

Gavel to Gavel

A review of state legislation affecting the courts

June 27, 2011

Special Edition

Special Edition: Public Financing of Judicial Campaigns

Earlier today the Supreme Court handed down its decision on Arizona's public financing system in *McComish v. Bennett* and *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*. While Arizona's system does not cover judges, in the years since the plaintiffs filed their initial lawsuit(s), several state legislatures (including Arizona's) have looked to adopt or in fact have adopted such systems for judicial elections. Particularly active states include Illinois, New Mexico, Washington, West Virginia, and Wisconsin. Among them:

Law

[New Mexico HB 6 \(2007 Special Session\)](#) ORIGINAL: Public financing of all statewide campaigns, including Supreme Court and Court of Appeals. Judicial candidates must collect \$5 contributions from one-tenth of one percent of all voters in the state. AMENDED: Same as above but law only goes into effect if constitutional amendment approved that would do away with retention elections and replace them with partisan judicial elections. Signed into law with line-item veto to remove amendment related to ending merit selection 4/13/07.

West Virginia [HB 4130](#) / [SB 233](#) (2010) 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. House version: Signed into law by Governor 3/23/10.

[Wisconsin SB 40 \(2009\)](#) AS AMENDED: 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. Signed into law with partial veto by Governor 12/1/09.

Legislative studies authorized

[Georgia HB 47 \(2008\)](#) Creates a Joint Legislative Study Committee on Judicial Election Reform. The Committee is to "to determine if the independence and impartiality of the courts are threatened by the conduct of these recent



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[judicial] campaigns.” The Committee is to specifically focus on “the role of political parties in judicial elections, the role of special interest groups and tax-exempt organizations such as political organizations as defined in Section 527(e) of the Internal Revenue Code of 1986 in judicial elections, and how conflicts of interest due to campaign contributions are handled by the courts.” An Advisory Board to the Committee is assigned the task of obtaining information and testimony for the committee and specifically from those “who will be directly affected by any alteration of the existing mode of campaign finance.” The Committee is to report to the Legislature by the start of the 2009 session. [CLICK FOR REPORT](#). Approved by full House 4/4/08 (no additional approvals required).

[West Virginia SCR 69 \(2008\)](#) Requests Joint Committee on Government and Finance to study judicial selection methods and public financing of judicial elections. Joint Committee to report by start of 2009 session. Approved by full Senate and House (Governor’s approval not required).

One-chamber bills

[Illinois HB 7 \(2009\)](#) ORIGINAL: Creates a Public Financing of Judicial Elections Task Force to assess the need for developing a system of public financing for judicial elections. Task Force to report by January 2012. AMENDED: Removes all references to Judicial Elections Task Force. Approved by House 3/18/09. Amended to remove all references by Senate 5/28/09.

[Illinois SB 222](#) Creates a voluntary program of public financing of election campaigns for the Supreme Court and Appellate Courts, administered by the State Board of Elections. Approved by full Senate 5/2/07. Died in House Executive Committee.

[Montana SB 202 \(2007\)](#) Public financing for Supreme Court candidates. Approved by full Senate 2/27/07. Died in House Appropriations Committee.

Currently Pending in 2011

[Oregon SB 905](#) Establishes Voter Owned Elections Fund to provide public financing for candidates for Supreme Court and other specified offices. In Senate Rules Committee.

Introduced

2011

[Kentucky HB 21](#) 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. Died in House Elections, Const. Amendments & Intergovernmental Affairs Committee.

[Washington HB 1898](#) Provides for public financing of Supreme Court campaigns. Funding to be provided in part by \$3 surcharge on civil case filings. In House State Government & Tribal Affairs Committee.

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[Washington SB 5010](#) 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. In Senate State Government, Tribal Relations & Elections Committee.

2010

[Arizona HCR 2037 \(Constitutional Amendment\)](#) Includes judicial races in state's public financing program. Provides Supreme Court to name presiding judge of Superior Court only in counties above 800,000 people (currently, Supreme Court names all presiding judges). Presiding judges in counties below 800,000 to be elected by county electors. Requires Superior Court judges be elected by county electors in counties over 800,000. Provides vacancies to be filled by County Board of Supervisors (currently Governor fills). Retains merit selection commission for appellate courts, but requires all applicants be submitted to governor in rank order based on merit. Provides appellate judges will remain subject to yes/no retention votes. Sets spending limit for Superior Court candidates as equal to that for a candidate for the legislature and for presiding judge the same as Mine Inspector. Requires publicity pamphlet be created and distributed prior to elections and that all statements and comments filed with the secretary of state under 300 words be included. Died in House Judiciary Committee.

[Arizona SCR 1049 \(Constitutional Amendment\)](#) ORIGINAL: Includes judicial races in state's public financing program. Sets spending limit for Superior Court candidates as equal to that for a candidate for the legislature and for presiding judge the same as Mine Inspector. Provides Supreme Court to name presiding judge of Superior Court only in counties above 800,000 people (currently, Supreme Court names all presiding judges). Presiding judges in counties below 800,000 to be elected by county electors. Requires Superior Court judges be elected by county electors in counties over 800,000. Provides vacancies to be filled by County Board of Supervisors (currently Governor fills). Retains merit selection commission for appellate courts, but requires all applicants be submitted to governor in rank order based on merit. Provides appellate judges will remain subject to yes/no retention votes. Requires publicity pamphlet be created and distributed prior to elections and that all statements and comments filed with the secretary of state under 300 words be included. AS AMENDED: Increases the county population threshold from 250,000 to 800,000 for filling judicial vacancies by merit selection. Removes provisions requiring certain seats on nominating commissions be held by attorneys vs. non-attorneys. Approved by Senate Judiciary Committee 2/23/10. Rejected as amended by full Senate 3/3/10. Motion to reconsider rejected by full Senate 3/4/10.

[Georgia HB 892](#) 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 in House Judiciary Committee.

[Illinois HB 887](#) 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 in House Elections & Campaign Reform Committee.

Tennessee [HB 1936](#) / [SB 2035](#) Creates voluntary public financing system for Supreme Court races. House version: Died in House Judiciary Committee. Senate version: Died in Senate Government Operations Committee.

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2009

[Illinois HB 2631](#) 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 in House Elections & Campaign Reform Committee.

[Illinois HB 4561](#) 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 in House Rules Committee.

[Illinois SB 2144](#) 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 in Senate Executive Committee.

[Michigan SB 53](#) Provides for voluntary public financing of Supreme Court campaigns. Died in Senate Committee on Campaign and Election Oversight.

[New York AB 6728](#) Limits judicial campaign contributions to \$500. Provides for optional public financing of judicial elections. Died in Assembly Election Law Committee.

[Oregon HB 3404](#) Establishes Voter Owned Elections Fund to provide public financing to candidates for the Supreme Court and certain other public offices. Establishes Voter Owned Elections Commission to administer fund. Died in House Rules Committee.

[Pennsylvania HB 1837](#) Creates public financing system for appellate court races. Died in House State Government Committee.

[Texas HB 3146](#) Provides public financing of campaigns for appellate judicial office. Places on limits on political contributions to and direct campaign expenditures made on behalf of judicial candidates. Died in House Elections Committee.

[Washington HB 1738](#) Creates voluntary pilot campaign funding system for all appellate judicial races. Approved by House State Government & Tribal Affairs Committee 2/2/10. Died in House Ways & Means Committee.

[Washington SB 5912](#) Creates voluntary pilot campaign funding system for all appellate judicial races. Approved by Senate Government Operations & Elections 2/5/10. Ruled tax increase subject to two-thirds vote requirement by Lt. Gov. (as President of Senate) 2/15/11. Died in Senate Rules Committee.

[West Virginia SB 311](#) Creates 2012 Supreme Court of Appeals Public Campaign Financing Pilot Program. Approved by Senate Judiciary Committee 3/27/09. Died in Senate Finance Committee. **(Note: Enacted in 2010 Special Session. See above).**

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2008

Arizona [HCR 2063](#) / [SCR 1021](#) Places Superior Court elections in state public financing system with funding to come from fines assessed on criminal convictions. Ends merit selection for Superior Court judges. Replaces with direct nonpartisan elections. House version: Approved by House Appropriations Committee 2/21/08. Died on House floor. Senate version: Approved by Senate State Government & Tribal Affairs Committee 2/1/07. Died in Senate Judiciary Committee.

Connecticut [SB 448](#) Directs State Elections Enforcement Commission to submit report on inclusion of Probate Judges in state's public campaign financing program. Report due January 1, 2009. Died in Joint Committee on Judiciary

Illinois [SB 2823](#) Creates the Judicial Campaign Reform Act and a voluntary program of public financing of election campaigns for the offices of judges of the Illinois Supreme Court and Appellate Courts, administered by the State Board of Elections. Establishes funding mechanisms and provides penalties for violations. Sets mandatory contribution limits with respect to all judicial election campaigns. Died in Senate Local Government Committee.

Michigan [HB 5799](#) Creates public finance system for Supreme Court races. Died in House Judiciary Committee.

2007

Georgia [HB 102](#) would be open to appellate court candidates able to gather between \$50,000 and \$100,000 through contributions of up to \$500 each. Died in House Committee on Governmental Affairs.

Michigan [SB 128](#) Creates public financing system for Supreme Court candidates who collected at least \$50,000. Died in Senate Committee on Campaign and Election Oversight.

New Mexico [HB 799](#) Public financing of all statewide campaigns, including Supreme Court and Court of Appeals. **(Note: Enacted in 2007 Special Session. See above).**

New Mexico [HB 818](#) Public financing of all statewide campaigns, including Supreme Court and Court of Appeals. **(Note: Enacted in 2007 Special Session. See above).**

New Mexico [SB 1 \(2007 Special Session\)](#) Public financing of all statewide campaigns, including Supreme Court and Court of Appeals. **(Note: Enacted in 2007 Special Session. See above).**

Tennessee [HB 566](#) / [SB 539](#) Institutes popular elections for Supreme Court justices and all appellate judges. Abolishes the Tennessee plan of judicial selection. Enacts "Tennessee Judicial Public Campaign Financing Act", providing public financing for appellate court races. House version: Died in House Government Operations Committee. Senate version: Died in Senate Judiciary Committee.

Washington [HB 1186](#) Creates six-year pilot program for public financing for appellate court races. Supreme Court candidates need 500 qualifying contributions, Court of Appeals 100, from registered voters. Candidates must attend at least one public forum. Candidates that having opted into the program later remove themselves must pay a fine. Candidates who are part of the program and later are found to have violated its terms are subject

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to civil penalties and disqualification from the program. If there is no funding appropriated by June 30, 2007, bill and program and deemed null and void. Approved by House Appropriations Committee 3/3/07. Died in House State Government & Tribal Affairs Committee.

Washington [HB 1589](#) / [SB 5226](#) Creates voluntary pilot campaign funding system for all appellate judicial races. House version: Died in House State Government & Tribal Affairs Committee. Senate version: Approved by Senate State Government & Tribal Affairs Committee 2/1/07. Died in Senate Ways & Means Committee.

[Wisconsin AB 250](#) Public financing of Supreme Court campaigns. Died in Assembly Elections and Constitutional Law Committee. **(Note: Enacted in 2009. See above).**

[Wisconsin SB 171](#) Public financing of Supreme Court campaigns. Approved by full Senate 2/19/08. Died in Assembly Elections and Constitutional Law Committee. **(Note: Enacted in 2009. See above).**

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