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It's Cheaper to Buy a Judge Than a State Senator

By Joe Pinsker

“Justice Robin Hudson: not tough on child molesters, not fair to victims,” [intoned an ominous ad](#) meant to smear a North Carolina judge up for reelection next week. Hudson is one of many judges who have found themselves up against surprisingly well-financed campaigns and the TV spots that come with them. In the past decade or so, the amount of money thrown into judicial campaigns has increased tenfold—and apparently, so has the vitriol.

Political donors have realized that a donation to a state supreme court campaign brings higher yields than a donation to a state legislator's campaign: It's more expensive to change who's passing the laws—often more than 100 people—than to change the handful of individuals who interpret them. When the campaign-finance levees broke after the 2010 ruling in *Citizens United v. Federal Election Commission*, money rushed in to judicial elections—and that money may be subtly changing the way judges deliberate.

Because judicial elections aren't nearly as visible as congressional ones, it's little known that [90 percent of state judges are up for election at one point or another](#), and that [38 states have judicial elections of some kind](#). Alexis de Tocqueville saw the problems with this setup early on, predicting that judicial elections would bring “[disastrous results](#).” The concept of campaign promises seems logically inconsistent in the legal world, where decisions are theoretically made on a case-by-case basis, as it were.

When it comes to the financial side-effects of *Citizens United* on these elections, the before-and-afters are pretty striking. [According to Emory law professor Joanna Shepherd](#), about \$3 million was spent on 2002's judicial elections, but for the 2012 elections that was up to \$24 million. Another tabulation, this one from [from the Brennan Center for Justice](#), indicated that spending rose from \$39 million during the 2010 election season to \$56 million during 2012's. (To keep this in perspective, spending on this year's congressional elections is estimated to be [about \\$3.7 billion](#).)

In the same way that [money can dictate Congress's actions](#), it can apparently dictate judges' decisions too. [In one poll](#), nearly half of the judges surveyed said that campaign contributions had in some way influenced their decisions. But Shepherd, the Emory professor, sought out a more empirical link between judicial-election spending, *Citizens United*, and the rulings that judges then made. [She and her co-author, Michael S. Kang, found](#) that as the number of campaign ads increased, judges were less likely to side with a defendant. Further, they were 7 percent more likely to side in a defendant's favor before

Citizens United than after. Another study, of 276,000 cases in Washington, [found that sentences were 10 percent longer when judges were about to go up for reelection.](#)

“Either judges are fearful of making rulings that provide fodder for the ads, or the TV ads are working and helping get certain judges elected,” Shepherd [told *The New York Times*](#) earlier this week. “Either way, outcomes are changing.”

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