

Eliminate potential bias by appointing appellate judges

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Pennsylvania once again leads the nation, as it did in the 2007-2008 election cycle, in the cost of statewide judicial elections. But there is a twist this time, in that the cost is in much more than money alone.

An analysis by Pennsylvanians for Modern Courts and the non-partisan Campaign Media Analysis Group found that the Supreme Court race between Democrat Jack Panella and Republican Joan Orié Melvin cost at least \$4.5 million. Beyond the cost, the underlying issues in that race constitute a compelling argument to abandon the election of appellate judges in favor of merit selection and appointment.

The phrase "at least" is important because it might never be known just how much was spent on the campaigns. Both major political parties spent heavily but, by state law, are not required to divulge the amounts they spent per candidate.

Both parties were heavily involved in the high court race because of its long-term political implications - even though the courts are supposed to be apolitical.

One-justice edge - not that it matters

Orié Melvin's victory gives Republicans a one-justice majority on the court. That, in turn, is vital to the political parties because the high court is likely to rule on the validity of new legislative districts that will be drawn after the 2010 census.

In terms of direct spending, Panella raised far more money than Orié Melvin, \$2.65 million to \$940,000. But the state Republican Party spent more than Orié Melvin's campaign for her TV advertising, just under \$1 million, according to public records kept by TV stations. Panella's campaign paid for all of his TV advertising. The state Democratic Party spent \$1.8 million on all races in 2009, and the Republican Party spent nearly \$5 million. But, due to the gaps in their reporting requirements per candidate, it's not clear exactly how much in total they spent on the Supreme Court race.

There was, of course, the usual heavy spending by the legal community. The Committee for a Better Tomorrow, the political action committee of the Philadelphia Association of Trial Lawyers, gave about \$1 million to the Panella campaign, for example, and lawyers also contributed heavily to the Orié Melvin campaign.

Even the candidates themselves understand the peril of funding judicial campaigns with donations from parties that later appear before the victorious judge in court. They traded charges throughout the campaign about their fundraising and its potential implications.

The usual suspects

Meanwhile, on Dec. 18 the Allegheny County district attorney's office raided a district office of state Sen. Jane Orié, Orié Melvin's sister and the third-ranking Republican in the Senate. They seized computers and records in furtherance of an Allegheny County grand jury investigation that began Nov. 2, one day before the general election. According to the Pittsburgh Post-Gazette, an intern in Orié district's office complained to prosecutors that the legislative office had engaged in campaign work for Orié Melvin.

Use of publicly paid legislative staffers and resources for political work is the basis of a statewide investigation being conducted by the state attorney general's office. The Allegheny County inquiry is separate.

Orié's lawyer cried foul, noting that the Allegheny County district attorney is Stephen Zappalla Jr. Zappalla is a Democrat and the son of former Supreme Court Justice Stephen Zappalla, who has gone to work for the casino industry since his retirement as a judge. Orié, in the Senate, has been a vocal opponent of gambling expansion.

All of that is the sort of inside political baseball for which Pennsylvania is infamous. But the point is that Pennsylvanians shouldn't have to worry about those back stories if they have business before an appellate court.

Bills are pending in both houses to begin the process of amending the state constitution to establish merit appointment of appellate judges. Lawmakers should initiate the change.