By Carolyn Raffensperger

When Business Funds Judicial Elections

If judges are free to be impartial, an endangered species is more likely to get a fair shake in court under the Endangered Species Act, even though it has not contributed to a campaign. National parks and forests are more likely to be preserved for future generations who cannot speak for themselves in current court cases. Science presented by plaintiffs in *Daubert* hearings is more likely to be treated fairly.

In August, North Carolina introduced the Judicial Campaign Reform Act, which mandates using public money to pay for appellate and supreme court races in that state. Illinois, Ohio, Texas, and Wisconsin may initiate judicial campaign finance reform themselves.

The North Carolina law was drawn up in response to massive increases in spending for these elections in recent years. According to the North Carolina Center for Voter Education, special interest money in judicial elections exceeded $45 million nationally in 2000 — a 61-percent increase in just two years. This pattern is reflected across the country in the 42 states in which judges are elected. The money is coming from business interests and is having a telling effect.

According to a study done by the Environmental Policy Project at Georgetown University Law Center, the Louisiana Chamber of Commerce and other business interests joined to create multiple political action committees and an umbrella organization called the Louisiana Alliance of Business and Industry to influence judicial elections in the state. In 1998 over a million dollars was spent in one race for the Louisiana Supreme Court. With the support of LABI, at least three pro-business judges have been seated on the court since 1994. As a result, a state with egregious environmental problems no longer has an impartial court willing to hold corporate polluters accountable.

For example, the Louisiana Supreme Court has ruled against the Louisiana attorney general's policy of entering into contingent-fee contracts with law firms to help the state prosecute environmental cases. Some of the key polluters who would have been targeted for prosecution brought suit. The case was decided by the judges who had been supported by LABI. In another case, in a contorted administrative decision, the court amended a court rule and thereby has forced Tulane University's environmental law clinic to turn down many poor and minority groups with environmental complaints.

This hijacking of the courts by business interests is not unique to Louisiana. Similar stories could be told about Idaho, Michigan, and Ohio. Financing judicial elections will be an increasingly pressing problem since, at present, of the 42 judge-electing states, 39 elect appellate-level judges. 23 of these have contested partisan or nonpartisan elections. The rest hold retention elections for judges who have been in office.

Financing for judicial campaigns may introduce serious conflicts of interest. Judges who have been elected with corporate money are deciding environmental and health cases that challenge the same corporate interests. Campaign financing by industry has failed the public good in Congress by skewing legislation to protect wealthy corporations. It will also fail the public good in the judiciary by influencing the outcome of these cases.

As the bipartisan Constitution Project makes clear, "Judicial candidates should not be political candidates in the traditional sense. Political candidates are expected to represent the interests of a geographically defined group of people. They are expected to be partisan and favor a political party and certain interest groups. As a qualification for election, voters expect them to declare in advance their positions on controversial public policy issues. . . . Judges do not, or at least should not, do any of these things. They do not represent constituents. They represent the law. Their decisions must be based upon an informed and good faith interpretation of the law and the Constitution, not popular opinion or special interests."

Campaign financing is closely linked to litmus tests of judicial candidates' views on key issues such as methods for eliminating what business calls "junk science" but is in reality valid, justiciable uncertainty. In an effort to break this link, Minnesota barred judicial candidates from announcing their views on disputed legal and political issues. In August, however, the U.S. Supreme Court, by a 5-4 vote, found that such a prohibition violates the First Amendment.

The American Bar Association swiftly responded to this news by appointing a blue-ribbon commission "whose mission is to identify a better way for states to conduct judicial elections." According to a poll commissioned by the ABA, a majority of people think elected judges are more fair and impartial than appointed judges. However, the survey shows almost three out of four people believe that raising campaign money compromises impartiality of the judiciary. And the public strongly favors nonpartisan elections — by a 63 to 24 margin.

Alfred P. Carlton Jr., incoming president of the ABA, said, "We must defuse the escalating partisan battle over America's courts. Millions of dollars are being spent to 'control' courts in some states much the same way political parties control legislative and executive branches of government." Carlton went on to say, "The challenge is to find a way for states that want to continue to elect judges to allow judicial candidates to freely express themselves on political issues in a way that does not compromise their impartiality once they are on the bench."

The era of tobacco science in the courts must end. One way to do that is to take the money out of judicial elections.

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