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Campaign Contributions and the Montana Supreme Court

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The cost of running for a position on a state Supreme Court has increased dramatically in many states, as organizations and individuals have poured money into what previously were often low-profile races. Montana, however, remained immune from the trend of rising campaign costs through the 1990s, seeing an increase in campaign fundraising and spending for the first time in 2000.

The question of whether the increased pressure to raise funds affects candidates for a state's highest court deserves scrutiny, since many of the people who contribute to judicial candidates may end up appearing in court before them. Indeed, about 63 percent of the cases heard by the Montana Supreme Court between 1991 and 1999 involved a campaign contributor.

This study, prepared with grants from the Joyce Foundation and the Open Society Institute, collected and published contribution data and data on Montana Supreme Court cases as part of the dialogue on judicial independence. It is intended to gather together information on the cost of judicial races, who gives to judicial candidates, how much they give, what their business interests are, and whether or not they appeared before the Court. While it is beyond the scope of this study to determine whether the relationship between contributors and candidates has caused any bias in the Court's decisions, the proportion of funds that comes from litigants is relatively small. In fact, the vast majority of campaign contributors had no cases before the Court, and most litigants who appeared before the Court had not contributed. A summary of the findings follows.

SUMMARY

- Fourteen Supreme Court candidates raised nearly $1.27 million in 10 races from 1990 through 1998. Of that total, $936,499 came from 3,670 contributors whose donations were high enough to require candidates to report their names and other information.
- The average amounts raised by the candidates varied without an apparent pattern, ranging from a high of $151,552 in 1990, when there was one contested race, to a low of $33,217 in 1994, when there were two uncontested races. The average amount spent by winners ranged from $249,752 in 1990 to $33,217 in 1994.

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- The average contribution size generally decreased over the study period, reaching its peak of $271 in 1990, dropping to a low of $105 in 1996 – when stricter contribution limits went into effect – and rising slightly to $125 in 1998.
- More than 63 percent of the cases heard by the Montana Supreme Court between 1991 and 1999 involved a party, lawyer, business or other organization that contributed to a Justice at some point before the case was decided. Only 14 percent of the Court's caseload involved a contributing attorney representing the state or another governmental entity.
- Fewer than 8 percent of the litigants who appeared before the Court contributed to a Justice at least once before their case decision. However, they accounted for 17 percent of the contributors and gave almost 29 percent of the total money.
- Contributions made by the Supreme Court candidates to their own campaigns constituted about 19 percent of the total contributions.
- Political parties gave no money directly to Supreme Court candidates, but partisan candidates and party officials who made contributions as individuals gave about 1 percent of the total funds.
- Public funding was only available in 1990 and 1992 and made up less than 1 percent of the contributions for those two years.

The Money in Judicial Politics Project of the Institute on Money in State Politics was developed to track contributions and spending in Supreme Court elections in a number of states, including Montana. To compile a complete campaign profile of the Court that included at least one election for each of the seven Justices on the bench in 1998, data was collected for a nine-year period, 1990 through 1998. During that time, 10 individuals sought one of the seven positions on the Court, several of them more than once.

Databases were created of all campaign contributions to all candidates during the study period. The contributors' names were then matched against a database of the parties and attorneys whose cases were heard by the Supreme Court from 1991 through 1999.

The 2000 Supreme Court races, for which six candidates raised a total of $1,162,277, are not included in this study because the Justices elected have not yet participated in enough cases to make the process of matching contributors and litigants worthwhile.

Note that the data is a small dataset; averages and trends calculated from such a small sample can be misleading and should be read with caution. A summary list of the cases is attached as an appendix, and the complete databases are available on request.

The Court

The Montana Supreme Court consists of a Chief Justice and six Justices who are elected to eight-year terms in nonpartisan, statewide elections. If a seat is vacated before the end of a term, the Governor, with Senate approval, appoints a replacement who must then run in the next general election in order to continue serving to the end of the unexpired term.

The Cost of Running

Year	Recipient	Contrib $	Status	
1990	GREELY, MIKE	$53,351	L	Contested
1990	TRIEWEILER, TERRY N	$249,752	W	
1990	**Average**	**$151,552**		
1992	TRIEWEILER, TERRY N	$163,146	L	Chief Contested
1992	TURNAGE, JEAN A	$213,751	W	
1992	NASCIMENTO, JOE	$3,985	L	Contested
1992	GRAY, KARLA M	$66,258	W	
1992	HUNT SR, WILLIAM E	$15,030	W	Uncontested
1992	**Average**	**$92,434**		
1994	LEAPHART, WILLIAM	$47,983	W	Uncontested
1994	NELSON, JAMES C	$18,450	W	Uncontested
1994	**Average**	**$33,216**		
1996	ERDMANN, CHARLES E	$154,353	L	Contested
1996	REGNIER, JAMES M	$170,005	W	
1996	NELSON, JAMES C	$14,794	W	Uncontested
1996	**Average**	**$113,051**		
1998	GRAY, KARLA M	$30,516	W	Uncontested
1998	TRIEWEILER, TERRY N	$64,468	W	Uncontested
1998	**Average**	**$47,492**		

The cost of running for the Montana Supreme Court went up and down during the 1990s in no particular pattern, impacted by a lowering of contribution limits in 1996 and by the small number of contested races.

From 1990 through 1994, the contribution limit was an aggregate of $2,000 for political action committees and $750 for individuals per candidate for each campaign. Starting with the 1996 race, the limits dropped to $200 for both PACs and individuals.

During the five election cycles in this study, there were only 10 races and 14 candidacies by 10 separate individuals. Only four of those races were contested: one in 1990, two in 1992 and one in 1996. In 1994 and 1998 there were no contested races. In addition, there were no contested primaries during the study period.

Uncontested Supreme Court races in Montana have usually not been controversial and have raised substantially less money than contested races. Candidates facing no opposition raised an average of $31,874 each, compared with the average $134,325 raised by candidates in contested races.

During this study period, all of the five incumbents who ran unopposed won by an approval vote of at least 70 percent.

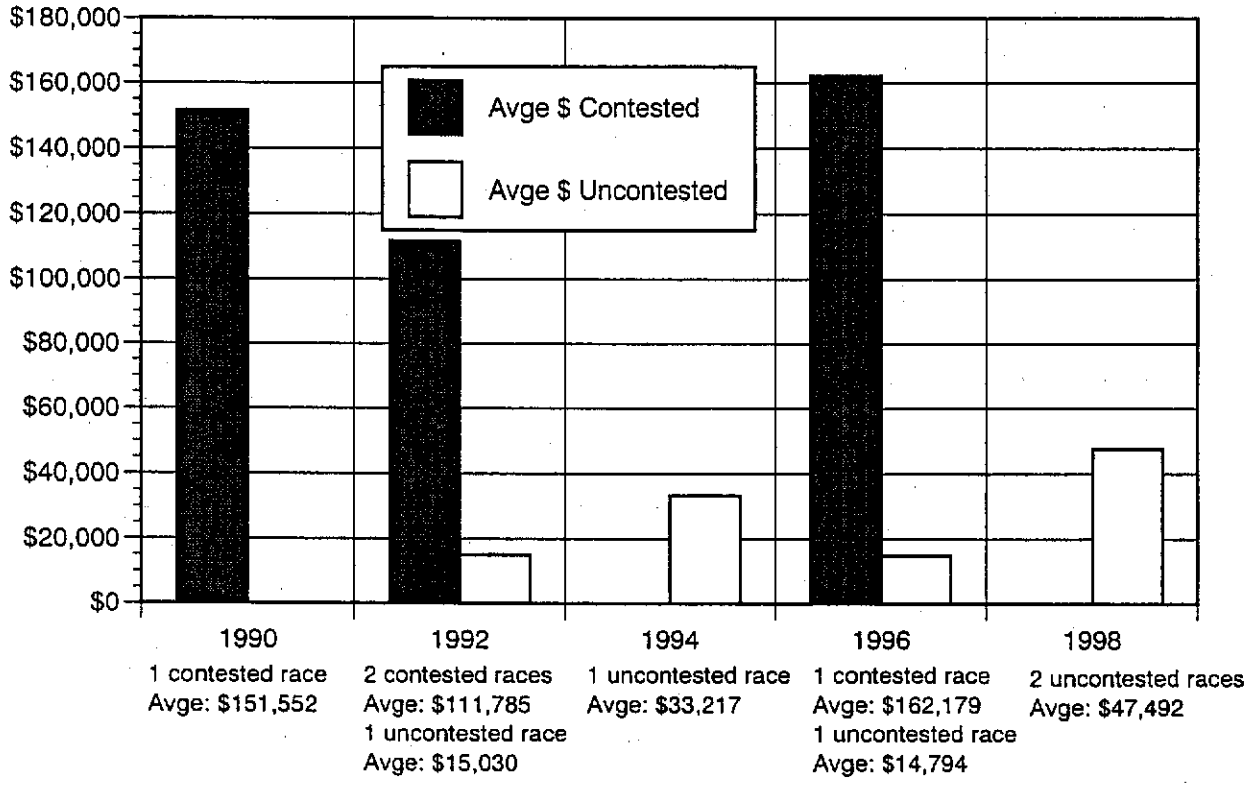
All of the winners in the contested races raised more money than did their opponents, although incumbents did not always raise more money than their challengers. All of the candidates in uncontested races raised significantly less money than the winners of the contested races.

The least expensive race occurred in 1996, when an unopposed incumbent Justice raised $14,794.

The most expensive race occurred in 1992, when a sitting Justice challenged the incumbent Chief Justice for the Chief Justice seat. The two candidates raised a total of $376,897. (In the 2000 Chief Justice race, which is not part of this study, two sitting Justices vying for an open seat left by the retiring Chief Justice raised a total of $693,663, an increase of more than 84 percent over the 1992 race. So by at least one measure, the cost of judicial elections appears to be increasing.)

The largest amount raised by a single candidate was the $249,752 that Terry Treiweiler raised for an open seat he won in 1990. The money he contributed to his own campaign made up more than half of his total, $128,060. The smallest amount raised was $3,985 by Joe Nascimento, who lost to an incumbent Justice in 1992. Nascimento relied on $3,384 of his own money, $487 in public subsidies, and $115 in contributions.

The following chart shows the average amounts raised by candidates in contested races, compared with the average raised by candidates who did not have an opponent.



Election-Cycle Averages

The average cost of running and winning was at a high in 1990, in large part due to Justice Trieweiler's large contribution of $128,060 to his own campaign. Between 1992 and 1996, the average cost of contested races increased about 22 percent. The average raised in uncontested races more than doubled between 1992 and 1998, from $15,030 to $47,492.

The 2000 election saw contested races for both the Chief Justice seat and a Justice position, and the average raised per candidate jumped to $280,739. Winners raised an average of

$318,961. Compared to the contested races in 1992, which also involved both a Justice and Chief Justice race, the 2000 contests represented an increase of more than 150 percent for all candidates and a 128 percent for the winners. Compared to the previous high averages of 1990, the 2000 averages increased 85 percent for all candidates and 22 percent for the winners.

Litigants and Contributors

In order to assess the frequency with which a contributor to a winning judicial candidate appeared before the Montana Supreme Court, this study matched a list of contributors against the list of parties and attorneys who had appeared before the Court. This comparison showed that only 625 of the 3,670 named contributors in the study period were involved in cases that came before members of the Court to whom they had contributed. This "contributor-litigant" group represents fewer than 8 percent of all the litigants who appeared before the Court and 17 percent of all the contributors to Court races. The $362,706 that these "contributor-litigants" gave to winning candidates represented 29 percent of the total funds contributed in the Court races during the study period.

The following chart shows total contributions to winning candidates, the contributor-litigant contributions, and the percentage of the total that the money from contributor-litigants represented for each candidate.

Recipient	Election Year	Total Contributions	$ from Litigants	% of total from Litigants
TRIEWEILER, TERRY N	1990	$249,752	$70,640	28.3%
GRAY, KARLA M	1992	$66,258	$21,892	33.0%
HUNT SR, WILLIAM E	1992	$15,030	$6,942	46.2%
TRIEWEILER, TERRY N	1992	$163,146	$77,803	47.7%
TURNAGE, JEAN A	1992	$213,751	$30,476	14.3%
LEAPHART, WILLIAM	1994	$47,983	$32,773	68.3%
NELSON, JAMES C	1994	$18,450	$13,305	72.1%
NELSON, JAMES C	1996	$14,794	$10,450	70.6%
REGNIER, JAMES M	1996	$170,005	$48,122	28.3%
GRAY, KARLA M	1998	$30,516	$13,527	44.3%
TRIEWEILER, TERRY N	1998	$64,469	$36,775	57.0%

Do Contributors Win?

Given the importance of judicial impartiality, a system that forces candidates to seek funds from those they know raises questions of favoritism. However, it is nearly impossible to accurately calculate whether contributors receive better treatment because of their contributions. The cases that go before the Supreme Court of any state involve the most complicated legal questions that the state's legal system produces, and the result can be split decisions or complex holdings that are not easily scored as a victory for one party or the other. Furthermore, it is impossible to guess whether the successful party would have been successful without the contribution since, unlike the situation that arises with contributions to legislative candidates, one of the two parties before the Court will prevail, with or without contributions.

In Montana, contributor-litigants were involved, either as a party, an attorney or in a friend-of-the-court role, in 1,627 of the 2,582 cases in the study period – or 63 percent of the cases. Analysis of these cases showed:

- In 543 cases, or 33 percent, there were contributions from parties on the winning side of the case, but not the losing side of the case. However, 178 of those cases involved attorneys whose contributions probably had little to do with their success or failure, because in the cases in question, they represented the government rather than an individual client.

- In 440 cases, or 27 percent, there were contributions from parties on the losing side of the case, but not the winning side of the case. Seventy of those cases involved attorneys representing a government entity.

- The Court issued split decisions in 217 cases, or 13 percent; of those, 28 cases involved attorneys representing a government agency.

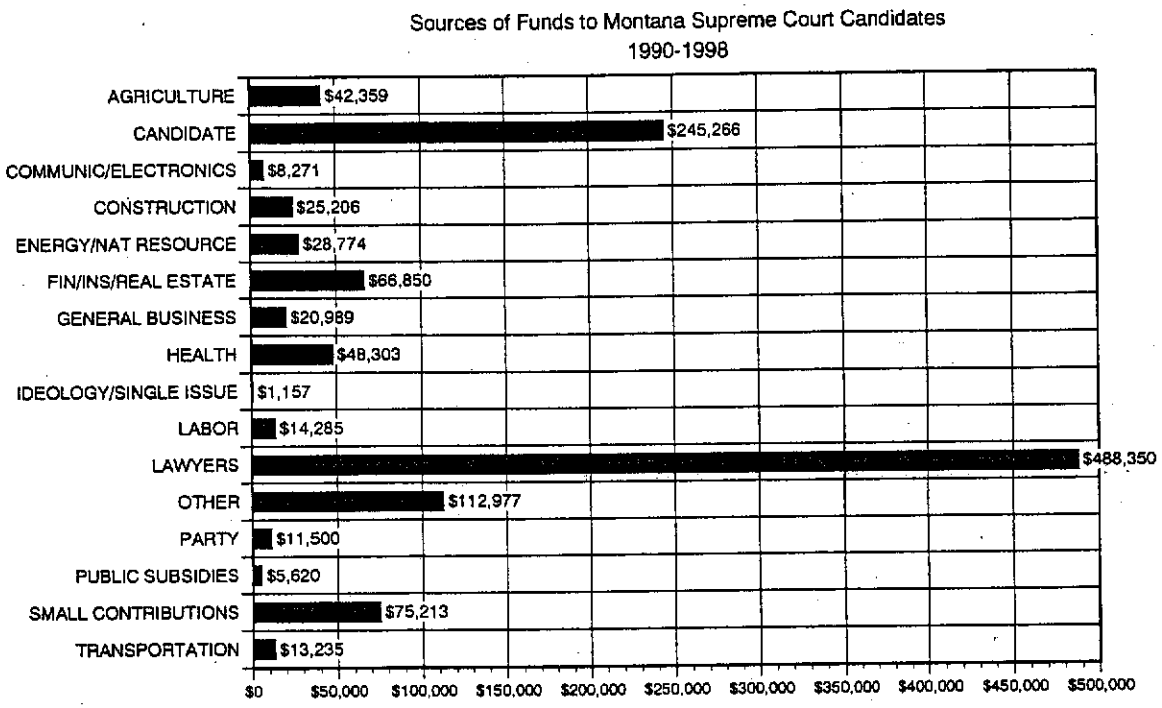
- In 421 cases, contributions came from both the winning and losing parties. Winning parties in those cases gave a total of $481,316. Losing parties gave $338,274.

- In 220 of the 421 cases where both winning and losing parties contributed, the winning parties gave more than the losing parties. In 189 cases, the losers gave more than the winners. In 12 cases, the two parties gave equal amounts.

- In six cases, the only contributions came from parties who had filed friend-of-the-court briefs.

Sources of Funds

The 10 judicial campaigns raised a total of $1,265,844 during the five election cycles. The sources of about 95 percent of that money have been identified and classified by business sector or party. The lack of information on employer and occupation in the reports filed by the candidates makes it impossible to classify the remaining 5 percent.



a. Attorneys

Attorneys contributed $488,350 of the $1,265,844 in contributions, or almost 39 percent of the total. They made up 1,096 of the 3,670 contributors, or about 30 percent of the individuals and businesses that contributed in these races.

Attorney Contributor-Litigants
Fifty-two percent of these attorneys ended up appearing before a successful candidate to whom they had contributed. In fact, attorneys made up the bulk of the 625 contributor-litigants who contributed to a winning candidate at least once before the Court decided their cases -- 574 of the 625 contributor-litigants, or 92 percent of the group.

Public attorneys
Although attorneys as a group were the largest source of campaign funds, the "public attorneys" who represented state or local government before the Court gave very little. Only 61 public attorneys who appeared before the Court contributed to a winning candidate, representing less than 16 percent of all public attorneys who appeared in court during the study. Some of those attorneys worked directly for a government agency, such as county attorneys or department staff attorneys. Others were private practice attorneys who contracted with the state for a particular case. Combined, these attorneys contributed only $12,817, an average of $210 each.

Although attorneys representing a government agency appeared in almost half the cases in this study (1,148 out of 2,582), those who contributed to a Justice appeared in only 353 cases, or 14 percent of the total cases. In 232 of those cases, the contributing public attorneys were on the winning side of the case. In 91 cases, they were on the losing side. And the Court issued split decisions in 28 of the cases. In two cases, the only public attorney who was a contributor submitted an amicus brief. The contributing public attorney who appeared the most often, Yellowstone County Attorney Dennis Paxinos, was involved in 105 cases but only gave a total of $200, of which $100 went to winning

candidates. Paxinos prosecutes cases on behalf of the state's largest county, so it is not surprising that his cases appear frequently before the Court.

Montana Trial Lawyers Association
The Montana Trial Lawyers Association PAC and staff contributed a total of $4,600, all of it to two Justices: Terry Trieweiler and James Regnier. The association did not appear as a party in any cases, but attorneys submitted amicus briefs on behalf of the group in 18 cases. In all 18 cases, the attorneys who filed the briefs had contributed as individuals.

Law Firms
It can be important to examine the total giving by all members of a law firm, even those members who did not appear before the Court, to evaluate the firm's potential influence in matters before the Court. Although members of law firms change over the years, the firm's name often carries the weight of reputation as much or more than the individuals who argue the cases.

Three law firms each contributed an aggregate of more than $10,000 during the five election cycles in this study.

- Eight employees of the Knight Dahood firm of Anaconda gave $18,500 during the study period. About 92 percent of the contributions, $17,000, went to winning candidates. A secretary in the firm gave $100. All of the other seven contributing employees appeared before the Court, a total of 23 times. In all 23 cases (win, lose or split), the Knight Dahood attorneys' contributions to Justices exceeded the contributions of opposing attorneys. They won 11 times, lost nine times and received a split decision three times.
- Six members of Hoyt & Blewett in Great Falls gave $18,435, and all but $50 went to a winning candidate. Only three of the six contributors appeared before the Court. Their contributions totaled $15,675, or about 85 percent of the firm's total. The firm's attorneys appeared before the Court 12 times. They won seven cases, lost three and received a split decision in two. In all 12 cases, the total contributions of the Hoyt & Blewett attorney arguing the case was greater than the contributions of the opposing attorney.
- Seven members of the Datsopoulos MacDonald law firm in Missoula gave a total of $10,100. All but $1,000 of that went to winning candidates. All seven contributing attorneys and seven other non-contributing attorneys appeared before the Court, a total of 39 times. In addition, the firm itself was a named defendant in one case. In 21 of the cases, a firm attorney had given at least once before the date of the case. They won 15 cases, lost 19 (including the case in which the firm was a defendant), and split 6. Of the 15 cases they won, they gave more money than opposing attorneys in eight, less money in six, and won one case in which none of the parties had given money before the case. Of the cases they lost, they gave more money in 10, less money in six, and in three cases there were no contributions. Of the split-decision cases, they gave more in three, less in one, and none of the parties were contributors in two of those cases.

b. Candidate Self-funding

Candidates contributed $245,266 to themselves, or about 19 percent of the amount raised during the study period. Every candidate but one, William Leaphart, loaned money or contributed to his or her own campaign. The leading self-funding candidate was Terry Trieweiler, who ran three different times during this study period and gave $145,210 to his own campaigns, almost 60 percent of the total candidate self-funding. Trieweiler's single loan of $128,060 to his first campaign in 1990 equals roughly 10 percent of the total campaign funds for the five elections in the study.

	Candidate Self-Finance	Other Funding	Total
1990	$133,285	$169,819	$303,103
1992	$23,389	$438,781	$462,170
1994	$770	$65,663	$66,433
1996	$87,822	$251,330	$339,152
1998	$0	$94,985	$94,985
Total	$245,266	$1,020,578	$1,265,844

The amounts contributed by each of the candidates is shown in the following chart.

	1990	1992	1994	1996	1998	TOTAL
GREELY, MIKE	$5,225					$5,225
TRIEWEILER, TERRY N	$128,060	$17,150			$0	$145,210
GRAY, KARLA M		$1,425			$0	$1,425
HUNT SR, WILLIAM E		$1,298				$1,298
NASCIMENTO, JOE		$3,384				$3,384
TURNAGE, JEAN A		$133				$133
NELSON, JAMES C			$770	$499		$1,269
ERDMANN, CHARLES E				$24,010		$24,010
REGNIER, JAMES M				$63,313		$63,313
TOTAL	$133,285	$23,389	$770	$87,822	$0	$245,266

c. Business Sources

The total contributions of business groups (agriculture, communication/electronics, construction, energy/natural resources, finance/insurance/real estate, health, transportation and general business) came to $253,987, about 20 percent of the total. Almost 70 percent, or $176,484, of business contributions went to winners.

d. Non-business Sources

The "other" category consists of non-business interests such as clergy, military, government employees, non-profit institutions, artists and retirees. Contributions from these sources totaled $112,977.

e. Labor

Labor organizations and staff members gave $14,285, of which $14,160 went to winners. Teachers (including their unions, affiliates, PACs and union staff) gave $9,805, which represents more than two-thirds of the labor money. The Montana Education Association, whose organizations and staff gave $5,550, was a party in four cases, and an attorney filed an amicus brief on its behalf in one case. It won one case, lost a case and received a split decision in two cases. The Montana Federation of Teachers, which accounted for $1,820, was a party in two cases. It lost one case and received a split decision in the other. The AFL-CIO gave $1,700 and appeared in one case, which resulted in a split decision. None of the other labor contributors appeared before the Court.

f. Political Parties

Montana law prohibits contributions by political parties to Supreme Court candidates. The "party" source category consists of contributions from candidates, candidate committees and party officials who gave as individuals. The amount is insignificant: $11,500, or less than 1 percent of the total.

g. Major Donors:

Only two non-attorney individuals gave $2,000 or more during the study period, and only one of them appeared in court. Ranchers Errol & Jack Galt gave $2,550, with $1,850 of it going to winners. Jack Galt was a party in one case, which he won.

There were only four non-attorney organizations (excluding state employees) that appeared before the court and whose combined staff and PAC contributions exceeded $2,000:

- Montana Power Company (MPC) was the biggest non-attorney business contributor. Fifty contributors identified as Montana Power employees gave a total of $7,227, of which $6,677 went to winning candidates. Justice Gray, who was a staff attorney for the company before being appointed to the Court, received $4,807 from MPC. Chief Justice Turnage received $1,420, and the remaining $450 was divided among Justices Leaphart, Regnier and Trieweiler. The only MPC contribution to Justice Trieweiler was $100 from Karla Gray in 1990 while she was still an employee of Montana Power. Only two of the contributing employees (one attorney and an executive) appeared before the Court, and they gave only $419 to winning candidates. However, the company itself was a party before the Court 10 times, a subsidiary was a party in one case, and staff

attorneys filed an amicus brief in one case. The company lost seven cases, won two cases and received split decisions in two cases.

- The Montana Education Association (MEA) gave $5,550 (including contributions from staff and locals), all of it to winners. MEA was a party in four cases (discussed above).
- Seven employees of Dennis Washington's companies gave $2,750, of which $1,850 went to winners. The Washington Companies focus on heavy construction, mining and transportation. None of the employees appeared before the Court, but Dennis Washington was a party in five cases, and one of his companies, Washington Contractors Group, was a party in one case. Washington won three cases, lost one, and received a split decision in one. The company lost its case.
- Fifteen employees of investment firm D.A. Davidson & Co. gave a total of $2,110, with about $1,322 going to winning candidates. None of the employees appeared before the Court. But the company itself was a party in one case, which it won.

Expenses

The candidate expenditure reports list the expense amounts and the purpose of each payment. In many cases, the purpose listed is too vague or general to reliably identify the specific reason for the payment. This report has assigned the expenditures to 12 categories, based on the information available.

Purpose	Expenditures
OTHER ADVERTISING	$323,875
MEDIA ADVERTISING	$318,734
ADMINISTRATIVE	$214,555
FOOD/TRAVEL	$28,162
PRINTING	$22,201
EVENTS	$13,947
CONSULTANTS	$9,497
CONTRIBUTIONS	$6,400
FUNDRAISING	$4,290
PYMT TO PARTY	$1,634
MAILING LISTS	$795
TICKETS	$572

Advertising was by far the largest expense category. Advertising for all the candidates came to $642,609, more than two-thirds of the total expenditures. Candidates spent $318,734 on media advertising that was clearly identified as TV or radio. The Other Advertising expenses of $323,875 included newspapers, yard signs and unspecified advertising. Because most of the payments to consultants were identified and categorized as advertising, the remaining consultant expenses were relatively minor, totaling $9,497, mostly for polling.

The Administrative category includes payroll, office overhead such as rent, phones, computers and general supplies, plus postage when the purpose of the postage wasn't specified. Roughly $47,000 of the administrative costs were for salaries, payroll taxes and other staff expenses. Postage stamps, bulk mailings and other mail expenses came to about $53,000.

All other expenses accounted for less than 10 percent of the total. Candidates spent about $28,162 on travel expenses, including plane fares, gas, food and lodging. General unspecified printing costs came to $22,201.

Expenses for fundraising and other events such as rallies included room rentals, supplies and catering. Mailing list expenses were primarily the cost of purchasing lists from the state Bar Association.

The Contributions category consists of payments to nonprofits such as food banks. Out of 19 contributions totaling $6,400, all but two were made by Justice Leaphart, and all but $435 of his $5,735 in donations were made after the election, presumably disposing of his surplus funds. None of the candidates made contributions to political parties. However, payments totaling $1,634 were made to political parties for activities such as dinners, fair booths, and advertising. Payments were also made for tickets and other fees to non-party events such as Chamber of Commerce dinners and community parades.