosure Law, Louisiana Election Code, and Iowa Election Law each require a corporation's board of directors to approve independent expenditures by the corporation prior to disbursement.[149] Each of these states has some form of judicial elections with Iowa recently receiving publicity over the recall of three of its Supreme Court justices. Only Iowa's law postdates *Citizens United*, and as discussed below in the Constitutionality section, it has been criticized as "openly flout[ing] the Supreme Court."[150] No state currently requires shareholders to approve independent expenditures, but

New York is considering such legislation. Nine states, including California[151] and New York, have proposed either board approval or shareholder consent measures since *Citizens United*.

One concern after *Citizens United* is that corporate decision-makers can freely use investors' money to curry political favor for the corporation, regardless of how many individual investors might oppose the strategy. Since roughly half of Americans own stock, this perceived injustice could have a widespread effect. Some scholars have proposed that government intervene by requiring a corporation's shareholders or board of directors approve any contributions before corporate funds are disbursed. Immediately after the Supreme Court decided *Citizens United*, Professor Laurence Tribe stated that requiring shareholders to approve independent expenditures would put an end to "the very real injustice and distortion entailed in the phenomenon of some people using other people's money to support candidates they have made no decision to support."[152]

A recent report by the Brennan Center noted that corporate political spending "falls into a problematic regulatory gap between campaign finance law and corporate law."[153] Federal securities law fails to require that shareholders receive information on corporate political spending.[154] Under existing law, shareholders who disagree with management's decision to make independent expenditures have very few options for contesting independent expenditures. Chief Justice Roberts suggested at oral argument in *Citizens United* that shareholders who disagree with a corporation's independent expenditures could sell their stock.[155] However, many investors hold their stock as part of a 401(k) or mutual fund, meaning that the choice to divest themselves of those individual shares lies instead with the fund manager. Therefore, selling stock may not be a realistic outlet for shareholder discontent with political spending.

An even less realistic shareholder remedy would be to try to oust the corporate officer

responsible for the expenditure. Unless an individual shareholder owns so many shares that his or her opinion matters, one shareholder is very unlikely to be able to fund and manage an effort to push out the officer responsible for that expenditure. Finally, shareholder suits almost never succeed. Under state breach of fiduciary duty laws, including California's, independent expenditures are considered discretionary, and recovery is barred by the "business judgment rule." [156] Plaintiffs would have to allege corruption or reckless conduct even to state a claim challenging management actions.[157] This lack of shareholder remedies underscores the appeal of requiring a check on corporate management after *Citizens United*.

The United Kingdom offers a different model for managing how corporations may choose to get involved financially in politics. The European Corporate Governance Service recognized that shareholders' opinions about whether, to whom, and to what extent a corporation should contribute will vary and many may conclude that it is a waste. Still, management may ignore shareholders' opinions and unilaterally choose to place the company into politics, potentially damaging the corporation and its reputation.[158] A legislative analyst for the House of Commons surveyed problems with the regulatory void, and concluded that suspicions of undue influence and improper access between the corporate and political spheres had led to public support for legislation.

That support led in 2000 to an amendment to the U.K.'s Companies Act to require corporations to disclose political contributions to its shareholders and seek their consent. Disclosure to shareholders is triggered at £2,000 (about $3,250), and a company cannot make any political expenditure over £5,000 (roughly $8,000) without first receiving approval from a majority of its shareholders. Now, British companies have changed their practice of donating large sums of money to accrue good favor with Ministers, Members of Parliament,[159] and other

government officials. Managers now put a political budget for the fiscal year to an up-or-down shareholder vote. If shareholders vote against the proposal, corporate officials cannot make any political donations with corporate money, or they will be held personally liable for violating the law.

13. **Benefits and Limitations**

The three main principles typically advanced in support of requiring a corporation's board or its shareholders to approve political expenditures are that doing so (1) would empower shareholders, (2) prevent corporations from gaining an unfair advantage, discussed as the "anti-distortion rationale," and (3) could protect corporate assets from a practice that has been identified as a poor business practice. The government has argued before the Supreme Court in *Austin* and *Citizens United* that empowering shareholders is a valid goal of independent expenditure regulation.[160] The distortive effects of corporate money in politics were key to the U.S. Supreme Court upholding Michigan's campaign finance law in *Austin*.[161] The third potential benefit of board or shareholder approval, essentially protecting the corporation from its own bad decisions, is perhaps more controversial.

Corporations may have good reasons — at least in the short term — to allocate money to political campaigns. Seventy-five financial institutions that made a total of $20.4 million in political expenditures received billions of dollars in TARP bailout funds.[162] However, studies suggest that those short-term gains might be offset by reduced shareholder value and a perception that the corporation's management has misplaced stockholders' priorities and is carrying out its role poorly.[163] Companies that have made it a part of their business strategy to make independent expenditures have not necessarily enjoyed long-term success. The Center for Political Accountability found that Enron, WorldCom, and Qwest regularly funneled large

amounts of money into PACs.[164] Each company ultimately went bankrupt, and Enron in particular remains synonymous with corporate mismanagement. Whether corporations are aware of the pitfalls of committing corporate assets to independent expenditures is unclear, although regulation in the United Kingdom has greatly affected if and how corporations choose to spend on campaigns.[165]

Available data from Great Britain indicates that the changes it implemented in 2000 have reduced the uneven impact of company money in politics. Before 2000, the Conservative Party overwhelmingly benefited from the previous system, receiving £2.7 million from 145 companies in a single fiscal year, dwarfing the £98,000 the Labour Party received from companies. After the law was amended to require disclosure and approval, company donations to Conservatives fell to £1.16 million in the 2001 fiscal year. GlaxoSmithKline, British Airways, the music retailer HMV, and Burberry do not make political contributions, and made note of that in their annual reports. If the U.S. follows the British model, it is possible that shareholders and boards will provide a meaningful check on the otherwise increasing flow of corporate cash into politics, empowering shareholders, preventing an unbalanced influx of money to benefit companies, and preventing corporations from following in the ignominious footsteps of Enron.

Still, board or shareholder approval has its drawbacks, and not all of the potential benefits might come to fruition. Board and shareholder approval would need to be tied to an effective disclosure system. A state's elections commission might have to walk a regulatory tightrope between ensuring that shareholders and the investing public, i.e., potential shareholders, have the information so that they can make a considered judgment, and on the other hand corporations cannot be overly burdened by disclosing constantly or organizing frequent votes.[166]

The returns from Great Britain's decade of requiring shareholder approval have not all

been positive. There, proxy shareholder votes for many companies' political expenditures have become a simple rubber stamp. This would seem especially disconcerting because shareholders are approving huge budgets to corporations that presumably already have a strong lobbying presence in Parliament, such as BP and British American Tobacco.

Finally, the fact that no state has chosen to adopt shareholder approval might indicate that it simply is too extreme a remedy for the problem. After *Citizens United*, nine states have proposed legislation, but only Iowa actually passed a consent provision, and even that only required the Board of Directors or similar leadership body as opposed to shareholders themselves to approve expenditures.[167] It is unclear whether board consent provides a meaningful check on undesirable corporate spending in politics, and it fails to add transparency to shareholders.

14. Constitutionality

The Center for Competitive Politics, a non-profit organization featuring former FEC chairman Bradley A. Smith, argues that Iowa's recent amendment to its election law violates *Citizens United*'s core holding.[168] First Amendment law has developed to prevent chilling or burdening speech, and after *Citizens United*, requiring shareholder or board consent might indeed trigger strict scrutiny if a court decides that these measures burden corporations' speech rights. If so, none of the rationales advanced in support of shareholder or board approval, antidistortion, anticorruption, and voter information, would constitute a compelling government interest.

Despite confident assertions from the Center for Competitive Politics that Iowa SF 2354 is unconstitutional, the only court to rule on its constitutionality upheld the law.[169] Missouri's law has never been challenged, and Louisiana's election law was held unconstitutional in part before *Citizens United*,[170] but the constitutionality of its board approval provision has not been questioned.

15. **Application to California**

California corporate decision-makers are as insulated from liability for their discretion to finance politics through independent expenditures by the business judgment rule. In *Marsili v. Pacific Gas & Electric Co.*,[171] a California Court of Appeal held that a corporate political contribution is a good faith business decision.

Even advocates of shareholder approval measures envision them taking place at the federal level.[172] If California requires its corporations to seek approval, they might feel they are on an uneven playing field with corporations located in other states. Corporations and nonprofits that tend to align with their interests such as the Center for Competitive Politics are almost certain to resist legislative measures that restrict their ability to spend unilaterally.

An alternative to legislating board or shareholder consent might be to educate corporations about the drawbacks to unilaterally disbursing funds for political purposes. Even before *Citizens United*, at least one prominent business law firm published its "best practices" guidance for clients advising them to engage shareholders in a cooperative dialogue about corporate leadership.[173]

f. **Public Financing of Judicial Campaigns**

Public financing of judicial elections may present a promising solution for states seeking to limit the influence of wealthy donors in legal proceedings.[174] Currently, sixteen states and roughly a dozen local governments offer some form of public financing for legislative and executive election campaigns.[175] Public financing has been gaining popularity, with four states currently financing judicial elections, and four more states considering such legislation.

North Carolina pioneered public financing for judicial elections when it passed the Judicial Campaign Reform Act in 2002.[176] Created with the 2004 election cycle in mind, the Act

established the Public Campaign Fund from various sources, including a surcharge on privilege license renewals by attorneys and voluntary tax designations on state tax forms.[177] To qualify for public financing, candidates had to demonstrate a reasonable level of public support by raising a certain amount of qualifying funds made up of relatively small contributions. After qualifying, participating candidates stopped fundraising and received public funds. In 2004, twelve of the sixteen candidates for the North Carolina Supreme Court and Court of Appeals opted into the program, with four of the five elected Supreme Court justices participating.[178] In 2010, all judicial candidates participated.[179] Judge Wanda Bryant of the North Carolina Court of Appeal has testified in front of other states' commissions that considered implementing public financing for judicial elections, stating, "I've run in two elections, one with campaign finance reform and one without. I'll take 'with' any day of the week."[180]

In addition to receiving the support of judicial candidates, the innovative system inspired public confidence in judicial elections in North Carolina. In two studies conducted by the North Carolina Center for Voter Education shortly after the election, 74% of the respondents supported public financing of judicial campaigns.[181] Even though it had gained public support and was deemed successful, North Carolina's system of public financing for judicial elections would come to an end if currently pending SB 419 were to pass this year. However, one of the lasting yardsticks of the public financing solution created there could be the extent to which other states begin to implement it.

Three other states have enacted public financing for judicial election campaigns. In 2007, New Mexico became the second state to finance judicial elections when it amended its 2003 public finance law to include candidates for the Court of Appeals and Supreme Court.[182] Wisconsin passed the Impartial Justice Act in November 2009. Most recently, West Virginia's

Independent Commission on Judicial Reform, perhaps in response both to *Caperton* and to Judge Bryant's testimony, persuaded its legislature to implement a trial public financing scheme for its Supreme Court elections in 2012.

Since *Citizens United*, ten states have considered public financing for judicial elections. In addition, four states, including Tennessee and Washington, which introduced but failed to pass voluntary schemes last year, currently have legislation to establish public financing for judicial election campaigns pending in their legislatures.

16. **Benefits and Limitations**

Proponents of public financing believe that the system will reduce the pressure currently on elected judges to fundraise from parties that appear before them in court. It follows that public confidence in judges increases when they are not forced to rely on these parties for their election or reelection. It is also possible that potential judicial candidates who are not wealthy or well-connected enough to fund a competitive campaign may be encouraged to run. Public financing enhances the role of small contributors and grassroots donors that help candidates reach the "trigger" qualifying them for public financing. Finally, public financing would appear to be a compromise between advocates of appointment systems who fear the influence of money, and supporters of traditional judicial elections that hope to keep the judiciary in touch with society by keeping judges accountable to voters.

Public financing has limitations. First, public financing does not fully address the risk posed by independent expenditures used to fund advertising targeting judicial candidates. Second, public financing could lead to raising or eliminating contribution limits or existing caps on party coordinated expenditures. These controls on campaign finance left in place by the *Citizens United* decision could be eroded if public financing of elections were passed with these

compromises. A final and very significant Achilles heel in public financing is its potential dependence on continuing support from lawmakers, especially if tax dollars go into the fund. In Wisconsin, for example, Gov. Scott Walker is likely to eviscerate the Impartial Justice Act by defunding public financing. Therefore, the very independence of the judiciary public financing was designed to protect can be undermined when the politics and bias of elections is simply shifted into the decision whether and to what extent to insulate judicial campaigns with public funds.

17. **Constitutionality**

Currently, the constitutionality of certain public financing laws is unclear. Rarely challenged but generally upheld, public finance laws have long been presumed to be constitutional. However, in *Davis v. FEC* in 2008, the U.S. Supreme Court struck down a provision of the Bipartisan Campaign Reform Act nicknamed the "Millionaire's Amendment" that allowed congressional candidates to accept up to six times the federal contribution limit if they faced an opponent who spent a large amount of personal funds to finance his or her own campaign.[183] Even after *Davis*, the Fourth Circuit Court of Appeals affirmed the constitutionality of North Carolina's Judicial Campaign Reform Act of 2002 and the U.S. Supreme Court denied *certiorari*.[184]

The U.S. Supreme Court is currently considering in *McComish v. Bennett* whether Arizona's Citizens Clean Elections Act is unconstitutional after *Citizens United* and *Davis v. FEC*.[185] Commentators believe that the Court will strike down the law, which in turn jeopardizes public financing for judicial elections in each of the four states where it currently exists, because those states' laws have a trigger provision like the one under review from Arizona.

18. **Application to California**

In addition to the uncertain constitutional footing of public financing of campaigns in the near future, California faces potentially insuperable obstacles to passing a system of public financing for judicial elections. First, as evidenced by the relatively slow spread of public financing for judicial elections and the number of failed bills introduced in nine states, the phenomenon is still somewhat new and states are proceeding cautiously. Second, even after overcoming political inertia, finding the financial support necessary to fund campaigns that are escalating to $5,000,000 might be next to impossible given the current budget crisis.

g. **Appointment and Selection Systems**

The recent *Citizens United* decision and the renewed focus on money in judicial campaigns have amplified the debate over the proper method of judicial selection that best protects the integrity of the judicial system. States have recently called into question whether popular elections are the best way to select judges. At least twelve state legislatures have proposed legislation that would change the states' judicial selection process from an electoral system to an appointive system.[186] Seven states have proposed moving from an election system to a merit selection system, while four states have brought legislation to create an appointive system. Five states with merit selection system in place have proposed moving to a purely appointive system. Since *Citizens United*, no state has been successful in changing their system of judicial selection.

The appropriate method of judicial selection and retention has been debated for centuries, dating back to the Founding Father's competing concerns with judicial accountability and judicial independence. [187] All states used an appointment system until 1832, when Mississippi amended its constitution to require election for all of its state judges. In 1846, New York

followed Mississippi's lead and soon, the majority of states followed suit. Currently, 87% of state judges in the United States are elected.[188]

The most notable proponent for a merit selection system is former U.S. Supreme Court Justice Sandra Day O'Connor. Under the O'Connor Judicial Selection Initiative at the Institute for the Advancement of the American Legal System, a preferred model for a merit selection system would include a multi-step process.[189] A nominating commission, made up of non-lawyer members, gathers information on potential candidates, and submits a list of qualified nominees to the governor for selection. Proponents argue that effective nominating commissions include nonpartisan bodies, comprised of members from diverse backgrounds and appointed from a variety of sources.[190] A chief executive (usually the governor) then selects a candidate from the list provided by the commission. In a few states, another governmental body, usually the state legislature, must confirm the chief executive's chosen candidate. After confirmation, the appointee serves a brief initial term in office, during which time a comprehensive judicial performance evaluation is created based on the criteria of impartiality, temperament, and command of the law. With this information, voters then decide in an unopposed retention election whether the judge should remain on the bench. An appointive system is similar to a merit system, except an appointive system does not utilize a judicial nominating commission.

19. **Benefits and Limitations**

Many proponents of appointive systems contend that the threat to judicial independence is created by the judicial election process itself. To run most judicial campaign in an election, a candidate must raise financial resources to pay for staff, travel, and advertising expenses. Many times, the most frequent contributors to judicial campaigns are individuals or entities that often appear before judges they helped to elect.[191] Aside from money, judges subject to elections also

need to gain support from special interest groups and the general populous to ensure success at an election. When a judge's continued stay on the bench is tied to the outcome of a case, the election process may hinder a judge's ability to provide a neutral and fair opinion that may be against popular opinion.[192] Under an appointive system, judges would be able to take money and politics out of their decision-making, and focus on deciding cases on the facts and the law.

Aside from the actual monetary contributions and catering to popular support, proponents for an appointive system argue that judicial elections weaken the public's perception of judicial impartiality and independence. In 2009, a USA Today Gallup Poll found that 89% of people surveyed believed campaign contributions influenced a judge's rulings, and 52% of the respondents viewed it as a "major" problem.[193] Judicial elections also invite advertisements that may attack a candidate and call into question that candidate's integrity. Proponents of appointive systems argue that the unique role of judges as neutral arbitrators of the law needs to be honored. Appointive systems have the most potential of placing qualified and impartial judges on the bench, without the problems of money and politics. It also helps to preserve the appearance of judicial impartiality, which is key to public confidence in the courts and the legitimacy of our system of justice.

The argument against an appointive system focuses on the importance of judicial elections for proper accountability. Proponents for elections argue that judges are too insulated from the public, and have too much power in making judicial decisions that effectively create policy. [194] Through a popular election, the public will be able to rein in the judiciary so that it does not exercise its power arbitrarily. Additionally, if a judge is too influenced by money or special interests, the public will be able to use judicial elections to vote out supposedly biased judges.[195] Judicial elections also have the positive benefit of requiring judges to campaign in the

community, exposing them to the general public and making the judicial system more accessible. A former candidate for a seat in an intermediate appellate court stated that campaigning gave him "cause to think with more depth and at least anecdotal data about some of the people and questions affected by what the court does."[196]

Critics of the merit system also argue that politics cannot be taken out of judicial selection, and under an appointive system, it merely gets shifted out of public focus into the power of the a judicial nominating commission or to the chief executive.[197] Instead of focusing on judicial campaigns, interest groups will place influence on judicial nominating commissions, where there is less transparency and accountability to the public. Additionally, some statistics show that judges chosen through merit selection do not make different decisions than judges who are elected. [198] The backgrounds and qualifications of judges chosen through both systems are also similar, and have no marked difference.

20. **Constitutionality**

States historically have had the right choose the type of judicial selection method it wants with little constitutional challenge. Most litigation challenging the constitutionality of the selection process in state elections focuses on the legislative and executive branches and the election process itself.[199] Recently, proponents of election methods have turned to the courts in three states to challenge the constitutionality of merit selection for judicial elections, but have done so unsuccessfully. In *Bradley v. Work*, the plaintiffs argued that Indiana's process for choosing members of the judicial nominating commission and for selecting judges violated the equal protection clause, the Voting Rights Act, and voting rights of the Fifteenth Amendment.[200] The court granted the defendants' motion for summary judgment and motions to dismiss on the

suit, finding that Indiana's judicial nominating committee and process for electing judges did not violate the constitution or the Voting Rights Act.[201]

In another challenge, the Missouri Court of Appeals upheld the constitutionality of the state's judicial election process, and held that the process did not violate either the equal protection clause under a rational basis review, or the Voting Rights Act.[202] Most recently, in *Kirk v. Carpeneti*, the plaintiffs argued that the Alaska Judicial Council violated the equal protection clause because not all members of the judicial selection process were popularly elected, or appointed by popularly elected officials.[203] The court held that the process did not violate the equal protection clause, and noted that the plaintiffs were "hard-pressed to find legal support for the principle they seek to establish."[204]

The recent litigation against merit selection systems in the courts has been another tactic of proponents for judicial elections to further their agenda. However, courts have consistently dismissed these claims, acknowledging that the legal theories are weak, and that the litigation is part of a larger controversy over the best judicial selection method for states. Because these cases have not been successful, state merit selection methods are generally constitutional, though they may be subject to attack from judicial election proponents.

21. **Application to California**

California currently uses a judicial appointment system with retention elections to retain appellate justices. This type of system minimizes the risk of campaign spending and extensive attack advertisements, so California moving to a merit selection system would directly address the problems posed by *Citizens United* and campaign spending. However, making some changes to the current system may address broader issues of the appearance of judicial impartiality. California could move its current appointment system more towards a merit selection system by

creating a nominating committee that uses a transparent process to make a list of potential candidates for the governor to appoint.

California currently has a Judicial Nominees Evaluation ("JNE") process that evaluates candidates submitted by the Governor for qualifications and fitness on the bench. JNE gives each candidate a rating system from "not qualified" to "exceptionally well qualified" and the rating received is confidential. If a governor appoints someone deemed to be not qualified, the State Bar may make this public information after notice to the appointee of its intention to do so. Though not dissimilar to a model merit selection system, California does not allow for an impartial judicial nomination commission to choose a list of candidates for a governor's appointment, arguably allowing the governor to bring in political biases when choosing appointments. It is unlikely that California will create a judicial nominating commission because there is no pressing need to change the system, especially if it does not directly address the concerns raised by *Citizens United*. Additionally, the California Commission on Impartial Courts did not recommend for the JNE process to change, citing that the current model already serves the goal of producing qualified nominees for the bench.[205] There also is not a strong national trend to change from an appointment system to a merit selection system. All the states proposing a merit selection system had some form of elections.[206] In fact, five states with merit selection systems proposed changing to an appointment system.

At the superior court level, California selects trial court judges through non-partisan elections, and therefore, could consider adopting a merit selection system for trial court judges. However, the need here is also not a pressing concern because most trial court judges obtain their seat through appointment and not direct election. Even though most trial judges run for election in an unopposed campaign, California may consider changing from nonpartisan elections to

retention elections. This may prevent any future potential for campaign spending to increase dramatically for trial court judges, and improve the appearance of judicial impartiality by eliminating popular elections. However, this consideration would require further inquiry into whether *Citizens United* has caused an increase in campaign spending for California's superior court judge elections, and whether the electorate believes nonpartisan elections for the trial court affected judicial impartiality. If either of these questions were answered in the affirmative, California may want to consider adopting an appointive system for choosing its superior court judges.

h. **Requests for U.S. Congressional Action and for Guidelines**

Though *Citizens United* dealt directly with federal campaign finance laws, its effects were immediately felt throughout the country partly because twenty-four states' prohibitions on corporate or union independent expenditures became vulnerable to constitutional challenge.[207] Ten states have proposed resolutions to express discontent over the decision, and have asked Congress to take legislative action or to pass a federal constitutional amendment overturning *Citizens United*. Generally, these resolutions have been unsuccessful, and only Hawaii was able to pass HCR 282, which called on the U.S. Congress to pass a constitutional amendment barring the use of "person" when defining "corporate entity."[208]

In light of *Citizens United*, scholars have expressed urgency to create an amendment that would overturn the decision.[209] The recommended wording for an amendment has varied among scholars to include adding language to the First Amendment to expressly exclude campaign finance legislation, or adding Congressional power to legislate campaign finance reforms.[210] Two constitutional amendments were introduced during the 111th U.S. Congressional session, but neither has been successful.[211] In the current Congressional session, Rep. Marcy Kaptur (D-

Oh) has introduced H.J. Res. 8, which is currently in the Subcommittee on the Constitution, as of the date of this report.[212] State resolutions urging federal action could provide support for an amendment to the U.S. Constitution and allow states to create a record of discontent over *Citizens United*. Theoretically, if enough states passed a similar resolution urging a constitutional amendment, there would be enough public support so that the U.S. Congress could pass a resolution. However, this public support has not been extensive, and expressing opposition to the decision is not affirmative action that addresses potential problems in light of the opinion. Without quick action, *Citizens United* still places states at risk of litigation for existing campaign finance laws.

Understanding requests for a constitutional amendment to be controversial, time-consuming, and perhaps futile, some states have opted to bring their laws into compliance with *Citizens United*. In Colorado, the state legislature passed HJR 1011, calling on the Colorado Supreme Court to respond to interrogatories to interpret the impact of *Citizens United* on the state's existing independent expenditure and electioneering laws. Facing threats of litigation from several corporate groups, Colorado sought to quickly resolve any conflict between its state campaign laws and the holding in *Citizens United.*[213] As a result, the Colorado Supreme Court held that the ban on independent expenditures and funding for electioneering communications by corporations or labor organizations violated the First Amendment of the U.S. Constitution.[214] To bring their campaign laws into federal compliance, Colorado was then able to pass bills with more stringent disclosure laws.

22. **Application to California**

In 2010, the California legislature considered AJR 3, which memorialized the legislature's disagreement with *Citizens United* and asked for an amendment to the U.S.

Constitution that would allow limits on campaign contributions.[215] This resolution failed to pass. The California legislature could attempt to pass another resolution. However, U.S. Constitutional amendments are time-consuming and often difficult to accomplish. Therefore, a California resolution — without broad public support from other states — would be ineffective in causing national change.

California could also call on a separate state organization to draft proposals to strengthen campaign finance laws after *Citizens United*. But unlike Colorado, California did not have a prohibition on corporate and union spending in campaigns, so the decision did not directly render any California laws unconstitutional. Requesting expertise to bring California laws into compliance with Citizens United seems unnecessary, and California can still rely on the recommendations of the CIC final report for guidance on stronger campaign finance laws in judicial elections.

VI. Conclusion

This report was intended to give the Assembly Judiciary Committee a broad overview of the types of laws that are currently being proposed, debated, and in some cases, enacted by other states to protect the actual and perceived independence of their judiciaries after a United States Supreme Court decision that — at the very least — has the potential to erode public confidence in the fairness of an electoral system where corporations and unions can spend without limit. What follows are final considerations on each of the categories of laws, including steps that the Committee may wish to take if to further research that trend and draft a bill.

- **Disclosure and Reporting**: California could protect its appellate justices in retention elections from well-funded smear campaigns like those in Iowa, Wisconsin, and Illinois several ways.

- The state could prevent corporations or special interests from hiding behind obscure committee names by requiring clear "paid for by" disclaimers
- If interested in expanding the definition of "independent expenditure," Assembly members could contact members of the Commission on Impartial Courts to determine why they chose to withdraw its draft recommending the change, and work with legislative analysts to craft a bill that would identify and avoid the unintended consequences that ultimately discouraged the CIC from including that recommendation in its final report.

- **Recusal and Disqualification**: California could make the current recusal standards mandatory as applied to appellate justices in order to increase public confidence in the judiciary. Also, California could require a third-party judge decide or review motions to disqualify a challenged judge. Both of these changes are politically and practically feasible in California and would involve minimal financing.
- **Contribution Limits**: California could enact uniform contribution limits that apply to all contributors. Contribution limits would greatly reduce the risk of actual and perceived bias, but require stringent reporting and disclosure laws to be effective. However, there may be some opposition to enacting contribution limits since it reduces the ability of justices to raise funds, which becomes a significant restraint when a justice is opposed by an independent expenditure campaign.
- **Bans on Foreign Corporate Spending**: With this potential solution on uncertain constitutional ground, the state could conduct fact finding, consult with First Amendment experts, and tailor any proposed ban to attempt to satisfy strict scrutiny.
- **Shareholder or Board Consent**: Three solutions under this heading may warrant consideration.
  - The state might require a board of directors or similar corporate leadership entity to approve any independent expenditures.
  - Alternatively, California might boldly propose legislation like the United Kingdom's requiring shareholders to consent. If the shareholder consent provision is appealing, the Brennan Center would be a useful resource because it has published extensively on this potential solution after *Citizens United*.
  - A less politically contentious measure might be to encourage corporations to enter political spending with their eyes wide open, by pointing to the empirical evidence showing that corporate spending is not a sustainable business practice.
- **Public Financing**: If interested in this promising remedy to the problem of money in judicial politics, legislators could begin building consensus for public financing.
- **Appointment and Selection Systems**: Although politically thorny, numerous changes to California's system for selecting its judges could further insulate the judiciary from the actual or perceived threat of bias from money in politics.
  - First, the state could add transparency and increase the public's confidence in the judiciary's legitimacy by replacing the Judicial Nomination Evaluation process with an independent judicial nominating committee.

- Second, California could implement a pure appointment or even merit selection system for superior court judges.

- **Requests for U.S. Congressional Action and Guidance**: California experimented with this type of legislation in 2010 and failed to pass a resolution. Because almost all other states also have been unsuccessful, and these measures do not tend to have their desired effect of leading to an overruling of the decision, the best course might be to focus on other action.

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[1] Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263.
[2] 424 U.S. 1 (1976).
[3] *Id.*
[4] 494 U.S. 652 (1990).
[5] *Id*. at 652, 659-60.
[6] Bipartisan Campaign Reform Act of 2002, 2 U.S.C. § 441b. Congress primarily enacted the BCRA to combat the influence of "soft money"—referring to funds raised outside of campaign finance limitations. *See McConnell v. FEC*, 540 U.S. 93, 122-23 (2003).
[7] 540 U.S. 93 (2003).
[8] *Id.* at 203-09.
[9] Electioneering communications are defined as any broadcast, cable, or satellite communication that refers to a candidate for federal officer and that is broadcast within 30 days of a federal primary election or 60 days of a federal general election in the jurisdiction in which that candidate is running for office.
[10] *Citizens United v. FEC*, 130 S. Ct. 876, 904 (2010) (internal citation omitted).
[11] *Id.* at 972 (Stevens, J., dissenting).
[12] *Id.* at 909.
[13] *Id.* at 908.
[14] *Id.* at 910.
[15] Meryl J. Chertoff, Judicial Ethics and Accountability: At Home and Abroad: Trends in Judicial Selection in the States, 42 MCGEORGE L. REV. 47, 55 (2010).
[16] *See, e.g.*, Ritter v. FEC, 227 P.3d 892 (Colo. 2010).
[17] *Mistretta v. United States*, 488 U.S. 361, 407 (1989).
[18] *Commonwealth Coating Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 150 (1968).
[19] Justice Ming W. Chin, *Judicial Independence Under Attack Again?*, 61 HASTINGS L. J. 1345, 1348 (2010).
[20] *See, e.g.*, Amelia T.R. Starr et al., The Fund for Modern Courts, A Heightened Recusal Standard for Elected New York Judges Presiding Over Cases, Motion or Other Proceedings Involving Their Campaign Contributors 31 (2010), *available at* http://moderncourts.org/documents/april_2010_recusal.pdf; Press Release, Justice at Stake, Solid Bipartisan Majorities Believe Judges Influenced by Campaign Contributions (Sept. 8, 2010), *available at* http://tinyurl.com/2c422fs.
[21] Solid Bipartisan Majorities, *supra* note 20.
[22] *Id.*
[23] *Id.*
[24] Starr et al., *supra* note 20, at 27-28 (citing Joan Biskupic, *Supreme Court Case With the Feel of a Best Seller*, USA Today, Feb. 16, 2009).
[25] *Id.*

[26] *See, e.g.*, Caperton v. A.T. Massey Coal, 129 S. Ct. 2252 (2009).
[27] *See, e.g.*, Joanna M. Shepherd, *Money, Politics, and Impartial Justice*, 58 DUKE L.J. 623, 669 (2009) (finding that "there is a strong relationship between campaign contributions and judges' voting.").
[28] *See, e.g.*, Vernon V. Palmer, *The Recusal of American Judges in the Post*-Caperton *Era: An Empirical Assessment of the Risk of Actual Bias in Decisions Involving Campaign Contributors*, 10 Global Jurist 1 (2010), *available at* http://www/bepress.com/gi/vol10/iss3/art4/.
[29] Starr et al., *supra* note 20.
[30] Adam Liptak & Janet Roberts, *Campaign Cash Mirrors a High Court's Rulings*, N.Y. Times, Oct. 1, 2006, *available at* http://www.nytimes/com/2006/10/01/us/01judges/html.
[31] *Id.* at A1 (quoting Justice Paul E. Pfeifer).
[32] *Id.*
[33] *Id.*
[34] 216 Ill. 2d 100 (Ill. 2005); *see also* Starr et al., *supra* note 20, at 33-34; Editorial, *Illinois Judges: Buying Justice?*, St. Louis Post-Dispatch, Dec. 20, 2005, at B8.
[35] 129 S. Ct. 2252 (2009).
[36] Brennan Center for Justice, Setting Recusal Standards After *Caperton v. A.T. Massey Coal Company* 1 (2009), http://www.brennancenter.org/content/resource/recusal_standards_after_caperton_v_massey/.
[37] *Caperton*, *supra* note 26 at 2265.
[38] *Id.* at 2264-66.
[39] *Id.* at 2264.
[40] Judicial Council of California: Commission for Impartial Courts, Final Report: Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California 1 (CIC Final Report), *available at* http://www.courts.ca.gov/xbcr/cc/cicfinalreport.pdf.
[41] A.B. 2487, 2009-2010 Leg., Reg. Sess. (Cal. 2010).
[42] *See* Appendix B for state selection methods.
[43] See Appendix A for state survey of legislation.
[44] Cal. Const. art. VI, § 16(d)(2).
[45] Cal. Const. art. VI § 16(c).
[46] *See* James Sample et al., Justice at Stake, *The New Politics of Judicial Elections 2000-2009* 1 (2010), *available at* http://www.justiceatstake.org/resources/new_politics_of_judicial_elections_20002009; Brief of Amicus Curiae, Justice at Stake et al., *McComish v. Bennett*, No. 10-238, at 8-9 (Feb. 22, 2011).
[47] *Id.*
[48] *Id.* at 10.
[49] *Id.*
[50] *Id.* at 11.
[51] *Id.*
[52] Justice at Stake et al., *2010 Judicial Elections Increase Pressure on Courts, Reform Groups Say*, Nov. 3, 2010, http://www.justiceatstake.org/state/judicial_elections_2010/election_2010_news_releases.cfm/2010_judicial_elections_increase_pressure_on_courts_reform_groups_say?show=news&newsID=9129. Four of the top five spenders on TV airtime in Supreme Court elections are non-candidate groups. *Id.* Moreover, Michigan Supreme Court candidates were

vastly outspent — in the amount of millions of dollars — by political parties and one out-of-state group in a television ad war. *Id.*

[53] Linda Casey, National Institute on Money in State Politics, *Independent Expenditure Campaigns in Iowa Topple Three High Court Justices*, Jan. 10, 2011, http://www.followthemoney.org/press/ReportView.phtml?r=440.

[54] Brief of Amicus Curiae, Justice at Stake et al., *McComish v. Bennett*, *supra* note 46 at 13.

[55] *Id.*

[56] *Id.*

[57] *Id.* at 12.

[58] The states that reported state supreme court candidates receiving funds that used a partisan election system were: Alabama, Louisiana, Michigan, Ohio, Texas, and West Virginia.

[59] The states that reported state supreme court candidates receiving funds that used a nonpartisan election system were: Arkansas, Georgia, Idaho, Kentucky, Minnesota, Mississippi, Montana, Nevada, North Carolina, Oregon, Washington, and Wisconsin.

[60] Justice at Stake et al., *2010 Judicial Elections Increase Pressure on Courts, Reform Groups Say*, Nov. 3, 2010, *supra* note 52.

[61] *Id.*

[62] *Id.*

[63] Brief of Amicus Curiae, Justice at Stake et al., *McComish v. Bennett*, *supra* note 46 at 12.

[64] *Id.*

[65] *Id.* The 2011 Wisconsin judicial election is notable for the vast number of nasty and misleading attack advertisements. For instance, one conservative interest group sponsored the "Pedophile Priest" advertisement, falsely suggesting that Justice Prosser had improperly allowed a known pedophile priest go free and enabled the priest to subsequently committed another molestation. *See* A Misleading Ad, Milwaukee Journal Sentinel, Mar. 29, 2011.

[66] Judicial Public Financing in Wisconsin — 2011, Brennan Center for Justice, Apr. 5, 2011, http://www.brennancenter.org/content/resource/judicial_public_financing_in_wisconsin_2011.

[67] Erik Opsal, *One Week Later: What Happened in Wisconsin?*, Brennan Center for Justice, Apr. 13, 2011, http://www.brennancenter.org/blog/archives/one_week_later_what_happened_in_wisconsin.

[68] *Id.*

[69] *See, e.g.*, Kenneth P. Vogel, *Big Money, Union Fight Shape Wisconsin Court Race*, Politico, Apr. 4, 2011.

[70] *See* Stephanie Mancimer, Tea Party Express Jumps Into Wisconsin Judicial Race, Mother Jones, Mar. 30, 2011.

[71] Christopher Murray, Wisconsin Has Become 'Exhibit A' for Not Electing Judges, Washington Examiner, Mar. 21, 2011.

[72] Follow the Money.

[73] California Commission for Impartial Courts, *Final Report: Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California*, Dec. 2009 [hereinafter CIC Final Report], *available at http://www.courts.ca.gov/xbcr/cc/cicfinalreport.pdf*, at 42.

[74] *Id.*

[75] *See* Philip Hager, *No Opposition, Little Notice for 5 State Justices Up for Election*, L.A. Times, Nov. 4, 1990, at A3.

[76] James R. Sutton, Corporations Are Unlikely to Spend Big on Elections, Daily News, Mar. 3, 2010, *available at* http://www.dailynews.com/search/ci_14501700?IADID=Search-www.dailynews.com-www.dailynews.com.
[77] See Appendix B for survey state legislation since *Citizens United*.
[78] H.B. 748, 2009-2010 Gen. Assemb., Reg. Sess. (N.C. 2010).
[79] H.B. 5471, 2010 Gen. Assemb., Jan. Sess. (Conn. 2010).
[80] S.F. 2354, 83rd Gen. Assemb., 2010 Sess. (Iowa 2010).
[81] H.B 4647, 79th Leg., Reg. Sess. (W. Va. 2010).
[82] Ciara Torres-Spelliscy, *Transparent Elections after Citizens United*, Brennan Center for Justice 12 (2011), *available at* http://brennan.3cdn.net/a11b62a1ae58821838_z8m6iiruw.pdf.
[83] *Citizens United*, 130 S.Ct at 916.
[84] *Id.*
[85] Torres-Spelliscy, supra note 82, at 10-11
[86] James Bopp, Jr., *How Not to Reform Judicial Elections: Davis, White, and the Future of Judicial Campaign Financing*, 86 DENV. U. L. REV. 195, 218-19 (2008).
[87] *Id.* at 219.
[88] Torres-Spelliscy, supra note 82, at 7.
[89] *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1976).
[90] Grading State Disclosure, http://www.campaigndisclosure.org/gradingstate/ca.html (last visited March 28, 2011).
[91] CIC Final Report, supra note 73, at 50.
[92] *Id.*
[93] Amelia T.R. Starr et al., The Fund for Modern Courts, *A Heightened Recusal Standard for Elected New York Judges Presiding Over Cases, Motion or Other Proceedings Involving Their Campaign Contributors* 10 (Apr. 2010).
[94] *Caperton*, 129 S. Ct. at 2263-64 (2009).
[95] *Id.* at 2263 (internal citations omitted).
[96] *Id.* at 2267.
[97] *See, e.g.*, Wisconsin Special Committee on Judicial Discipline and Recusal, http://legis.wisconsin.gov/lc/committees/study/2010/JUDI/index.html.
[98] Norman L. Greene, *How Great Is America's Tolerance for Judicial Bias? An Inquiry into the Supreme Court's Decisions in* Caperton *and* Citizens United*, Their Implications for Judicial Elections, and Their Effect on the Rule of Law in the United States*, 112 W. VA. L. REV. 873, 905-06 (2010).
[99] These states are California, Georgia, Montana, New York, and Texas.
[100] Starr et al., *supra* note 93, at 11.
[101] Brennan Center for Justice, Setting Recusal Standards, *supra* note 36, at 5.
[102] *See id.*; ABA Model Code of Judicial Conduct, Canon 2, R. 2.11(A)(4).
[103] *See* Georgia HB 601 (2010).
[104] The five states are Hawaii, Oklahoma, Massachusetts, Michigan, and Tennessee.
[105] Greene, *supra* note 98, at 904.
[106] Starr et al., *supra* note 93, at 37.
[107] Oklahoma SB 543 (2011).
[108] Tennessee HB 1197 and SB 1089 (2011).

[109] Adam Skaggs & Andrew Silver, Brennan Center for Justice, Promoting Fair and Impartial Courts Through Recusal Reform (Feb. 2011).
[110] *See, e.g.*, Nathan Koppel, *States Weigh Judicial Recusals, Some Judges, Businesses Oppose Restrictions on Cases Involving Campaign Contributors*, Wall St. J., Jan. 26, 2010, *available at* http://online.wsj.com/article/SB10001424052748703822404575019370305029334.html; *see also* Greene, *supra* note 98, at 905.
[111] *Id.*
[112] Erwin Chemerinsky, *Preserving an Independent Judiciary: The Need for Contribution and Expenditure Limits in Judicial Elections*, 74 CHICAGO-KENT L. REV. 133, 135 (1998).
[113] *JAS Lauds New Judicial Rules in Michigan*, Justice at Stake, Nov. 6, 2009, *available at* http://www.justiceatstake.org/newsroom/press_releases.cfm/jas_lauds_new_judicial_rules_in_michigan?show=news&newsID=6249.
[114] *See* California Code of Civil Procedure §§ 170.1-170.6.
[115] CIC Final Report, *supra* note 73, at 42.
[116] *See* California Code of Judicial Ethics, Canon 3E.
[117] California Code of Civil Procedure § 170.3(c)(5)-(6).
[118] Minnesota SB 80 (2010) (signed into law on May 7, 2010).
[119] Wisconsin SB 40 (2010) (signed into law).
[120] Oregon SB 1058 (2010) (died).
[121] Alabama HB 46 (2010) (died).
[122] Missouri SB 75 (2011) (pending).
[123] Missouri HB 1322, HB 1326, HB 1327, HJR 91, and SB 648 (2010).
[124] *See, e.g.*, New York SB 7063 (2010) (would have barred limited liability companies from making political contributions); Florida SB 470 (2010) (would have barred corporations for making political contributions); Hawaii HB 2968 (2010) (same); Maryland HB 917 (2010) (would have barred "business entities" from making political contributions); Oregon SB 1058 (2010) (would have barred all corporate contributions).
[125] Floirda SB 470 (2010) (died).
[126] New Mexico SB 527 (2011) (pending).
[127] *Dallman v. Ritter*, 225 P.3d 610, 622 (Colo. 2010).
[128] CIC Final Report, *supra* note 73.
[129] *Id.* at 33.
[130] *Id.*
[131] *Buckley v. Valeo*, 424 U.S. at 15.
[132] *Dallman*, 225 P.3d at 622.
[133] *See Beaumont*, 539 U.S. at 162.
[134] *Citizens United*, 130 S.Ct at 876, 903.
[135] *Thalheimer v. City of San Diego*, 706 F. Supp. 2d 1065 (S.D. Cal. 2010).
[136] *Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 741 F. Supp. 2d 1115, 1133 (D. Minn. 2010); *Thalheimer*, 706 F. Supp. 2d 1065.
[137] *See Geary v. Renne*, 911 F.2d 280 (9th Cir. 1990) (en banc), *vacated on other grounds*, 501 U.S. 312 (1991).
[138] *See Randall v. Sorrell*, 548 U.S. 230 (2006) (holding that a ban on judicial candidates announcing their legal and political views was unconstitutional).
[139] *Green Party of Connecticut v. Garfield*, 616 F.3d 189, 202 (Conn. 2010).

[140] *See* CIC Final Report, *supra* note 73 at 32.
[141] *Id.* at 31-32.
[142] *Id.* at 32.
[143] Federal Election Commission Foreign National Brochure (July 2003), *available at* http://www.fec.gov/pages/brochures/foreign.shtml.
[144] *See* ARTICLE: LEGISLATIVE INTERVENTION IS NOT A NECESSARY RESPONSE TO CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, 29 J. L. & Com. 1, 9 (2010).
[145] *See* FEC Brochure, *supra*, note 143.
[146] H.B. 3182, 2009-2010 Leg., Reg. Sess. (Tenn. 2010); S.F. 2354 2009-2010 Leg., Reg. Sess. (Iowa 2010); S.B. 284 2010-2011 Leg., Reg. Sess. (Alaska 2011).
[147] Maryland SB 750, Michigan HB 6186 2010.
[148] *Citizens United*, 130 S. Ct. at 911. ("We need not reach the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation's political processes. Section 441b is not limited to corporations or associations that were created in foreign countries or funded predominately by foreign shareholders. Section 441b therefore would be overbroad even if we assumed, *arguendo*, that the Government hasa compelling interest in limiting foreign influence over our political process.")
[149] Missouri Campaign Finance Disclosure Law, MO. REV. STAT. § 130.029 (2000), Louisiana Election Code, LA. REV. STAT. § 18.1505.2(F) (2003), and Iowa Election Law, IOWA CODE § 68A.402A (2009) (requires a majority of the board of directors to vote in the affirmative to authorize political expenditures by a corporation).
[150] Center for Competitive Politics, Press Release: Iowa legislative leaders attempt to defy Supreme Court (February 22, 2010), *available at* http://www.campaignfreedom.org/newsroom/detail/iowa-legislative-leaders-attempt-to-defy-supreme-court.
[151] A.B. 2321 2009-2010, Reg. Sess. (Cal. 2010).
[152] Tribe, Laurence. What Should Congress Do About *Citizens United*? An analysis of the ruling and a possible legislative response (January 26, 2010, *available at* http://www.scotusblog.com/2010/01/what-should-congress-do-about-citizens-united/.
[153] Ciara Torres-Spelliscy, Corporate Campaign Spending: Giving Shareholders a Voice (Jan. 27, 2010), http://www.brennancenter.org/content/resource/corporate_campaign_spending_giving_shareholders_a_voice/, at 8.
[154] *Id.* at 12. See Part IV.A.
[155] *Citizens United* Transcript of Re-argument at 57-59 (Sept. 9, 2009), http://www.supremecourtus.gov/oral_arguments/argument_transcripts/08-205%5BReargued%5D.pdf.
[156] *Marsili v. Pacific Gas & Elec. Co.*, 51 Cal. App. 3d 313, 322 (1975).
[157] Thomas W. Joo, *People of Color, Women, and the Public Corporation: Corporate Hierarchy and Racial Justice*, 79 ST. JOHN'S L. REV. 955, 959 (2005) (citation omitted).
[158] European Corporate Governance Service, *Blue-Wash* (undated), http://www.ecgs.net/news/story216.html.
[159] For example, one shareholder led a corporate campaign against a large company political budget when he discovered that the company had given free airport parking passes to Members of Parliament ("MPs"). Shareholders voted down the £1.25 million proposed by the company's managers, and the company stopped giving free passes to MPs.

[160] *Citizens United*, 130 S. Ct. at 911 ("The Government contends further that corporate independent expenditures can be limited because of its interest in protecting dissenting shareholders from being compelled to fund corporate political speech.")
[161] *Austin*, 494 U.S. at 659-60.
[162] Nicole Albertson-Nuanes, Give to Get? Financial Institutions That Made Hefty Campaign Donations Score Big Bucks From The Government (Mar. 19, 2009), *available at* http://www.followthemoney.org/press/Reports/GIVE_TO_GET_TARP_Recipients.pdf?PHPSESSID=fa738af7f3dba55d269db58a057e3f7a, at 1.
[163] Rajesh Aggarwal, Felix Meschke & Tracy Wang, *Corporate Political Contributions: Investment or Agency?*, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=972670, at 39.
[164] Bruce F. Freed & John C. Richardson, The Green Canary: Alerting Shareholders and Protecting Their Investments (2005), *available at* http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/920, at 5.
[165] Ciara Torres-Spelliscy, Corporate Campaign Spending: Giving Shareholders a Voice (Jan. 27, 2010), *available at* http://www.brennancenter.org/content/resource/corporate_campaign_spending_giving_shareholders_a_voice/.
[166] *Id.* at 12.
[167] S.F. 2354, 2009-2010 Leg., Reg. Sess. (Iowa 2010).
[168] Center for Competitive Politics, *supra*, note 150.
[169] *Iowa Right to Life Comm., Inc. v. Smithson*, 2010 U.S. Dist. LEXIS 119741, 4:10-cv-00416, at *68 (October 20, 2010) (first amendment claims against the statute generally present an insufficient likelihood of success on the merits to justify issuing a preliminary injunction). *Id.* at *73-*74 (Iowa Right to Life unlikely to succeed on the merits challenging board approval requirement).
[170] *Penn v. State ex rel. Foster* , 751 So.2d 823 (La. 1999).
[171] *Marsili*, *supra* note 156, at 322.
[172] Torres-Spelliscy, *supra* note 165, at 23.
[173] Ira M. Millstein, Holly J. Gregory & Rebecca C. Grapsas, Weil, Gotshal & Manges LLP, 47. Rethinking Board and Shareholder Engagement in 2008 (January 2008), *available at* http://blogs.law.harvard.edu/corpgov/files/2008/01/gregory_millstein_corporate-governance-advisory-memo-jan-2008.pdf, at 3 ("Shareholders have legitimate interests in information about corporate policies and practices with respect to social and environmental issues such as climate change, sustainability, labor relations and political contributions. These issues, many of which do not fall neatly within a line item disclosure requirement, bear on the company's reputation as a good corporate citizen and consequently, the perceived integrity of management and the board.")
[174] "Public financing of campaigns is increasingly recognized as the most promising way to address threats to fairness and impartiality – real or apparent – caused by private contributions to candidates competing in judicial elections." ABA Commission on Public Financing of Judicial Campaigns, Report (July 2011). "[S]everal states are examining public financing as a way to curb excessive spending by judicial candidates and outside groups, such as special-interest campaigns and political parties. This is particularly important given the Court's recent decision in *Citizens United* and could provide states with a method for lessening the influence of

corporate spending." Bert Brandenburg, *Big Money and Impartial Justice: Can they Live Together?*, 52 U. ARIZ. L. REV. 207, 215 (2010).
[175] Common Cause, Public Financing in the States (June 2007), *available at* http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4773825.
[176] N.C. Gen. L. § 173-268 *et seq*.
[177] *Id.* N.C. Gen. L. § 84-34.
[178] Fact Sheet: The Public Campaign Fund (2010), *available at* http://www.ncjudges.org/media/fact_sheet_pcf.html.
[179] First in the Nation: NC's Judicial Public Financing Campaign, North Carolina Voters for Clean Elections, *available at* http://www.ncvce.org/nc-judicial-program. ("The 100% participation rate in 2010 is especially noteworthy after the US Supreme Court's Citizens United decision to allow corporations to finance independent campaigns for or against candidates, which some commentators suggested could scare candidates away from voluntarily accepting the fundraising limits that go with public campaign support.")
[180] Bert Brandenburg, Protecting Wisconsin's Courts from Special Interest Pressure, Milwaukee J. Sentinel Mar. 27, 2007, *available at* http://www.jsonline.com/news/opinion/29460844.html.
[181] Study: N.C. Judicial Voter Guide a Success (February 16, 2005) *available at* http://www.ncjudges.org/media/news_releases/2_16_05.html; Voters Believe Money Influence Courts, Support Bold Reforms, Says New Study by N.C. Center for Voter Education (June 28, 2005) *available at* http://www.ncjudges.org/media/news_releases/2_16_05.html.
[182] Common Cause, *supra* note 175.
[183] *Davis v. FEC*, 554 U.S. 724 (2008).
[184] *Duke v. Leake*, 524 F.3d 427 (4th Cir. 2008), cert. denied 129 S.Ct. 490 (2008).
[185] *McComish v. Bennett*, No. 10-239, transcript of oral argument *available at* http://www.supremecourt.gov/qp/10-00239qp.pdf.
[186] *See* Appendix B for survey of state legislation since *Citizens United*.
[187] Matthew J. Streb, The Study of Judicial Elections, in Running for Judge: The Rising Political, Financial and Legal Stakes of Judicial Elections 1, 9 (2007), *available at* http://www.nyupress.org/webchapters/0814740340chapt1.pdf.
[188] National Center for State Courts, Judicial Selection and Retention FAQs (April 3, 2011), *available at* http://www.ncsc.org/Topics/Judicial-Officers/Judicial-Selection-and-Retention/FAQ.aspx#How%20many%20state%20judges%20are%20elected.
[189] Chertoff, *Trends in Judicial Selection*, *supra* note 15.
[190] The Fund for Modern Courts, *Methods of Judicial Selection* (April 14, 2011), http://www.moderncourts.org/advocacy/judicial_selection/methods.html.
[191] David Caroline, *What's More Important: Electing Judges or Judicial Independence? It's Time for Pennsylvania to choose Judicial Independence*, 48 DUQ. L. REV. 859, 864 (2010).
[192] *Id.* at 871.
[193]Joan Biskupic, *Supreme Court Case with the Feel of a Bestseller*, USA Today, Feb. 16, 2009, http://www.usatoday.com/news/washington/2009-02-16-grisham-court_N.htm.
[194] Michael DeBow, et. al., *The Case of Partisan Judicial Elections* (April 4, 2011), http://www.fed-soc.org/publications/detail/the-case-for-partisan-judicial-elections.
[195] Martin J. Siegel, *In Defense of Judicial Elections (Sort of)*, 36 No. 4 Litig. 23, 24-26 (2010).
[196] *Id.* at 25.
[197] DeBow, *supra* note 194.

[198] Martin J. Siegel, *In Defense of Judicial Elections (Sort of)*, 36 No. 4 Litig. 23, 27 (2010).
[199] *Kirk v. Carpenti*, 623 F.3d 889, 869 (9th Cir. 2010).
[200] *Bradley v. Work*, 916 F. Supp. 1446, 1474-75 (S.D. Ind. 1996), *aff'd*, 154 F.3d 704 (7th Cir. 1998).
[201] *Id.*
[202] *African-American Voting Rights Legal Defense Fund, Inc. v. Missouri*, 994 F. Supp. 1105, 1110 (E. D. Mo. 1997), *aff'd*, 133 F.3d 921 (8th Cir. 1998) (per curiam) (unpublished).
[203] *Kirk v. Carpeneti*, 623 F.3d 889, 891 (9th Cir. 2010).
[204] *Id.*
[205] CIC Final Report, supra note 73, at 77.
[206] *See* Appendix A for state judicial selection methods.
[207] Ian Urbina, *Consequences for State laws in Court Ruling*, N.Y. Times, January 23, 2010 at A.
[208] H.C.R. 282, 25th State Leg., Reg. Sess. (Haw. 2010).
[209] Lawrence Lessig, *Citizens United: The Constitutional Amendment America Needs*, The New Republic (March 16, 2010) http://www.tnr.com/article/politics/citizens-unite.
[210] Norman L. Greene, *How Great is America's Tolerance for Judicial Bias? An Inquiry into the Supreme Court's Decisions in Caperton and Citizens United, Their Implications for Judicial elections, and their Effect on the Rule of Law in the United States*, 112 W. Va. L. Rev. 873, 929 (2010).
[211] H.J. Res 13, 111th Cong. (2010); H.J. Res. 68 111th Cong. (2010).
[212] H.J. Res. 8, 112th Cong. (2011).
[213] Anthony Bowe, *Ritter Asks Supreme Court for Clarification on Campaign Finance Laws*, The Colorado Statesman, February 12, 2010, http://www.coloradostatesman.com/content/991603-ritter-asks-supreme-court-clarification-campaign-finance-laws.
[214] *In re Interrogatories Propounded by Governor Ritter, Jr., Concerning Effect of Citizens United v. Federal Election Commission*, 227 P.3d 892, 894 (Colo. 2010).
[215] A.J.R. 3, 2009-2010 Leg., Reg. Sess. (Cal. 2010).

Appendix A

50 State Survey of Post-CItizens United Legislation
(Updated through March 31, 2011)

State	Bill No.	Type of Legislation	Category of regulation	Status
Alabama	HB 340 2011	Selection	Provides for nonpartisan election of circuit and district judges.	Pending
Alabama	HB 1 2010	Contribution limits	Imposes contribution limits on judicial and other races for PACs, corporations, and individuals.	Died
Alabama	HB 46 2010	Contribution limits	Provides for a $500 limitation on contributions for candidates for election to the Alabama Supreme Court, Alabama Court of Appeals, Alabama Court of Criminal Appeals, circuit courts, or district courts per election. Provides for increasing the allowed contribution amount based on the application of the consumer price index	Died
Alabama	HB 542 2010	Selection	Constitutional amendment that requires the nonpartisan election of circuit, district, and all appellate court judges.	Died
Alabama	HB 680 2010 SB 561 2010	Selection	Permits but does not require nonpartisan election of circuit and district court judges. Allows counties to "opt in" when a majority of circuit court judges submit a petition to their county commission.	Died
Alabama	SB 173 2010	Contribution limits	Provides for a limitation on contributions for candidates for election to various courts: $5,000 for Supreme Court, Court of Appeals, Court of Criminal Appeals and $2,000 for Circuit and District Courts. Provides for increasing the allowed contribution amount based on the application of the consumer price index.	Died
Alabama	SB 94 2010	Contribution limits	Provides for a limitation on contributions for candidates for election to various courts: $5,000 for Supreme Court, Court of Appeals, Court of Criminal Appeals and $2,000 for Circuit and District Courts. Provides for increasing the allowed contribution amount based on the application of the consumer price index.	Died

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(Updated through March 31, 2011)

State	Bill No.	Type of Legislation	Category of regulation	Status
Alaska	HB 358 2010	Reporting & Disclosure	Provides clear disclosure requirements for corporations participating in electioneering. Corporations would have to report how much money they spend on a given election to the Alaska Public Offices Commission. Advertisements for or against a candidate would also have to include a "paid for by" disclaimer.	Died
Alaska	HB 358 2010	Reporting & Disclosure	Regulates the reporting and disclosure of political contributions and independent expenditures. Requires "paid for by" disclosure on all political communications	Died
Alaska	HB 401 2010	Reporting & Disclosure	Regulates the reporting and disclosure of political contributions and independent expenditures. Requires "paid for by" disclosure on all political communications	Died
Alaska	HB 409 2010	Reporting & Disclosure	Regulates the reporting and disclosure of political contributions/independent expenditures. Requires "paid for by" disclosure on all political communications	Died
Alaska	SB 284 2010	Reporting & Disclosure Foreign Ban	Regulates the reporting and disclosure of political contributions/independent expenditures. Requires "paid for by" disclosure on all political communications. Requires any nonprofit organization that makes an independent expenditure to disclose their top funders. Prohibits any foreign entity from making expenditures to influence elections	Passed June 3, 2010
Arizona	HCR 2020 2011	Selection	Ends merit selection system. Allows governor to fill judicial vacancies subject to senate confirmation. Provides that judges must be reappointed and reconfirmed at end of terms.	Pending

Appendix A

50 State Survey of Post-CItizens United Legislation
(Updated through March 31, 2011)

State	Bill No.	Type of Legislation	Category of regulation	Status
Arizona	SB 1482 2011	Selection	Provides not later than sixty days preceding the regular primary election for the retention of an appellate court judge, the commission on judicial performance review shall prepare and publish on its website a list of the decisions of that appellate court judge including the decision's official citation and an electronic copy of the entire text of the decision. The judicial performance review process is intended to assist voters in evaluating the performance of judges and justices standing for retention.	Pending
Arizona	SCR 1048 2011	Selection	Ends retention election votes for judges. Provides at end of term, judge to be voted on by senate and retained *unless* rejected by two-thirds of senate.	Pending
Arizona	HB 2788 2010	Corporate registration Reporting & Disclosure	Requires corporations and labor organizations to register with the Secretary of State and follow set guidelines if they wish to make independent expenditures.	Passed April 1, 2010
Arizona	SB 1444 2010	Corporate registration Reporting & Disclosure	Requires corporations and labor organizations to register with the Secretary of State and follow set guidelines if they wish to make independent expenditures.	Passed by Senate
Arizona	SCR 1002 2010	Changing method of judicial elections - appointment	Ends merit selection system. Allows governor to fill judicial vacancies subject to senate confirmation. Subjects all judges to yes/no retention elections.	Retained by Senate Committee
Arkansas	SB 744 2011	Selection	Provides for merit selection system for Court of Appeals. Requires approval by public on 2012 election ballot.	Pending
California	AJR 3 2010	Resolution for federal action/ Constitutional Amendment	Calls on U.S. Congress to pass Constitutional amendment	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
California	AB 7 2010	Disclosure	Requires certain sponsor identification information to be included on campaign materials financed by independent expenditures	Died
California	AB 2321 2010	Reporting & Disclosure Shareholder Rights	Refers to Citizens United in its regulation of corporate political disbursements, including: reporting and disclosure requirements; and shareholder rights, including objection/refusal, share refunds, and civil action.	Died
California	AB 2487 2010	Reporting & Recusal	Disqualification of a judge who has received a contribution in excess of $1,500 from a party or lawyer in the proceeding.The bill would further disqualify a judge based on a contribution of a lesser amount under specified circumstances. The bill would require the judge to disclose any contribution from a party or lawyer in a matter that is before the court that is required to be reported, as specified, even if the amount would not require disqualification under these provisions.	Passed
California	AB 126 2011	Selection	Requires the Governor to collect and release the names of all persons who have been provided judicial application materials by the Governor or his or her representatives to assist in the decision whether to submit an application to the State Bar for evaluation or whether the applicant should be appointed after he or she has been evaluated by the State Bar, other than employees of the Governor. Requires each member of the designated agency of the State Bar responsible for evaluation of judicial candidates to complete a minimum of 2 hours of training in the areas of fairness and bias in the judicial appointments process on an annual basis.	Pending
Colorado	HJR 1011 2010	Other	Calls on the Colorado Supreme Court to interpret the impact of the Citizen United ruling.	Passed

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State	Bill No.	Type of Legislation	Category of regulation	Status
Colorado	SB 203 2010	Disclosure	Requires organizations to disclose independent expenditures within 48 hours of the money being spent. The ad must contain a statement that gives the full name of the person paying for it. The law also requires organizations to create a separate account where money to be used for independent expenditures is kept. The name on the account should identify the purpose of the money in it.	Passed
Connecticut	HB 5471 2010	Reporting & Disclosure Attribution	Removes the prohibition on independent expenditures made by businesses and organizations. Establishes reporting and attribution requirements for independent expenditures made by businesses and organizations. Requires any independent expenditure made within 29 days of an election to be disclosed within 24 hours	Signed into law June 8, 2010
Connecticut	HB 5511 2010	Other	Requires the State Elections Enforcement Commission to review Connecticut election law in light of Citizens United and, if necessary, make recommendations for corrective legislation.	Died
Delaware				
Florida	HJR 7039 2011 SJR 1672 2011	Retention	Requires justices or judges receive at least 60% of vote to be retained in office starting with 2012 election.	Pending
Florida	SB 470 2010	Contribution limits	Bars corporations from making political contributions but provides for unrestricted independent expenditures.	Died
Florida	HB 1207 2010	Reporting & Disclosure	Provides for establishment of affiliated party committees; provides for definitions, duties, exemptions, exclusions, restrictions, penalties, & responsibilities of affiliated party committees; revises affected definitions in chapter 106, F.S.; amends definitions of expenditures & gifts, etc.	Vetoed by governor
Florida	SB 2536 2010	Reporting & Disclosure	Among several campaign finance provisions are regulations on the reporting and disclosure of independent expenditures.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Georgia	SB 17 2010	Reporting & Disclosure	Among several campaign finance provisions are regulations on the making of, as well as the reporting and disclosure of, independent expenditures.	Passed
Georgia	HB 130 2010	Selection	Provides for nonpartisan election of superior court clerks and specified county officers.	Died
Georgia	HB 601 2010	Recusal	Requires judicial recusal where a judge either a) failed to set up a campaign committee to accept contributions and instead directly solicited contributions from any party or attorney or law firm representing a party in a case pending before his or her court or b)involving a party or his or her attorney that has made an influential action concerning a campaign of the judge presiding over the party's case during the election of such judge. Requires any person domiciled outside Georgia who contributes to judicial or other campaigns file disclosures similar to instate contributions.	Died
Georgia	HB 892 2010	Public financing	Creates Georgia Fund for Judicial Campaigns Act to provide for an "alternative source of campaign financing for candidates who demonstrate qualifying broad public support and voluntarily accept fund-raising expenditure limitations in conjunction with acceptance of fund moneys. Limits Fund to Supreme Court and Court of Appeals races. Provides funding from, among other sources, attorney contributions as directed by the Supreme Court and voluntary contributions made on state income tax forms.	Died
Hawaii	HB 2928 2010	Contribution limit and requirement	Requires corporations accepting or making political contributions to form noncandidate committees. Puts a 2-year cycle cap on contributions to those committees.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Hawaii	HB 2968 2010	Contribution limit and requirement Registration & Reporting	Expresses disagreement with the Citizens United ruling and bars corporations from making political contributions. Prohibits persons other than individuals from making contributions directly to candidates or noncandidate committees, except through noncandidate committees. Requires individuals who make contributions or expenditures in an aggregate amount of $1,000 or more during an election period to register as a noncandidate committee. Prohibits persons other than an individual from using treasury funds to make more than $1,000 in contributions or expenditures to a noncandidate committee of a person other than an individual that may contribute to a candidate. Exempts from the prohibition persons other than individuals when noncandidate committees are formed for the sole purpose of making independent expenditures.	Died
Hawaii	HCR 282 2010	Resolution for federal action/ Constitutional Amendment	Calls on the US Congress to pass a constitutional amendment barring the use of "person" when defining "corporate entity."	Passed
Hawaii	HR 204 2010	Resolution for federal action/ Constitutional Amendment	Calls on the US Congress to pass a constitutional amendment barring the use of "person" when defining "corporate entity."	Died
Hawaii	SB 2918 2010	Corporate Contribution Ban	Bars corporations from making political contributions. Restricts the use of treasury funds.	Died
Hawaii	SCR 225 2010	Resolution for federal action/ Constitutional Amendment	Calls on the US Congress to pass a constitutional amendment barring the use of "person" when defining "corporate entity."	Died
Hawaii	SR 116 2010	Resolution for federal action/ Constitutional Amendment	Calls on the US Congress to pass a constitutional amendment barring the use of "person" when defining "corporate entity."	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Hawaii	SB 330 2009 SB 272 2011	Other - Recall elections	Provides for recall elections for all elected officials, including judges.	Pending
Hawaii	SB 331 2009	Other - Recall elections	Provides for initiative, referendum, and recall elections for all elected officials, including judges.	Died
Hawaii	SB 680 2011	Recusal	Clarifies that a judge may be disqualified for cause by motion that must be decided by a different judge.	Pending
Idaho	HJM 12 2010	Resolution for federal action/ Constitutional Amendment	Stating findings of the Legislature and urging the Congress of the United States to use all efforts, energies and diligence in applying the powers vested in the legislative branch to negate the harmful effects of the United States Supreme Court's decision in Citizens United v. Federal Election Commission	Died
Illinois	HB 2631 2010	Public financing	Establishes a voluntary system of public financing of campaigns for the offices of judges of the Illinois Supreme and Appellate Courts, administered by the State Board of Elections. Specifies limits on campaign contributions and expenditures with respect to all candidates for those offices.	Died
Illinois	HB 4561 2009	Public financing	Creates the Illinois Public Financing Program Act. Establishes an alternative campaign financing mechanism for candidates for the office of Governor or Illinois Supreme Court Judge. Provides for various funding sources.	Died
Illinois	HB 887 2009	Public financing	Establishes a voluntary system of public financing of campaigns for the offices of judges of the Illinois Supreme and Appellate Courts, administered by the State Board of Elections. Specifies limits on campaign contributions and expenditures with respect to all candidates for those offices.	Died
Illinois	HCA 44	Selection	Provides that Appellate and Circuit Judges are to be appointed by the Supreme Court based on nominations from Judicial Nominating Commissions.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Illinois	HCA 45	Selection	Provides for the appointment of Supreme and Appellate Court Judges, and Circuit Judges in the First Judicial District and circuits adopting merit selection by referendum, by the Governor from nominees submitted by Judicial Nominating Commissions. Permits other Judicial Circuits to adopt by referendum a plan for merit selection of Circuit Judges. Provides that Judicial Review Commissions shall be established to decide whether appointed Judges shall be retained. Provides for Associate Judges to be phased out in the First Judicial District and in circuits adopting merit selection.	Died
Illinois	HCA 58	Selection	Provides for the appointment of Supreme and Appellate Court Judges, and Circuit Judges in the First Judicial District and circuits adopting merit selection by referendum, by the Governor from nominees submitted by Judicial Nominating Commissions. Permits other Judicial Circuits to adopt by referendum a plan for merit selection of Circuit Judges. Provides that Judicial Review Commissions shall be established to decide whether appointed Judges shall be retained. Provides for Associate Judges to be phased out in the First Judicial District and in circuits adopting merit selection. Makes other changes.	Died
Illinois	SB 2144	Public financing	Establishes a voluntary system of public financing of campaigns for the offices of judges of the Illinois Supreme and Appellate Courts, administered by the State Board of Elections. Specifies limits on campaign contributions and expenditures with respect to all candidates for those offices.	Died
Illinois	SB 3108	Selection	Provides for the election of Supreme, Appellate, and Circuit Court judges, State's Attorneys, and sheriffs in non-partisan elections.	Died
Illinois	SCA 9	Other - Recall elections	Allows for recall for supreme, appellate, and circuit judges and other elected officials.	Died
Illinois	HB 1344 2011	Contribution limits	Sets limits on contributions from political party committees to judicial candidate political committees during an election cycle at which candidates seek election at a general election.	Pending

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State	Bill No.	Type of Legislation	Category of regulation	Status
Illinois	SB 1272 2011	Contribution limits	Sets limits on contributions from political party committees to judicial candidate political committees during an election cycle at which candidates seek election at a general election.	Pending
Indiana				
Iowa	HF 2441	Reporting & Disclosure	Expands the definition of "political committee" to include corporations and labor organizations engaging in political activity.	Withdrawn
Iowa	SF 2128 2010	Reporting & Disclosure	Regulates the reporting and disclosure of political contributions, especially those from federal and out-of-state committees.	Passed
Iowa	SF 2195 2010	Other	Expands the definition of "political committee" to include corporations and labor organizations engaging in political activity.	Passed
Iowa	SF 2354 2010	Reporting & Disclosure Foreign Ban	Requires a "paid for by" disclosure on all political communications. Prohibits organizations that are owned by or are subsidiaries of foreign corporations from making independent expenditures Requires organizations paying for ads to electronically disclose details about the expenditure within 48 hours of the ad going out to the public, or the money being spent, whichever is sooner	Passed
Iowa	HF 379 2009	Public financing Reporting & Disclosure	Among several campaign finance provisions is the establishment of voluntary public financing. Includes regulations on the making of, as well as the reporting and disclosure of, independent expenditures.	Died
Iowa	HJR 2013 2010	Selection	Eliminates merit selection system for Supreme Court and requires direct, statewide elections. Reduces Supreme Court terms in office from 8 years to 6 or until successor takes office.	Died
Iowa	HJR 2014	Selection	Ends state's merit selection system. Permits governor to unilaterally appoint any person to fill a judicial vacancy who is a member of the Iowa bar and a resident.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Iowa	HJR 12 2011	Selection	Ends merit selection system for supreme court and district court and replaces with selection by governor and confirmation by senate.	Pending
Iowa	HJR 13 2011	Selection	Term limits for judges and justices. Provides supreme court justices and district court judges shall not serve more than 2 regular terms (i.e. 12 years) after initial term (of up to 2 years). Makes term limit effective after 2016.	Pending
Iowa	SJR 13 2011	Selection	Ends merit selection system for supreme court and replaces with elections. Specifies terms of office as being six years.	Pending
Kansas	HB 2733 2010	Reporting & Disclosure	Applies campaign finance reporting requirements to any person sponsoring any electioneering communication. Defines said communications.	Died
Kansas	HB 2123	Selection	Creates court of appeals nominating commission & removes power of supreme court nominating commission to nominate court of appeals judges. Court of appeals nominating commission to consist of 9 members, 3 selected by governor, 3 by senate president, 3 by house speaker, but in all cases no more than 1 of the 3 may be an attorney (Currently, supreme court nominating commission consists of 4 non-attorneys selected by governor and 5 attorneys selected by the state's attorneys). Nominee selected by Governor from list given by commission would require senate confirmation (currently, senate confirmation not required). Expands court of appeals from 13 to 14.	Died
Kansas	SB 593	Other	Includes judicial retention elections within current campaign finance laws.	Died
Kansas	HB 2101 2011	Selection	Ends merit selection system for future Court of Appeals judges. (current judges would still be subject to retention elections). Future judges to be appointed by governor and confirmed by Senate. Changes term of office for future judges to "during good behavior".	Pending

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State	Bill No.	Type of Legislation	Category of regulation	Status
Kansas	HCR 5015 2011	Selection	Provides governor appoints supreme court justices with senate confirmation. Provides nomination commission membership to consist of 9 members, no more than 3 of whom may be attorneys. Extends supreme court terms for current and future justices from six years to "good behavior".	Pending
Kansas	SCR 1603 2011	Selection	Ends merit selection nominating commission for supreme court. Replaces with appointment by governor of any qualified person with consent of both house and senate. Keeps retention elections at end of term(s).	Pending
Kentucky	SR 127 2010	Resolution stating disagreement	Expresses disagreement with the Citizens United ruling and reaffirms Kentucky's limits on corporate spending on elections.	Died
Kentucky	HB 21 2011	Public financing	Establishes clean judicial elections fund for use in races for, Supreme Court, Court of Appeals, Circuit Court, Family Court, or District Court. Permits the Supreme Court to require members of the Kentucky Bar Association to submit an annual fixed amount not to exceed $25 to be dedicated to the clean judicial elections fund.	Pending
Louisiana	HB 1 2008 (cross-reference HB 3A)	Disclosure	Requires every judge and candidates for judge in the state and many other government employees to disclose annually certain income, compensation, and financial transactions of the public servant or his spouse and additionally requires candidates for certain offices to file financial disclosure statements with the Board of Ethics. Amended to exempt Judiciary in HB 3A.	
Louisiana	HB 101 2010	Other - Term Limits	Prohibits judges from serving more than three terms.	Died
Louisiana	HB 289 2010	Other	Requires judges and justices reside in their respective districts, circuits, or parishes during the entirety of their term in office.	Involuntarily deferred

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State	Bill No.	Type of Legislation	Category of regulation	Status
Louisiana	HB 623 2010	Recusal	Provides that the judge to whom a motion to recuse is assigned shall have full power and authority to act in the cause pending the hearing of the motion to recuse.	Passed
Louisiana	HB 801 2010	Other - Term Limits	Decreases terms of Supreme Court justices from 10 to 6 years. Applies only to justices sworn into office after January 2012.	Involuntarily deferred
Louisiana	SB 72 2010	Disclosure	Extends all financial disclosure requirements and mandatory ethics training currently in place for other elected officials to judges.	Died
Maine				
Maryland	HB 1385 2010	Selection Other - Term Limits	Replaces current election system for circuit courts with merit selection system followed with retention elections. Reduces terms in office for circuit judges from 15 years to 10.	Died
Maryland	SB 883 2010	Selection Other - Term Limits	Replaces current election system for circuit courts with merit selection system followed with retention elections. Reduces terms in office for circuit judges from 15 years to 10.	Died
Maryland	HB 309 2011	Selection Other - Term Limits	Replaces current election system for circuit courts with merit selection system followed with retention elections. Reduces terms in office for circuit judges from 15 years to 10.	Died
Maryland	HB 375 2011	Selection Other - Term Limits	Replaces current election system for circuit courts with merit selection system followed with retention elections. Reduces terms in office for circuit judges from 15 years to 10.	Died
Maryland	SB 52 2011	Selection	Prohibits, under specified circumstances, a judge from filing a certificate of candidacy for judicial office or a campaign finance entity more than 2 years before the general election for the judicial office.	Pending
Maryland	HB 616 2010	Disclaimer Disclosure Shareholder approval	Regulates the making of independent expenditures, including disclosure requirements and shareholder approval.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Maryland	HB 725 2010	Foreign	Limits amount foreign nationals may donate to campaigns.	Died
Maryland	HB 917 2010	Contribution limits	Limits amount any "business entity" may donate to campaigns.	Died
Maryland	HB 986 2010	Disclaimer Disclosure Shareholder approval	Regulates corporate political contributions and campaign material, including Board oversight and shareholder approval. Creates right of action for shareholders if Act is violated.	Died
Maryland	HB 1029 2010	Reporting & Disclosure	Regulates the reporting and disclosure of independent expenditures made by business entities and nonprofits.	Died
Maryland	HB 1225 2010	Disclosure	Requires business entities and nonprofit organizations to include certain sponsor identification information on their campaign material.	Died
Maryland	HB 1504 2010	Foreign	Bars out-of-state political committees from making political contributions	Died
Maryland	SB 216 2010	Contribution limits	Modifies and expands existing law regarding political contributions made by affiliated business entities, applying the same restrictions as single-company contributors if certain conditions are met.	Died
Maryland	SB 543 2010	Reporting & Disclosure	Requires business entities and nonprofit organizations to file independent expenditure reports. Also requires that they include sponsor identification information on their campaign material.	Died
Maryland	SB 570 2010	Disclosure Board & Shareholder Approval	Regulates corporate political contributions and campaign material, including Board oversight and shareholder approval.	Died
Maryland	SB 601 2010	Contribution restriction Expenditure restriction	Bars business entities from contributing to campaign finance entities. Also prohibits expenditures in support of or opposed to candidates. Allows business spending only on ballot questions.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Maryland	SB 691 2010	Expenditure Restriction	Bars persons doing public business from making independent expenditures. Also lowers the "doing business" threshold from $100,000 to $5,000.	Died
Maryland	SB 750 2010	Foreign	Bars foreign nationals from making political contributions.	Died
Massachusetts	SB 772 2011	Resolution for federal action/ Constitutional Amendment	Expresses disagreement with Citizens United and calls on the US Congress to pass a constitutional amendment.	Pending
Massachusetts	HB 444 2011	Recusal	Requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. Defines standards of courtesy, conduct, and disqualification to be upheld by judges. Prohibits ex parte motions and practice except in specified instances	Pending
Massachusetts	SB 1562 2011	Recusal/Selection	Provides no member of the Judicial Nominating Commission or Commission on Judicial Conduct may make an appearance in a representative capacity or receive a financial compensation or benefit from a partner, associate or other member of a firm who has filed an appearance in a representative capacity, for compensation, before a court of the commonwealth.	Pending
Massachusetts	SB 650 2011	Recusal	Defines recusal standards and obligations. Allows any party to unilaterally declare the judge biased and have the judge removed one time per case. equires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.	Pending
Massachusetts	SB 877 2011	Recusal	Defines recusal standards and obligations. Allows any party to unilaterally declare the judge biased and have the judge removed one time per case. equires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.	Pending

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State	Bill No.	Type of Legislation	Category of regulation	Status
Massachusetts	HB 1476 2010	Recusal	Defines recusal standards and obligations. Allows any party to unilaterally declare the judge biased and have the judge removed one time per case.equires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.	Died
Massachusetts	SB 1567 2010	Recusal	Defines recusal standards and obligations. Allows any party to unilaterally declare the judge biased and have the judge removed one time per case. equires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.	Died
Massachusetts	SB 1807 2010	Recusal	Requires judges refer motions to recuse to another judge. Specifies requirements for recusal or disqualification. equires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.	Died
Massachusetts	SB 337 2010	Selection	Prohibits candidates for judicial office to maintain a campaign fund or account subsequent to being confirmed to a judgeship.	Died
Massachusetts	SD 2666 2011	Resolution for federal action/ Constitutional Amendment	Calls on the US Congress to pass a constitutional amendment barring the use of "person" when defining "corporate entity."	Died
Massachusetts	HB 4857 2010	Shareholder Approval Reporting & Disclosure	Requires majority shareholder approval before corporation can make independent expenditures. All corporate-sponsored political advertisements must include a disclaimer.	Died
Massachusetts	HB 4800 2011	Reporting & Disclosure	Amended the budget to require a disclaimer on corporate-sponsored political advertisements.	Passed
Michigan	HB 5893 2010	Selection	Permits judicial candidates pay additional filing fees in lieu of collecting signatures ($1,000 for circuit court; $500 for district court).	Died

State	Bill No.	Type of Legislation	Category of regulation	Status
Michigan	HJR 16 2009	Recusal	Specifies basis for judicial recusal. Requires a supreme court justices to disqualifiy himself or herself if his or her impartiablity might reasonably be questioned.	Died
Michigan	HJR 46 2010	Selection	Provides for election of supreme court justices from districts rather than statewide.	Died
Michigan	HJR 61 2010	Selection, Qualifications & Terms	Disqualifies a person who has been convicted of certain felonies from election or appointment to an elective office and from certain public employment, including judgeship.	Died
Michigan	SB 53 2010	Public Financing	Provides for voluntary public financing of supreme court campaigns.	Died
Michigan	SB 745 2010	Selection	Requires Supreme Court Justices be elected by districts rather than statewide.	Died
Michigan	SJR 21 2010	Selection	Eliminates the designation of incumbency on judicial ballots.	Died
Michigan	SB 1361 2010	Reporting & Disclosure	Corporations must file notification of independent expenditure with Secretary of State at least five days before making one.	Died
Michigan	HB 6183 2010	Reporting & Disclosure Shareholder Rights	Corporations and labor organizations must notify the Secretary of State of independent expenditures and include a disclaimer in electioneering communications. Independent expenditures must be approved by a majority of shareholders.	Died
Michigan	HB 6184 2010	Corporate Contribution Ban	Corporations that: contracted with the state, received a grant funded in part by the state, received or applied for a tax credit or incentive, or accepted assistance under TARP would all be prohibited from making an independent expenditure. Additionally, an electric utility, natural gas utility, or insurer would be prohibited from making an independent expenditure.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Michigan	HB 6186 2010	Foreign	Prohibits independent expenditures by corporations or joint stock companies incorporated in a foreign country, from a subsidiary thereof, from a corporation having a shareholder who is not a U.S. citizen, or from a corporation having a corporate officer who is not a U.S. citizen. Prohibits a person who has received money from any such corporation from making an independent expenditure.	Died
Michigan	HB 6187 2010	Other	Imposes civil liability on corporate officers and shareholders for improper independent expenditures by a corporation.	Died
Michigan	HB 6055 2010	Reporting & Disclosure Shareholder Rights	Requires disclosure to and the affirmative consent of a majority of shareholders before a corporation may make an independent expenditure.	Died
Michigan	SB 1362 2010	Reporting & Disclosure Shareholder Rights	Requires disclosure to and the affirmative consent of a majority of shareholders before a corporation may make an independent expenditure. Corporations must keep records and provide them to a Michigan elector whenever they are requested.	Died
Michigan	SB 1363 2010	Corporate Contribution Ban	Corporations that: contracted with the state, received a grant funded in part by the state, received or applied for a tax credit or incentive, or accepted assistance under TARP would all be prohibited from making an independent expenditure. Additionally, an electric utility, natural gas utility, or insurer would be prohibited from making an independent expenditure.	Died
Michigan	SB 2364 2010	Foreign	Prohibits independent expenditures by corporations or joint stock companies incorporated in a foreign country, from a subsidiary thereof, from a corporation having a shareholder who is not a U.S. citizen, or from a corporation having a corporate officer who is not a U.S. citizen. Prohibits a person who has received money from any such corporation from making an independent expenditure.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Michigan	SB 1365 2010	Other	Provides for a penalty of up to $5,000 and/or imprisonment up to three years for violations of related campaign finance laws by corporations.	Died
Michigan	SB 1366 2010	Other	Imposes liability on corporate officers and shareholders for improper independent expenditures by a corporation.	Died
Minnesota	HF 1154 2011	Selection	Requires judges and others be elected by majority of all votes cast (ends winning-by-plurality).	Pending
Minnesota	SF 627 2011	Selection, Qualifications & Terms	Deletes provision that puts word "incumbent" after judge's name if seeking re-election.	Pending
Minnesota	HF 1206 2010	Contribution limits	Sets contributions limits for judicial candidates: $2,000 in an election year for the office sought and $500 in other years.	Died
Minnesota	HF 1632 2010	Selection	Replaces Board of Judicial Standards with 8 randomly selected citizens, plus 2 people selected by the House and Senate. Grants legislature power to "retire" a judge for a physical or mental disability or violations of state/federal laws or constitutions. Provides the Board may sit in review and judgment of court decisions and my overturn those decisions but specifies the state government, political subdivisions, and corporations must seek review in the appellate courts instead. Provides that if the Board determines a jurist is in violation of state/federal laws and constitutions the Board may overturn the judge's decision and remove or merely "warn" the judge. Any determination of the Board as the legality/constitutionality of the jurist is deemed unappealable to any court; removal and other determinations of the Board are only to be appealed to the legislature. Repeal requirement that when courts seek to determine legislative intent they may used the decisions of a court of last resort that has construed the language of the law or one dealing with the same subjects.	Died

State	Bill No.	Type of Legislation	Category of regulation	Status
Minnesota	HF 1826 2010	Selection	Requires vacancies in judicial office be filled by election rather than appointment. Provides that service in finishing out an unfinished term is excluded from allowable service for retirement. Requires judges retire at the end of the term in which the judge has reached the age of 70 (currently, must retire in the month they turn 70).	Died
Minnesota	HF 2119 2010	Selection	Requires Commission on Judicial Selection participate in filling of appellate court vacancies. Requires commission solicit recommendations from statewide attorney associations and from organizations that represent minority or women attorneys.	Died
Minnesota	HF 224 2010	Selection	Establishes retention elections for judges. Expands terms of office from six to eight years. Creates a judicial performance commission. Commission must issue in year judge seeks retention evaluation of "well-qualified," "qualified," or "unqualified".	Died
Minnesota	HF 31 2010	Selection Disclaimer Disclosure	Expands definition of public official in campaign finance and public disclosure law to include district court judge, Appeals Court judge, or Supreme Court justice.	Died
Minnesota	HF 3634 2010	Selection	Merit selection required for all justices and judges. Modifies requirements related to the Commission on Judicial Selection.	Died
Minnesota	HF 3738 2010	Constitutional Amendment	Declares federal laws do not apply in Minnesota unless approved by two-thirds vote of state legislature and governor. Declares Minnesota courts must provide jury trials for violations of this provision.	Died
Minnesota	HF 3829 2010	Constitutional Amend. Selection	Establishes retention elections for judges. Expands terms of office from six to eight years. Creates a judicial performance commission. Commission must issue in year judge seeks retention evaluation of "well-qualified," "qualified," or "unqualified".	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Minnesota	HF 440 2010	Constitutional Amend. Selection	Executive officer, judge, or legislator required to be elected by a majority of the votes cast at the general election for the office.	Died
Minnesota	HF 87 2010	Disclosure	Creates judicial candidate voluntary conduct restrictions, prohibiting announcement of views, partisan activities, or personal solicitation of campaign funds. Judicial candidates that decline to agree to the restrictions have following placed on ballot next to their name in red: ``WARNING: This candidate has refused to be voluntarily bound by campaign ethics rules for judicial candidates.`` Candidates that agree to restrictions to have ``This candidate has voluntarily agreed to be bound by campaign ethics rules for judicial candidates.`` placed next to their names.	Died
Minnesota	HF 970 2010	Selection	Requires runoffs, rather than recounts, in judicial and other elections.	Died
Minnesota	SF 1119 2010	Constitutional Amend. Selection	Requires executive officer, judge, or legislator be elected by a majority of the votes cast at the general election for the office.	Died
Minnesota	SF 157 2010	Disclosure/ Disclaimer	Expands definition of public official in campaign finance and public disclosure law to include district court judge, Appeals Court judge, or Supreme Court justice.	Died
Minnesota	SF 1788 2010	Selection	Requires Commission on Judicial Selection participate in filling of appellate court vacancies. Requires commission solicit recommendations from statewide attorney associations and from organizations that represent minority or women attorneys.	Died
Minnesota	SF 3152 2010	Selection	Merit selection required for all justices and judges. Modifies requirements related to the Commission on Judicial Selection.	Withdrawn by sponsor

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State	Bill No.	Type of Legislation	Category of regulation	Status
Minnesota	SF 3378 2010	Constitutional Amendment	Declares federal laws do not apply in Minnesota unless approved by two-thirds vote of state legislature and governor. Declares Minnesota courts must provide jury trials for violations of this provision.	Died
Minnesota	SF 70 2010	Selection	Establishes retention elections for judges. Expands terms of office from six to eight years. Creates a judicial performance commission. Commission must issue in year judge seeks retention evaluation of "well-qualified," "qualified," or "unqualified".	Died
Minnesota	SF 80 2010	Contribution limits	Sets contributions limits for judicial candidates: $2,000 in an election year for the office sought and $500 in other years. Full text at https://www.revisor.mn.gov/statutes/?id=211B.15	Signed into law 5/7/10
Minnesota	HF 913 2009	Other	Removes certain unconstitutional provisions governing independent expenditures	Died
Minnesota	SF 425 2009	Other	Removes certain unconstitutional provisions governing independent expenditures.	Died
Minnesota	SF 2353 2010	Other	Repeals the ban on independent expenditures by corporations.	Died
Minnesota	SF 3018 2010	Disclaimer & Disclosure	Among several campaign finance provisions are regulations on the making of, as well as the reporting and disclosure of, independent expenditures.	Died
Minnesota	SF 3157 2010	Other	Allows corporations to make independent expenditures.	Died
Minnesota	HF 1206 2010	Other	Among several campaign finance provisions is a modified definition of independent expenditures, which now includes certain political party expenditures.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Minnesota	HF 3660 2010	Disclaimer & Disclosure	Among several campaign finance provisions are regulations on the making of, as well as the reporting and disclosure of, independent expenditures.	Died
Minnesota	SF 2471 2010	Reporting & Disclosure	Narrows the definition of "independent expenditure." Creates campaign finance reporting and independent disclosures including disclaimers.	Passed
Minnesota	HF 3454 2010	Corporate Contribution Ban	Repeals the ban on independent expenditures by corporations.	Died
Minnesota	HF 3559 2010	Corporate Contribution Ban	Permits corporations to make independent expenditures.	Died
Minnesota	SF 3157 2010	Reporting & Disclosure	Permits corporations to make independent expenditures, while requiring corporate officials to keep and file records of all contributions including independent expenditures of greater than $100. Imposes civil penalties on corporate officers who do not adhere to these requirements.	Died
Minnesota	HF 3368 2010	Reporting & Disclosure Other	Requires a disclaimer on certain campaign materials. Adjusts cap on total amount a candidate may spend during an election. Requires that independent expenditures of greater than $500 be registered with the Board of Elections.	Died
Minnesota	SF 3293 2010	Reporting & Disclosure Campaign Finance Other	Requires a disclaimer on certain campaign materials. Adjusts cap on total amount a candidate may spend during an election. Requires that independent expenditures of greater than $500 be registered with the Board of Elections. Raises the amount of state tax return can be designated to the sttae elections campaign fund.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Minnesota	SF 3398 2010	Reporting & Disclosure Shareholder Rights	Independent expenditures of greater than $5000 require the corporation making them to file notice with the Board of Elections within 48 hours. At least quarterly corporations that make independent expenditures must notify their shareholders of the amount. Provides for audits to ensure compliance with these provisions.	Died
Minnesota	HF 3821 2010	Reporting & Disclosure Shareholder Rights	Independent expenditures of greater than $5000 require the corporation making them to file notice with the Board of Elections within 48 hours. At least quarterly corporations that make independent expenditures must notify their shareholders of the amount. Provides for audits to ensure compliance with these provisions.	Died
Mississippi	HB 1 2011	Selection	Changes date for election of all judges and other officials to Saturday.	Pending
Mississippi	HB 229 2011	Selection	Provides that justices of the Supreme Court and Court of Appeals are to be initially appointed by the Governor with Senate confirmation. Provides for yes/no retention elections for subsequent terms.	Pending
Mississippi	HB 287 2011	Selection	Repeals Nonpartisan Judicial Election Act. Requires all judicial elections currently conducted in a nonpartisan manner (i.e. all courts except Justice Courts) to be by partisan ballot.	Pending
Mississippi	HB 471 2011	Selection	Provides that justices of the Supreme Court are to be initially appointed by the Governor with Senate confirmation. Provides for yes/no retention elections for subsequent terms.	Pending

State	Bill No.	Type of Legislation	Category of regulation	Status
Mississippi	HB 725 2011	Other - Judicial Conduct	Enacts Mississippi Court Corruption Act. Prohibits any judge from depriving any person of their constitutional and civil rights. Subjects to $5,000 fine and suspension from the practice of law any judge who is found guilty of false pretense, who abuses or exceeds their judicial power, who is guilty of improper courtroom decorum or who engages in unethical conduct. Provides "No judge shall issue any ruling on a legal matter without conducting a fair hearing which allows all interested parties to participate." Provides a violation of the fair-hearing provision subjects judge to fine/suspension.	Pending
Mississippi	HB 773 2011	Selection	Establishes procedure where a single candidate has qualified for election to judicial office but dies, resigns, or is otherwise disqualified prior to the general election.	Pending
Mississippi	HCR 7 2011	Selection	Provides that justices of the Supreme Court are to be initially appointed by the Governor with Senate confirmation. Provides for yes/no retention elections for subsequent terms.	Pending
Mississippi	SCR 518 2011	Selection	Requires all elections, including those for judicial offices, be held on even numbered years. Reduces terms of current office holders accordingly.	Pending
Mississippi	HB 1554 2010	Selection	Prohibits judicial candidates from qualifying before January 1 of the year in which the election is held.	Died
Mississippi	HB 304 2010	Selection	Requires election of county officers, including justice court judge, chancery clerk, and circuit clerk, be nonpartisan.	Died
Mississippi	HB 409 2010	Selection	Requires elections for chancery clerk, circuit clerk, justice court judge and all other county offices by nonpartisan ballot.	Died
Mississippi	HB 460 2010	Selection	Repeals Nonpartisan Judicial Election Act. Requires all judicial elections currently conducted in a nonpartisan manner (i.e. all courts except Justice) to be by partisan ballot.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Mississippi	HB 494 2010	Selection	Repeals Nonpartisan Judicial Election Act. Requires all judicial elections currently conducted in a nonpartisan manner (i.e. all courts except Justice) to be by partisan ballot.	Died
Mississippi	HCR 22 2010	Selection	Provides that justices of the Supreme Court are to be initially appointed by the Governor with Senate confirmation. Provides for yes/no retention elections for subsequent terms.	Died
Mississippi	SB 3033 2010	Selection	Prohibits judicial candidates from qualifying before January 1 of the year in which the election is held.	Signed into law 3/17/10
Mississippi	SCR 561 2010	Selection	Requires all elections, including those for judicial offices, be held on even numbered years. Reduces terms of current office holders accordingly.	Died
Mississippi	HB 383 2010	Disclaimer & Disclosure	Among several campaign finance provisions are regulations on the making of, as well as the reporting and disclosure of, independent expenditures.	Died
Mississippi	SB 2050 2010	Disclaimer & Disclosure	Among several campaign finance provisions are regulations on the making of, as well as the reporting and disclosure of, independent expenditures.	Died
Missouri	HB 567 2011	Other	Partial redistricting of judicial districts.	Pending

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State	Bill No.	Type of Legislation	Category of regulation	Status
Missouri	HJR 18 2011	Selection	Modifies state merit selection system. Increases from 3 to 5 names to be submitted to governor. Allows governor to reject first panel of 5 names and receive additional panel, none of whom may have been named in first panel. Changes appellate judicial commission to remove justice of supreme court, provides non-lawyer members appointed may not be the spouse of a member of the bar, and all commissioners must be senate confirmed. Makes similar changes to circuit judicial commissions. Ends service of all current commission members effective date of adoption of amendment. Allows incoming governors to remove commissioners appointed by prior governor(s).	Pending
Missouri	SB 218 2011	Other	Partial redistricting of judicial districts.	Pending
Missouri	SB 225 2011	Selection	Provides for nonpartisan elections of judicial candidates currently subject to partisan elections. Forbids certain judges and candidates from engaging in political activities.	Pending
Missouri	SB 75 2011	Contribution limits	Imposes campaign contribution limits. For judicial candidates $325, $650 or $1,275 (depending on size of district elected from).	Pending
Missouri	SJR 17 2011	Selection	Modifies state merit selection system. Increases from 3 to 5 names to be submitted to governor. Allows governor to reject first panel of 5 names and receive additional panel, none of whom may have been named in first panel. Changes appellate judicial commission to remove justice of supreme court, provides non-lawyer members appointed may not be the spouse of a member of the bar, and all commissioners must be senate confirmed. Makes similar changes to circuit judicial commissions. Ends service of all current commission members effective date of adoption of amendment. Allows incoming governors to remove commissioners appointed by prior governor(s).	Pending
Missouri	HB 1322 2010	Contribution limits	Imposes campaign contribution limits. For judicial candidates $325, $650 or $1,275 (depending on size of district elected from).	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Missouri	HB 1326 2010	Contribution limits	Imposes campaign contribution limits. For judicial candidates $325, $650 or $1,275 (depending on size of district elected from).	Died
Missouri	HB 1327 2010	Contribution limits	Imposes campaign contribution limits. For judicial candidates $325, $650 or $1,275 (depending on size of district elected from).	Died
Missouri	HJR 82 2010	Other	Requires all impeachments, except that of the governor, be tried by the Senate (currently, Supreme Court tries all impeachments).	Died
Missouri	HJR 91 2010	Contribution limits	Imposes campaign contribution limits. For judicial candidates $325, $650 or $1,275 (depending on size of district elected from).	Died
Missouri	SB 648 2010	Contribution limits	Imposes campaign contribution limits. For judicial candidates $325, $650 or $1,275 (depending on size of district elected from).	Died
Missouri	SJR 27 2010	Selection	Ends merit selection in state. Allows governor to select any person to fill a judicial vacancy subject to senate confirmation. Subsequent terms to be obtained via retention elections.	Died
Montana	D 38 2011	Selection	Creates merit selection system for justices of the supreme court. Majority of merit selection commission must be lay members who are neither attorneys nor elected officeholders. Initial terms limited to a maximum of 3 years. Requires creation of judicial performance evaluation system. Referendum to be submitted to voters in November 2012.	Pending
Montana	HB 245 2011	Other	Reduces size of supreme court from 7 to 5 justices. Removes seats number 5 and 6, which were created in 1979 and whose terms are currently set to expire in 2013 (Justices James Nelson and Brian Morris).	Tabled by committee

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State	Bill No.	Type of Legislation	Category of regulation	Status
Montana	HB 443 2011	Other - State's rights	Declares certain federal laws null and void. Makes a felony an occurrence where a state judge or other official attempts to enforce the specified federal laws or court decisions related to them.	Tabled by committee
Montana	HB 521 2011	Selection	Requires all judges be elected by partisan ballot. Eliminates prohibition on party endorsement of judicial candidates. Referendum to be submitted to voters in November 2012.	Pending
Montana	HB 557 2011	Selection	Allows political parties to support and oppose judicial candidates.	Pending
Montana	HB 89 2011	Disclosure	Provides candidates for district judgeship need not file certain documents with county election officials and are instead to file with the state-level commissioner of political practices. Full text at http://data.opi.mt.gov/bills/2011/billhtml/HB0089.htm	Signed into law 3/11/11
Montana	HJ 14 2011	Other - State's rights	Declares a "Judicial Order of the United States that assumes a power not delegated by the United States Constitution and diminishes the liberty of this State or its citizens constitutes a breach of the United States Constitution and Bill of Rights by the government of the United States, which would also breach Montana's Compact With the United States."	Tabled by committee
Montana	SB 123 2011	Recusal	Requires supreme court justice recuse when party or party's attorney has made in the last 8 years aggregate contributions greater than what would be permitted to be contributed in a single election ($300 under present law). Also requires recusal where the party or attorney made aggregate contributions to a political committee that made independent expenditures in the justice's campaign for the court above the $300 level.	Tabled by committee

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State	Bill No.	Type of Legislation	Category of regulation	Status
Montana	SB 175 2011	Selection	Creates merit selection system for justices of the supreme court. Majority of merit selection commission must be lay members who are neither attorneys nor elected officeholders. Initial terms limited to a maximum of 3 years. Requires creation of judicial performance evaluation system. Referendum to be submitted to voters in November 2012.	Died
Montana	SB 268 2011	Selection	Referendum to require election of supreme court justices from districts.	Pending
Montana	SB 323 2011	Other	Permits supreme court decisions invalidating statute to be over-ridden by state voters in referendum.	Tabled by committee
Montana	§ 13-35-227 (1912)	Contribution limits	Statute, enacted in 1912, prohibited contributions by corporations. Amended by initative to prohibit direct corporate expenditures in ballot intiative campaigns. The law was challenged, and the court held that the initative violated the First Amendment. See 226 F.3d 1049 (2000).	N/a
Nebraska	LB 368 2009	Disclosure	Creates very strict rules of disclosure for corporations, labor unions, and business organizations	Died
Nevada	AB 7 2011	Recusal	Extends from 2 days to 5 days time a judge whose recusal has been requested has in order to respond to affidavit for recusal. Clarifies days as used means judicial days.	Enacted on 3/30/2011
Nevada	AB 81 2011	Selection	Increases filing fees to run for judicial and other offices. Provides for placement of supreme court candidates on ballot.	Pending
New Hampshire	CACR 11 2011	Other (age/term limits)	Sets 5 year terms for judges (currently, they serve during good behavior until age 70).	Pending
New Hampshire	CACR 2 2011	Other (age/term limits)	Repeals terms for judges (currently, they serve during good behavior until age 70). Allows legislature to set terms of office.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
New Hampshire	HB 334 2011	Selection	Establishes a judicial performance review commission and requires each district court and superior court judge and marital master to be reviewed by the commission every 3 years.	Pending
New Hampshire	HB 511 2011	Other	Clarifies that retired judges over 70 years of age shall not serve as judges in any judicial capacity except as judicial referees.	Pending
New Hampshire	HCR 19 2011	Other	Declares, in part, that any "Judicial Order by the Judicatories of the United States of America which assumes a power not delegated to the government of United States of America by the Constitution for the United States of America and which serves to diminish the liberty of the any of the several States or their citizens shall constitute a nullification of the Constitution for the United States of America by the government of the United States of America." Specifies acts which would cause "nullification" and that in the event such an act takes place, "all powers previously delegated to the United States of America by the Constitution for the United States shall revert to the several States individually."	Pending
New Hampshire	CACR 21 2010	Other (age/term limits)	Eliminates mandatory retirement at 70 for judges. Constitutional amendment	Died
New Hampshire	HB 1185 2010	Other (age/term limits)	Clarifies that retired judges over 70 years of age shall not serve as judges in any judicial capacity except as judicial referees.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
New Hampshire	HB 1343 2010	Other - State's rights	Declares, in part, that any "Judicial Order by the Judicatories of the United States of America which assumes a power not delegated to the government of United States of America by the Constitution for the United States of America and which serves to diminish the liberty of the any of the several States or their citizens shall constitute a nullification of the Constitution for the United States of America by the government of the United States of America." Specifies acts which would cause "nullification" and that in the event such an act takes place, "all powers previously delegated to the United States of America by the Constitution for the United States shall revert to the several States individually."	Died
New Hampshire	HB 1410 2010	Other	Prohibits lobbyists from serving on judicial branch commissions, committees, boards, or similar government entities.	Died
New Hampshire	HB 1367 2010	Corporate ban Disclosure	Requires business organizations and labor unions to form political committees if they wish to make political contributions. Requires that such spending only be done from separate accounts funded by voluntary contributions. Also includes reporting requirements for independent expenditures. Requires specific disclaimer on all TV campaign ads.	Died
New Hampshire	NH Law § 664:4	Corporate ban	Statute, enacted in 1979, prohibited all corporate camapign contributions. Held to be an unconstitutional violation of the First Amendment; encouraging poetential candidates to run for office and having races be competitive to not a compelling interest that justifies this restriction. See Op.Atty.Gen. No. 00-2, June 6, 2000.	N/a
New Hampshire	HB 1459 2010	Reporting & Disclosure	Packaged with many provisions regulating banking, requires the filing of a statement with the secretary of state before a corporationengages in political advertising or advocacy advertising in the state.	Died

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New Jersey	ACR 14 2010	Selection	Provides for 5 year terms for Justices of the Supreme Court and for tenure elections for a Justice to receive tenure upon reappointment. Constitutional Amendment	Died
New Jersey	ACR 19 2010	Selection	Provides for 5 year terms for Justices of the Supreme Court and for tenure elections for a Justice to receive tenure upon reappointment. Constitutional Amendment	Died
New Jersey	ACR 70 2010	Other (age/term limits)	Increases mandatory retirement age for judges and justices from 70 to 75. Constitutional Amendment	Died
New Jersey	ACR 78 2010	Selection	Abolishes tenure for Supreme Court justices and establishes retention elections as part of the reappointment process. Constitutional Amendment	Died
New Jersey	SCR 80 2010	Selection	Provides for 5 year terms for Justices of the Supreme Court and for tenure elections for a Justice to receive tenure upon reappointment. Constitutional Amendment	Died
New Jersey	SCR 91 2010	Selection	Provides for 5 year terms for Justices of the Supreme Court and for tenure elections for a Justice to receive tenure upon reappointment.	Died
New Jersey	AR 64 2010	Resolution for federal action/ Constitutional Amendment	Expresses disagreement with the Citizens United ruling and calls on the US Congress to pass a constitutional amendment.	Died
New Mexico	HJR 15 2011	Selection	Requires appointed judges serve at least a year before a general election is held for that office. Const'l amdt	Died
New Mexico	SB 527 2011	Contribution limits	Prohibits attorneys from contributing to judicial elections or endorsing judicial candidates. Prohibits judicial candidates from personally soliciting campaign funds.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
New Mexico	SB 576 2011	Other - Judicial Conduct	Provides "notwithstanding any provision of the code of judicial conduct to the contrary, a candidate for judicial office retains all constitutionally protected rights of free speech during the campaign and election process.A judicial candidate may exercise the candidate's free speech rights by discussing controversies or issues that are relevant to voters in an election. A canon of judicial conduct shall not prohibit judicial speech based on its content."	Died
New York	AB 225 2011	Other	Authorizes retired judges and justices to serve as justice of supreme court until age 80. Constitutional Amendment	Pending
New York	AB 309 2011	Selection	Directs the commission on judicial nomination to send the names of all well qualified candidates to the governor for appointment to the state's highest court (court of appeals).	Pending
New York	AB 5703 2011	Selection	Establishes a system of merit selection of judges of the state's major trial courts.	Pending
New York	AB 876 2011	Disclosure Recusal	Requires parties and their counsel disclose to opposing counsel campaign contributions above $500 in the last five years to campaign of the judge presiding over their case. Provides if the other side has made no such contributions themselves, the judge must recuse upon timely application of the non-contributing party.	Pending
New York	SB 1226 2011	Other	Eliminates the mandatory retirement for judges.	Pending
New York	SB 1562 2011	Selection	Requires that judges be enrolled members of the party for which they are running in the primary election or to have received a proper certificate of authorization filed properly according to the election law.	Pending
New York	AB 11482 2010	Other	Authorizes retired judges and justices to serve as justice of supreme court until age 80.	Pending

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State	Bill No.	Type of Legislation	Category of regulation	Status
New York	AB 3866 2010	Selection	Directs the commission on judicial nominations to forward to the governor all well qualified candidates for associate judge and/or chief judge.	Died
New York	AB 6728 2010	Contribution limits Public financing	Limits judicial campaign contributions to $500. Provides for optional public financing of judicial elections.	Died
New York	AB 6879 2010	Disclosure Recusal	Requires parties and their counsel disclose to opposing counsel campaign contributions above $500 in the last five years to campaign of the judge presiding over their case. Provides if the other side has made no such contributions themselves, the judge must recuse upon timely application of the non-contributing party.	Died
New York	AB 7050 2010	Selection	Makes all judicial elections nonpartisan. Prohibits judicial candidates from engaging in any partisan political activity (except registering and voting as a party member), endorsing candidates, accept or solicit party contributions.	Died
New York	SB 6080 2010	Selection	Prohibits judicial nominating commission members from continuing to serve on the commission beyond their term (i.e. ends "holdover" appointments). Requires commission fill vacancies before they occur. Invites commission to consider racial, gender, ethnic, geographic and experiential diversity and increases number of names submitted to the governor. Requires additional online disclosure of commission practices and procedures. Modifies current commission's "weighted voting" practice.	Died
New York	SB 6254 2010	Other	Eliminates mandatory retirement at 70 for judges. Constitutional Amendment	Died
New York	AB 696 2011	Shareholder Approval	Refers to Citizens United in its requiring of shareholder approval of corporate political contributions.	Pending

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State	Bill No.	Type of Legislation	Category of regulation	Status
New York	SB 7063 2010	Corporate ban	Bars limited liability companies from making political contributions.	Died
New York	SB 7083 2010	Shareholder Approval	Requires shareholder approval of corporate political contributions.	Died
North Carolina	HB 325 2011	Selection	Ends elections for judges. Provides for initial appointment by the Governor of anyone otherwise qualified to serve as a judge. Provides, after at least 24 months of service, judge or justice to be subject to Yes/No election. If retained, to serve full term. Provides chief justice to be selected by members of supreme court.	Pending
North Carolina	HB 64 2011	Selection	Returns judicial elections to partisan ones.	Pending
North Carolina	HB 99 2011	Selection	Provides when a vacancy due to death, retirement, etc. on the appellate courts is filled by governor, the judge appointed shall hold their places until the second election for members of the General Assembly that is held after the vacancy occurs. Changes requirement for a special election to fill a vacancy for the remainder of the term of superior court judge from 60 days to 90 days prior to the general election. Constitutional Amendment	Pending
North Carolina	SB 419 2011	Public Financing	Ends public financing for judicial races.	Pending
North Carolina	SB 458 2011	Selection	Creates merit selection system for appellate courts. Provides for yes/no retention elections. Grants governor power to appoint chief justice from among justices of supreme court.	Pending
North Carolina	SB 47 2011	Selection	Returns judicial elections to partisan ones.	Pending

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State	Bill No.	Type of Legislation	Category of regulation	Status
North Carolina	HB 748 2010	Disclaimer & Disclosure	Replaces outright ban on corporate political campaign contributions and electioneering communications with stringent disclosure requirements. Full text at http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H748v6.pdf	Signed into law 8/2/2010
North Carolina	HB 2013 2010	Reporting & Disclosure Shareholder Rights	Explicitly referencing *Citizens United* and Iowa's response, requires disclosure of all independent expenditures of greater than $750 and shareholder approval.	Died
North Carolina	HB 2023 2010	Reporting & Disclosure Board Approval	Explicitly referencing *Citizens United*, requires disclosure of all independent expenditures of greater than $750 and approval by a majority of the corporation's board of directors.	Died
North Dakota	N.D. L. Ch. 16.1-08.1	Disclaimer & Disclosure Corporate ban	Bars corporate donations to political party or candidate. Enacts strict disclosure requirements. Full text at http://www.legis.nd.gov/cencode/t161c081.pdf	Passed
Ohio	HB 55 2011	Campaign Finance	Regulates independent expenditures by corporations; prohibts contributions by corporations made for the purpose of influencing a ballot isse.	Pending
Ohio	SB 240 2010	Reporting & Disclosure	Allows corporations and labor organizations to make independent expenditures. Requires that they file campaign finance reports.	Died
Ohio	HB 506 2010	Disclaimer & Disclosure Board & Shareholder Approval	Disclaimer and disclsoure requirements. Prohibits independent expenditure from corporation under specified conditions, e.g., corporation has a bid upon a state contract. Requires shareholder/board approval.	Died
Ohio	SJR 11 2010	Selection	Makes an appointment to fill a vacancy on the Supreme Court subject to the advice and consent of the Senate.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Oklahoma	HB 1537 2011	Public Financing	Creates public financing system for elected officials	Pending
Oklahoma	HJR 1008 2011	Selection	Requires partisan elections for all appellate judges.	Pending
Oklahoma	HJR 1009 2011	Selection	Allows governor to appoint any person, not just those submitted by judicial nomination commission, to appellate court. Requires appointments be subject to senate confirmation.	Pending
Oklahoma	SB 22 2011	Other	Requires all judicial officers whose names will appear on a General Election ballot to make their written rulings and opinions available to the public for a period of time of at least sixty (60) days before the date of the election.	Pending
Oklahoma	SB 543 2011	Selection	Provides for partisan election for district judges and associate district judges.	Pending
Oklahoma	SB 790 2011	Recusal	Requires appeal of judge's denial of recusal motion go directly to supreme court	Pending
Oklahoma	SJR 15 2011	Selection	Requires judicial appointment made by governor under state's merit selection system be confirmed by senate.	Pending
Oklahoma	SJR 36 2011	Selection	Ends state's merit selection system. Allows governor to appoint any qualified person with senate confirmation.	Pending
Oregon	SB 1058 2010	Contribution limits	Sets campaign contribution limits for judicial and other races. Individuals: $1,000 for a candidate for the Supreme Court, Court of Appeals or Oregon Tax Court and $500 for all judicial other races. Sets limits on PACs and "small donor organization" groups.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Pennsylvania	SB 55 2011	Selection	Provides for retention elections for justices of the peace.	Pending
Pennsylvania	SB 59 2011	Other - Judicial Conduct	Requires Judicial Conduct Board review every complaint filed against a judicial officer that addresses potential ethical violations and make a determination whether further action should be taken on the complaint. Prohibits dismissal based solely on decision by the board's chief counsel. Prohibits deferral of investigation of complaint because of possible pending criminal investigations or charges. Requires judge who is notified of pending criminal investigation forward notice to Board, who must start its own investigation.	Pending
Pennsylvania	SB 860 2010	Selection	Creates merit selection system for the state's appellate courts. Provides for Appellate Nomination Commission and specifies composition. Provides for retention elections.	Died
Pennsylvania	HB 1837 2010	Public Financing	Creates public financing system for appellate court races.	Died
Pennsylvania	HB 1252 2010	Judicial Conduct	Creates Judicial Conduct Board within Executive Branch, a majority of whom cannot be lawyers. Creates Court of Judicial Discipline within the Judicial Branch to hear complaints filed by Judicial Conduct Board and censure, remove, or otherwise discipline judges.	Died
Pennsylvania	HR 653 2010	Resolution for federal action/ Constitutional Amendment	Expresses disagreement with the Citizens United ruling and calls on the US Congress to call a constitutional convention to amend the Constitution	Died
Pennsylvania	SB 1269 2010	Campaign Finance Reporting	Electoral reform bill that includes provisions related to out-of-state political committees and independent expenditures; provide for contribution limts and reporting requirements	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Pennsylvania	SB 861 2010	Selection	Creates 14 member Appellate Court Nominating Commission. Commission to provide 5 names to Governor.	Died
Rhode Island	HB 5091 2011 SB 229 2011	Selection	Vests with the governor the sole authority to nominate, on the basis of merit, from a list submitted by the judicial nominating commission with the advice and consent of the senate, all judges and magistrates, to all courts. (Currently presiding judges & chief judges appoint certain magistrates).	Pending
Rhode Island	HB 7120 2010	Selection	Vests with the governor the sole authority to nominate, on the basis of merit, from a list submitted by the judicial nominating commission with the advice and consent of the senate, all judges and magistrates, to all courts. (Currently presiding judges & chief judges appoint certain magistrates).	Held for further study
Rhode Island	Regulations	Disclaimer & Disclosure	Establishes a disclaimer requirement for independent expenditures. Requires disclosure of source of the funds and prohibits disguising the source of contribution. See http://sos.ri.gov/documents/archives/regdocs/released/pdf/BOE/6126.pdf, and http://reporting.sunlightfoundation.com/2010/citizens-united-rhode-islands-response/	Passed
Rhode Island	SR 2698 2010	Resolution for federal action	Expresses disagreement with Citizens United and calls on the US Congress to take action through legislation.	Died
South Carolina	HB 3135 2011	Selection	Requires election of probate judges be nonpartisan.	Pending
South Carolina	HB 3147 2011	Selection	Requires Judicial Merit Selection Commission submit the names of all qualified candidates to legislature.	Pending

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State	Bill No.	Type of Legislation	Category of regulation	Status
South Carolina	SB 33 2011	Selection	Repeals provision that does away with need for Judicial Merit Selection Commission public hearing where there is no known opposition to the incumbent judge seeking re-election.	Pending
South Carolina	SB 127 2011	Selection	Prohibits candidates for judicial office from seeking pledges of General Assembly members until recommendations of Judicial Merit Selection Commission have been released to the General Assembly.	Pending
South Carolina	SB 270 2011	Selection	Requires that if the county's legislative delegation fails to submit master in equity candidates names to Governor he or she may appoint or re-appoint any candidate found qualified and nominated by the Judicial Merit Selection Commission.	Pending
South Carolina	SB 352 2011	Selection	Provides Judicial Merit Selection Committee may reopen its public hearing prior to the issuance of its findings regarding a candidate if sufficient cause is determined by the commission for reopening the hearing.	Pending
South Carolina	SB 58 2010	Other - Judicial Campaigning	Prohibits a member of the General Assembly from actively campaign for a judicial candidate within two years of the judicial election. (In South Carolina, judicial elections are conducted by the General Assembly).	Died
South Carolina	SB 156 2010	Selection	Prohibits candidates for judicial office from seeking pledges of General Assembly members until recommendations of Judicial Merit Selection Commission have been released to the General Assembly.	Died
South Carolina	SB 438 2010	Public Financing	Among several campaign finance provisions is the establishment of voluntary public financing. Includes regulations on the making of, as well as the reporting and disclosure of, independent expenditures.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
South Carolina	SB 447 2010	Judicial Conduct	Creates the Commission on Judicial Oversight for the purpose of informing the General Assembly and the Supreme Court of complaints involving members of the judiciary. Provides the commission is to work with the Commission on Judicial Conduct to ensure that the General Assembly and the Supreme Court are notified in a timely fashion of all complaints against members of the judiciary.	Died
South Carolina	HB 3520 2010	Reporting & Disclosure	Among several campaign finance provisions is the establishment of voluntary public financing. Includes regulations on the making of, as well as the reporting and disclosure of, independent expenditures.	Died
South Dakota	HCR 1018 2010	Resolution for federal action/ Constitutional Amendment	Expresses disagreement with the Citizens United ruling and calls on the US Congress to pass a constitutional amendment.	Died
South Dakota	SB 165 2010	Shareholder Approval	Requires stockholder approval of corporate political contributions.	Died
South Dakota	HB 1053 2010	Disclosure	Among several campaign finance provisions are regulations on the making of, as well as the reporting and disclosure of, independent expenditures. Requires a disclosure statement be filed for any electioneering communication (advertisement). Allows disclosure within 48 hours of the broadcast of any advertisement paid for by an independent expenditure. All disclosures are supposed to be available to the public via the Secretary of State's Website. The disclosure will contain information regarding the organization making the expenditure, the amount spent and a description of the content of the advertisement, such as whether the money was for or against a certain candidate. Disclosures have to be filed only if a minimum of one thousand dollars is spent.	Passed

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State	Bill No.	Type of Legislation	Category of regulation	Status
Tennessee	SB 272 2011	Disclosure	Requires corporations to file statement of contributions and expenditures when using coporate funds to aid in either the election or defeat of a candidate; requires corporations to disclose such corporation paid for public commuincations when it expressly advocates the election or defeat of a clearly identified candidate.	Pending
Tennessee	SB 0282 2011	Judicial Conduct	Revises the membership of the court of the judiciary, which is the court responsible for the investigation, hearing and discipline or removal of Tennessee judges and judicial candidates for misconduct and for the determination of a judge's performance and fitness. The new memberships would to include a combination of new judges and members of the public.	Pending
Tennessee	SB 284 2011	Selection	Requires appellate judges be retained by 75 percent of persons voting rather than by a majority of voters.	Pending
Tennessee	HB 0321 SB 0492	Public Financing	Creates a voluntary system for public funding of political campaigns for the general assembly and governor.	Pending
Tennessee	HB 0231 SB 0281	Selection	Requires that one Tennessee supreme court justice be elected from each of five new districts, with the elections will be held on a contested, nonpartisan basis.Prohibits candidates for justice of the Tennessee supreme court from personally soliciting or accepting campaign contributions. This bill prohibits the treasurer of the campaign of a candidate for justice of the Tennessee supreme court from divulging to the candidate the names of donors or individual amounts contributed to the campaign.	Pending
Tennessee	HB 0173 2011 SB 0127 2011	Selection	Requires election of all judges, including appellate and supreme court judges.	Pending
Tennessee	HB 0958 2011 SB 0699 2011	Selection	Requires the popular election of state trial court judges, appellate court judges, and supreme court judges.	Pending

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State	Bill No.	Type of Legislation	Category of regulation	Status
Tennessee	HB 1197 2011 SB 1089 2011	Recusal	Provides that if a party makes a timely recusal motion and judge denies it, the party has the right to have another judge sit by interchange or as special judge to hear and determine whether the motion should be granted or denied	Pending
Tennessee	HB 1363 2011 SB 1098 2011	Judicial Conduct	Provides that if complaint filed against a judge and the judge is not reelected, resigns, or retires before disposition of the complaint, the court of the judiciary must make the complaint and allegations contained therein public.	Pending
Tennessee	HB 1702 2011 SB 0646 2011	Selection	Requires appellate judges be retained by 75 percent of persons voting rather than by a majority of voters.	Pending
Tennessee	HB 3714 2010 SB 3664 2010	Foreign Corps.	Prohibits foreign corporations or corporations not doing business in the state from making in-state political contributions for any office.	Died
Tennessee	HB 3715 2010 SB 3633 2010	Foreign Corps.	Prohibits foreign corporations from using funds to aid either in the election or defeat of any candidate for office.	Died
Tennessee	HB 3587 2010 SB 3118 2010	Reporting & Disclosure	Requires corporations to file political contribution reports when corporate funds are used for this purpose. Also requires that they include sponsor identification information on their campaign material.	Died
Tennessee	HB 3626 2010 SB 3303 2010	Reporting & Disclosure	Among several campaign finance provisions are regulations on the reporting and disclosure of independent expenditures.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Tennessee	SB 3198 2010 HB 3182 2010	Foreign Corps. / Reporting / Campaign Finance	Bars foreign corporations from making political contributions. Revises provisions governing a corporation using its funds in regard to an election; prohibits contributions to candidates; authorizes use of funds for communications regarding election or defeat of candidate; specifies reporting requirements and exceptions. http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB3182&ga=106.	Passed
Tennessee	SB 3633 2010 SB 3797 2010	Foreign Corps.	Bars foreign corporations from making political contributions.	Died
Tennessee	SB 3713 2010	Bar Corporate Contributions	Bars corporations from contributing to campaigns for judicial office.	Died
Tennessee	HB 3713 2010 SB 3672 2010	Bar Corporate Contributions	Creates Class B misdemeanor for corporations using funds to aid in the election or defeat of any judicial candidate.	Died
Tennessee	SB 3798 2010	Bar Corporate Contributions	Creates Class B misdemeanor for corporations using funds to aid in the election or defeat of any judicial candidate.	Died
Tennessee	HB 1150 2010	Selection	Abolishes judicial selection commission. Requires "All trial court and appellate court judges shall be elected in accordance with the constitution of the state of Tennessee."	Died
Tennessee	HB 1936 2010	Public Financing	Creates voluntary public financing system for supreme court races.	Died
Tennessee	HB 2412 2010	Selection	Proposes a limited constitutional convention to determine the method for choosing appellate court judges.	Died
Tennessee	N/A	Corporate Registration	Require corporations to register as political action committees when placing ads intended to influence elections. The groups must also disclose all spending according to the same schedule as regular PACs. See http://reporting.sunlightfoundation.com/2010/citizens-united-tennessees-response/	

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State	Bill No.	Type of Legislation	Category of regulation	Status
Texas	HB 156 2011	Recusal	Requires recusal by a judge/justice of the supreme court of court of criminal appeals where the judge's campaign received $2,500 over the prior four years from a party to the case, an attorney of record in the case, the law firm of an attorney of record in the case, the managing agent of a party to the case, a member of the board of directors of a party to the case, or an election committee established or administered by a person who is a party to the case	Pending
Utah	HB 74 2011	Selection	Changes the retention election requirements for municipal justice court judges entire county to the municipality where the judge sits. Clarifies that a justice court judge standing for retention in more than one location who is retained in one location and not retained in another does not lose both offices.	Pending
Utah	HB 164 2011	Contribution Limits	Limits contributions from all donors to $5,000 per legislative candidate, $10,000 per state office candidate and $10,000 per state PAC.	Died
Utah	SB 212 2011	Judicial Conduct	Allows the Judicial Performance Evaluation Commission to vote in a closed meeting on whether or not to recommend that the voters retain a judge. Removes litigants from the judicial performance evaluation survey. Reduces the number of categories to be included in the performance evaluation survey. Allows survey respondents to supplement responses to survey questions with written comments. Establishes a clear minimum performance standard. Establishes that the judicial performance evaluation survey is to be reported in three categories: legal ability, judicial temperament and integrity, and administrative abilities. Allows only a judge who is the subject of an unfavorable retention recommendation to meet with the commission about its recommendation. Allows the judicial performance evaluation commission to only report public discipline that a judge has received.	Pending

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State	Bill No.	Type of Legislation	Category of regulation	Status
Utah	HB 392 2011	Selection	Requires, beginning January 1, 2018, judicial retention elections for justice court judges. Requires Judicial Performance Evaluation Commission begin evaluating justice court judges beginning January 1, 2014.	Pending
Utah	SB 210 2010	Other	Eliminates witnesses who have testified in cases considered by the judge from the list of mandatory survey respondent groups. Expands the survey topic of "judicial temperament" to include questions about judicial demeanor and personal attributes that promote trust and confidence in the judiciary.	Passed
Utah	SB 289 2010	Selection	Provides Commission on Criminal and Juvenile Justice in consultation with Judicial Council to set rules concerning judicial nominating commissions. Requires recruitment periods for judicial vacancies be no more than 30-90 days, unless nine or more applications filed, in which case it may be extended. Requires commissions meet within certain number of days and submit names to governor. Requires governor ensure commission time periods enforced. Requires Senate confirm judges within 60 days. Requires appellate commissions give Governor seven names, trial commissions five. Requires AOC notify Governor of judicial vacancies immediately. Removes Chief Justice from appellate and trial nominating commission and gives Governor power to name chair. Grants Chief Justice power to name another member of Judicial Council to commissions. Provides that governor will select secretary/staff for commissions.	Passed
Utah	SJR 15 2010	Selection	Authorizes Legislative Management Committee and requires it study the appointment of justices to the Utah Supreme Court on a staggered term basis so that only one comes up for retention election every two years.	Passed
Vermont	SB 294 2010	Disclosure	Instituted penalites for campagin finance violations by corporations. Requires certain sponsor identification information to be included on electioneering communications.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Vermont	SB 36 2010	Selection	Requires that judicial retention votes in the legislature be public through voice vote or roll call.	Died
Virginia				
Washington	HB 1245 2011	Selection	Provides that all municipal court judges are to be elected (currently appointed by municipality).	Pending
Washington	HB 1898 2011	Public Financing	Provides for public financing of supreme court campaigns.	Pending
Washington	HB 1945 2011	Other	Declares legislature's "belief that judges and judicial candidates have a fundamental right to freely express and incorporate their beliefs and opinions in any statements made regarding any campaign or potential campaign for judicial office or any issue pertaining thereto without legal or professional retribution or other negative consequence, penalty, or sanction to the standing, evaluation, or privilege of the judge or the judicial candidate."	Pending
Washington	SB 5010 2011	Public Financing	Provides for public financing of supreme court campaigns as part of a pilot program. Funding to be provided in part by $3 fee on civil case filings.	Pending
Washington	SB 5630 2011	Selection	Provides that all municipal court judges are to be elected (currently appointed by municipality).	Pending
Washington	SJM 8027 2010	Resolution for federal action/ Constitutional Amendment	Expresses disagreement with the Citizens United ruling and calls on the US Congress to pass a constitutional amendment.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Washington	HB 2016 2010	Reporting / Disclosure	Modifies the requirements pertaining to independent expenditures and electioneering communications that require listing of the top five contributors so that if the sponsor of a communication is a political committee established, maintained, or controlled directly or indirectly through the formation of one or more political committees, by an individual, corporation, union, association, or other entity, the full name of that entity must be listed.	Passed
Washington	HB 1738 2010	Public Financing	Declares an intent to protect the fairness of elections for the supreme court. Declares that the act is necessary to ensure that our highest courts continue to be unbiased and insulated from special interests. Establishes the judicial election reform act to introduce a voluntary pilot project to provide an alternative source of financing candidates for the Washington supreme court who demonstrate public support and voluntarily accept strict fundraising and spending limits. Prohibits the public disclosure commission from offering the public financing program until an appropriation of three million dollars is made for the program. Creates the judicial election reform act fund.	Died
Washington	SB 5115 2010	Judicial Conduct	Increases membership of the judicial conduct commission. Prohibits a commission member or alternate who participates in an investigation or initial proceeding leading to a finding of probable cause from participating in any further proceedings on that cause, including a public hearing.	Died
Washington	SB 5912 2010	Public Financing	Provides for the public funding for supreme court campaigns.	Died
West Virginia	HB 2243 2011	Disclosure	Requires disclsoure by judicial officers of campaign contributions in excess of $250.	Pending
West Virginia	HB 2464 2011	Disclosure	Requires Ethics Commission publish on the Internet all financial disclosure statements filed members of and candidates for the Supreme Court of Appeals starting in 2012.	Passed

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State	Bill No.	Type of Legislation	Category of regulation	Status
West Virginia	HB 2903 2011	Public Financing	Authorizes the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program.	Pending
West Virginia	SB 293 2011	Public Financing	Authorizes the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program.	Pending
West Virginia	HB 4646 2010	Shareholder Approval Disclosure	Requires disclosure to and approval of corporate political contributions by shareholders. Requires the inclusion of certain sponsor identification information on campaign material and in prominent web listings.	Died
West Virginia	HB 4647 2010	Reporting & Disclosure	Allows corporations to make independent expenditures. Includes regulations on the making of, as well as the reporting and disclosure of, independent expenditures. Bars corporations from making other political contributions. See http://reporting.sunlightfoundation.com/2010/citizens-united-west-virginias-response/	Passed
West Virginia	SB 692 2010	Shareholder Approval Disclosure	Requires disclosure to and approval of corporate political contributions by shareholders. Requires the inclusion of certain sponsor identification information on campaign material and in prominent web listings	Died
West Virginia	SB 195 2010	Selection	Requires nonpartisan election of Supreme Court justices.	Died
West Virginia	HB 2603 2010	Selection	Provides for nonpartisan election of justices of the West Virginia Supreme Court of Appeals and circuit court judges.	Died
West Virginia	HB 3050 2010	Disclosure by Judges	Requires disclosure by judicial officers of campaign contributions in excess of $250.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
West Virginia	HB 4130 2010	Public Financing	Creates WV Supreme Court of Appeals Public Campaign Financing Pilot Program. Provides alternative campaign financing options for candidates for the West Virginia Supreme Court of Appeals in 2012 through public funds funded through attorney fees and special court fees. Provides that candidates participating in the Pilot Project would be required to raise a certain amount of campaign funds to qualify for the program and receive public funds and are prohibited from raising or spending money from private sources.	Passed
West Virginia	SB 233 2010	Public Financing	Creates WV Supreme Court of Appeals Public Campaign Financing Pilot Program.	Died
Wisconsin	AB 63 2010	Registration Reporting Other	Requires registration and reporting by any individual who or organization that, at any time, makes any mass communication hat refers to a candidate for judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office. Finds and declares that the function of judges and justices, who must independently apply the law, is fundamentally distinct from that of elective legislative and executive branch officials who take positions on issues that are influenced by, and represent the will of, their constituencies. Finds that because it is improper for a mass communication to seek to persuade a judge or justice to take a position on an issue, any such communication should be deemed to have been made for a political purpose.	Died
Wisconsin	AB 65 2010	Public Financing Contribution Limits	Makes numerous changes in the campaign finance law affecting campaigns for the office of justice of the supreme court. Creates a democracy trust fund to finance supreme court elections. Allows for public financing of all supreme court elections (currently, no funding is provided for primary campaigns). Lowers contribution limits from individuals and committees to $1,000.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Wisconsin	AB 812 2010	Registration Reporting & Disclosure Approval Foreign Corp. Ban	Refers to Citizens United in its regulation of corporate political disbursements, including: registration, reporting, and disclosure requirements; shareholder approval; and foreign corporations.	Died
Wisconsin	AB 913 2010	Public Financing	Alters public financing system for supreme court races.	Passed
Wisconsin	SB 40 2010	Contribution limits Public Financing Other	Limits contributions to supreme court candidates to $1,000. Creates the Democracy Trust Fund from which eligible candidates for the Office of Justice of the Supreme Court may receive public financing derived from general purpose revenues and from an expanded income tax check-off. Requires eligible candidate not accept private contributions other than seed money contributions and qualifying contributions, not accept more than $25 in cash from any contributor or accept cash from all sources in a total amount greater than .1% of the public financing benefit or $500, whichever is greater and not make any disbursement derived from personal funds after the close of the public financing qualifying period. Grants eligible candidate in $100,000 for a primary election campaign and $300,000 for a general election campaign. Makes amounts subject to a biennial cost of living adjustment. Provides for recuse and other funds where an opposing candidate does not participate in public financing or where independent expenditures exceed 120% of the public funding given to the candidate.	Passed
Wisconsin	SB 221 2010	Campaign Finance	Alters various public campaign finance and campaign reporting requirements. Finds and declares that the function of judges and justices, who must independently apply the law, is fundamentally distinct from that of elective legislative and executive branch officials who take positions on issues that are influenced by, and represent the will of, their constituencies. Finds that because it is improper for a mass communication to seek to persuade a judge or justice to take a position on an issue, any such communication should be deemed to have been made for a political purpose.	Died

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State	Bill No.	Type of Legislation	Category of regulation	Status
Wisconsin	SB 540 2010	Repeal Corporate Spending Limits	Refers to the Citizens United ruling in its repeal of Wisconsin's existing limits on corporate spending in elections.	Died
Wisconsin	AJR 6 2010	Selection	Requires the governor to appoint, with the advice and consent of the senate, justices of the supreme court for ten year terms. At the conclusion of their terms, the terms of justices would be automatically renewed unless they are rejected in a reaffirmation vote by a vote of at least 13 of the members of the senate. If the senate does not reaffirm, the governor would be required to appoint a new justice. Previously elected justices whose terms expire two or more years after ratification will serve out the terms for which they were elected and may be reaffirmed for additional terms by the senate. Previously elected justices whose terms expire less than two years after ratification may stand for reelection in the final year of their terms.	Died
Wisconsin	AJR 96 2010	Selection	Requires Supreme Court Justices be nominated by the Governor and confirmed by 3/5ths vote of the Senate. Subsequent terms would be by yes/no retention election.	Died
Wisconsin	SJR 49 2010	Selection	Eliminates the spring election for nonpartisan offices, including judges, and shifts elections to November. Shortens terms of office of those in office when amendment takes effect.	Died
Wisconsin	GAB 1 2011	Reporting & Disclosure	Regulation relating to organizations making independent disbursements. Promulgates rules following Citizens United, which includes registration, reporting, and disclaimer requirement. See https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=8204.	Pending
Wyoming	SB 3 2011	Campaign Finance	Conformed state law to *Citizens United*; provided that restrictions on expenditures to advocate the election or defeat of a candidate do not apply to organizations as specified; requires notification in advertising; campaign finance reporting	Passed
Wyoming	HB 68 2010	Other	Repealed restrictions on organizations making independent expenditures to advocate the election or defeat of a candidate; conformed state law to Citizens United.	Died

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Alabama	Supreme Court				Initial Term of Office: 6 Years Method of Retention: Re-election (6-year term)
	Court of Civil Appeals				Initial Term of Office: 6 Years Method of Retention: Re-election (6-year term)
	Court of Criminal Appeals				Initial Term of Office: 6 Years Method of Retention: Re-election (6-year term)
	Circuit Court				Initial Term of Office: 6 Years Method of Retention: Re-election (6-year term)
Alaska	Supreme Court	Initial Term of Office: 3 Years Method of Retention: Retention Election (10 year term)			
	Court of Appeals	Initial Term of Office: 3 Years Method of Retention: Retention Election (8 year term)			
	Superior Court	Initial Term of Office: 3 Years Method of Retention: Retention Election (6 year term)			

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State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
Arizona	Supreme Court	Initial Term of Office: 2 Years Method of Retention: Retention Election (6 year term)			
	Court of Appeals	Initial Term of Office: 2 Years Method of Retention: Retention Election (6 year term)			
	Superior Court (county pop. greater than 250,000)	Initial Term of Office: 2 Years Method of Retention: Retention Election (4 year term)			
	Superior Court (county pop. less than 250,000)	Initial Term of Office: 4 Years Method of Retention: Re-election (4 year term)			
Arkansas	Supreme Court			Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms	
	Court of Appeals			Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms	
	Circuit Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	

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State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
California	Supreme Court		Gubernatorial Appointment Initial Term of Office: 12 Years Method of Retention: Retention Election (12 year term)		
	Courts of Appeal		Gubernatorial Appointment Initial Term of Office: 12 Years Method of Retention: Retention Election (12 year term)		
	Superior Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
Colorado	Supreme Court	Initial Term of Office: 2 Years Method of Retention: Retention Election (10 year term)			
	Court of Appeals	Initial Term of Office: 2 Years Method of Retention: Retention Election (8 year term)			
	District Court	Initial Term of Office: 2 Years Method of Retention: Retention Election (6 year term)			

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State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
Connecticut	Supreme Court	Initial Term of Office: 8 Years Method of Retention: Commission reviews incumbent's performance on noncompetitive basis; governor renominates and legislature confirms			
	Appellate Court	Initial Term of Office: 8 Years Method of Retention: Commission reviews incumbent's performance on noncompetitive basis; governor renominates and legislature confirms			
	Superior Court	Initial Term of Office: 8 Years Method of Retention: Commission reviews incumbent's performance on noncompetitive basis; governor renominates and legislature confirms			

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State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
Delaware	Supreme Court	Initial Term of Office: 12 Years Method of Retention: Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The Senate confirms the appointment			
	Court of Chancery	Initial Term of Office: 12 Years Method of Retention: Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The Senate confirms the appointment			

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State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
	Superior Court	Initial Term of Office: 12 Years Method of Retention: Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The Senate confirms the appointment			
Florida	Supreme Court	Initial Term of Office: 1 Year Method of Retention: Retention Election (6 year term)			
	District Court of Appeal	Initial Term of Office: 1 Year Method of Retention: Retention Election (6 year term)			
	Circuit Court			Initial Term of Office: 6 Year Method of Retention: Re-	
	Supreme Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	

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State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
Georgia	Court of Appeals			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	Superior Court			Initial Term of Office: 4 Years Method of Retention: Re-election for additional terms	
Hawaii	Supreme Court	Initial Term of Office: 10 Years Method of Retention: Reappointed to subsequent term by the Judicial Selection Commission (10 year term)			
	Intermediate Court of Appeals	Initial Term of Office: 10 Years Method of Retention: Reappointed to subsequent term by the Judicial Selection Commission (10 year term)			
	Circuit Court and Family Court	Initial Term of Office: 10 Years Method of Retention: Reappointed to subsequent term by the Judicial Selection Commission (10 year term)			

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State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Idaho	Supreme Court			Initial Term of Office: 6 Year Method of Retention: Re-election for additional terms	
	Court of Appeals			Initial Term of Office: 6 Year Method of Retention: Re-election for additional terms	
	District Court			Initial Term of Office: 4 Year Method of Retention: Re-election for additional terms	
Illinois	Supreme Court			Initial Term of Office: 10 Years Method of Retention: Retention Election (10 year term)	
	Appellate Court			Initial Term of Office: 10 Years Method of Retention: Retention Election (10 year term)	
	Circuit Court			Initial Term of Office: 6 Years Method of Retention: Retention Election (6 year term)	
	Supreme Court	Initial Term of Office: 2 Years Method of Retention: Retention Election (10 year term)			

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State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
Indiana	Court of Appeals	Initial Term of Office: 2 Years Method of Retention: Retention Election (10 year term)			
	Circuit Court				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
	Circuit Court (Vanderburgh County)			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	Superior Court				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
	Superior Court (Allen and Vanderburgh County)			Years Method of Retention: Re-election for additional	
	Superior Court (Lake and St. Joseph County)	Initial Term of Office: 2 Years Method of Retention: Retention election (6 year term)			
Iowa	Supreme Court	Initial Term of Office: 1 Year Method of Retention: Retention Election (8 year term)			
	Court of Appeals	Initial Term of Office: 1 Year Method of Retention: Retention Election (6 year term)			

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State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
	District Court	Initial Term of Office: 1 Year Method of Retention: Retention Election (6 year term)			
Kansas	Supreme Court	Initial Term of Office: 1 Year Method of Retention: Retention Election (6 year term)			
	Court of Appeals	Initial Term of Office: 1 Year Method of Retention: Retention Election (4 year term)			
	District Court (seventeen districts)	Initial Term of Office: 1 Year Method of Retention: Retention Election (4 year term)			
	District Court (fourteen districts)				Initial Term of Office: 4 Years Method of Retention: Re-election for additional terms
Kentucky	Supreme Court			Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms	
	Court of Appeals			Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms	

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State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
	Circuit Court			Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms	
Louisiana	Supreme Court				Initial Term of Office: 10 Years Method of Retention: Re-election for additional terms
	Court of Appeals				Initial Term of Office: 10 Years Method of Retention: Re-election for additional terms
	District Court				Initial Term of Office: 6 Years Method of Retention: Re-election for additional 10 year terms
Maine	Supreme Judicial Court		Gubernatorial Appointment Initial Term of Office: 7 Year Method of Retention: Reappointment by governor, subject to legislative confirmation		
	Superior Court		Gubernatorial Appointment Initial Term of Office: 7 Year Method of Retention: Reappointment by governor, subject to legislative confirmation		

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Maryland	Court of Appeals	Initial Term of Office: Until the first general election following the expiration of one year from the date of the occurrence of the vacancy Method of Retention: Retention Election (10 year term)			
	Court of Special Appeals	Initial Term of Office: Until the first general election following the expiration of one year from the date of the occurrence of the vacancy Method of Retention: Retention Election (10 year term)			
	Circuit Court	Initial Term of Office: Until the first general election following the expiration of one year from the date of the occurrence of the vacancy Method of Retention: Nonpartisan Election (15 year term)			
Massachusetts	Supreme Judicial Court	Initial Term of Office: to age 70			
	Appeals Court	Initial Term of Office: to age 70			
	Trial Court of Mass.	Initial Term of Office: to age 70			

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Michigan	Supreme Court				Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms
	Court of Appeals				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
	Circuit Court				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
Minnesota	Supreme Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	Court of Appeals			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	District Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	Supreme Court			Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms	

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Mississippi	Court of Appeals			Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms	
	Chancery Court			Initial Term of Office: 4 Years Method of Retention: Re-election for additional terms	
	Circuit Court			Initial Term of Office: 4 Years Method of Retention: Re-election for additional terms	
Missouri	Supreme Court	Initial Term of Office: 1 Year Method of Retention: Retention Election (12 year term)			
	Court of Appeals	Initial Term of Office: 1 Year Method of Retention: Retention Election (12 year term)			
	Circuit Court				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
	Circuit Court (Jackson, Clay, Platte, Saint Louis Counties only)	Initial Term of Office: 1 Year Method of Retention: Retention Election (6 year term)			

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
Montana	Supreme Court			Initial Term of Office: 8 Years Method of Retention: Re-election; unopposed judges run for retention	
	District Court			Initial Term of Office: 6 Years Method of Retention: Re-election; unopposed judges run for retention	
Nebraska	Supreme Court	Initial Term of Office: 3 Years Method of Retention: Retention Election (6 year term)			
	Court of Appeals	Initial Term of Office: 3 Years Method of Retention: Retention Election (6 year term)			
	District Court	Initial Term of Office: 3 Years Method of Retention: Retention Election (6 year term)			
Nevada	Supreme Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Nevada	District Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
ew Hampshi	Supreme Court	Initial Term of Office: to age 70			
	Superior Court	Initial Term of Office: to age 70			
New Jersey	Supreme Court		Gubernatorial Appointment Initial Term of Office: 7 Years Method of Retention: Reappointment by governor (to age 70) with advice and consent of the Senate		
	Appellate Division of Superior Court		Gubernatorial Appointment Initial Term of Office: 7 Years Method of Retention: Reappointment by governor (to age 70) with advice and consent of the Senate		
	Superior Court		Gubernatorial Appointment Initial Term of Office: 7 Years Method of Retention: Reappointment by governor (to age 70) with advice and consent of the Senate		

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
New Mexico	Supreme Court	Initial Term of Office: until next general election Method of Retention: Partisan election at next general election after appointment for eight-year term for appellate judges, six-year term for district. The winner thereafter runs in a retention election for subsequent terms.			
	Court of Appeals	Initial Term of Office: until next general election Method of Retention: Partisan election at next general election after appointment for eight-year term for appellate judges, six-year term for district. The winner thereafter runs in a retention election for subsequent terms.			

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
New York	District Court	Initial Term of Office: until next general election Method of Retention: Partisan election at next general election after appointment for eight-year term for appellate judges, six-year term for district. The winner thereafter runs in a retention election for subsequent terms.			
	Court of Appeals	Initial Term of Office: 14 Years Method of Retention: Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.			
	Appellate Division of the Supreme Court	Initial Term of Office: 5 Years Method of Retention: Commission reviews and recommends for or against reappointment by governor			

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
	Supreme Court				Initial Term of Office: 14 Years Method of Retention: Re-election for additional 14 year terms
	County Court				Initial Term of Office: 10 Years Method of Retention: Re-election for additional terms
North Carolin	Supreme Court			Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms	
	Court of Appeals			Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms	
	Superior Court			Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms	
North Dakota	Supreme Court			Initial Term of Office: 10 Years Method of Retention: Re-election for additional terms	
	District Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Ohio	Supreme Court				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
	Court of Appeals				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
	Court of Common Pleas				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
Oklahoma	Supreme Court	Initial Term of Office: 1 Year Method of Retention: Retention Election (6 year term)			
	Court of Criminal Appeals	Initial Term of Office: 1 Year Method of Retention: Retention Election (6 year term)			
	Court of Appeals	Initial Term of Office: 1 Year Method of Retention: Retention Election (6 year term)			
	District Court			Initial Term of Office: 4 Years Method of Retention: Re-election for additional terms	

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Oregon	Supreme Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	Court of Appeals			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	Circuit Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	Tax Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
Pennsylvania	Supreme Court				Initial Term of Office: 10 Years Method of Retention: Retention Election (10 year term)
	Superior Court				Initial Term of Office: 10 Years Method of Retention: Retention Election (10 year term)
	Comonwealth Court				Initial Term of Office: 10 Years Method of Retention: Retention Election (10 year term)

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
	Court of Common Pleas				Initial Term of Office: 10 Years Method of Retention: Retention Election (10 year term)
Rhode Island	Supreme Court	Initial Term of Office: Life			
	Superior Court	Initial Term of Office: Life			
	Worker's Compensation Court	Initial Term of Office: Life			
South Carolina	Supreme Court		Legislative Appointment Initial Term of Office: 10 Years Method of Retention: Reappointment by legislature		
	Court of Appeals		Legislative Appointment Initial Term of Office: 6 Years Method of Retention: Reappointment by legislature		
	Circuit Court		Legislative Appointment Initial Term of Office: 6 Years Method of Retention: Reappointment by legislature		
South Dakota	Supreme Court	Initial Term of Office: 3 Years Method of Retention: Retention Election (8 year term)			

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
	Circuit Court				Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms
Tennessee	Supreme Court	Initial Term of Office: until next biennial general election Method of Retention: Retention Election (8 year term)			
	Court of Appeals	Initial Term of Office: until next biennial general election Method of Retention: Retention Election (8 year term)			
	Court of Criminal Appeals	Initial Term of Office: until next biennial general election Method of Retention: Retention Election (8 year term)			
	Chancery Court				Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms
	Criminal Court				Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms
	Circuit Court				Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Texas	Supreme Court				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
	Court of Criminal Appeals				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
	Court of Appeals				Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms
	District Court				Initial Term of Office: 4 Years Method of Retention: Re-election for additional terms
Utah	Supreme Court	Initial Term of Office: First general election > 3 years after appointment Method of Retention: Retention Election (10 year term)			
	Court of Appeals	Initial Term of Office: First general election > 3 years after appointment Method of Retention: Retention Election (6 year term)			
	District Court	Initial Term of Office: First general election > 3 years after appointment Method of Retention: Retention Election (6 year term)			

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	**Gubernatorial/ Legislative Appointment**	**Non-Partisan Election**	**Partisan Election**
	Juvenile Court	Initial Term of Office: First general election > 3 years after appointment Method of Retention: Retention Election (6 year term)			
Vermont	Supreme Court	Initial Term of Office: 6 Years Method of Retention: Retained by vote of General Assembly (6 year term)			
	Superior Court	Initial Term of Office: 6 Years Method of Retention: Retained by vote of General Assembly (6 year term)			
	District Court	Initial Term of Office: 6 Years Method of Retention: Retained by vote of General Assembly (6 year term)			
	Supreme Court		Legislative Appointment Initial Term of Office: 12 Years Method of Retention: Reappointment by legislature		

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Virginia	Court of Appeals		Legislative Appointment Initial Term of Office: 8 Years Method of Retention: Reappointment by legislature		
	Circuit Court		Legislative Appointment Initial Term of Office: 8 Years Method of Retention: Reappointment by legislature		
Washington	Supreme Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	Court of Appeals			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	Superior Court			Initial Term of Office: 4 Years Method of Retention: Re-election for additional terms	
West Virginia	Supreme Court				Initial Term of Office: 12 Years Method of Retention: Re-election for additional terms
	Circuit Court				Initial Term of Office: 8 Years Method of Retention: Re-election for additional terms

Appendix B **Methods of Judicial Selection in the States**

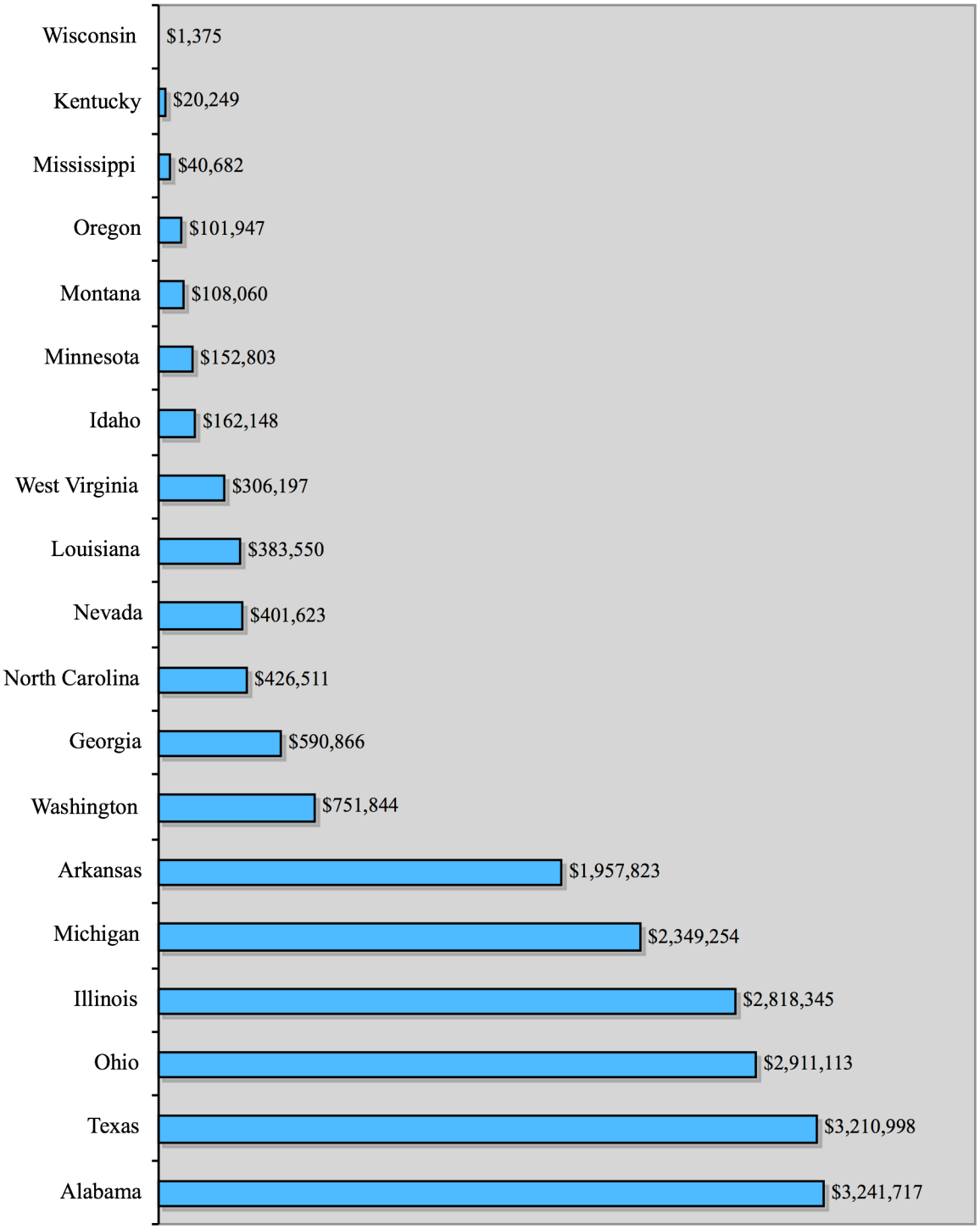
State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election
Wisconsin	Supreme Court			Initial Term of Office: 10 Years Method of Retention: Re-election for additional terms	
	Court of Appeals			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
	Circuit Court			Initial Term of Office: 6 Years Method of Retention: Re-election for additional terms	
Wyoming	Supreme Court	Initial Term of Office: 1 Year Method of Retention: Retention Election (8 year term)			
	District Court	Initial Term of Office: 1 Year Method of Retention: Retention Election (8 year term)			

Appendix B **Methods of Judicial Selection in the States**

State	Type of Court	Appointive Systems		Elective Systems	
		Merit Selection	Gubernatorial/ Legislative Appointment	Non-Partisan Election	Partisan Election

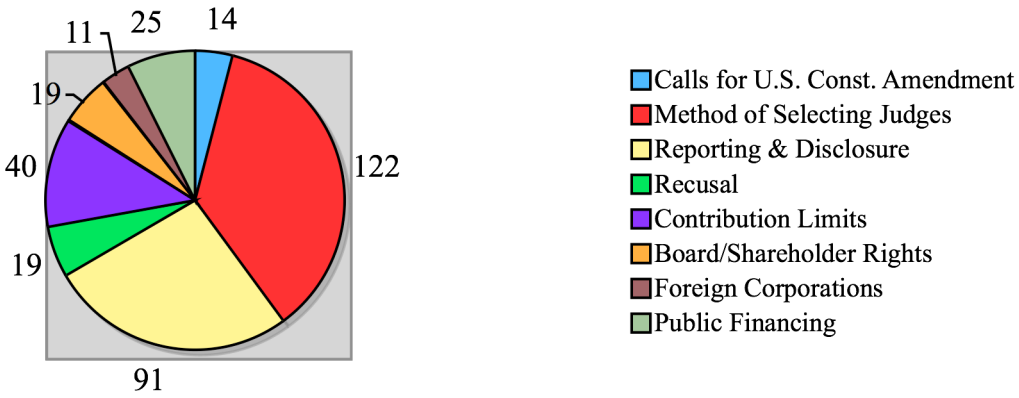
Appendix C

Total Supreme Court Fundraising by State in 2010



Appendix D

Number of Proposals by Trend



Number of Enacted Proposals by Trend