

# **Electing Judges in Cook County: The Role of Money, Political Party, and the Voters**

A Report Prepared by

**The Chicago Appleseed Fund for Justice**

**with the assistance of  
The Chicago Council of Lawyers**

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# Foreword

Chicago Appleseed Fund For Justice (“Chicago Appleseed”) and the Chicago Council of Lawyers (“Council”) have formed a strategic alliance to work on projects in the public interest.

Chicago Appleseed is a social action research organization focusing on government effectiveness and social justice issues, and has been the Chicago affiliate of the Appleseed Foundation since 1997. The Appleseed Foundation is a national organization designed to effect and enable constructive system change leading to a more just, equitable society by establishing “Appleseed Centers” throughout the country.

The Chicago Council of Lawyers is a public interest bar association devoted to bringing about an exemplary justice system in Cook County that is fair and accessible to all persons. Since 1970, the Council has been evaluating state judicial candidates and judges while offering numerous recommendations relating to improving the judicial selection process.

In this project, Chicago Appleseed has been responsible for the social science quantitative and interview research that was conducted. This was done to separate the data gathering and analysis from policy concerns and preferences.

The goal of this project is to utilize quantitative research analysis to identify the determinants of judicial election outcomes in Cook County. This analysis uses data that includes detailed campaign information about all judicial candidates in Cook County between 1988 and 2000 – including campaign funding information. Multiple regression analyses were conducted by Lee Epstein, a nationally known and respected professor of political science and law at Washington University, and by Professor Andrew Martin, also of Washington University. Biographies of Professors Epstein and Martin are attached as Appendix B.

The identified determinants of electoral success were the basis for detailed interviews conducted by social scientists and other trained individuals. These interviews were conducted with unsuccessful judicial candidates, judges, election law experts, members of the press, and other voters. Our goal in these interviews was to determine how and why the determinants of electoral success work in the real and very political world of judicial elections.

We then used the results of our quantitative analyses, the interviews, press accounts of judicial campaigns, and other literature to develop and present a series of judicial election reforms. This list serves as a series of suggested steps that need to be considered by all of the stakeholders in Cook County judicial elections.

# Electing Judges in Cook County: The Role of Money, Political Party, and the Voters

## Introduction

Judges are elected in 39 of the 50 states, including Illinois. The media are replete with stories about how expensive judicial elections have become and how cynical the public is about judicial elections. Surveys commissioned by Justice at Stake showed that 50% of American judges feel under pressure to raise money and that 76% of voters now believe that donors to judges' campaigns get special treatment in court.<sup>1</sup>

The purpose of the Judicial Campaign Finance Reform Project is to arrive at a better understanding of the determinants of electoral success in Cook County judicial races, including both primary and general elections. This understanding will help us identify the real problems with the judicial electoral system and to recommend effective solutions.

The project examined the relative influence of campaign financing practices, institutional selection and appointment processes (such as party slating), and the impact of the subcircuit election process. While the quantitative analysis helps identify the factors that determine election outcomes, we turned to personal interviews to understand how these determinants work within the political world of Cook County judicial elections. We conducted these interviews with more than 40 bar leaders, unsuccessful judicial candidates, judges, members of the media who cover judicial election stories, and lawyers with expertise in election law.

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<sup>1</sup> Surveys conducted by Greenberg Quinlan Rosner Research, Inc. Seventy-two percent of Illinois state judges said that the conduct and tone of judicial campaigns has become worse over the past five years. See [www.JusticeatStake.org](http://www.JusticeatStake.org).

In this report, we start with a description of the problems involving judicial elections, including the national perspective. We then discuss how judges are elected in Cook County and the year 2000 Illinois judicial campaign spending controversies. We then turn to the issue of why we are focusing on the lower courts in Cook County, rather than the Illinois Supreme Court. We next provide research results.

The final section of the report discusses a list of proposed recommendations for reform that have been suggested by our research results and then offers conclusions.

### **Problems Involving Judicial Elections, Including the National Perspective**

The financing of judicial campaigns has been portrayed in the media as a means to sell our courts to the highest bidders. Major studies and documentaries focus on such diverse places as Los Angeles, Texas, Wisconsin, and Louisiana. There are many examples nationwide of how the make-up of state supreme courts has been altered by organized interest groups who join forces to put onto the bench judges who will be favorable to their cause. Such groups have also sometimes worked to eliminate from the bench judges who are not favorable to their interests.

### **Prior Studies of Judicial Campaign Finance**

Like other types of elections, judicial elections have become nastier and costlier.<sup>2</sup> Three extensive studies conducted in the 1980s illustrate the problems facing elected judges

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<sup>2</sup> Georgetown University Law Center professor Roy A. Schotland first remarked upon this trend two decades ago in his landmark article *Elective Judge's Campaign Financing: Are State Judge's Robes the Emperor's Clothes of American Democracy?*, 2 J.L. & POL. 57 (1985), at 76-7. This increase in both cost and "nastiness" shows no sign of abating. In the 2000 elections, Professor Schotland observed record levels of spending in ten of the twenty states with supreme court elections. Schotland, *Financing Judicial Elections, 2000: Change and Challenge*, 2001 L. Rev. M.S.U.-D.C.L. 849. at n.54

nationwide. In 1986, Anthony Champagne, a professor in the School of Social Sciences at the University of Texas in Dallas, produced a study of judicial elections in Texas. This work was updated in 1992 and 1996. Another study, “Funding Judicial Campaigns in Illinois,” conducted by DePaul University professors Marlene Nicholson and Norman Nicholson, covers campaigns in Illinois from 1980 to 1990. In *The Price of Justice: A Los Angeles Area Study in Judicial Campaign Financing*, the California Commission on Campaign Financing, a private, nonprofit, bipartisan organization of 23 prominent Californians, examined data from Los Angeles County to study contested superior court races from 1976 to 1994 and contested municipal court races from 1988 to 1994.

### **Texas**

In an article published in 1996, Champagne asserted that non-lawyer Political Action Committees had become an increasingly significant factor in Texas judicial campaigns.<sup>3</sup> Individual contributions to Texas judicial campaigns can top \$100,000. A poll showed that a majority of judges there believe that judicial campaign contributors make those contributions with the goal of influencing the judicial system, and a majority of the contributors surveyed even stated that influencing the judiciary was one of their goals.

### **Los Angeles County**

In its examination of campaign finance data between 1976 and 1994, the California Commission on Campaign Financing (“Commission”) observed that the financing problems in the Los Angeles area fell into three categories: “the potentially corrupting influence of large campaign contributions, inadequate resources for judicial candidates to educate the voters and the inability of voters to obtain sufficient information from all media sources on judicial

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<sup>3</sup> Champagne and Cheek, *PAC's and Judicial Politics in Texas*, 80 JUDICATURE 26 (1996).



candidates.”<sup>4</sup> Assuming that the county’s elective system would remain in place, the Commission identified two goals of campaign finance reform: (a) to provide voters with enough information to make intelligent choices, and (b) to reduce the importance of campaign contributions.

The Commission’s report noted several patterns: 1) the amount of money spent correlates with success; 2) candidates who relied on self-funding, and those who spent the most of their own money, usually won; 3) the amount of money spent on judicial campaigns more than doubled every year during the period studied; 4) California’s voters’ pamphlets -- an official informational package mailed directly to all registered voters before the elections -- became so expensive to print between 1978 and 1994 that candidates increasingly could not afford to have their statements included, resulting in a decrease of voter information; 5) some judges ended their campaigns with substantial debt and had to raise money while in office; and 6) attorneys were the largest source of contributions to judicial campaigns.

### **Illinois**

The Nicholson study is an extension of an empirical study of campaign financing in the 1984 elections. It includes information about elections through 1990. The study found significant differences in fundraising practices depending on the type of election. Candidates in retention campaigns in Cook County during the period studied raised small amounts compared to candidates running to fill vacancies in partisan elections, and retention candidates raised funds through a joint committee rather than independently.

In contrast to the retention elections, the Nicholson study found that partisan elections involved substantial levels of individual fundraising. Between 1980 and 1990, circuit court

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<sup>4</sup> CALIFORNIA COMMISSION ON CAMPAIGN FINANCING, THE PRICE OF JUSTICE: A LOS ANGELES CASE STUDY IN JUDICIAL CAMPAIGN FINANCING (1995), at 96.

campaigns for circuit court judgeships outside of Cook County showed a four-fold increase in funds raised. In Cook County, the funds raised doubled during the same period.<sup>5</sup> The authors also found what they deemed to be questionable fundraising practices. For example, candidates in Cook County who were clearly running unopposed still raised substantial funds in both the primary election and the general election.

Ethical concerns may also arise from the expenditure of the contributed funds. The Nicholson study found that large sums of money were given to political committees in uniform amounts, which suggests that the donations were required assessments. Candidates were compelled to make these donations in order to obtain the party endorsement.<sup>6</sup>

### **How Judges Are Elected in Cook County**

The Cook County judicial system has both countywide and smaller, “subcircuit” districts. The two levels present different targets for reform. Countywide judges are selected by the voters of the whole county. Once elected, the candidate can be assigned to any division of the Circuit Court. The 15 subcircuits are geographical areas that all lie within Cook County. Subcircuit candidates must reside within the geographic boundaries of their subcircuit, and they are selected by the voters of that subcircuit only. Once elected, however, the judges from the subcircuits have the same powers as judges elected countywide, and can also be placed in any division of the Circuit Court, as well.

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<sup>5</sup> According to data collected by Chicago Appleseed, judicial fundraising in Cook County increased from an average of \$7,400 in 1988 to more than \$30,000 in the 1998 subcircuit elections and about \$19,000 in the 1998 countywide elections.

<sup>6</sup> For examples of amounts donated and recipients, see Abdon M. Pallasch, “Making a Contribution,” *Chicago Lawyer*, March 1996, at 4; and Pallasch, “Clout Is Key to Filling Dems’ Judicial Slate,” *Chicago Sun-Times*, November 28, 1999).

The subcircuits were created as a response to criticisms that countywide elections resulted in an insufficient number of minorities and Republicans on the bench. In 1992, the Illinois legislature enacted legislation establishing the subcircuit system in Cook County, with the aim of increasing diversity on the bench.

Subcircuit elections have changed the environment in which judicial campaign fundraising occurs. Some observers believe that subcircuit elections have made campaign fundraising more important since subcircuit candidates not slated by local politicians can win if they raise enough funds. The smaller geographic size of the subcircuits allows a candidate to reach every voter in the subcircuit with campaign information, provided that the candidate can raise a relatively modest amount of money. For example, in 1996 the unslated candidate running in the Eight Subcircuit was able to win a judicial seat after representatives of local political organizations disagreed over who was to be slated. The result of this disagreement was sample ballots or palm cards reflecting more than one slated candidate (different names appeared on different palm cards in precincts throughout the area). The successful candidate, Candace Fabri, was able to take advantage of the opportunity by raising enough money to gain name recognition through a large-scale distribution of campaign literature.

But the results vary. High-quality candidates not slated by the dominant political party (the Democratic Party in most subcircuits, but the Republican Party in some subcircuits) have shown that they can raise enough funds to win. In other instances, however, poorly qualified but slated candidates have beaten out more qualified people who did not have the ability to raise large amounts of campaign funds. In addition, the Awildcards@ of judicial elections -- the importance of ballot position and a surname that is appealing to voters -- continue to play a role.

## **Illinois Supreme Court elections and campaign spending controversies in 2000**

In contrast to most state supreme courts, which are elected or appointed on a statewide basis, Illinois Supreme Court Justices are elected from regional districts linked to appellate court districts. The three Supreme Court seats up for election in 2000 included the First District (all of Cook County), the Second District (covering McHenry, Will, and DuPage suburban counties), and the Third District (western Illinois). Hundreds of appellate and circuit court judges were standing for election or retention throughout the state. In Cook County alone, one Supreme Court justice, three appellate court justices, and 73 circuit court judges faced (and won) retention elections. At the (contested) primary election stage, four candidates vied for the Supreme Court seat vacated by Justice Bilandic, four candidates competed for an appellate court vacancy, and 76 candidates competed for 12 countywide and seven subcircuit judgeships.

The expenditures of two candidates competing for the Supreme Court vacancy established a new record: Circuit Judge Thomas Fitzgerald spent over \$1 million in his campaign. Appellate Justice Morton Zwick spent over \$1.1 million, narrowly outpacing Fitzgerald and far exceeding the expenditures of the other two candidates, private practitioner Christine Curran and First District Appellate Court Justice William Cousins.<sup>7</sup> The First District has long been considered a “safe” seat for Democratic candidates running countywide.

The Second District, by contrast, is generally considered to be “safe” territory for Republican candidates running countywide. The 2000 Second District race featured three Republican candidates: DuPage Circuit Court Judge Bonnie Wheaton, who spent over \$1.5 million in her effort (of which over \$1 million came from her own pocket); Appellate Justice Thomas Rathje, who also spent slightly over \$1 million, also a largely self-financed campaign;

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<sup>7</sup>Illinois Campaign for Political Reform, “Campaign Financing in Illinois Supreme Court Races.” Presented at Illinois Judicial Elections Meeting, April 12, 2001. Data also available at <http://www.ilcampaign.org>

and then-Appellate Court Justice and former Chicago Bears kicker Bob Thomas, who received the most third-party contributions of any candidate but spent only \$553,814, and won. The Second District received prominent attention from reform groups and the media both for the absolute levels of campaign spending in the races and for the tenor of the campaigns: as was the case in the First District primary, the race was notorious for candidates' use of attack-advertisements, particularly against Thomas, the front-runner and eventual victor.

The Third District had the only race where candidates faced difficult primary elections and a bona fide contested general election. Democrat Thomas Kilbride won by a narrow margin, outspending his Republican opponent Carl Hawkinson \$878,000 to \$538,000. That the partisan make-up of the Court is considered important to both political parties is reflected partially by absolute levels of party committee contributions: Kilbride received \$685,000 from the Democratic Party of Illinois committees alone, mainly from the Chicago area.

### **The Need to Examine Judicial Campaign Financing in Cook County**

The subject of money in state judicial elections and the potential ethical improprieties that accompany judicial fundraising generate considerable debate both inside and outside the legal arena. Competing concerns about balancing accountability and independence among elected judges have created controversy ever since Mississippi became the first state in the Union to elect judges in 1824.<sup>8</sup>

The debate over who should select judges is as old as the United States. Some say that electing judges gives the people their rightful voice, and that this voice would be taken away by

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<sup>8</sup>To be sure, concerns of bias on the bench are not and should not be limited to elected judges. Indeed, the practice of electing judges is a relatively recent phenomenon, unique to the United States among common-law legal cultures. Concerns for "blind justice" are apparent in legal histories and traditions in the English appointed system as well.

politicians and bar groups in an appointive system. Others argue that elections have produced corrupt and/or unqualified judges who lack the independence judges must have to dispense even-handed justice and to be an effective check on the power of the other branches of government.

While this debate continues, new and related issues have arisen. As judicial elections have become increasingly expensive, has raising money for judicial campaigns imposed increasing constraints on the independence of the judiciary in Cook County? And to what extent does the political slating process now interact with judicial campaign financing?

The vast majority of the attention paid to judicial elections -- and possible reforms -- is focused on state supreme court races. For example, a recent report by the American Bar Association calling for public financing of judicial elections included the caveat that public financing is only practical for state supreme court elections. But that may not be where reform is most needed -- a recent study published by the Institute on Money and Politics found no relationship between campaign contributions and the decisionmaking of the Illinois Supreme Court.<sup>9</sup>

Does this mean that money is not important in Illinois? Hardly. It may mean instead that people with money and power are primarily interested in the judicial elections at the lower court level, where many of our most important cases are heard. The great majority of those cases are not accepted for appeal to the Illinois Supreme Court.<sup>10</sup>

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There is no shortage of literature on problems of conflicts of interest of appointed judges. Indeed, the Declaration of Independence decried the system of judges appointed by and subject to the control of the King of England.

<sup>9</sup>The study found that the cost of winning a seat on the Illinois Supreme Court has tripled over the last decade. However, fewer than four percent of the lawyers appearing before the Supreme Court had made a contribution to a winning candidate. The study states: "There is no statistical evidence from these cases that connects contributions with success before the Court...." In fact, the study found that "just 10.7 percent of cases before the Supreme Court involve a contributor. When those contributors appeared before the Court, they were more often on the losing side than the winning side of the case."

<sup>10</sup> The Illinois Supreme Court disposed of 104 cases in 1999, 144 cases in 2000, and 133 cases in 2001. By contrast, in 2001, the Chancery Division of the Circuit Court of Cook County disposed of 21,092 cases; the Law Division

In Cook County, judicial campaign fund-raising is having a two-fold effect on judicial elections.

First, judicial campaigns started becoming expensive in the 1980s.<sup>11</sup> Then, with the creation of subcircuit elections in 1992, people realized that money could determine outcomes in these more geographically restricted contests -- that the candidate slated by the local party politician in the subcircuit could be beaten if the unslated candidate raised enough money. Since 1992, Cook County judicial campaigns have become even more expensive. According to data collected by Chicago Appleseed, judicial fundraising in Cook County increased from an average of \$7,400 per contest in 1988 to more than \$30,000 in the 1998 subcircuit elections and about \$19,000 in the 1998 countywide elections. We have to ask ourselves: what are the sources of the extra funds? what do contributors expect in return? as candidates need more and more money, is the need filled by special interest groups?

Second, the link between judicial campaign finance and the all-important political slating process is becoming stronger. Countywide judicial elections are won, for the most part, by those candidates slated by the Democratic Party. Past studies have shown that in Illinois, judicial candidates gave large sums of money to political committees in uniform amounts, suggesting that the donations were required assessments.<sup>12</sup> Once endorsed, the candidates were expected to make contributions to the Democratic Party.

Fundraising prior to the endorsement is a way for the candidate to demonstrate support or clout. Judicial candidates seeking the Party endorsement understand that they must persuade the slating committee that they are loyal Democrats. As one candidate said at a slating session, "I

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disposed of 246,523 cases; and the Criminal Division disposed of 312,561 cases. Annual Report of the Illinois Courts, Statistical Summary (2002).

<sup>11</sup> Nicholson and Nicholson, *Funding Judicial Campaigns in Illinois*, 77 JUDICATURE 294 (1994).

<sup>12</sup> *Id.*

could tell you I've handled thousands of cases as a judge and a lawyer, but I don't think that's important -- I've been a loyal Democrat all my life.”<sup>13</sup>

Once the slating has been done for the countywide elections, non-slated candidates often do not raise substantial funds, hoping instead that good ballot position or a good ballot name will create the electoral miracle it takes to beat the slated candidates. These electoral miracles are rare. Unslated candidates may lack the ability to raise money because potential donors see them as likely losers.

In addition to countywide slating, the subcircuit election process created a new type of slating and a new emphasis on the judicial fund-raising that goes along with the slating process. Dividing Cook County into 15 subcircuits for the purpose of electing more representative judges also created 15 slating processes B all controlled by politicians at the neighborhood level. The relationship between slating and campaign funds that existed at the County level then blossomed at the subcircuit level as well. Subcircuit judicial candidates seeking to be slated also need to show clout, often by raising campaign funds.

### **The Need to Focus on Local Courts in Illinois**

The politics behind how lawyers ascend to the bench -- including the influences of, *inter alia*, fundraising, campaigning, issue preferences, and partisan influences -- is increasingly understood, not as something peripheral to the judiciary or reflected in a mere handful of races, but rather as a primary determinant of who sits on the bench at all levels.<sup>14</sup> Not surprisingly, “politics-as-usual” gives many observers of the bench and bar pause. Those who value judicial independence believe that judgeships should be “removed” from the political process. A

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<sup>13</sup> Pallasch, *supra*, note 6.

<sup>14</sup> See, e.g., Kent Redfield. *Money Counts: How Money Dominates Illinois Politics and What Can Be Done About It*. Springfield: University of Illinois Press (2001).



controversial compromise would apply special rules to judicial elections, restricting what candidates say and spend in the course of their campaigns. Surveys conducted by the American Bar Association and the Illinois Campaign for Political Reform highlight the concern that drives such restrictions: there is a perception among the public that judges are or influenced by campaign contributors, especially when the donors are lawyers.<sup>15</sup>

State Rep. Kevin McCarthy (D-Orland Park), a co-sponsor of a bill to implement public financing in Illinois Supreme Court elections, summarized the views of many critics of the electoral process in Illinois when he labeled the spending in the 2000 judicial elections “outrageous,” and the attacks candidates leveled against one another during the course of the campaign as “unseemly.”<sup>16</sup> Even if judicial candidates are forced to take part in a partisan electoral process, the argument goes, they should make it clear that judges are accountable only to the law and the parties before the court.

### **One Size Does Not Fit All**

With rare (but notable) exceptions, state judges on appellate courts and state courts of last resort are appointed or elected to those positions only after initial service on lower courts. In Illinois (as in Texas, Michigan, Ohio, California, and other states), all state judges at the trial court level and above are elected through the same system; thus, the skills, practices, and customs for successful candidacies in the higher courts should in theory be developed in the lower courts. The questions then become: a) what are the characteristics that make for successful

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<sup>15</sup> American Bar Association, “Perceptions of the U.S. Justice System.” February, 1999. *See also* Illinois Campaign for Political Reform, “Perceived Influence of Campaign Contributions on Illinois Judicial Elections.” April 2001.

<sup>16</sup> McCarthy’s comments were made in support of Illinois H.B. 1704, “The Public Financing for Judicial Campaigns Act,” in a public “Q & A” session in Tinley Park, Illinois.

candidates in the lower courts, and b) do such major issues as campaign fundraising work in the same way in lower court elections as they do in state supreme court races?

A review of the Illinois contests discussed earlier makes it clear that campaign spending alone is not determinative. This is true even at the level of the Illinois Supreme Court. Morton Zwick, the biggest spender in the race for the First District Supreme Court seat and the subject of intense scrutiny by the media and organized bar for his controversial campaign tactics, ran fourth behind the slated Democratic candidate, a popular African-American judge, and a lawyer in private practice.

Judicial elections at the lower court level involve politics and political actors different from the factors influencing state supreme court races, and the reforms needed in supreme court campaigns may well be different from proposals aimed at improving elections used to select lower court judges. Our point here is a simple one: if the public is concerned about judicial campaign contributions, we should address the courts that handle most of the cases -- the circuit courts. In 2001, in a trend mirrored across the country, the Illinois Supreme Court decided only 133 cases.<sup>17</sup> This is not to say that reform measures for the Illinois Supreme Court are unimportant. But the measures required may be different in different areas of the court system.

## **Research Methodology**

To examine the role of money, political party, and the voters in judicial elections in Cook County, we employed two complementary research methods. Regression analysis conducted by Professors Epstein and Martin helped identify determinants of electoral success in Cook County judicial elections. Our analyses of candidate characteristics, election outcomes, and candidate spending and fundraising practices are based on examination of 33,000 records -- 30 pieces of

information for each of the more than 1,100 candidates who ran for judge in Cook County between 1988 and 2000. The goal of this quantitative analysis was to identify those factors that have a statistically significant influence on the election of judges in Cook County.<sup>18</sup>

But quantitative data alone have analytical limits. It is one thing to know that a particular variable can have a significant impact on determining success in judicial elections; it is quite another to know *why* it has such a strong impact. We therefore conducted focused interviews with various attorneys, political actors, journalists, former candidates, and other members of the community who are familiar with or have first-hand experience with the judicial selection process in Cook County. Because of the conflicting opinions regarding the Cook County judiciary, we sought responses from a wide variety of respondents from a number of different perspectives. All respondents were promised anonymity.

### **Collecting Quantitative Data: The Law of Campaign Finance in Illinois**

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<sup>17</sup> See footnote 10, *supra*.

<sup>18</sup> The quantitative data collection process contains the following elements of interest:

Candidate-centered variables

Candidate name, surname, gender, age, race/ethnicity, partisan affiliation, current and prior occupations (including judicial background), bar rankings, press endorsements, years practicing law, year admitted to bar, legal education, and (for current judges) whether the candidate initially reached the bench through interim appointment or contested election.

Election variables

Vacancy name, whether candidate was a sitting judge, whether a candidate was slated by a political party, year of election, type of race (primary, contested general election, uncontested general election, retention election), subcircuit/countywide race, partisan affiliation, number of candidates in election, election outcome (win/lose), number of votes cast in particular judicial election, number of votes cast for each candidate, ballot position, and party coattail effects (other high profile races or controversies, Get Out the Vote campaigns, etc.).

Financial Data

Money raised and spent by each candidate from 1988-2000, including dates received and/or spent. (Illinois law requires that a candidate file an official election committee report when a candidate receives and/or spends a combined \$3000 over an election cycle. This includes self-financed candidates.) For each candidate, our financial data identify, code, and aggregate: contributors to campaigns (including attorneys identified by area of practice and by firm, when applicable), loans and transfers, inter-campaign donations, donations from and expenditures to political parties and political figures, and campaign-related expenditures.

Candidates for all elective offices in Illinois, except federal offices, are governed by the Illinois Campaign Disclosure Act.<sup>19</sup> All candidates for judicial office who have accepted contributions or made expenditures (or any combination thereof) in excess of \$3,000 within a 12-month period must file campaign disclosure documents with the State Board of Elections and the county clerks.<sup>20</sup> Under Illinois law, “contributions” include anything of value (including in-kind contributions). Self-financing occurs through “loans” to the campaign committees. Thus, even candidates who are entirely self-financed must file if they spend in excess of \$3,000. “Expenditures” include loans-out, transfers to other campaigns, payments on campaign debt, and spending on all related campaign purposes.

All contributions or expenditures must be aggregated in “D-2” reporting forms. Regardless of the amount or number of receipts, each active committee must file detailed semi-annual reports. Additionally, if a candidate receives large contributions, he or she must file both pre-election and post-election reports. Expenditures or contributions of any kind are to be itemized if they exceed \$150. Anonymous contributions to political committees are prohibited in Illinois.

Given the political climate and intense scrutiny of judicial campaign fundraising, we had to consider the possibility that the financial data would tell something less than the truth about campaign fundraising activity. For two reasons, we believe this concern is unfounded. Having spoken with a number of former candidates, as well as journalists and other researchers who have closely covered the financing system, we believe that intentional reporting inconsistencies are few and far between. In spite of the itemization thresholds, a majority of candidates provided

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<sup>19</sup> P.A. 78-1183. *See* Illinois State Board of Elections, A GUIDE TO CAMPAIGN DISCLOSURE. Sept. 1999. Candidates running for federal office are held to federal reporting standards and thus are not covered by the Act.

“laundry lists” of itemized expenditures in which *all* expenditures or contributions that cumulatively totaled the aggregate reported amount were listed. This suggests that most candidates are risk averse, choosing to declare most if not all expenditures and contributions to avoid any later difficulties.<sup>21</sup>

Second, the comprehensive organized reporting system in Illinois does not lend itself to obfuscation. The extent of the reporting and the quality of data maintained on microfiche by the State Board of Elections are impressive. Although errors are not infrequent in reports, because of multiple filings most were corrected in subsequent data. Our coders were not charged with correcting addition or subtraction errors on the part of the candidate. Quantitative data were entered in Excel spreadsheet format and then relayed to Professors Epstein and Martin for independent analysis.

### **Qualitative Research Methods**

The qualitative data collection process, accomplished through interviewing by phone and in person, utilized a standardized data collection form designed to elicit information about:

- Slating
- Perceptions of the bench and bar about judicial elections
- Role of political parties and interest groups
- Campaigning for a judgeship
- Judicial speech
- Prospective voters’ need for information about candidates
- Money in judicial elections: Where it comes from and for what purposes it is given
- Opinions about proposed reforms

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<sup>20</sup> Beginning in 1999, any political committee with a balance of \$25,000 or more, or \$25,000 in any combination of loans, expenditures, or contributions must file electronically. Beginning in 2003, the threshold for electronic filing will drop to \$10,000.

## **Research Results**

We present the results of our quantitative research results and the results of our interviews.

### **Statistical Analysis: What Does It Take To Get Elected?**

Despite the importance that candidates and political parties assign to being slated, anecdotal evidence does not establish whether slating actually works or not. Moreover, stories about particular candidates paying for political endorsement do not prove that campaign contributions enhance the likelihood of slating in general.

Using Chicago Appleseed's judicial campaign database, Professors Epstein and Martin looked at three events – primary elections, general elections, and the slating process – to discern what factors were significant in achieving the desired goal (winning the election or being slated) for each of them. A copy of their findings is attached to this report as Appendix A; a summary of their findings is found below.

#### **Democratic Primaries in Countywide Races**

For Democratic primaries in countywide races, receiving a favorable endorsement by the *Chicago Tribune*, being female, and having an Irish or Scottish surname were all positive factors (to a statistically significant degree).

Slating had an enormous effect; if a candidate was not slated, then s/he had a 5.8% chance of winning the primary. If s/he was slated, those chances increased to 68.4%.

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<sup>21</sup> One staff member at the State Board of Elections reminded us that for the most part, “the only records that anyone cares about are the supreme court [candidate] records.”

### **Democratic Primaries in Subcircuit Races**

In the subcircuits, receiving the *Tribune*'s endorsement and being female have a positive effect on winning judgeships but, unlike countywide races, having an Irish or Scottish surname was not statistically significant. Slating, again, was the most important factor.<sup>22</sup> The probability of a candidate winning the primary without being slated is 8.9%. The probability increases to 76% if the candidate is slated.

In the subcircuits, money does not have a statistically significant effect on winning elections, except insofar as it relates to slating.

### **Republican Primaries**

Due to the smaller number of Republican candidates in primary elections, Professors Epstein and Martin could only analyze a sample combining countywide and subcircuit elections. That said, the result is clear: the only variable that exerts a statistically significant effect is slating. The probability of a non-slated Republican candidate winning the primary election is 15%, but an endorsed candidate has an 86.4% chance of winning the primary.

### **General Elections**

In the general elections, including both countywide and subcircuit races, *Chicago Tribune* endorsement and Irish/Scottish surnames had significantly positive effects, but the effects were not large. Being female and a Democrat were the most significant factors leading to victory; of these two, being a Democrat had the greater effect. With all other variables held at their means, Republicans win elections only 13.9% of the time.

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<sup>22</sup> Actually, the regression models show that *Tribune* endorsement does not exert a significant effect in predominantly African-American subcircuits, while it does in largely Hispanic subcircuits.

If we limit ourselves to subcircuit races in the general election, the only statistically significant variable leading to victory is party affiliation, although it is not as important as in the countywide races. Holding all other variables at their means, the statistical model suggests that, in the subcircuit elections, Republicans win 46.3% of the races they contest while Democrats win 88.6% of their elections. The total is more than 100% because both parties run candidates selectively, or choose not to run candidates in races where they expect to lose. The finding also suggests that the subcircuit system may be achieving its intended effect in one area -- loosening the Democratic stranglehold on Cook County judgeships.

The overarching theme of the findings is that slated candidates are much more likely to be successful than unslated ones. With that in mind, the next step in the analysis was to look at what factors went into slating decisions.

#### **Determinants of Being Slated – Democratic Countywide Races**

In Democratic countywide races, money was the most significant factor affecting slating. When all other variables were held constant, a candidate had a 23.6% chance of being slated. Spending an additional \$10,000 increases that probability to 31.8%; spending an additional \$50,000 increased the probability to 69.8%.

#### **Determinants of Being Slated – Democratic Subcircuit Races**

Subcircuit races presented a different picture: for those races, money was not statistically significant. The reasons for this are open to speculation, but Epstein and Martin believe that this result occurred because political organizations use different processes for slating candidates for subcircuit judges than they do for countywide seats.



### **Determinants of Being Slated – Republican Countywide and Subcircuit Races**

By and large, the slating decisions for the Republican Party follow the same pattern as those of the Democrats. Holding all other variables at their means, the probability of the party slating a candidate was 48.1%. This probability increased to 64.1% for an additional \$10,000 spent, 83.5% for an additional \$25,000, and 97.7% for an additional \$50,000. The Republican Party analysis also showed that there was a statistically positive effect when a candidate had run before.

### **Relationship Between Money and Slating**

Differences between the Republican and Democratic Parties aside, the data reveal a consistent and significant relationship between money and slating. That relationship may take one of two forms: (1) fundraising increases the likelihood of being slated, or (2) slating increases the potential for fundraising. It is not possible to differentiate between the two in our quantitative analysis. Professors Epstein and Martin believe that the former process is more likely than the latter, however because the “money” variable used in the analysis included only funds raised through the first quarter of the election year. They took this approach to focus on fundraising before and immediately after slating, rather than over the course of an entire campaign.

Interview data collected by Chicago Appleseed support this view, but causal links between money and slating vary by subcircuit. Some candidates who were slated raised significant funds before the slating decision was made. Other slated candidates had not raised funds by the time the slating decision was made, but there was an understanding that they would be able to provide significant funding once they were slated.

A final analysis conducted by Professors Epstein and Martin looked at the spending patterns of winners and losers in judicial races over the past decade. This analysis compared

winner and loser of all non-retention general election races in each year and computed the percentage of candidates that gave money to local political organizations. The results are as follows:

**Percentages of winners who gave money to party organizations:**

1988: 43%  
1990: 36%  
1992: 72%  
1994: 64%  
1996: 89%  
1998: 71%  
2000: 83%

**Percentages of losers who gave money to party organizations:**

1988: 9%  
1990: 44%  
1992: 31%  
1994: 0%  
1996: 50%  
1998: 41%  
2000: 0%

As the data show, in only one year, 1990, did more losers contribute money than winners, and in no year since 1992 – the year the subcircuits were created – did fewer than 64% of the winning candidates contribute to a political organization. In 1996, this percentage was 89%, and it was 83% in 2000. The data also show a marked increase in the percentage of winning candidates contributing to the Parties after the advent of subcircuit elections in 1992.

In 1988, a winning judicial candidate raised on average about \$7,400. In 1992, during the time of the first subcircuit election, the contribution level jumped to \$15,000 for countywide candidates and nearly \$19,000 for subcircuit candidates. In 1998, winning countywide candidates raised an average of \$19,000, while judicial subcircuit candidates on average raised more than \$30,000. Finally, the average age of candidates stayed about the same over the 12 years covered in our study – between 45 and 46 years of age, for both winners and losers.

## How Judicial Elections Are Won in Cook County

### The Need to be Slated

The reasons for being slated are, in sum: 1) to gain the advantage of having a political party's administrative network facilitate the candidate's campaign, 2) to receive the "political cue" of party affiliation, key for attracting uninformed voters, and 3) to receive the support of the local political organization advocating the slating, and the votes that the organization can deliver.

Administratively, the political parties provide candidates with personal contacts and advertising channels that would be difficult and expensive to acquire independently. In addition, the parties can mobilize members of their organization to campaign on behalf of the candidate.

As one former candidate stated:

"Candidates who are slated get stuff handed out for [them]...if [the candidate is] not [slated] you have to find people to stand there for you – friends and family. You need support otherwise done by the party for the slated candidate."

An unsuccessful candidate categorizes the administrative benefits provided by the political party as:

"Time, money, and organization – candidates who are endorsed by the party receive a weekly list of events to attend. If you [as a non-slatted candidate] want to find out what is going on, it takes a lot of work."

Slating also provides a candidate with an "official" endorsement from his/her political party. Showing that a candidate is affiliated with a political party is important in any election, but more so in judicial elections because of the relative obscurity of the candidates. When the electorate cannot evaluate a candidate based on particular information (such as previous work experience, education, etc.) they rely upon "political cues" in order to make their choice.<sup>23</sup> In

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<sup>23</sup> For a thorough discussion of voter behavior in judicial elections, especially in regards to "political cues," see William K. Hall and Larry T. Aspin, *What Twenty Years of Judicial Retention Elections Have Told Us*,

Cook County, some of the more common political cues are race, gender, and ethnicity (particularly if that ethnicity is Irish). No “political cue” is more identifiable in heavily Democratic Cook County than affiliation with the Democratic Party. Official endorsement by the Party and a place on its ballot means that the candidate will capture the votes of the Party regulars. One election law expert observed:

“The [Democratic] Party presents all of the [Democratic Party Slated] candidates together, including judges, knowing the audience will vote for the slates.”

Finally, slating by a party means that the candidate – to a certain extent – has the support of a ward boss. These bosses hold a large amount of “political capital” – the ability to deliver votes for a candidate – and in judicial elections, where a winning candidate may only need 30,000 votes to win, guaranteed votes are crucial.

As the data by Professor Epstein show, a candidate’s chances of winning an election increase exponentially if s/he is slated. The political parties are aware of its importance, and they exact a heavy price for the “privilege of being slated.” We will look at the cost of slating, and then examine another criterion used in slating decisions – party loyalty.

## **Slating in Countywide Elections v. Slating in Subcircuit Elections**

### **The Cost of Being Slated**

#### **Money**

In theory, there are no set criteria a candidate must satisfy in order to be slated. In practice, however, the candidate should be: 1) able and willing to donate money to the political party, and 2) a loyal party member – as demonstrated by the candidate’s past actions on behalf of

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JUDICATURE, Volume 70, Number 6, April-May 1987, 340; William K. Hall, Larry T. Aspin, Jean Bax, and Celeste Montoya, *Thirty Years of Judicial Retention Elections: An Update* (Bradley University, 1997 – draft version

the party. Both attributes are problematic in their own ways. In regards to money, the common practice with political parties has been to require a candidate to provide a donation to the party both before and after the slating session. A report in the *Chicago Daily Law Bulletin* of March 14, 1996 shows that every endorsed countywide candidate, with three exceptions, declared contributions of \$10,000 to the Democratic Party's central committee from their individual campaign committees, and some made individual contributions to influential ward and township committeemen as well. Some of the major contributors were endorsed over incumbent judges appointed to fill vacancies by the Illinois Supreme Court -- a marked departure from traditional Democratic Party procedure.

Another example was explored in a *Chicago Daily Law Bulletin* article of March 14, 1996. The slated candidate was Sebastian Patti, who was endorsed over a sitting judge who had been endorsed by committeemen from his home area. Records show that Patti's campaign committee made individual contributions to the party committee totalling \$6,375 in 1994, \$2,500 in May 1995, and another \$2,500 in November 1995. In addition he transferred \$2,500 to Michael Madigan's campaign committee in September. All of these donations came before the slating sessions. After the slating sessions, Patti's committee gave county Democrats \$10,000 (as did most of the other countywide candidates), \$1,000 more at a later date, \$2,500 to Michael Madigan's campaign committee in November, and another \$1,000 to Madigan in January 1996. In February, Patti's committee gave \$1,500 to William Lipinski's 23<sup>rd</sup> Ward Democratic organization, \$1,000 to the 43<sup>rd</sup> Ward organization, and \$750 to the 36<sup>th</sup> Ward organization. Finally, the committee gave \$250 each to the 11<sup>th</sup>, 4<sup>th</sup>, and 21<sup>st</sup> Ward committees.<sup>24</sup>

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accepted for publication in the Social Science Journal); Larry Aspin, *Trends in judicial retention elections, 1964-1998*, JUDICATURE, Volume 83, Number 2, September-October 1999, 79.

<sup>24</sup> Data collected for this project by Chicago Appleseed show similar patterns – winning candidates giving contributions to multiple local political organizations. Since 1992, when subcircuit elections began, between 64%

The practice of judicial candidates contributing to multiple political organizations is common. An unsuccessful judicial candidate noted in his interview that, to run countywide and be slated, a candidate was expected to raise well over \$10,000. Once slated, the candidate would need to contribute extra money if he or she expected extra assistance from the Democratic Party for the campaign. If a candidate wanted to run in a subcircuit, the “participation fee” was \$10,000. However, that contribution went to the local political organization responsible for the slating; each subcircuit is made up of a number of wards and a number of committeemen. If the candidate wanted extra assistance from the non-slating committeemen during the campaign, crucial for reaching all the wards in a subcircuit, s/he would need to make additional contributions to each ward’s committeeman (somewhere in the range of \$5,000). If the candidate chose not to pay, s/he risked receiving no support from the other wards during his/her campaign.<sup>25</sup> And even if a candidate was loyal to the party and paid everyone who asked for contributions, it may still not be enough to receive the support needed to win the election.<sup>26</sup> This is the exception rather than the rule, however: getting support from the local political party is usually the key to winning a judicial election.<sup>27</sup>

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and 80% of winning candidates in Cook County give contributions to local political organizations. In 1988, this percentage was 43% and in 1990 the percentage was 36%.

<sup>25</sup> However, the power-sharing setup utilized by committeemen in the subcircuits can sometimes lead to altogether unintended results. For instance, the Eighth subcircuit features a system where the party officials in the 42<sup>nd</sup>, 43<sup>rd</sup>, and 44<sup>th</sup> wards alternated being able to slate judicial candidates. After all three wards had their turn, the 46<sup>th</sup>, 47<sup>th</sup>, and 48<sup>th</sup> wards alternated. In 1994 it was the turn of the 43<sup>rd</sup> ward to slate but Bernie Hansen (the 43<sup>rd</sup> ward committeeman) had a candidate who was a lawyer two years out of law school and was beaten by Tom Chiola. In 1996 Hansen re-slating his candidate and asked Alderman Lipiniski, whose turn it was to slate a candidate, to also slate Hansen’s candidate. Both men ended up slating different candidates, which in turn split the vote in the subcircuit. This split in the vote allowed Candace Fabri, a highly recommended, but non-slating candidate, to win the election.

<sup>26</sup> A perfect example of this arose in the 1999 race for deceased judge Joan M. Corboy’s seat. Candidate Marvin Leavitt, who had raised over \$280,000 in campaign contributions, had the backing of the Cook County Democratic Party. However, his support was not as unified as Joyce Murphy, another candidate, who, despite only raising \$39,000, won the race. See John Flynn Rooney, “Benchmark Contributions,” Illinois Issues, October 2000, at 18-20.

<sup>27</sup> A telling anecdote from an article by Abdon M. Pallasch:

Finally, this practice of multiple payments is not limited to ward committeemen. In one case, a sitting judge had been selected to fill a judicial vacancy, was slated for a countywide judicial position, and raised the requisite amount of money associated with that kind of slating. However, she was then approached by local organizations and asked for additional funds.<sup>28</sup>

If the contributions made to political parties were a one-time event, or if the amount requested was defined in such a way as to show where the campaign expenditures actually went, then the argument could be made that these contributions go directly towards the candidate's campaign. The way that campaign contributions are solicited, though, strongly suggests that the initial \$10,000 - \$25,000 payment is a "pay to play" fee and is not directly tied to the costs of running the campaign.

And there is no doubt that the parties expect these contributions to be made in return for slating. One former judicial candidate recalls another candidate being expected to "cough up" money to the party as soon as he was slated. He was "asked" for a \$20,000 contribution.

"You are naïve if you think that you do not have to raise money; if you are slated you have to make the payment."

### **"Loyalty"**

In addition to the financial commitment, establishing "clout" requires persuading the slating committee that the candidate is loyal to the party. This loyalty is demonstrated either by

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On February 12, 1997, Judge Sebastian Patti gave 75 judicial candidates his advice for getting elected: Make a direct and personal connection with your ward committee person. If you don't have that all-important connection, call this week. Go in on a Saturday morning. Ask for their help and support. Include them in your campaign. In a countywide race, slating is very important. The party will advance your candidacy, all the precinct captains. I would encourage those of you with a love of the law and a commitment to justice: Do what you have to do – because that's the name of the game in Illinois – to get yourself elected...The endorsement is key because the ward committeemen decide which candidates' names go onto the palm card that loyal Democratic organization voters take into the polls with them....

Pallasch, "Dollars and Sense of the Judicial Primary," *Chicago Lawyer*, March 1998, 1.

showing that the candidate has devoted time and energy to the party, or that s/he has a “connection” with an influential politician.

According to the reports of slating committee meetings from years past, loyalty is considered to be of paramount importance. In the 2001 slating meetings, judicial candidate Ken Cortesi opened his presentation with his legal resume – which was substantial – but then concluded by delivering “the main course Chicago’s ward bosses have been waiting for”:<sup>29</sup>

“Most importantly, I’ve been a member of the 31<sup>st</sup> Ward Democratic organization since 1971. Like you, I’ve been a precinct worker. I delivered for candidates every time we had an election. I never failed to carry a precinct. I know what it is to work a precinct. I know what it is to get up early in the morning.”<sup>30</sup>

Alderman Ed Burke commented that Cortesi “is one of us.”<sup>31</sup>

It is common for candidates seeking slating to note their political party activities prominently first, and then mention qualifications.

Of course, when looking at the emphasis put on party loyalty, a good question to ask is: “Who cares? Why does it matter that slating committees place a higher emphasis on loyalty than judicial quality?” One can argue, as Alderman Ed Burke has, that working for a political party provides “real world” grounding for potential judges.<sup>32</sup> But this suggests an erosion of a judge’s most important attribute -- independence. Above political parties, above campaign contributors, above all else, a judge must be loyal to the rule of law; by placing into power judges with predispositions that will not be set aside at the appropriate times, that judicial independence is compromised.

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<sup>28</sup> Interview with an unsuccessful candidate for the Circuit Court of Cook County.

<sup>29</sup> Pallasch, “Judgment Day,” *Chicago Sun-Times*, November 25, 2001.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> “I frankly think that coming to the bench with legal skills is wonderful. . .but coming to the bench with the kind of skills that you and I have. . . people really need a sense of justice. Knowing what people out there in the neighborhood have to go through is something that is equally important.” Pallasch, “Judgment Day,” *Chicago Sun-Times*, November 25, 2001.



And consider that, as Abdon Pallasch notes,

“The committeemen and the aldermen make no apologies for their love of machine partisanship. They *revel* (emphasis theirs) in it.”<sup>33</sup>

### **The Slating Selection Process**

In the countywide slating process, after all the candidates appear before the committee, the committee makes its slating choices. Because this is done behind closed doors, no one outside of the committee knows what criteria are used for selection. When recalling the committee selection process, one lawyer specializing in election law told us:

“They [the committee] close the doors to discuss candidates. It is common if committeemen are unable to attend that they get a proxy [to attend in their place]. But even proxies are excluded when the doors are closed after the speeches.”

A concern among observers of the slating process is that, despite formalities suggesting normal evaluative procedures, candidates are actually selected in “smoke-filled back rooms.” The closed-door policy of the committee meetings does nothing to dispel this notion. It is a common belief that while the slate is not entirely picked ahead of time, it is mostly picked ahead of time. For the few spots up for grabs, there is deal-making between and among the committee members to fill those spots. In fact, as one election lawyer notes, because of the pre-meeting “selection process,” many candidates know they are going to be slated before they even attend the meeting.

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<sup>33</sup> *Id.* Alderman Burke, during the slating process, fondly recalled memories of his father, also an alderman:

“A guy would go down to 54 W. Hubbard and take the test for the Police Department, and he’d be too short. And he’d come to see my father at 4713 S. Halsted. My father would write out a little card, and he’d send him back there and – believe it or not – he’d grow an inch. Someone would have a heart murmur, he’d write out a card and send ‘em back to 54 W. Hubbard, and suddenly they were cured. He made fat people thin. He made short people tall. It was marvelous.”

This is an example of the party politics that judicial candidates must play if they are to be slated.

In the subcircuits, slating is done at the level of the local political organization and the process varies greatly from subcircuit to subcircuit. Judicial candidates seeking slating know they must meet with as many precinct captains and other local political figures as possible. The process begins in the fall before the primary election.

In some subcircuits, the aldermen have formal sessions akin to the slating process of the Cook County Democratic Party. More often, the process is much less formal. But behind the scenes, there is intense political debate, for in each subcircuit there can often be found several local political organizations. For each judicial vacancy to be filled with a subcircuit election, there must be a decision made as to which political organization gets to slate the candidate. Theoretically, the organization with the greatest number of delivered votes in the preceding election gets first pick. In actuality, the decision is often the product of intense discussions. One alderman observed:

“Committeemen take turns picking candidates...To get slated, a person must be active in my political organization because this is the way I know people.”

### **Political Power Plays In Judicial Elections: Not Always Centered Around Slating**

The political tactics and practices employed in judicial elections do not always center on the slating process. Old political tricks such as “ballot-packing”<sup>34</sup> or “vote-splitting”<sup>35</sup> are still

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<sup>34</sup> Where a number of primary candidates enter a race with the intent of dropping out at the last moment and for the purpose of either squeezing certain candidates out or generating voter interest that will ultimately be transferred to a particular candidate:

“For example, in 1994, a nephew of [Ed] Vrdolyak [former Democratic alderman, and still a very influential person in Democratic politics], Henry Richard Simmons, Jr., ran for judge. Six lawyers from the Vrdolyak firm also filed for that race. All the male candidates from the firm then withdrew, while two women from the firm stayed in the race. This left Simmons as the only male candidate. The women from the firm did not submit materials for review by bar associations and appeared to be in the race solely to draw off votes from Simmons’s female opponents. Judge Simmons denied any role in getting false candidates to run, but he did nothing to discourage them and said nothing that indicated any disapproval of this scheme. As a result, Simmons was found not qualified for election and later, for retention, by the Chicago Council of Lawyers, who noted that it could not be confident of Simmons’s independence from political and institutional

common. But unlike the old days, where the primary motivation for participating in these practices was fear that noncompliance would lead to political blacklisting, political organizations now effectively use the “carrot” of being slated at a future time on top of the “stick” of blacklisting, to great effect.

For example, in one case, a subcircuit judicial candidate who asked for slating did not receive it, but was called by representatives of the local political organizations after the slating process. She was told that she would not be slated, but was asked to stay in the race because they needed her to “split the women’s vote,” so that the male slated candidate would win. In return, she would “get rewarded.”<sup>36</sup> Although she was asked to remain in the race, many other non-slated candidates are asked to drop out. Even if they had not been asked, according to another unsuccessful candidate, there is an “unwritten rule” that unslated candidates are expected to drop out. Failure to cooperate, especially when a request is made by a local political organization, could result in the uncooperative candidate never receiving slating in any future race.

Sometimes a candidate will decide to run in a race where s/he was not slated, or where s/he was not “welcomed” by the local political organization. If this is the case, not only will the candidate have to work against the disadvantage of not being slated, but s/he will sometimes have to fend off active challenges by the local political organization itself. One tactic the local political organizations commonly employ is objecting to a candidate’s petition signatures.

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influences. This race was an example not only of political influence, but also, of the recognition and capitalization of the voters’ predilection to vote on the basis of candidate’s names alone.”

Pallasch and Neubauer, “Vrdolyak Works Judicial Magic,” *Chicago Sun-Times*, October 24, 2000.

<sup>35</sup> Where a candidate remains in a race or becomes a candidate in another race that the candidate may not want to enter, solely for the purpose of drawing certain votes away from a particular candidate. This practice is employed most effectively when affinity groups (female, under-represented, ethnic) make up a sizable part of the voting populace.

Under Illinois election law, in order to be recognized as a candidate in a political or judicial election, a candidate must collect a prescribed number of signatures from residents of the election area. As a safeguard against candidate fraud, Illinois election law provides that any citizen may contest the signatures collected by a candidate, if the objection is based on good cause. Despite the original intentions of the legislators in drafting this law, the ability to contest signatures has now become a powerful weapon of harassment in the hands of local political organizations. A former judicial candidate notes that “[if a non-slated candidate decides to run in the district where s/he was not slated], the presumption is that slated candidates are going to object to every signature.”<sup>37</sup>

The case of Marva Paull is a good example of this practice. Ms. Paull was a candidate for Judge of the Circuit Court of Cook County in 1994. Despite not being slated, she decided to run for judge anyway, and collected 1,037 signatures in support of her candidacy. In response, Nadine M. Zapolsky and William Greiger contested 1,036 of the signatures, claiming that they were invalid because the signers were not registered at the addresses shown. In fact, Mr. Greiger even claimed that Ms. Paull herself was not registered at her listed address. According to Ms. Paull, Ms. Zapolsky and Mr. Greiger believed that if Ms. Paull were faced with a choice of defending her valid petitions (and incurring the concomitant attorney’s fees), or running in a different race in which her petitions were not challenged, she would decide to withdraw from the race in which her petitions were challenged.

Ms. Paull did not withdraw. Instead, she defended her candidacy, hired an attorney to defend her petitions, and filed a motion to dismiss Zapolsky and Greiger’s objections. In her initial complaint and throughout subsequent pleadings, Ms. Paull claimed that Zapolsky and

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<sup>36</sup> Interview with an unsuccessful candidate for the Circuit Court.

<sup>37</sup> Anonymous interview.

Greiger had violated her rights under the Illinois Election Code,<sup>38</sup> violated her U.S. and Illinois constitutional rights,<sup>39</sup> and committed the tort of abuse of process. The state court jury found that Zapolsky and Grieger were in fact liable for “malicious harassment” and awarded damages.

### **The Experience of Running for Judge**

A common theme among unsuccessful judicial candidates we interviewed is that the process is humiliating:

“I presented my materials before each precinct captain and committeemen who would see me. Sometimes, I don’t think they were even listening to my credentials. They only wanted to know what I had done for the organization.”

Another candidate running in a suburban subcircuit was counseled to “send money to each committeeman. . . in the area where she was running for judge.” She was then told to run in the next election so “that her name would be on the radar screens of these committeemen.” When she confessed during these sessions that she had not done work for the local political organizations, she was told that she would not be slated.

Nevertheless, she ran as an unslated candidate, received high bar ratings and the *Chicago Tribune’s* endorsement. This candidate sought union endorsements, and spoke at a variety of community organizations. Her fundraising allowed her to send materials to the majority of voters. She lost by a handful of votes – as the statistical model would predict. Slating is the

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<sup>38</sup> On the basis that: 1) the Illinois Election Code should be construed to be constitutional under the U.S. and Illinois Equal Protection Clauses; 2) under these clauses, which require that similarly situated candidates be treated similarly, the application of frivolous contests to signatures – and the resulting attorney’s fees if the candidate should decide to challenge – violated Ms. Paull’s Equal Protection rights; and 3) under the Election Rights Provision of the Election Code, any person who causes a deprivation of any candidate’s rights, privileges, or immunities will be liable to the person affected.

<sup>39</sup> On the basis that the Election Code allows a citizen to file only well-founded objections, not frivolous ones. According to Ms. Paull, Zapolsky and Greiger did no investigation of the signatures beforehand, and had never identified a single defective signature.

most critical determinant of success in the subcircuits, but her narrow defeat shows what can be done in subcircuit elections because of the limited geographic area.

Another candidate told us:

“If I run countywide, I just see where my name is on the ballot. I am not going to raise or spend money because it would be a waste. But if I think I can raise campaign funds, then I’ll run in the subcircuits where money makes a difference. I can beat the slated guy in the subcircuit if I can raise the funds.”

Still another person observed that :

“We are seeing countywide slating control -- the county tries to screen out really unqualified candidates. In the subcircuits, some truly bad people get slated; they are much more invisible and can get away with it.”

We looked at the judicial evaluations of Circuit Judges elected either through countywide or subcircuit elections. In evaluations done by the Chicago Council of Lawyers, 22% of judges initially elected in the subcircuits were found Not Qualified in the most recent retention election in which each ran. For judges initially elected countywide, 18% were found Not Qualified by the Council. We also looked at the evaluations where the Council found the judicial candidate either Well Qualified or Highly Qualified. While 18% of judges initially elected countywide were found Well or Highly Qualified in the last election in which they ran, only 12% of judges initially elected in the subcircuits were in these higher categories. In addition, substantially more candidates with less than ten years experience ran in the subcircuits than in the countywide elections.

Yet these figures also show that the majority of judges who came to the bench from the Subcircuits (as well as from Countywide elections) were found Qualified by the Council – known as the toughest grader among the bar groups.

In discussing campaign fundraising, most of the candidates to whom we spoke say funds come from four sources: themselves, relatives, friends, and other lawyers. But those we interviewed who have run more than once told us that they see the amount of funds they need to spend in a campaign growing. As one unsuccessful candidate said, she “can’t help but be concerned that the amount of money has to be flowing into the campaign with the hope of gaining some future influence.” Finally, one individual we interviewed commented on the issue of free elections and the power of the slating process. He stated that too many unqualified candidates are being elected to the bench, and suggested that “political power is more of a problem than elections themselves because it is the slating process that provides the less qualified pool of candidates.” He observed that endorsements leave candidates open to demands for future requests for political favors – whether or not there actually is a quid pro quo.

## **Suggested Reforms**

### *Some Preliminary Notes About the Proposed Reforms*

Each of the following reforms has been suggested in the literature or in the interviews we conducted. We do not present them as recommendations. Rather, we present them for discussion by members of the bench, the bar, community leaders, and policymakers.

As with any reform proposal, the key is to identify the “problems” and then propose remedies to rectify them. In the case of Cook County’s judicial elective system, the problems are the increasing costs of waging a judicial campaign and the considerable influence that the political party organizations hold over judicial campaigns. If we are to continue to elect judges in Illinois, is it possible to modify Cook County’s judicial elective system, so that increasing

costs and political influence are diminished, without compromising the positive attributes of democratic selection?

Before considering the efficacy of each of these proposed reforms, we offer a note in response to those who claim that reforming the electoral process is a futile exercise. Relatively few people currently vote in judicial elections. There is a dramatic drop-off between the number of voters for the positions at the top of the ballot and the number who actually vote for the judges at the ballot's end.<sup>40</sup> Although the democratic process can hardly be said to be operating well if voters fail to participate in it, change in a relatively small number of votes might produce substantial change in the outcomes of these judicial elections. In some subcircuit elections, for example, a judicial race may draw a total of less than 20,000 votes and the winning candidate may receive less than 30% of that total. For example, in the 2002 Democratic primary election, five candidates running in the Fifteenth Subcircuit split about 16,000 votes. The winning candidate received about 29% of the vote and won the election by less than 600 votes. An increase of only a few thousand informed voters can make a large difference in some judicial races.

These reform proposals are offered to help level the playing field of judicial elections so that the electorate can make an informed and thoughtful decision

### **Relaxing existing restrictions on a judicial candidate's campaign speech -- the end of judicial independence?**

To many observers, the fundamental flaw with the judicial elective system in Cook County is that it is "politics as usual." Many of the inherent features of a standard political system (parties, interaction with constituents, contributions by those constituents) are incompatible with the



optimal inherent features of a judicial system (independent thought, fidelity to the letter of the law, lack of contact with the public). Efforts have been made to distance the judicial system from the political system; one of the most controversial is Illinois Supreme Court Rule 67 (Canon 7). Canon 7 outlines appropriate conduct for a judicial candidate; it prescribes what types of events a candidate should/should not attend, how a candidate should/should not accept campaign contributions, etc. The provision that has received the most attention is Canon 7(A)(3)(d) (I), which declares that a candidate shall not:

- (i) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues within cases that are likely to come before the court; or
- (ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

This rule has come under direct and collateral attack. Within Illinois, questions about its efficacy were raised when Bob Thomas, a 2000 candidate for the Illinois Supreme Court, was charged with violating Canon 7 by handing out leaflets to the public describing his support of the pro-life movement. Thomas avoided any sanctions or penalties by making the argument that he was not telegraphing how he would rule if an abortion case came in front of him. Rather, he would consider the facts and follow the ruling of *Roe v. Wade*. Although he was not punished, the debate continues over whether Thomas really did violate Canon 7, and if not, what other types of “political speech” are valid under the Canon. Some question whether Canon 7 has any remaining efficacy.

In addition to the Thomas case, a June 2002 U.S. Supreme Court decision called into question whether Canon 7 is constitutional. In *Republican Party of Minnesota v. White*, a

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<sup>40</sup> For example, in the 2000 primary election, there were a total of about 736,000 votes cast in all races. For each countywide judicial vacancy, there were on average less than 368,000 votes cast. There were a total of less than

Minnesota statute similar to Canon 7 was challenged as violating a candidate's right to free speech.<sup>41</sup> In a 5-4 decision, the Court held that the statute was, indeed, violative of the plaintiff's right to free speech under the First and Fourteenth Amendments, and was thus unconstitutional.<sup>42</sup> It is possible to make the argument that Minnesota's statute is more restrictive of the candidate's speech than the Illinois rule, and that this extra restriction makes it unconstitutional. But this is speculative.

A cornerstone of such proposed reforms as voter guides and judicial candidate forums (to be discussed below) is a more thorough dissemination of information about candidates to the public. Is this objective hindered by Canon 7, and would it be helped if the restrictions set forth by Canon 7 were relaxed or eliminated?

Balanced against the need for more information by voters is the need to protect judicial independence. Arguing for a modification of Canon 7 to achieve more information for voters invokes what Justice Scalia alluded to in *White*: if we have a judicial elective system, we're going to have "politics as usual."<sup>43</sup> But to others, "politics as usual" is to be avoided in judicial elections. Regardless, this is a reform proposal that must be addressed as part of any comprehensive reform package, including a delineation of what is and what is not acceptable judicial candidate behavior under Canon 7.

## **Campaign Finance Reform Proposals**

### **Public Financing of Judicial Elections**

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219,000 votes cast in the combined subcircuit elections which included judicial elections in 7 subcircuits.

<sup>41</sup> For an analysis of *Republican Party of Minnesota v. White*, see "Republican Party of Minnesota v. White: What Does the Decision Mean For the Future of State Judicial Elections?," on the website of the Brennan Center, [www.brennancenter.org](http://www.brennancenter.org).

<sup>42</sup> An interesting sidenote: during oral arguments (and within the opinion), Justice Scalia made the observation that if a state decides to select its judges through an elective (rather than exclusively appointive) system, then it must live with the consequences of that system – namely, "politics as usual."

<sup>43</sup> Justice Scalia authored the majority opinion. See note 42, *supra*.

Many public interest-minded organizations have called for public financing of state supreme court elections.<sup>44</sup> Public financing of individual candidates is not practical at the lower court level (in light of the number of candidates), but public financing could be used to fund a number of potential electoral reforms, including a judicial performance commission, voter guides, and candidate forums.

**Impose limits on a judicial candidate’s campaign spending and restrict judicial campaign contributions by attorneys**

Campaign finance reform is the most common genre of reform proposals.<sup>45</sup> The underlying assumptions are that candidates who spend more money have a substantial advantage, and thus, restricting the amount of money that a candidate can raise or spend will create a “leveling of the playing field.” But campaign finance reform is a two-edged sword. Slated candidates have an advantage that only campaign funds may be able to overcome. In the political world of judicial elections, raising money for good, nonslated judicial candidates has been shown to be an occasional “antidote” to the negative effects brought about by slating – when a poor quality candidate is slated for reasons independent of judicial quality. By imposing spending limits and other forms of campaign finance reform, this leveling agent would be eliminated and may result in an entrenchment of the power of slating. Campaign caps can, in effect, give an additional advantage to the slated candidate.

There is another factor, though, to be considered when debating the efficacy of campaign contribution caps: the public’s perception of judicial independence. As we have discussed,

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<sup>44</sup> See, e.g., “Commission on Public Financing of Judicial Campaigns,” Report of the American Bar Association Standing Committee on Judicial Independence, July 2001. Other proponents of public financing of state supreme court races include Justice at Stake (see [www.JusticeatStake.org](http://www.JusticeatStake.org)) and the Illinois Campaign for Political Reform ([www.ilcampaign.org](http://www.ilcampaign.org)).

<sup>45</sup> See, e.g., a Chicago Bar Association proposal to the Illinois Supreme Court limiting lawyers’ contributions to judicial campaigns. The Supreme Court rejected the proposal without comment.

Chicago Appleseed's data show that the cost of running a judicial election has risen dramatically between 1988 and 1998. In 2000, the average amounts raised by all judicial candidates was reported to be \$30,325.<sup>46</sup> In one Cook County countywide race, three candidates combined to raise nearly \$460,000 – with \$284,000 of that money coming from one candidate alone.<sup>47</sup> In a 2000 subcircuit election, one candidate raised over \$104,000.<sup>48</sup>

The problem of parties “buying influence” with judges through campaign contributions is made worse because of the sources of most campaign funds: lawyers and special interest groups – parties that have the highest probabilities of appearing before judges. According to a study done by the National Institute on Money in State Politics, lawyers and lobbyists made up 28.1% of all campaign contributions, general businesses provided 7.3%, and Labor, Health,

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<sup>46</sup> See John Flynn Rooney, “Benchmark Contributions,” *Illinois Issues*, October 2000, 18. It should be noted that the Nicholson average figures do not list the number of candidates that raised no money, which has the effect of skewing a mean. In 2000, only one candidate did not raise any money.

<sup>47</sup> See *Id.*

<sup>48</sup> See Vock, “By Law and Ethics, Judicial Candidates Are Different: Panel,” *Chicago Daily Law Bulletin*, October 7, 2000. In particular, note Cheryl Niro's comment that “citizens should appreciate that the best way to ensure the continuation of our constitutional freedoms and, truly, the effectiveness of our legislative [branch] is to have a judiciary that is as free as possible.” See also John Flynn Rooney, “Benchmark Contributions,” *Illinois Issues*, October 2000:

While some judicial candidates say they don't like their campaigns raising money, they say it is nonetheless necessary with an elected judiciary. But critics charge such fundraising can lead to the appearance of a conflict of interest because most of the contributions come from lawyers. “The problem is [that] to spend the money, you have to raise it,” says Marlene Arnold Nicholson....”That means [candidates' committees] go to attorneys, which at least has the appearance of a possible conflict of interest, or they have to use their own money.”

See also Aaron Chambers, “How High the Bar?” *Illinois Issues*, October 2000. In commenting about two judicial candidates in Ohio and Alabama who set imposed spending limits (and ultimately lost), Chambers notes:

“Still, their efforts highlight what reformers argue is the single greatest threat to the independence of the courts: Judicial candidates have become more like other candidates. They raise increasing amounts of money – much of it from lawyers, businesses and other special interests – to wage television ad campaigns, some of which engage in public debate on controversial issues. There is no proving, of course, that campaign contributions to judges, or other political candidates for that matter, color their decisions while in office. And reasonable people within the legal community can and do disagree about whether the bench is tarnished when some justices take to the airwaves in the heat of a campaign to argue policy questions. But on one point there is plenty of evidence: There has been a decline in public respect for the judiciary that stems from this increasingly political process.”

Construction, Energy, and Financial/Insurance/Real Estate PACs provided 12.5%. All together, 47.9% of a candidate's funds came from organizations that appear in front of judges more than any other types of parties and the people who represent them.<sup>49</sup>

Not surprisingly, because of these donations, the public is becoming highly skeptical of a judge's ability to decide a case in an impartial manner. A recent survey conducted by the Coalition for Consumer Rights found that one-third of all respondents thought that judges were "often" influenced in their decisions by contributors to their campaigns, another third felt rulings are "sometimes" influenced, and only 7% felt that rulings are "never" influenced by campaign cash. In addition, 60% of those polled said businesses, unions, and attorneys should not give money for judicial contests. When the question was narrowed to whether lawyers and law firms only should be barred from contributing, the margin increased to 68%.<sup>50</sup> This sentiment is echoed by an election lawyer who told us that judicial races are "influenced by too much money coming from influential sources. It is plain wrong to mix money and justice – it creates partiality and skewed results."<sup>51</sup>

### **Implement judicial performance evaluations conducted by a staffed, independent commission**

The Colorado Judicial Performance Program in evaluating judges seeking retention surveys litigants, lawyers, law enforcement, jurors, court personnel, social service workers, probation officers, and crime victims. Up to 600 persons per judicial candidate are contacted. Survey results include statistical analysis, comments from the survey and cross tabulation of

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<sup>49</sup> See Samantha Sanchez, Report, "Money in Judicial Politics," National Institute on Money in State Politics, March 21, 2000, p. 7.

<sup>50</sup> See Vock, "Voters Leery on Judicial-Race Funding: Survey," *Chicago Daily Law Bulletin*, October 25, 2000.

<sup>51</sup> Claims of unfairness aside, there is an interesting argument that, by creating a conflict of interest in the judicial branch, contributions from interested parties result in a violation of procedural due process. See Note: *Popular Justice: State Judicial Elections and Procedural Due Process*, 31 *Harvard Civil & Liberties Law Review*, 187.

results by each type of respondent. There are judicial self-evaluations, public hearings, written documentation from interested parties, court statistics, personal interviews with the judicial candidates, and personal interviews with those having direct professional experience with the judicial candidates.<sup>52</sup>

In Cook County, judicial candidates running in partisan elections and judges seeking retention in the general election are evaluated by more than 10 bar associations, each relying on volunteer investigators and evaluators. A judicial performance commission would perform judicial evaluation investigations using an independent, professional staff.<sup>53</sup> While the importance of evaluating candidates is not in dispute, the efficacy of having so many organizations perform the function is – especially when there is a decisive lack of uniformity between the groups. For example, in the 2002 retention election, 11 bar associations could all agree on only one candidate. While representatives from the bar associations might still wish to evaluate judicial candidates, a performance commission would provide comprehensive investigations of judicial candidates.

Alternative uses of evaluations prepared by performance commissions include:

1) providing comprehensive investigative information to those wishing to evaluate judicial candidates and to members of the voting public;

2) giving the public actual evaluation ratings for each judicial candidate;

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<sup>52</sup> For additional information on the Colorado Commission, see [www.courts.state.co.us/panda/judicialperformance/judperfindex.htm](http://www.courts.state.co.us/panda/judicialperformance/judperfindex.htm)

<sup>53</sup> For a detailed discussion of performance commissions, see American Bar Association Standing Committee on Judicial Independence Report, “The Role of State and Local Bar Associations in Judicial Retention Elections;” Andersen, *Judicial Retention Evaluation Programs*, 34 Loy. L.A. L. Rev. 1375 (June 2001) ; and Esterling, *Judicial accountability the right way: Official performance evaluations help the electorate as well as the bench,* JUDICATURE (March/April 1999).

3) in the case of retention elections, limiting the field so that only those judges found “Not Qualified” by the performance commission would be required to seek retention from the voters.

**Change the deadlines for filing election materials and evaluate judicial candidates in time to influence slating decisions**

Bar associations that evaluate judicial candidates running in the March primaries complain about the lack of time to conduct thorough evaluations. Candidates do not have to file the materials necessary to get on the ballot until December, less than three months before the primary election. Organizations evaluating judicial candidates need more time than that, and the filing requirements for judicial candidates should be modified accordingly. Moreover, evaluations of judicial candidates should be done in time to have results available to all county and local political organizations.

All county and local political organizations responsible for slating decisions should be asked to not slate any candidate who has received negative evaluation ratings from a selected number of bar associations or a negative rating from the proposed performance commission, should it be implemented.

**Consider a prospective judges’ school for lawyers wanting to run for judge**

Those interested in becoming candidates would have the opportunity to attend and complete a series of courses on learning how to be a judge – from substantive law to managing a courtroom.

**Require judges to recuse themselves from hearing cases involving parties that have contributed to their campaigns**

Recusal (when a judge disqualifies him/herself from a case due to a reasonably foreseeable

conflict of interest) is a common remedy in the canons of judicial ethics. The federal rules of judicial ethics, as well as most state statutes, have codified a recusal requirement for judges when a conflict of interest could reasonably arise. It is theoretically possible to modify the requirements for recusal so that a judge disqualifies him/herself when a party that has contributed to his/her campaign appears in front of him/her.

But there are significant problems in implementing this proposed reform. Allowing an additional substitution of judge may create court scheduling problems. Another problem is deciding when the identity of the contributor and the timing of the contribution matter. If a corporation makes a campaign contribution to Judge X for the 2000 elections, and in 2002 an officer of the corporation appears before the court, should that be grounds for recusal if the officer did not authorize the contribution? Is there a time limit for disqualification based on campaign contributions, or does one contribution warrant recusal during the judge's entire time on the bench? What if the judge is promoted or moved to a different court? What if the corporate officer's cause of action has nothing to do with any activities of the corporation? This is just a sampling of the many issues that can arise under a recusal law based on campaign contributions.

### **Use public financing for voter information guides to be distributed to all members of the public**

As stated earlier in this report, without adequate information about judicial candidates, voters tend to rely upon "political cues"; of these "cues," political party is one of the strongest. Consequently, the strength that comes from being endorsed by a political party makes the slating process so crucial for candidates and gives the political parties immense power. The key to loosening the political parties' grip is to provide voters with enough information about



candidates that they will not have to rely on “political cues.” The most basic method would be to have a voter’s guide prepared and distributed to all registered voters before every election. This effort could be publicly financed or supported through the philanthropic community. The information provided would be uniform (e.g., resume information, personal statement, evaluation results) and mandatory for all candidates. To be sure that candidates submit the required information, political parties should not slate any candidate who refuses to provide it.<sup>54</sup>

### **Host a series of public forums for judicial candidates**

Instituting a series of public forums, where the candidates appear and field questions from the public regarding their suitability for the position and other questions, could be a key part of any reform package. The stance taken by current judges and legislators regarding Canon 7 (see discussion at pp. 40-42 above) will go a long way in determining how informative such question-and-answer sessions can be. In any event, putting the candidates on display for voters before Election Day is a positive step in turning the electorate into a group of informed, concerned voters.

The key to developing an effective public forum is achieving a balance between the general objective of getting key information about the judicial candidates out to the public and allowing the people organizing community forums to handle them in a way that recognizes the unique needs of the community. This can be problematic, however; by putting too much “local flavor” into a forum, it can turn from an information-gathering session into an interrogation on local issues (for example, Wrigleyville residents grilling a judicial candidate on his/her views

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<sup>54</sup> Justice at Stake released in August 2002 a report entitled, “Developing Voter Guides for Judicial Elections: An Analysis of Six Focus Groups.” Justice at Stake employed Belden Russonello & Stewart to “uncover what types of information voter use to make up their minds in deciding on a judicial candidate, what types of information they

about increasing the schedule of night games at Wrigley Field.) Local issues may be important to the voters, but they don't have any bearing on a candidate's ability to judge, will likely never be addressed by the candidate in any professional capacity, and can only serve to attract or repel voters for the wrong reasons. Therefore, community organizations (perhaps in conjunction with the Illinois Electoral Board, or a judicial performance commission) would have to work to develop a forum that is not only informative, but also objective and non-partisan.

Public forums, of one kind or another, are quite common in Cook County. Candidates usually jump at the opportunity to make contact with potential voters. As they exist now, however, these forums are not organized with regularity, and they usually fail to include all the candidates for a particular race.

Some of the key steps in systematizing public forums for judicial candidates include:

- Finding community organizations willing to put on public forums – this means finding an appropriate venue, informing the community about the event, and working with the judicial performance commission to develop an informative and objective event.
- Determining when these forums should take place. Ideally, they would take place before any slating has occurred, so as to communicate to the voters that all of these candidates are, indeed, equal, and should be judged on the merits they communicate during the forum – regardless of any subsequent endorsement. However, it would have to occur after the “official” candidates have filed for candidacy, in order to maintain some semblance of order at the forum (avoiding “protest candidates” and

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would most like to receive in a voter guide, and how to present voter guides to voters.”

people who wish to use the forum for reasons other than those intended by the community groups).

- Arranging for all of the candidates to appear at the forum. By having the forum before the slating process, the candidates will feel more pressure to take part because they will not yet have any advantage over the others (other than inherent advantages).

The key to producing and executing successful public forums will be the sense of civic involvement displayed by a community. Doubtless this civic involvement depends on the position members of the community themselves take on the importance of making well-informed decisions about judges. One of the reform proposals discussed below is starting a campaign to emphasize the importance of judges in people's everyday lives; the more a community accepts that proposition, the more likely it is to be interested in hosting a successful forum.

#### **Provide mail-in voting for judicial elections**

The historically low percentage of voters actually voting for judicial candidates gives the political parties great leverage through endorsements. In particular, committeemen with great political clout are able to bring out large numbers of voters to support their selected candidates. Providing mail-in voting for judges would curb some of the "get out the vote" power held by political bosses and would allow voters more time to use informational materials about judicial candidates.

#### **Have judicial elections at a time different from the currently established election times**

This proposal advocates separating judicial elections from elections for political office by holding the two types of elections at different times. The logic behind this reform is that voters are so overwhelmed by the total number of candidates that they end up focusing their attentions on one or two top-shelf races only. They make their decisions for the remaining races based on

“political cues” or based on race, ballot position, or other factors not related to judicial qualifications. By separating the judicial elections out, voters would have an opportunity to focus more attention on judicial races and thus make more informed choices.

The potential problem with separating judicial and political elections is that most people do not seem to be very interested about judicial elections, and separating them out could result in even lower voting rates than we currently see. This drop-off may only strengthen the power of the political parties, especially in districts with political leaders who can guarantee a large number of votes.

**Initiate a project designed to show how judges have effects on people’s lives on a daily basis**

One of the largest hindrances to effective democratic participation in judicial elections is the apparent lack of connection between a judge and an average voter. Voters recognize that it is important to make an informed decision about a politician because that politician’s actions will affect the voter’s day-to-day activities. Most voters do not feel the same way about judges, since few people (except attorneys and corporations) reasonably expect to find themselves in court on a regular basis. But judges play an important role in shaping and interpreting the laws that the politicians enact and in dispensing individual justice.

This proposal would set up a project – presumably research-based – to show how judicial decisions make a difference in the day-to-day lives of ordinary people. The arguments could be put into a general report, available to the general public in a “user-friendly” format, such as a television special (aired on public television or cable access television), a radio special (on community or public radio stations), and a publicized website.

## **Non-Partisan Election of Judges**

In an attempt to reduce the influence of political party slating, it has been suggested that judges be elected without political party label -- in a recognition that while judges are elected, they are different from their elected counterparts in the political world. Critics of non-partisan elections warn that, without political party involvement, voters will resort to voting based on name and ballot position to a greater extent than they do today.

### **Conclusions Regarding the Current State of Judicial Elections in Cook County**

Based on the anecdotal and statistical evidence regarding the politicization of judicial elections, a few conclusions regarding the problems within the system can be offered.

- , *Many qualified candidates are being “priced out” of running or waging a successful campaign. On the other hand, too many non-qualified candidates who are good at raising money or have influential political connections are being ushered into judgeships.*
- , *Voters do not have adequate credible information about the qualifications of judicial candidates.*
- , *Subcircuit elections have greatly increased the importance of judicial fundraising and slating by local political organizations, creating a new campaign financing culture that is continuing to expand. The analyses done by Professors Epstein and Martin suggest that the most important factors in selecting a judge are political affiliation and, tied to that, money raised/spent. This means that, the system rewards those who have political connections and are willing to pay for them.*

- , *Judicial campaign fundraising may affect a judge's ability to dispense impartial justice to those who 1) contribute to the judge's campaign; 2) refuse to contribute to the campaign; or 3) contribute to the campaign of another candidate. It creates a perceived bias.*
- Lawyers appearing in a courtroom may factor into their legal strategy whether the opposing counsel or opposing party has made a generous contribution to the judge's campaign. The credibility of the judicial system is called into question.
- X *The slating of judicial candidates by the political parties in effect puts the election of judges into the hands of a relatively few powerful political figures. By placing so much importance on slating and leaving the slating process in the hands of a small group of politicians, the democratic nature of the elective system is undercut. Essentially, the slating committee serves as an appointment committee – but too often with little consideration of judicial qualifications.*
- X *As judicial campaigns become more expensive, judicial candidates look for new sources of contributions. This makes judicial candidates increasingly susceptible to new players who enter the field, seeking to influence judicial races with substantial judicial campaign contributions. While this is a phenomenon that has been described as already occurring in a highly visible way in supreme court races in the states of Texas and Louisiana, it could soon become part of the Illinois judicial election system.*
- X *Judicial elections through the subcircuit system have increased diversity on the Circuit Court, but the slating process sometimes results in the election of less qualified individuals. The relatively small size of the subcircuits has on occasion allowed unslated but highly qualified candidates to win an election, provided that the candidate raised sufficient funds. But the slating process usually has an overwhelming determinative*

effect in both the countywide and subcircuit judicial elections.

- X *Reform measures aimed at the electoral process should focus on the slating process, on the amount and credibility of voter information, and on how and when this information is to reach voters.*

# Appendix A

## An Analysis of Judicial Elections in Cook County – 1988 through 2000

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## 1 Introduction

Using the Appleseed dataset, which houses information on all judicial elections held between 1988 and 2000 in Cook County, Illinois, we estimated three sets of statistical models. The first helps illuminate those factors that may be associated with a political party's decision to slate a candidate or not; the second set examines possible explanations of candidates' success (or lack thereof) in party primaries; and the third explores variables that may shed light on victories (and losses) in general elections.

Taken collectively, our results underscore the importance of partisan politics and money: the amount of money candidates raise is associated, at a statistically significant level, with the probability that the party will slate them; slated candidates are, in turn and even after controlling for the effect of campaign spending, far more likely to win their primary races than those who are not slated; and Democratic candidates win their elections at much higher rates than Republicans, though Republicans can increase their odds substantially by spending money on their races.

In what follows, we provide the statistical models<sup>1</sup> used to generate these conclusions, as they pertain to slating (Section 2), primaries (Section 3), and general elections (Section 4).

## 2 Slating

What factors are associated with the decision of a political party to slate (or not) a particular candidate? To address this question, we estimated a statistical model composed of one dependent variable—whether or not the party slated the candidate—and two independent variables—money spent during the primary campaign up to and including the first quarter of the calendar year of the primary<sup>2</sup> and whether or not the candidate had previously run for a judicial post. We estimated this model for slating decisions made by the Democratic and the Republican parties.

Before turning to the results, a word or two about the limitations of the data are in order. One is that we do not know the precise date that slating occurs—and it is virtually impossible to obtain this information for all slating decisions, for all years. Another is that we do not know the precise dates that money leaves campaign coffers. That is why we include “money spent up to the first quarter of the election year”—and not “money spent before slating”—in the statistical models.

Owing to these limitations, we cannot, on the one hand, use these data to make strong causal claims about, say, the relationship between money spent and slating. So, for example, if the models reveal (as they do; see the tables below) a statistically significant relationship between money spent and slating, it could be that (1) if a candidate spends enough money, she or he will be slated (i.e., fundraising increases the odds of being slated). But it also could be that (2) if a candidate is slated, he or she has increased his or her ability to raise more money (slating increases the potential for fundraising). The nature of the data do not allow us to differentiate between these two explanations with any degree of precision. On the other hand, because of the

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<sup>1</sup> All the dependent variables in these analyses are dichotomous, which makes using common models, such as linear regression, inappropriate. Accordingly, we estimate probit models using maximum likelihood. All coefficients reported in the tables below are thus probit estimates.

<sup>2</sup> The “money” variable we employ here and in all of analysis that follow is expenditures—the total money spent in the specific timeframe.

way we incorporated money into the model—by including only money spent up to the first quarter of the election year and nothing thereafter—we believe we have minimized the possibility of (2), specifically, of a candidate raising a great deal of money after, rather than before, slating.

We have more to say about this issue below. For now, though, let us turn to the statistical results, beginning with the Democratic party and then moving to the Republicans.

## 2.1 Slating and the Democratic Party

In Table 1, we present the results of our effort to identify those factors associated with the Democratic party’s decision to slate a candidate—regardless of whether that candidate hopes to obtain the party’s endorsement to run in a county-wide or sub-circuit race. As we can see, one of the factors is not particularly relevant: whether or not a candidate has run before is not associated with the probability of being slated at a statistically-significant level.

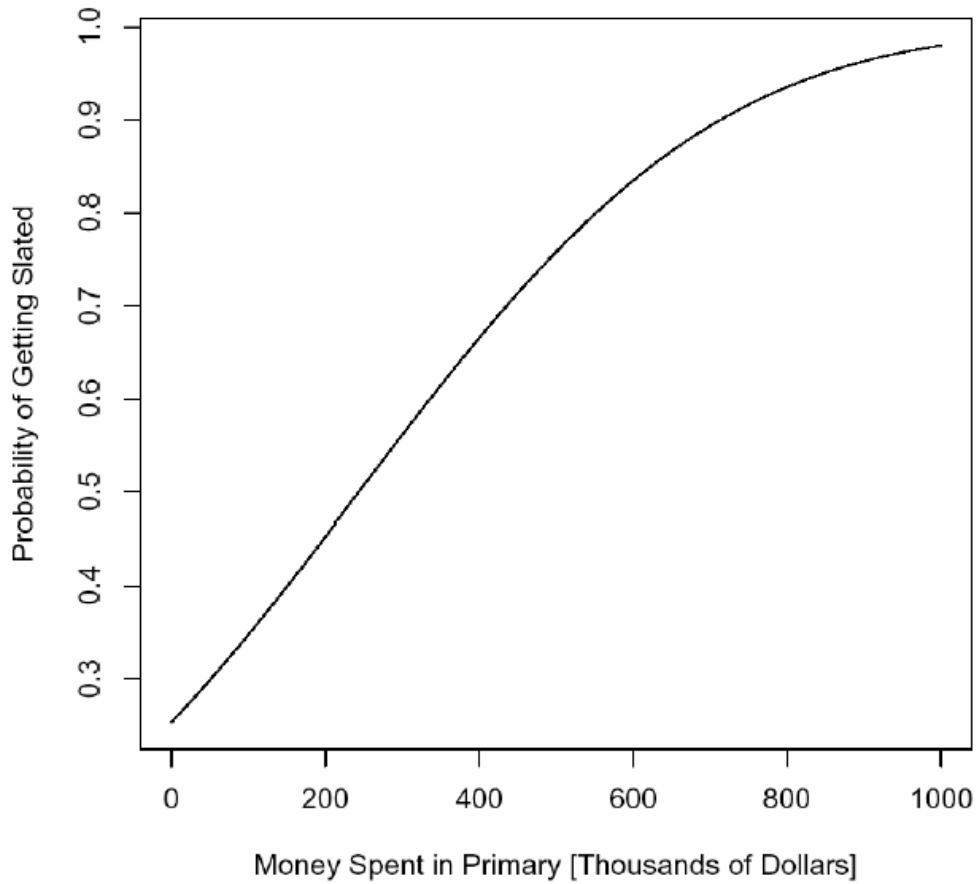
**Table 1.** The Democratic Party and the Slating of Candidates for All Judgeships

Probit estimates	Number of obs = 690
	LR chi2(4) = 9.87
	Prob > chi2 = 0.0072
Log likelihood = -395.20708	Pseudo R2 = 0.0123

	Coefficient	Standard Error	z	P > z	[95% Confidence Interval]	
<b>Expenditures</b>	2.55e-06	9.21e-07	2.77	0.006	7.45e-07	4.36e-06
<b>Ran Before</b>	-.1554845	.1228362	-1.27	0.206	-.3962390	.08527
<b>Constant</b>	-.6255175	.0603149	-10.37	0.000	-.7437326	-.5073024

What is associated, what turns out to be the key factor in understanding slating decisions is money spent. To get a sense of the importance of this variable, consider Figure 1. What we show is the effect of money when we hold all the other variables constant at their means. Under those conditions, the probability that the party will slate a single candidate is 26.4%. A candidate can raise that probability to 35.5% by spending an additional \$100,000. If a candidate were to spend \$500,000 the probability is increased to 81.7%; and if she or he spends \$1,000,000, the candidate would be virtually guaranteed of obtaining the party’s endorsement (probability of 97.2%).

**Figure 1.** The Relationship between the Democratic Party’s Decision to Slate Candidates for All Judgeships and Money Raised



Do these results hold for sub-circuit and county-wide races? To address this question, we re-estimated the models separately for each type of race, with Table 2 presenting the results.

**Table 2.** The Democratic Party and the Slating of Candidates for County-Wide and Sub-Circuit Judgeships

*A. Countywide*

Probit estimates	Number of obs = 386
	LR chi2(2) = 43.75
	Prob > chi2 = 0.0000
Log likelihood = -193.52179	Pseudo R2 = 0.1016

	Coefficient	Standard Error	z	P >  z	[95% Confidence Interval]	
<b>Expenditures</b>	.0000247	4.23e-06	5.85	0.000	.0000165	.000033
<b>Ran Before</b>	-.2149312	.1866075	-1.15	0.249	-.5806752	.1508127
<b>Constant</b>	-.9352706	.0941808	-9.93	0.000	-1.119862	-.7506797

*B. Subcircuit<sup>3</sup>*

Probit estimates	Number of obs = 281
	LR chi2(2) = 1.02
	Prob > chi2 = 0.5993
Log likelihood = -170.02505	Pseudo R2 = 0.0030

	Coefficient	Standard Error	z	P >  z	[95% Confidence Interval]	
<b>Expenditures</b>	9.20e-07	9.26e-07	0.99	0.320	-8.95e-07	2.74e-06
<b>Ran Before</b>	-.0306896	.1777338	-0.17	0.863	-.3790414	.3176621
<b>Constant</b>	-.5474096	.0947117	-5.78	0.000	-.7330411	-.3617781

Turning first to county-wide races, money once again emerges as the key to understanding slating decisions. If we hold all the other factors constant (at their means), the probability that the party will slate a single candidate is 23.6%. Spending an additional \$10,000 increases that probability to 31.8%; \$25,000 spent increases the probability to 46.0%; and \$50,000 spent increases it even further, to 69.8%. If a candidate spends over \$100,000, he or she would have a virtual lock on obtaining the party's endorsement.

<sup>3</sup> Data used to estimate all sub-circuit models come from races occurring between 1992 (rather than 1988, since sub-circuit elections did not start until 1992) and 2000.

Sub-circuit races present a somewhat different picture: for these, money is not a statistically significant predictor of the slating decision. Why this is the case is a question on which we can only speculate but the answer may turn on the smaller sample size for this category of races<sup>4</sup>, as well as on the party's use of distinct processes for slating candidates for sub-circuit and county-wide seats. What we do know is that, at least for the latter, money is the key to understanding the slating decisions made by the Democratic party; from a statistical standpoint, it overwhelms all other explanations.

## 2.2 Slating and the Republican Party

With some differences at the margins, we can say the same of slating decisions made by the Republican party. As Table 3 shows, the amount of money spent exerts a strong, statistically significant, effect on slating. Holding all other variables at their mean, the probability of the party slating a candidate is 48.1% (see Figure 2). This probability increases to 64.1% for an additional \$10,000 spent, 83.5% for an additional \$25,000 spent, and 97.7% for an additional \$50,000.

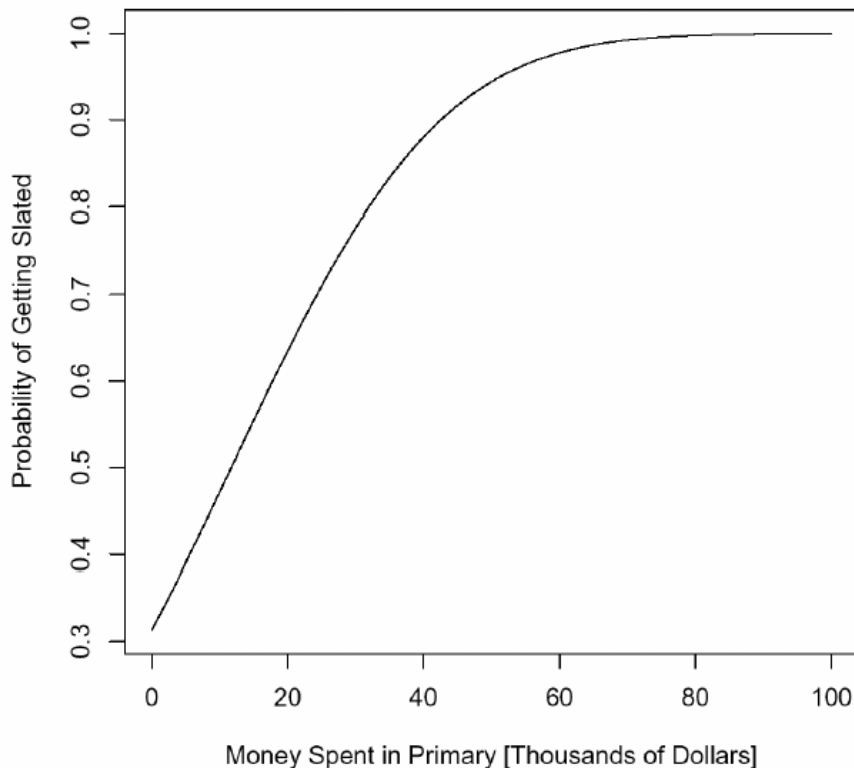
**Table 3.** The Republican Party and the Slating of Candidates for All Judgeships

Probit estimates	Number of obs	=	44
	LR chi2(2)	=	8.80
	Prob > chi2	=	0.0123
Log likelihood = -170.02505	Pseudo R2	=	0.1446

	Coefficient	Standard Error	z	P >  z	[95% Confidence Interval]	
<b>Expenditures</b>	.0000409	.0000176	2.32	0.020	6.35e-06	.0000755
<b>Ran Before</b>	1.127977	.5645496	2.00	0.046	.0214804	2.234474
<b>Constant</b>	-.6842317	.2999624	-2.28	0.023	-1.272147	-.0963161

<sup>4</sup> Along similar lines come the results of separate analyses we conducted on the slating of appellate and supreme court candidates and all others in the First Judicial Circuit. Specifically, the models suggest that money plays a larger role in non-appellate races than it does in those for seats on appellate benches. We must, though, exercise care in interpreting this (non) finding as the sample size is quite small. Moreover, in all other regards, the data are quite clear: expenditures are critical for attaining the party's endorsement in the big county-wide races, and marginally so for the non-countywide races, whether for the First Judicial Circuit or a sub-circuit race.

**Figure 2.** The Relationship between the Republican Party’s Decision to Slate Candidates for All Judgeships and Money Raised



But money is not the only important factor. In contrast to the results for slating decisions made by the Democratic party (see Table 1) those for the Republican party reveal that whether or not a candidate has run before exerts a statistically significant effect. Two explanations for this finding seem likely: the Republican party has fewer candidates from which to draw than its Democratic counterpart, along with a less established patronage system. Taking together, these work to make “name recognition” more important for the Republican party, thus leading it to select candidates familiar to it (i.e., those who previously ran for a judgeship).<sup>5</sup>

This difference between the Republican and Democratic parties aside, the data reveal a consistent and significant relationship between money and slating. That relationship could take one of two forms: (1) fundraising increases the odds of being slated or (2) slating increases the potential for fundraising. Due to the limitations of the data that we enumerated earlier, we cannot differentiate between these two with any degree of precision. Nonetheless, for two reasons we believe (1) is more likely than (2). First, and again as we noted above, the “money” variable incorporated into these analyses includes only funds raised up to and including the first quarter of the election year. We took this rather conservative approach specifically to minimize the

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<sup>5</sup> Due to data limitations, we were unable to make meaningful comparisons between sub-circuit and county-wide primaries for the Republicans; nor were we able to analyze separately appellate and non-appellate court races. There are simply not enough cases to disaggregate the data in these ways and maintain statistical power.

possibility of (2). Second, the qualitative, interview data collected by Appleseed tend to corroborate (1) rather than (2)— as does our comparison of the donations made to political party organizations (whether to the state party, the Cook county party, or ward Democratic/Republican organizations) by electoral winners and losers of all county-wide (non-retention) general elections between 1988 and 2000. Under interpretation (1) of the relationship between money and slating, we might expect to observe winning candidates donating more money to the party than losers. That expectation, as it turns out, holds for all years but 1990.<sup>6</sup>

### 3 The Primaries

What factors are associated with winning (or losing) primaries? To address this question, we estimated statistical models that attempt to explain primary wins (losses) with the following factors: the amount of money spent up to the first quarter of the election year; the Chicago Bar Association rating; the Chicago Tribune rating;<sup>7</sup> whether or not the judge served previously as an associate judge; whether or not the candidate had an Irish-Scottish surname; whether or not the candidate was a woman; whether or not the race was countywide; and whether or not the candidate was slated. Again, we model separately Democratic and Republican races.

#### 3.1 Democratic Primaries

Several factors, as Table 4 shows, help to account for outcomes in Democratic primaries for all judgeships (both countywide and subcircuit). Favorable ratings or endorsements by the Chicago Tribune and the Chicago Bar Association increase the probability of winning; female candidates (as we might expect in Democratic races), as well as candidates with an Irish or Scottish surname (as we might expect in Cook county) also are more likely to attain victory.

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<sup>6</sup> The percentages of winning and losing candidates that made donations to party organizations are as follows:

<b>Year</b>	<b>Winners (%)</b>	<b>Losers (%)</b>
<b>1988</b>	43	9
<b>1990</b>	36	44
<b>1992</b>	72	31
<b>1994</b>	64	0
<b>1996</b>	89	50
<b>1998</b>	71	41
<b>2000</b>	83	0

<sup>7</sup> We include the Chicago Tribune, rather than both the Tribune and the Chicago Sun Times, because the Sun Times (in contrast to the Tribune) did not consistently rate candidates during the period covered in this study.

**Table 4.** The Democratic Primaries (All Judgeships)

Probit estimates	Number of obs	=	781
	LR chi2(8)	=	367.76
	Prob > chi2	=	0.0000
Log likelihood = -261.50717	Pseudo R2	=	0.4129

	Coefficient	Standard Error	z	P >  z	[95% Confidence Interval]	
<b>Expenditures</b>	-3.56e-07	1.34e-06	-0.27	0.791	-2.99e-06	2.27e-06
<b>Chicago Bar Ass'n</b>	.2656729	.1063434	2.50	0.012	.0572437	.4741021
<b>Tribune</b>	.5610319	.1502619	3.73	0.000	.266524	.8555398
<b>Associate Before</b>	.2418605	.1876908	1.29	0.198	-.1260067	.6097276
<b>Irish-Scottish</b>	.4610262	.1373743	3.36	0.001	.1917776	.7302748
<b>Female</b>	.7801436	.139848	5.58	0.000	.5060465	1.054241
<b>Slated</b>	2.023507	.1437966	14.07	0.000	1.741671	2.305343
<b>Constant</b>	-2.144067	.1466586	-14.62	0.000	-2.431513	-1.856622

Perhaps the two most interesting results displayed in Table 4, though, center on the role of money and slating. Controlling for all other factors, money has no independent effect; more or less sums spent do not affect the ability of candidate to win a primary. What does have a very large impact, what tells the story for Democratic primaries is slating. If a candidate is not slated, the probability that she or he will emerge as the victor is a trivial 7.4%; if, however, she or he has the party's endorsement, her odds jump to 71.8%.

To determine whether these basic results hold both for county-wide and sub-circuit primaries, we performed separate analyses—with the results displayed in Table 5. For the former, the findings parallel those depicted in Table 4: female candidates, those with Irish or Scottish surnames, and those endorsed by the Tribune and the Bar Association all have a higher probability of success. But, again, the key to winning lies with being slated: Holding all variables at their means, the chance of an unslated candidate winning a primary is just 5.8%; being slated increases that probability to 68.4%. This is, yet again, a huge effect.



**Table 5.** The Democratic Primaries (County-Wide and Sub-Circuit Races)

*A. Countywide*

Probit estimates Number of obs = 448  
LR chi2(7) = 219.24  
Prob > chi2 = 0.0000  
 Log likelihood = -135.4997 Psuedo R2 = 0.4472

	<b>Coefficient</b>	<b>Standard Error</b>	<b>z</b>	<b>P &gt;  z </b>	<b>[95% Confidence Interval]</b>	
<b>Expenditures</b>	-2.95e-06	3.58e-06	-0.83	0.409	-9.96e-06	4.06e-06
<b>Chicago Bar Ass'n</b>	.5454377	.1537792	3.55	0.000	.2440361	.8468394
<b>Tribune</b>	.5806855	.2140456	2.71	0.007	.1611638	1.000207
<b>Associate Before</b>	.125468	.2464277	0.51	0.611	-.3575215	.6084575
<b>Irish-Scottish</b>	.6690628	.1874906	3.57	0.000	.3015879	1.036538
<b>Female</b>	.9573293	.2009916	4.76	0.000	.5633929	1.351266
<b>Slated</b>	2.046461	.2184017	9.37	0.000	1.618402	2.474521
<b>Constant</b>	-2.59241	.2348316	-11.04	0.000	-3.052671	-2.132148

*B. Subcircuit*

Probit estimates Number of obs = 310  
LR chi2(7) = 150.54  
Prob > chi2 = 0.0000  
 Log likelihood = -110.58517 Psuedo R2 = 0.4050

	<b>Coefficient</b>	<b>Standard Error</b>	<b>z</b>	<b>P &gt;  z </b>	<b>[95% Confidence Interval]</b>	
<b>Expenditures</b>	1.91e-07	1.31e-06	0.15	0.885	-2.39e-06	2.77e-06
<b>Chicago Bar Ass'n</b>	.0849921	.1697339	0.50	0.617	-.2476802	.4176644
<b>Tribune</b>	.629338	.2299342	2.74	0.006	.1786752	1.080001
<b>Associate Before</b>	.3985459	.3156991	1.26	0.207	-.220213	1.017305
<b>Irish-Scottish</b>	.1322809	.2353898	0.56	0.574	-.3290747	.5936364
<b>Female</b>	.5778674	.2165126	2.67	0.008	.1535104	1.002224
<b>Slated</b>	2.05158	.2056192	9.98	0.000	1.648574	2.454586
<b>Constant</b>	-1.802438	.2035769	-8.85	0.000	-2.201441	-1.403435

The results for sub-circuit races are a bit different. For these primaries, unlike those for county-wide seats, Irish or Scottish surnames are not an advantage—a result that holds across various types of subcircuits, whether (predominantly) white in composition or not.<sup>8</sup>

In all other ways, though, the results are virtually identical to those we obtained for the Democratic primaries for all seats and for county-wide positions. Money fails to exert a statistically significant effect, while gender and Tribune rating affect outcomes, as does slating, which remains (substantively speaking) the most important factor. The probability of a candidate winning the primary without being slated is 8.9%. This probability increases to 76.0% simply by obtaining the party's endorsement. Given the size of this effect, coupled with its impact on county-wide races, we have no hesitation in concluding that, in general, slating is the name of the game in Democratic primaries for judgeships.<sup>9</sup>

### 3.2 Republican Primaries

Table 6 presents the results of our effort to explain outcomes in Republican primaries. The findings are clear: The only variable that exerts a statistically significant effect is slating.<sup>10</sup> That no other factors help account for winning (losing) is likely due to the small sample size. But this does not take away from the fact that the effect of slating is quite substantial. Holding all variables at their means, the probability of a non-slated Republican winning a primary is just 15.0%; when endorsed by the party, that figure jumps to 86.4%.<sup>11</sup>

From a substantive perspective, then, slating seems to be the determinative factor for the primaries of both parties: candidates slated by their party win at far higher rates than those who fail to obtain such endorsements.

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<sup>8</sup> Specifically, we reestimated the model with separate effects for Irish/Scottish surnames for (largely) Hispanic, black, and white subcircuits. None achieves statistical significance.

<sup>9</sup> Several additional checks on the data reinforce this conclusion. For example, to explore the possibility that different subcircuits exhibit distinct patterns, we considered the effect of Tribune ratings and the importance of slating across primarily black, Hispanic, and white subcircuits. Some (interesting) differences in magnitude emerge, but the overall patterns (depicted in the tables above) prevail. In particular, Tribune ratings do not exert a significant effect in (predominately) black subcircuits, while they do in the (largely) Hispanic subcircuits. Slating remains statistically significant across the board. In white and black subcircuits a slated candidate has 68.4 % chance of winning the primary; for non-slated candidates, that figure is only 5.8%. In Hispanic subcircuits, the effect of slating is even greater. Without being slated the probability of a candidate winning in a Hispanic subcircuit is 8.7%.; that increases to 91.2% just by slating.

We also estimated separately primary models for seats on appellate and non-appellate courts. For both models, being slated continues to soak up most of the variance, and gender also plays a significant role. In fact, the only substantive difference comes in the Tribune rating: It is significant (both statistically and substantively) in the appellate subsample, but not in the other.

<sup>10</sup> We hypothesized that expenditures would exert a positive effect on winning. But the estimated coefficient is negative and, thus, under a one-tailed test, statistically insignificant.

<sup>11</sup> A sufficient amount of data does not exist for Republican primaries to compare meaningfully county-wide and subcircuit races, those for appellate and non-appellate seats, or races in (predominately) black, Hispanic, and white subcircuits.

**Table 6.** The Republican Primaries (County-Wide and Sub-Circuit Races)

Probit estimates	Number of obs	=	60
	LR chi2(8)	=	30.78
	Prob > chi2	=	0.0001
Log likelihood = -26.063965	Pseudo R2	=	0.3713

	Coefficient	Standard Error	z	P >  z	[95% Confidence Interval]	
<b>Expenditures</b>	-.0000359	.0000201	-1.79	0.074	-.0000752	3.47e-06
<b>Chicago Bar Ass'n</b>	.0398414	.4194513	0.09	0.924	-.782268	.8619508
<b>Tribune</b>	.686275	.4897805	1.40	0.161	-.2736771	1.646227
<b>Associate Before</b>	.135256	.7340291	0.18	0.854	-1.303415	1.573927
<b>Irish-Scottish</b>	.5452877	.6547902	0.83	0.405	-.7380775	1.828653
<b>Female</b>	.8820867	.623729	1.41	0.157	-.3403997	2.104573
<b>Slated</b>	2.014541	.505207	3.99	0.000	1.024353	3.004728
<b>Constant</b>	-.9864973	.3931399	-2.51	0.012	-1.757037	-.2159573

#### 4 General Elections

Table 7 explores the effect of factors that might (plausibly) be associated with winning (and losing) seats for county-wide and sub-circuit judgeships. Notice that three variables have a significant impact on the ability of a candidate to win in the general election: attaining the endorsement of the Chicago Bar Association, running as a Democrat, and spending money. The substantive effect of the first, bar endorsement, is quite small. (Holding all other variables at their mean, moving an increase in one category from the Chicago bar association rating increases the probability of getting elected by only 8%.) But not so of party and money. Overall, Democrats win 82.6 percent of the races they contest; that figure for Republicans is only 12.3%.

**Table 7.** The General Elections (All Judgeships)

Probit estimates	Number of obs	=	374
	LR chi2(7)	=	189.67
	Prob > chi2	=	0.0000
Log likelihood = -129.95426	Pseudo R2	=	0.4219

	Coefficient	Standard Error	z	P >  z	[95% Confidence Interval]	
<b>Expenditures</b>	9.95e-06	4.07e-06	2.24	0.014	1.97e-06	.0000179
<b>Chicago Bar Ass'n</b>	.2890582	.1439927	2.01	0.045	.0068377	.5712787
<b>Tribune</b>	.4382355	.2979534	1.47	0.141	-.1457424	1.022213
<b>Irish-Scottish</b>	.1801784	.2067489	0.87	0.383	-.2250421	.5853988
<b>Female</b>	.3058024	.2118037	1.44	0.149	-.1093252	.72093
<b>Party</b>	1.919157	.1788774	10.73	0.000	1.568564	2.26975
<b>Constant</b>	-1.124184	.1945548	-5.78	0.000	-1.505504	-.7428636

Republicans, though, can increase appreciably their odds of victory via campaign expenditures. Holding all other variables constant (at their mean), spending an additional \$100,000 increases a Republican’s chances of electoral success to 67.4%. This is a substantial boost but not as large as the one that obtains for Democrats under the same conditions (that is, holding all other variables constant). Should a Democratic candidate spent an additional \$100,000, she or he virtually assures him or herself victory (99.1% chance).

We replicated this analysis for all county-wide and sub-circuit races. As Table 8 shows, in the former, Tribune rating, an Irish or Scottish surname, and the amount of money spent are trivial predictors of success. It is gender and party that have the greatest impact, with females and Democratic candidates far more likely to win their races than males and Republicans. Of these two, though, political party has the greater substantive effect. Holding all variables at their means, the model predicts that Republicans will win 13.9% of countywide races; that figure is 98.3% for Democrats. This result, along with the findings depicted above, suggests that once the Democrats slate their candidates for county-wide judgeships, those candidates will win in the primaries, as well as in the general election.<sup>12</sup>

<sup>12</sup> This result holds for all judicial elections—whether for seats on an appellate bench or not. For supreme and appellate court races, all of the Democrats won and all of the Republicans lost. Hence, party appears to be the determining factor, with the statistical model unable to tell us much more. When we re-estimated the county-wide model (purging appellate races), we find that party is the only significant predictor.

**Table 8.** The General Elections (County-wide and Sub-circuit Races)

*A. Countywide*

Probit estimates Number of obs = 174  
LR chi2(6) = 171.23  
Prob > chi2 = 0.0000  
 Log likelihood = -24.434658 Psuedo R2 = 0.7780

	<b>Coefficient</b>	<b>Standard Error</b>	<b>z</b>	<b>P &gt;  z </b>	<b>[95% Confidence Interval]</b>	
<b>Expenditures</b>	.0000206	.0000167	1.23	0.217	-.0000121	.0000534
<b>Chicago Bar Ass'n</b>	.0211118	.3424982	0.06	0.951	-.6501722	.6923959
<b>Tribune</b>	.8497189	.5703929	1.49	0.136	-.2682307	1.967669
<b>Irish-Scottish</b>	.6213601	.4359664	1.43	0.154	-.2331184	1.475839
<b>Female</b>	.8650875	.484972	1.78	0.074	-.0854402	1.815615
<b>Party</b>	3.213103	.4519687	7.11	0.000	2.32726	4.098945
<b>Constant</b>	-2.078069	.4102139	-5.07	0.000	-2.882073	-1.274064

*B. Subcircuit*

Probit estimates Number of obs = 186  
LR chi2(6) = 33.24  
Prob > chi2 = 0.0000  
 Log likelihood = -85.139308 Psuedo R2 = 0.1633

	<b>Coefficient</b>	<b>Standard Error</b>	<b>z</b>	<b>P &gt;  z </b>	<b>[95% Confidence Interval]</b>	
<b>Expenditures</b>	1.88e-06	3.99e-06	0.47	0.638	-5.94e-06	9.70e-06
<b>Chicago Bar Ass'n</b>	.2001912	.1819267	1.10	0.271	-.1563786	.556761
<b>Tribune</b>	.662593	.4980839	1.33	0.183	-.3136336	1.63882
<b>Irish-Scottish</b>	-.0510402	.2740827	-0.19	0.852	-.5882325	.486152
<b>Female</b>	.1194363	.2658752	0.45	0.653	-.4016695	.640542
<b>Party</b>	1.123369	.2328758	4.82	0.000	.6669408	1.579797
<b>Constant</b>	-2.538855	.2639295	-9.6	0.336	-.7711778	.2634068

The story is similar for sub-circuit races. For these, however, the only statistically significant variable is party affiliation—and its substantive importance is not as great as it is for county-wide general elections (not surprising in light of the profound demographic differences across subcircuits<sup>13</sup>). The model suggests that Republicans win 46.3% of the races they contest (holding all other variables at their means), while Democrats win 88.6% of their elections. This result implies that both parties run candidates selectively—or perhaps choose not to run them at all—in subcircuits where they expect to lose. It also leads us to conclude that the sub-circuit system, in general, is working to lessen the Democratic party’s lock on judgeships in Cook County.

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<sup>13</sup> For the general elections, we cannot conduct any comparisons across (predominately) black, Hispanic, and white subcircuits. That is because in black subcircuits the Democrats won all but one election; in Hispanic subcircuits the Democrats won every race.

# Appendix B

## Biographies

**Lee Epstein**

Mallickrodt Professor of Political Science and Law, Washington University

**Andrew Martin**

Assistant Professor of Political Science, Washington University

# Lee Epstein

Mallickrodt Professor of Political Science and Law, Washington University

Lee Epstein joined the Political Science Department at Washington University in 1991. In July 1993, she was made a full professor, and between 1995 and 1999, she served as chair of the department--a position she again holds. In April 1998, she was named the Edward Mallinckrodt Distinguished University Professor of Political Science; and in 2000 she became a member of the Washington University Law School faculty.

Epstein's interests are in the fields of courts, law, and judicial politics. Among her recent research projects, undertaken with various colleagues at Washington University and elsewhere, are the "[Norm of Consensus on the Supreme Court](#)" (published in the *American Journal of Political Science*), which considers whether justices serving on Supreme Courts of the 19th (and into the 20th century) disagreed over the outcomes of cases but masked their disagreement from the public by producing consensual opinions; "[Strategic Defiance of the U.S. Supreme Court](#)" (funded by the National Science Foundation), which seeks to address the question of why lower courts defy precedent established by the Court; "[What Role do Constitutional Courts Play in the Establishment and Maintenance of Democratic Systems of Government?](#)" (*Law & Society Review*), which answers the primary question with a model that assumes strategic behavior on the part of the relevant actors (including judges, executives, and legislatures) and assesses the predictions generated by the model against data drawn from the Russian case; "[The Rules of Inference](#)" (*University of Chicago Law Review*), which adapts the rules of inference used in the natural, physical, and social sciences to the special needs, theories, and data in legal scholarship, and explicates them with extensive illustrations from research in the nation's law reviews; and "The Norm of Prior Judicial Experience (And Its Consequences for the U.S. Supreme Court)" (*California Law Review*), which argues that all norms--including one making service on the (federal) bench a near prerequisite for a position on the Court--are problematic because they reduce the ability of the affected group (the Supreme Court not excepted) to perform its tasks.

A recipient of seven grants from the National Science Foundation, Epstein has also authored, co-authored, or edited twelve books on law and courts. One, [The Supreme Court Compendium: Data, Decisions, and Developments](#) (now in its 3rd edition) received a special recognition award from the Law and Courts Section of the American Political Science Organization; an Outstanding Academic Book Award from Choice, a magazine for academic librarians; and a listing in *Lingua Franca* education magazine as a Best Research Tool. Another book, [The Choices Justices Make](#), was described in the article "What 15 Top Political Scientists are Working on Now" in *The Chronicle of Higher Education*; it also received the C. Herman Pritchett Award for the best book published on law and courts.

In addition, Epstein serves her profession in a number of capacities. She is a former chair of the Law and Courts Section of the American Political Science Association and is currently the President of the Midwest Political Science Association. She also serves (or has served) on the Board of Directors of the American Judicature Society, the Executive Council of the Southern Political Science Association, the Board of Trustees of the Law & Society Association, and on the Editorial Boards or Advisory Panels of the *American Journal of Political Science*, the *American Political Science Review*, *American Politics Research*, *I-CON: The International Journal of Constitutional Law*, *Law and Social Inquiry*, *Law & Society Review*, *Political Research Quarterly*, and *Social Science Quarterly*. She also is an active



member of the Washington University community, currently serving on the Academic Planning Committee for Arts and Sciences, the Advisory Boards of the Law School's Center for Interdisciplinary Studies and its Institute for Global Legal Studies, and the Academic Freedom and Tenure Hearing Committee.

Epstein enjoys working with her students in the law school and Political science department. She regularly directs honors theses and dissertation work, and teaches courses on American Political Institutions, Constitutional Courts, Constitutional Law, Research Design and Methods, and the U.S. Supreme Court. For her efforts, she received a Faculty of the Year Award from Washington University's Student Union and was named Professor of the Year by the Undergraduate Political Science Association.

## Andrew Martin

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Andrew D. Martin is an Assistant Professor of Political Science at Washington University. He specializes in political methodology and Bayesian statistics. His substantive research focuses on American politics and institutions, particularly the United States Congress and Supreme Court, and electoral institutions in parliamentary systems. He is currently working on Bayesian hierarchical models, event count models, and measurement models of the ideal points of

Supreme Court justices. He is also the co-author of the Scythe Statistical Library, an open source C++ library for statistical computation. Martin teaches courses at both the graduate and undergraduate level in political methodology.