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OPEN FOR BUSINESS: ILLINOIS COURTS AND PARTY POLITICS

Michael H. LeRoy^{*}

Illinois suffers from the most partisan system in the nation for electing judges—a system that erodes the independence of courts from politics.

Politics, Not Merit, Is the Crux of Selection for Illinois Judges: Judges at every court level must declare as a Democrat or Republican when they first run for office. This makes it easy for special interest groups, businesses, labor unions, trial lawyers, and political parties to donate heavily to judicial candidates. Illinois is among the few states with no formal merit process at any point in selecting judges.

Elections for Illinois Judges Are Giant Magnets for Out-of-State Campaign Contributions: Justice Lloyd Karmeier, a Republican with strong backing from big business, and his Democratic opponent spent \$9.3 million on a supreme court seat for a sparsely populated rural district. Democrats play the money game, too. Up for a retention vote, Justice Thomas Kilbride received more than \$2 million from the state Democratic Party and labor unions.

Illinois' Partisan Elections Mimic Influence Peddling in Legislative Elections: Partisan judicial campaigns produce court rulings that set major public policies in Illinois. Behind these decisions, large corporations, powerful labor unions, wealthy trial lawyers, and entrenched political parties exploit the state's partisan elections. This study identifies four major Illinois supreme court rulings that bear earmarks of campaign influence from big donors.

^{*} Professor at the University of Illinois at Urbana-Champaign's School of Law and Employment Relations and a Professor at the Illinois College of Law

The General Assembly Overpays Illinois Judges: Since 1983, the General Assembly has implemented an opaque process that overpays judges. Illinois' appellate judges rank second in the nation for pay. Supreme Court justices are paid \$220,873; and intermediate appellate justices are paid \$207,882. Trial judges in Illinois rank third in the U.S. with pay of \$190,758. This pay arrangement raises questions about the independence of the judiciary from the General Assembly in lawsuits over pension reforms and legislative redistricting.

Some Illinois Judges Game the Election System: Illinois' system of electing judges greases the way for unethical conduct. Judges who are up for retention elections have "retired" and filed as "new" candidates in the general election. By doing so, they avoid the 60% retention requirement and need only 50% plus one vote for a new term. No rule prohibits this subterfuge.

Illinois Lacks an Effective Discipline Board for Judges: Unlike many states, Illinois has an outdated code of judicial conduct that fails to address the growing influence of money in judicial campaigns. This problem is magnified by Illinois' highly ineffective judicial ethics board. A recent audit reported that the public had over 300 unanswered complaints against judges, some alleging misconduct and mental incapacity. When the public complains about a judge, the board issues discipline in less than one percent of these cases.

Illinois should follow other states by adopting more stringent campaign regulations, patterned after the revised ABA Model Code, for judges and judicial candidates. More broadly, Illinois should abolish partisan elections and replace them with a non-partisan commission of non-lawyer citizens, lawyers, and judges to select and retain judges on merit.

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I. INTRODUCTION

A. Context for Partisan Elections and Judicial Ethics

The Illinois General Assembly and governor are ridiculed for partisan politics—Illinois courts are not seen, however, as part of this problem. But my study shows that Illinois courts are similarly mired in legalized influence peddling. The state's partisan elections for judges produce court rulings that set major public policies and nullify jury awards of billions of dollars. Leading up to these supreme court cases, large campaign donations to justices have left footprints of influence from corporations, labor unions, trial lawyers, and political parties.

My study adds to a literature that examines partisan elections for judges.¹ I demonstrate how structural influences impinge on the independence of

¹ For an insightful essay published a century ago on this matter, see generally Samuel Rosenbaum, *Election of Judges, or Selection?*, 9 ILL. L. REV. 489 (1915). In his piece, Rosenbaum establishes that:

The candidates for the bench usually occupy minor places far down on the ballot, and are swept into office by the success of their party ticket Furthermore, the final choice is left to a body of voters who, as a class, have little conception of the duties and technical requirements of the office, and have not the training necessary to a right understanding of them. Yet in every state in the Union but thirteen, the entire judiciary, from the Supreme Court down to the justices of the peace, are elected by popular vote.

Id. at 489–90. See generally David W. Adamany, *The Party Variable in Judges' Voting: Conceptual Notes and a Case Study*, 63 AM. POL. SCI. REV. 57 (1969); Kathleen L. Barber, *Ohio Judicial Elections—Nonpartisan Premises with Partisan Results*, 32 OHIO ST. L. J. 762 (1971); Mark A. Behrens & Cary Silverman, *The Case for Adopting Appointive Judicial Selection Systems for State Court Judges*, 11 CORNELL J.L. & PUB. POL'Y 273 (2002); Thomas E. Brennan, *Nonpartisan Election of Judges: The Michigan Case*, 40 SW. L.J. 23 (1986); W. St. John Garwood, *Democracy and the Popular Election of Judges: An Argument*, 16 SW. L.J. 216 (1962); Charles Gardner Geyh, *Why Judicial Elections Stink*, 64 OHIO ST. L.J. 44 (2003); Henry R. Glick & Craig F. Emmert, *Selection Systems and Judicial Characteristics: The Recruitment of State Supreme Court Judges*, 70 JUDICATURE 228 (1987); Kermit L. Hall, *Progressive Reform and the Decline of Democratic Accountability: The Popular Election of State Supreme Court Judges, 1850–1920*, 9 AM. B. FOUND. RES. J. 345 (1984); Donald W. Jackson & James W. Riddlesperger, Jr., *Money and Politics in Judicial Elections: The 1988 Election of the Chief Justice of the Texas Supreme Court*, 74 JUDICATURE 184 (1991); Kathleen Hall Jamieson & Bruce W. Hardy, *Will Ignorance & Partisan Election of Judges Undermine Public Trust in the Judiciary?*, DÆDALUS, Fall 2008, at 11; Jared Lyles, *The Buying of Justice: Perversion of the Legal System Through Interest Groups' Involvement with the Partisan Election of Judges*, 27 L. & PSYCH. REV. 121 (2003); Michael S. Kang & Joanna M. Shepherd, *Judging Judicial Elections*, 114 MICH. L. REV. 929 (forthcoming Apr. 2016) (book review).

Illinois courts. These courts are shaped by the Democratic and Republican parties and General Assembly. Illinois does not use merit selection for judges. Illinois simply labels judges by their political party. The General Assembly sets judicial salaries at near-record levels. This pay practice raises additional questions about the independence of Illinois courts.

Illinois judges engage in political campaigning that other states strictly prohibit. Meanwhile, Illinois' outdated Code of Judicial Conduct fails to deal with millions of dollars that fuel these elections. In sum, Illinois courts mimic the state's corruption-prone political branches. Its judges are not corrupt, so far as the evidence shows—but by campaigning so much like elected politicians, some judges exercise influence-tinged power that makes them campaign like legislators, and colors their rulings as usurpations of legislative power.

B. Overview of Article

Section II.A of this article explains how Illinois' method for selecting judges is seriously flawed.² Elections align judges with political parties, and strategically labels them for wealthy donors who influence public policies. Constitutional theory from the *Federalist Papers* also suggests that this method fails to attract the brightest and most principled lawyers to the bench.³ On the other hand, this system tends to attract judicial candidates who are able to campaign like politicians. The result is that this highly partisan process hinders the judiciary's fulfillment of its apolitical role.

Section II.B examines how Illinois overpays judges.⁴ This is worrisome because the pay system has been controlled by an obscure board whose members are named by the General Assembly.⁵ The scheme shields lawmakers from direct scrutiny because the board's recommendations become law by default if the General Assembly fails within thirty days to reject them.⁶ Compounding the pay problem, judicial productivity in Illinois is declining.⁷ Considered as a whole, the system aligns the monetary interests of overpaid judges with their legislative benefactors—and while there is no evidence that the pay process compromises judicial integrity, it deprives taxpayers of accountability and transparency.

² *Infra* notes 20–39.

³ *Infra* notes 30–35.

⁴ *Infra* notes 40–69.

⁵ *Infra* notes 40–41.

⁶ *Infra* notes 42–45.

⁷ *Infra* notes 58–59.

Section II.C exposes judicial misconduct related to partisan elections.⁸ Some Illinois judges who have barely survived retention elections (contests with no opponent) “game” their next election by retiring from office and declaring themselves as new candidates in a general election.⁹ This lowers the threshold for winning election from sixty percent to fifty percent plus one vote. The retire-to-run ruse conflicts with the intent of the Illinois Constitution, and it reveals character flaws in some judges.

Section III.A explores how partisan judicial elections compromise the independence of Illinois courts.¹⁰ Multi-million dollar support from business groups for a Republican supreme court justice enabled him to vote to reverse multi-*billion* dollar judgments against State Farm Insurance and Phillip Morris.¹¹ Likewise, large campaign donations to two Democratic justices by their party, as well as by unions and trial lawyers, enabled them to vote in major cases to broaden tort liability for medical providers.¹²

Section III.B explains how the Illinois Judicial Code of Conduct is toothless and outdated.¹³ Illinois waited more than a decade after the American Bar Association passed its Model Code of Judicial Conduct before it adopted the new rules.¹⁴ Even then, Illinois adopted only parts of the Model Code, and it avoided stringent standards for political campaigning.¹⁵ I compare how other states aggressively regulate campaign activities for judicial candidates.¹⁶

Section III.C compares the inactivity in code enforcement in Illinois to recent U.S. Supreme Court decisions that deal with similar problems in other states.¹⁷ In two cases involving partisan elections, the Court has ruled that judicial campaigning violated the constitutional rights of citizens.¹⁸ In a third case involving non-partisan judicial elections, the Court upheld a state bar’s sanction of a candidate who wrote a letter to solicit donations.¹⁹ When these cases are compared to controversial Illinois judicial campaigns, the implication is that Illinois judges are not held accountable for compromising judicial independence.

⁸ *Infra* notes 70–90.

⁹ *Infra* notes 76–79, 81–82.

¹⁰ *Infra* notes 91–109.

¹¹ *Infra* notes 94–95, 98–102.

¹² *Infra* notes 103–07.

¹³ *Infra* notes 110–33.

¹⁴ *Infra* note 120.

¹⁵ *Infra* note 131.

¹⁶ *Infra* notes 132–33.

¹⁷ *Infra* notes 134–39.

¹⁸ *Infra* notes 137, 139.

¹⁹ *Infra* note 138.

In Section IV, I offer several recommendations. Illinois should (1) abolish partisan elections for judges, (2) update and strengthen its judicial code to restrain influence peddling by donors, and (3) increase funding and staffing for currently ineffective judicial ethics board.

II. STRUCTURAL INFLUENCES OF POLITICS ON ILLINOIS JUDGES

A. Selection Processes

The Illinois Constitution establishes a supreme court, appellate courts, and circuit courts.²⁰ Illinois citizens elect judges.²¹ Circuit judges serve terms of six or four years; appellate judges serve ten-year terms.²² A judge must run in a general election, sometimes against an opponent, for a first term. In these situations, state law mandates partisan elections at the three levels.²³ Thereafter, judges who run for another term must win at least sixty percent of the votes cast in a non-partisan retention election.²⁴ By this time, their party affiliation is known to groups that donate heavily in these elections.

These selection methods are the result of a statewide vote for a new constitution in 1970. The Illinois State Bar Association and the Chicago Bar Association advocated merit selection of judges and put this idea on the ballot.²⁵ Voters favored Proposition 2A, providing for partisan election of judges, thus defeating merit selection in Proposition 2B.²⁶

This vote kept Illinois in a tiny minority of states that run judicial elections like elections for legislators and executive branch officers. Only eight states have partisan elections for their court of last resort.²⁷ In addition, Illinois

²⁰ ILL. CONST. art. VI, § 1.

²¹ See *id.* § 12(a) (“Supreme, Appellate and Circuit Judges shall be nominated at primary elections or by petition.”).

²² *Id.* § 10; see also *About the Courts in Illinois*, ILLINOIS COURTS, <http://www.illinoiscourts.gov/General/CourtsInIL.asp> (last visited Feb. 21, 2017) (“Circuit Judges are elected for a term of six years; Associate Judges are appointed . . . for a four-year term.”).

²³ 46 ILL. COMP. STAT. ANN. 5/7(1) (West 2010).

²⁴ ILL. CONST. art. VI, § 12.

²⁵ *History of Reform Efforts: Illinois*, NATIONAL CENTER FOR STATE COURTS, http://www.judicialselection.us/judicial_selection/reform_efforts/failed_reform_efforts.cfm?state=IL (last visited Oct. 17, 2016) (establishing that the Illinois State Bar Association and the Chicago Bar Association worked for two decades to put merit selection on the ballot leading up to the 1970 referendum and that, even after the merit option was voted down, these groups continued to advocate for this selection method).

²⁶ *Id.* (confirming that Proposition 2A prevailed by 146,000 votes).

²⁷ Bill Raftery, *8 States Continue to Have Partisan Elections for Their Top Courts; A Look at Legislative Efforts to Move to Nonpartisan*, GAVEL TO GAVEL (Mar. 9, 2015), <http://gavelto>

is among only thirteen states with no merit commission for judges, and only eleven states with partisan election of general jurisdiction judges.²⁸

Why is this a problem? To begin, when donors and voters see a political label next to a judge's name, this signals that the candidate shares the party's values. Thus, a judge is forever identified as Republican or Democratic even when these labels are not used in a retention election. Campaign donors—especially business groups, labor unions, trial lawyers, and political parties—are able to make calculated decisions about investing in judicial candidates.²⁹ The fact that these donors give millions of dollars to high-level candidates signifies their confidence that party affiliation reliably predicts a judge's key votes in future cases.

gavel.us/2015/03/09/8-states-continue-to-have-partisan-elections-for-their-top-courts-a-look-at-legislative-efforts-to-move-to-nonpartisan/. In addition to Illinois, the other states that hold partisan elections for judges are Alabama, Louisiana, Michigan, New Mexico, Ohio, Pennsylvania, and Texas. *Id.* However, three of these states have one or more non-partisan methods for nominating or selecting justices, thus diluting the influence of partisan politics. In New Mexico, a judicial nominating commission provides the governor with recommended candidates to fill vacancies; and political parties are allowed to run candidates against the merit-appointed candidate in primary elections. *Id.* In Ohio, candidates first run in partisan primaries, but the winners appear on the ballot during the general election without party designations. *Id.* Michigan elects its state supreme court justices in nonpartisan elections, but candidates are nominated by political parties at statewide conventions.

²⁸ U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NCJ 242850, STATE COURT ORGANIZATION (2013), Map 3 at 6 (depicting Illinois among twelve other states with no judicial commission), Map 4 at 6 (depicting Illinois among ten other states with partisan election of general jurisdiction judges).

²⁹ See generally BILLY CORRIHER, PARTISAN JUDICIAL ELECTIONS AND THE DISTORTING INFLUENCE OF CAMPAIGN CASH, CTR. FOR AMERICAN PROGRESS (2012), <https://www.americanprogress.org/issues/civil-liberties/report/2012/10/25/42895/partisan-judicial-elections-and-the-distorting-influence-of-campaign-cash/>, for a discussion on the increase in judicial campaign contributions and overall divisiveness in those states that elect or nominate judicial candidates in partisan races.

Why are partisan judicial races so much more expensive than nonpartisan contests? One answer could be that potential campaign donors find it easier to donate money in these races. In states with partisan judicial elections, there is a ready-built infrastructure for “bundling” donations in place, with state parties acting as conduits for special interests.

Id. at 2. For a specific illustration, see ILLINOIS STATE BOARD OF ELECTIONS, CONTRIBUTIONS LIST, <https://www.elections.il.gov/CampaignDisclosure/ContributionsSearchByAllContributions.aspx> (search with “The Illinois Chamber PAC” as “Last or Only Name” and “10/29/2004” as “Received Date”) (reporting on a contribution made by the Illinois Chamber PAC to Justice Lloyd A. Karmeier in the amount of \$20,000 on October 29, 2004).

The nation's constitutional founders envisioned independence for courts, framed in a theory of separation of powers.³⁰ While they saw the judiciary as the weakest branch,³¹ they conferred special legitimacy to courts by conceiving them as an intermediate body to protect citizens from the stronger branches.³² Illinois' constitution enacts this theoretical foundation by expressly defining judicial power as distinct from others.³³

The state's partisan election system works against this core principle, however, by encouraging judges to campaign like everyday politicians. As a result, judicial independence is compromised. Judges are open game for political factions that compete to control the other branches. Thus, the people lose an important constitutional check against a partisan faction that can marginalize minority groups.

Illinois' method for selecting judges also affects the quality of judging. Alexander Hamilton theorized that judges need years to understand precedents on which they base their decisions.³⁴ Judges should have high intellect and sound character, an unusual combination; and to attract these people, judges should be shielded from political pressure.³⁵ Illinois is heedless to these

³⁰ See THE FEDERALIST NO. 78, at 401-08 (Alexander Hamilton) (George W. Carey & James McClellan eds., 2001) (stating the theory that the judiciary is independent of the political branches). “[T]he judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment . . .” *Id.* at 402.

³¹ *Id.* (“[L]iberty can have nothing to fear from the judiciary alone, but would have every-thing to fear from its union with either of the other departments . . . that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches . . .”).

³² *Id.* (“It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority.”).

³³ ILL. CONST. art. II, § 1 (“The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.”).

³⁴ THE FEDERALIST NO. 78, *supra* note 30, at 407 (voicing concerns that judges should not exercise arbitrary discretion). To counteract this possibility, Hamilton urged that judges “should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them . . .” *Id.* He understood that “it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them.” *Id.*

³⁵ Hamilton understood that “few men in the society . . . will have sufficient skill in the laws to qualify them for the stations of judges.” *Id.* Furthermore, Hamilton remarked that “making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge.” *Id.* Finding

concerns. The state runs partisan judicial elections— on the same ballot, at the same time, and with the same background issues— as for politicians. Politics, not merit, is the crux of selection for Illinois judges.

Compounding this problem, Illinois differs from most states by failing to use commissions to screen candidates for judicial office.³⁶ While maintaining this standard-less system, Illinois has ignored legal experts who advocate merit selection.³⁷

This partisan system allows money to shake hands with Illinois candidates for judicial office. By anchoring judicial office to the Democratic and Republican parties, Illinois is the nation's leading money magnet for out-of-state campaign donations.³⁸ And ironically, Illinois' partisan system has led to its entrenched supreme court— ironic because elections are meant to give voters more influence than merit commissions, and should therefore expose candidates to more turnover. If justices fully serve their current terms, they will average 19.2 years of unbroken tenure.³⁹

judges with high intellect and character would therefore require unusual independence from political influences and long tenure. In particular, Hamilton concluded:

[T]he government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity.

Id.

³⁶ Methods of Judicial Selection, AMERICAN JUDICATURE SOCIETY (2015), http://www.judicialselection.us/judicial_selection/methods/judicial_nominating_commissions.cfm?state. For an example of a screening process that filters out an unfit candidate in another state, see generally *In re Nocella*, 79 A.3d 766 (Pa. Ct. Jud. Disc. 2013).

³⁷ NATIONAL CENTER FOR STATE COURTS, *supra* note 25.

³⁸ REPORT: ILLINOIS HAD HIGHEST SHARE OF OUTSIDE SPENDING IN 2014 STATE SUPREME COURT ELECTIONS, PROGRESS ILLINOIS (Nov. 5, 2015), <http://www.progressillinois.com/posts/content/2015/11/05/report-illinois-had-highest-share-outside-spending-2014-state-supreme-court>. For a specific illustration, see ILLINOIS STATE BOARD OF ELECTIONS, CONTRIBUTIONS LIST, <https://www.elections.il.gov/CampaignDisclosure/ContributionsSearchByAllContributions.aspx> (search with “Morgan Stanley” as “Last or Only Name” and “10/7/2004” as “Received Date”) (reporting on a contribution made by Morgan Stanley to Justice Lloyd A. Karmeier in the amount of \$25,000 on October 7, 2004). See also SCOTT GREYTAK ET AL., BANKROLLING THE BENCH: THE NEW POLITICS OF JUDICIAL ELECTIONS 13 (2015), <http://newpoliticsreport.org/app/uploads/JAS-NPJE-2013-14.pdf> (reporting that Illinois and Tennessee had the most expensive retention elections of the 2013–14 campaign season). Illinois state supreme court Justice Karmeier's election was ranked first in the nation for “Non-Candidate Spending Total,” at \$3,043,620.45, and for percent of “Non-Candidate Spending,” at 90.8%. *Id.* at 68.

³⁹ This information was compiled from *Meet the Illinois Supreme Court Justices*, ILLINOIS COURTS, <http://www.illinoiscourts.gov/supremecourt/meetsupremecourt.asp>, which lists Thomas

B. Judicial Salaries and the General Assembly

Illinois' method for determining pay for judges strips another layer of separation from party politics. A 1982 law created a continuous process for raising pay for judges.⁴⁰ The General Assembly formed the Compensation Review Board, an obscure public body, to adjust salaries for all state officers, including judges.⁴¹ This 12-person board is appointed by Speaker of the House, House Minority Leader, Senate President, and Senate Minority Leader, underscoring the General Assembly's control over the livelihoods of judges.⁴² The board determines pay for public offices and reports its recommendations to the General Assembly.⁴³ Because the constitution forbids reduction of judicial salaries, the board can only recommend no change or a pay raise.⁴⁴ The law frustrates public airing of judicial pay. Instead, it automatically executes the pay recommendation if the General Assembly does not vote to reject it within 30 session days.⁴⁵

Quinn v. Donnewald challenged this process, arguing that pay raises could not be made constitutionally by the inaction of the General Assembly.⁴⁶ Justices on the Illinois supreme court—who stood to benefit from this back-door process—upheld the pay plan.⁴⁷ The court weakly rationalized the pay practice on grounds that fifteen other states set pay similarly.⁴⁸ More recently,

L. Kilbride (Democratic, 2000-2020), Charles E. Freeman (Democratic, 1990-2020), Robert R. Thomas (Republican, 2000-2020), Mary Jane Theis (Democratic, 2010-2022), Rita B. Garman (Chief Justice) (Republican, 2001-2022), Lloyd A. Karmeier (Republican, 2004-2024), and Anne M. Burke (Democratic, 2006-2018) as the current Illinois state supreme court justices.

⁴⁰ See 53 ILL. COMP. STAT. ANN. 290/1 (establishing salaries for state officials, including judges). The Act increased judicial salaries beginning in 1983, when the state was directed to pay the higher amount of the increased rate set forth in the statute or the amount set by the Compensation Review Board. *Id.* This pay salary applied to all judicial offices. 53 ILL. COMP. STAT. ANN. 290/3.1-3.3 (West 2010).

⁴¹ The Compensation Review Act created this Board, and empowered it to evaluate and adjust salaries. 63 ILL. COMP. STAT. ANN. 120/1.

⁴² *Judicial Salary Tracker, Illinois*, NAT'L CTR. FOR STATE COURTS, <http://www.ncsc.org/microsites/judicial-salaries-data-tool/home/Special-Reports/How-States-Set-Salaries/Illinois.aspx>.

⁴³ *Id.*

⁴⁴ See ILL. CONST., art. VI, § 14 (forbidding reduction in pay for judges).

⁴⁵ 63 ILL. COMP. STAT. ANN. 120/5 (West 2010). If the General Assembly fails to adopt a resolution regarding the Board's in 30 session days, the Board's recommended salaries take effect and the General Assembly is required to appropriate funds to pay those salaries. 63 ILL. COMP. STAT. ANN. 120/6 (West 2010).

⁴⁶ 483 N.E.2d 216 (Ill. 1985).

⁴⁷ *Id.* at 223.

⁴⁸ *Id.* at 219.

in *Jorgensen v. Blagojevich*, the Illinois supreme court protected their own pay, holding that a governor's veto of a cost of living adjustment for judges was unconstitutional.⁴⁹

The annual cost of living adjustment has been repealed since 2009.⁵⁰ But these laws do not necessarily prohibit other ways to increase judicial salaries, nor do they abolish the Compensation Review Board. This leaves an unclear picture of how judges' salaries are now set. The National Center for State Courts (NCSC) currently says that pay recommendations are set by the board.⁵¹ My inquiry did not reveal, however, membership on this board, nor was I able to verify its existence.⁵²

This long running pay system shows that the General Assembly and Governor fight over who sets pay for judges. NCSC's current national survey of judicial pay shows that the General Assembly has won this battle, leading to exceptionally high salaries for their robed colleagues. Pay for Illinois' appellate judges ranks second in the nation.⁵³ The state's supreme court justices are paid \$220,873; and intermediate appellate justices are paid \$207,882.⁵⁴ Trial judges rank third in the nation with pay of \$190,758.⁵⁵

These lofty salaries are made without regard to judicial productivity. From 2004 to 2012, pay for Illinois judges rose 29% due to raises and hiring of more judges.⁵⁶ Meantime, felony caseloads dropped 13%.⁵⁷ Illinois judges averaged 4,553 total cases (criminal and civil) in 2009. Busier judges in

⁴⁹ 811 N.E.2d 652 (Ill. 2005).

⁵⁰ 63 ILL. COMP. STAT. ANN. 120/5.6-5.9, 6.1-6.4 (West 2010).

⁵¹ *Judicial Salary Tracker, Illinois*, *supra* note 42.

⁵² See *Illinois Board, Commission, Task Force and Council List*, ILLINOIS.GOV, <https://www.illinois.gov/sites/bac/SitePages/AppointmentsListing.aspx> (listing all Illinois state commissions and boards but failing to reveal the existence of the Illinois Compensation Review Board).

⁵³ For a broader discussion of pay for judges, compare Stephen J. Choi, G. Mitu Gulati & Eric A. Posner, *Are Judges Overpaid? A Skeptical Response to the Judicial Salary Debate*, 1 J. OF LEGAL ANALYSIS 47 (2009) (finding little evidence that raising salaries improves judicial performance) with Jonathan L. Entin, *Getting What You Pay For: Judicial Compensation and Judicial Independence*, 2011 UTAH L. REV. 25 (2011) ("Protecting judges against salary diminution is an important device to ensure their independence.").

⁵⁴ *Survey of Judicial Salaries: Ohio Judges Receive Long-Awaited Raise*, 40 NAT'L CTR. FOR STATE COURTS 1, 2 (2016), <http://www.ncsc.org/FlashMicrosites/JudicialSalaryReview/2016/resources/CurrentJudicialSalaries.pdf>.

⁵⁵ *Id.*

⁵⁶ Jake Griffin, *More Illinois Judges, Required Raises Mean We Pay 29% More in 8 Years*, DAILY HERALD (Mar. 29, 2012), <http://www.dailyherald.com/article/20120328/news/703289967/>.

⁵⁷ *Id.*

Wisconsin (6,611 total cases) and Indiana (4,983 total cases) earned about \$50,000 less.⁵⁸ The Illinois supreme court also noted declining productivity.⁵⁹

The co-mingling of monetary interests of Illinois judges and legislators is also suggested by their gold plated pension plans. A recent analysis shows that nearly 40 percent of the state's 789 retired judges make more money in pensions than when they sat on the bench.⁶⁰ The average annual judicial pension in 2015 was \$132,426, about \$25,304 more in retirement than they were paid in their final salaries.⁶¹ Similarly, 104 of 310 former elected state officials receive state pensions in amounts higher than their final salaries.⁶²

In two recent cases, the Illinois supreme court struck down laws that tried to repair massively underfunded public pensions.⁶³ Its opinion in *In re Pension Reform Litigation* mentioned that lawmakers excluded the Judges' Retirement System of Illinois from pension cutting legislation.⁶⁴ This was the court's tacit admission that lawmakers curried favor with judges by protecting only judicial pensions. The court's opinion did not discuss, however, that the judicial pension system is distressed and needs cuts, too.⁶⁵ While this decision is legally sound, it also set a powerful precedent for preserving pensions of the judges who joined in this ruling.

Currently, the issue of separation of powers between Illinois courts and the General Assembly lurks in a major legal controversy over drawing a map for legislative districts. In *Hooker v. Illinois State Board of Elections*,⁶⁶ a Demo-

⁵⁸ *Id.*

⁵⁹ The Illinois state supreme court disposed 2,922 cases in 2010. 2014 ANNUAL REPORT OF THE ILLINOIS COURTS, SUPREME COURT OF ILLINOIS 19 (2014), http://www.illinoiscourts.gov/SupremeCourt/AnnualReport/2014/AdminSumm/2014_Admin_Summary.pdf. This figure peaked in 2011 at 3,104 cases, before falling to 2,793 cases in 2012, 2,627 cases in 2013, and 2,443 cases in 2014. *Id.* All Illinois courts disposed 634,833 cases in 2010. *Id.* at 33. Thereafter, case dispositions fell to 591,474 in 2011, 576,071 in 2012, 555,648 in 2013, and 504,230 in 2014. *Id.*

⁶⁰ Jake Griffin, *40% of Ex-Judges' Pensions Higher than Old Salaries*, DAILY HERALD (Dec. 2, 2015), <http://www.dailyherald.com/article/20151202/news/151209812/>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Jones v. Mun. Employees' Annuity & Benefit Fund*, 50 N.E.3d 596, 596 (Ill. 2016); *In re Pension Reform Litigation*, 32 N.E.3d 1, 1 (Ill. 2015).

⁶⁴ *In re Pension Reform Litigation*, *supra* note 63, at 11.

⁶⁵ *Id.* at 1-30. See JUDGES' RETIREMENT SYSTEM OF ILLINOIS 12 (2015), <https://www.srs.illinois.gov/PDFILES/oldAnnuals/jrs2015.pdf> (indicating that the Judges' Retirement System of Illinois had a funding ratio of 35.4% for its pension plan in 2015).

⁶⁶ *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶ 1, <https://www.scribd.com/document/318846697/Decision-on-redistricting-reform-referendum>; see also Kevin Hoffman, *Independent Map Amendment Loses Round 1, Next Up IL Supreme Court*, REBOOT ILLINOIS (July 20, 2016), <http://rebootillinois.com/2016/07/20/independent-map-amendment-loses-round-1-but-match-likely-to-be-decided-by-il-supreme-court/61949> (providing analysis of the *Hooker* decision).

cratic judge blocked a petition with 570,000 signatures to allow voters in the 2016 general election to authorize an independent commission to redraw legislative maps. The opinion has strong political overtones, even though Circuit Judge Diane Larsen is widely respected.⁶⁷ But according to Governor Bruce Rauner, a Republican who supports the voter petition, “If this decision remains in place, it will prove that we need to put political reform at the top of our legislative agenda.”⁶⁸ The map case is unavoidably political; but the Illinois constitution and judiciary would be better served if judges were elected as non-partisan candidates or appointed by a merit commission. This would minimize the appearance of political influence in matters of great importance to Illinois voters.⁶⁹

C. Judicial Conduct Related to Partisan Elections

A recent judicial election in Florida offers a benchmark for measuring the low ethics of some Illinois judges. When Lanell Williams-Yulee ran for an elected judgeship, she wrote that would she “bring fresh ideas and positive solutions to the judicial bench.”⁷⁰ In the same letter, she added that a “contribution of \$25, \$50, \$100, \$250, or \$500, made payable to ‘Lanell Williams–Yulee Campaign for County Judge,’ will help raise the initial funds needed to launch the campaign and get our message out to the public.”⁷¹ The Florida Bar charged her with violating its Code of Judicial Conduct, which bans personal solicitations for campaign funds.⁷² Eventually, the U.S. Supreme Court ruled that Florida did not violate the candidate’s First Amendment rights.⁷³

Illinois greased the way for judges to make unethical campaign statements by misleading the public.⁷⁴ For context, 112 judges have filed petitions

⁶⁷ See REPORT ON THE JUDGES SEEKING RETENTION ON THE NOVEMBER 2, 2010 BALLOT IN COOK COUNTY, JUDICIAL PERFORMANCE COMMISSION OF COOK COUNTY 25 (2010), https://web.archive.org/web/20120130202540/http://www.voteforjudges.org/JPC_report_for_2010_final.pdf (“Judge Larsen is considered a smart judge who issues timely and well-reasoned opinions. She drew praise for her calm, professional manner and her diligence and focus.”).

⁶⁸ See Williams, *infra* note 141, at 1909 (“A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part.”).

⁶⁹ See SIDE-BY-SIDE TEXT COMPARISON, 2007 MODEL CODE OF JUDICIAL CONDUCT WITH COMPARABLE PROVISIONS OF 1990 CODE, *infra* note 131 (indicating the judicial standards for the appearance of impropriety in both the 1990 and 2007 codes of judicial conduct in Illinois).

⁷⁰ Williams-Yulee v. Fla. Bar, 135 S.Ct. 1656, 1663 (2015).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ People ex rel. Francis X. Golniewicz v. Ill. Court’s Comm’n, No. 05 CH 11679, 2006 WL 4660087 (Ill. Cir. Ct. Feb. 15, 2006). The petitioner was removed as a Cook County judge

for retention elections in November 2016.⁷⁵ Three judges in St. Clair County who are up for retention elections “retired” to refile as new candidates in the general election.⁷⁶ By doing so, they will avoid the sixty percent retention requirement and will need to garner only one more vote than their opponents to serve again.⁷⁷

Sounding like a smooth talking politician, Judge John Baricevic said that running in the general election would “allow[] him to speak out more about issues that affect the judiciary,”⁷⁸ a phrase that is similar to Yulee’s statement that had led to her discipline.⁷⁹ Judge Baricevic failed to mention, however, that his devious strategy violated the spirit of the Illinois Constitution, which regulates retention elections.⁸⁰ His less noble intention—not mentioned in his appeal to voters—was to game the system in order to survive the next election. In his 2010 retention election, Judge Baricevic squeaked by with 62.49% “yes” votes—a margin of about two percentage points.⁸¹ In the 2016 election, he could have polled twelve percentage points less than he did in 2010, and won another term on the bench. St. Clair County Judge Lloyd Cueto retired to run in the 2006 general election, which he won.⁸²

These retiring judges might also be angling to double dip—that is, receive retirement income while earning income in their “new” job. This recently happened in New York, where State Supreme Court Justice Brian DeJoseph retired on December 31, 2014 and began a new term of office the next day.⁸³ His election to a new term exploited a loophole in New York’s

after he falsely claimed that he was a lifelong resident of the sub-circuit. *Id.* The Illinois Courts Commission found this to be “a misrepresentation and a violation of Rule 62 of the Code of Judicial Conduct which requires judges to conduct themselves ‘in a manner that promotes public confidence in the integrity . . . of the judiciary.’” *Id.*

⁷⁵ STATE OF ILL. EXEC. DEP’T, LIST OF JUDGES SEEKING RETENTION IN THE NOVEMBER 8, 2016 GENERAL ELECTION (2016).

⁷⁶ George Pawlaczyk, *Who Will Appeals Court Side with in St. Clair County Judges Case?* BELLEVUE NEWS-DEMOCRAT (June 7, 2016), <http://www.bnd.com/news/local/article82338447.html> (reporting that three Democratic judges—John Baricevic, Robert Haida and Robert LeChien—prevailed in a challenge before the state election board and lower court).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*; *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1665 (2015) (“[Yulee’s] stated purpose for the solicitation was to get her ‘message out to the public.’”).

⁸⁰ ILL. CONST. art. VI, § 12.

⁸¹ George Pawlaczyk, *Baricevic, Haida and LeChien Spurn Retention Vote, Will Run in General Election*, BELLEVUE NEWS-DEMOCRAT (Aug. 26, 2015), <http://www.bnd.com/news/local/article32427582.html>.

⁸² *Id.*

⁸³ Michelle Breidenbach, *Judge DeJoseph to Double Dip with Pension and Salary in New Term*, SYRACUSE.COM (Jan. 14, 2015), http://www.syracuse.com/news/index.ssf/2015/01/judge_dejoseph_double_dips_with_pension_and_salary_in_new_term.html.

retirement law, enabling him to bank an estimated \$112,000 a year in pension benefits while concurrently earning \$183,300 as salary.⁸⁴ In Pennsylvania, eighty-six judges similarly double-dip, having received in 2012, for instance, nearly \$11 million in combined pension and salary payments.⁸⁵

Illinois has a similar problem. Judge Michael McCuskey, now an Illinois circuit court judge, took his current post after he retired from his federal judgeship.⁸⁶ Upon retirement, he became eligible by federal law for a full-salary pension of \$199,100 per year.⁸⁷ He quickly returned to the bench—simply by changing a federal robe for a state robe.⁸⁸ In Illinois, he earns \$190,758.⁸⁹

Thus, Judge McCuskey appears to be paid about \$389,858 annually from his federal pension and state salary. Nothing in the Judicial Code addresses this

⁸⁴ *Id.*

⁸⁵ Robert Swift, *Double Dippers: Senior Judges' Combined Compensation Costs Taxpayers Millions*, CITIZENS' VOICE (Oct. 6, 2013), <http://citizensvoice.com/news/double-dippers-senior-judges-combined-compensation-costs-taxpayers-millions-1.1564137>.

⁸⁶ Less than a month after retiring, Judge McCuskey accepted appointment in Illinois's Tenth Judicial Circuit as Resident Circuit Judge of Marshall County in the 10th Judicial Circuit. *See Retired Federal Judge Michael McCuskey Appointed in 10th Judicial Circuit*, CINEWSNOW.COM (June 16, 2014), <http://www.cinewsnow.com/news/local/US-Supreme-Court-fills-vacancy-in-10th-Judicial-Circuit-263311611.html> (indicating that Judge McCuskey retired from the federal bench in May of 2014 and confirmed his appointment to the 10th Circuit on June 16, 2014).

⁸⁷ *See* 28 U.S.C. § 371(a)(2) (“In a case in which a justice or judge retires . . . the justice or judge shall continue to receive the salary that he or she was receiving when he or she was last in active service . . .”); *see also* UNITED STATES COURTS, JUDICIAL COMPENSATION, <http://www.uscourts.gov/judges-judgeships/judicial-compensation>. Upon reaching age 65, a federal judge may retire at his or her current salary, or take senior status, after performing 15 years of active service as an Article III judge. *Id.* According to Judge McCuskey's biographical information, he was born in 1948 and served as a federal district court judge from 1998 until he assumed senior status on June 30, 2013. FED. JUDICIAL CTR., BIOGRAPHICAL DIRECTORY OF FEDERAL JUDGES: MCCUSKEY, MICHAEL PATRICK, <http://www.fjc.gov/servlet/nGetInfo?jid=2765>. On May 31, 2014, he retired from senior status. *Id.* In 2013, Judge McCuskey would have qualified for \$174,000—but by staying one additional year on senior status, his pay increased to \$199,100. UNITED STATES COURTS, JUDICIAL COMPENSATION, *supra* note 87.

⁸⁸ To obtain a copy of Judge McCuskey's annual filing of economic interests under Rule 68, I traveled to the Illinois supreme court in Springfield on July 20, 2016—a distance of about 80 miles. Per Rule 68, I was required to identify myself, list my address and occupation, and state my reason for obtaining this information. After paying 25 cents per page for a copy of the report, I verified that he retired as a federal judge and listed this pension on his report (copy available upon request from the author). By rule, the Judge was provided a copy of my request. Judge McCuskey ran unopposed in the March 2016 primary election for circuit judge. *Michael McCuskey*, BALLOTPEdia, https://ballotpedia.org/Michael_McCuskey (last visited Nov. 27, 2016). For a more general discussion on judicial retirement, *see generally* Stephen B. Burbank et al., *Leaving the Bench, 1970–2009: The Choices Federal Judges Make, What Influences Those Choices, and Their Consequences*, 161 U. PENN. L. REV. 1 (2012).

⁸⁹ NAT'L CTR. FOR STATE COURTS, *supra* note 54.

problem, perhaps because drafters never thought that a judge would stoop so low. Aggravating this problem, Rule 68 of the Illinois Code creates an informational obstacle course for anyone who wants to discover if a judge is double dipping with a public pension.⁹⁰ Judge McCuskey's money grab, facilitated and obscured by unnecessary barriers in Rule 68, reduces public confidence in Illinois courts.

III. THE INFLUENCE OF ELECTION CAMPAIGNS ON JUDGES

A. Partisan Fundraising and Erosion of Judicial Independence

Illinois has experienced an alarming growth in political fundraising for judges, and these campaigns increasingly attract huge donations by anonymous, out-of-state donors.⁹¹ This spending is out of control for Democratic and Republican candidates. On the Republican side, Justice Lloyd Karmeier's epic election in 2004 raised more money than eighteen U.S. Senate elections.⁹² He and his Democratic opponent spent \$9.3 million on a supreme court seat for a sparsely populated rural district.⁹³

Why did this race attract so much money? State Farm Insurance Co. donated heavily to Justice Karmier at the time it was pursuing an appeal in *Avery*

⁹⁰ Rule 68 requires judges to make a declaration of economic interests. See ILLINOIS SUPREME COURT RULES, Rule 68 ¶ 4. By administrative order, current economic interests specifically include a "pension plan." *Id.*, at Rule 68, Administrative Order. But the information is not available online—indeed, one must personally travel to Springfield or Chicago to inspect the filing, and further: "Each person requesting examination of a statement or portion thereof must first fill out a form prepared by the Director specifying the statement requested, identifying the examiner by name, occupation, address and telephone number, and listing the date of the request and the reason for such request." *Id.*, at Rule 68 ¶ 4; see also *supra* note 88 (noting that my trip to Springfield was necessary to verify Judge McCuskey's federal judicial pension).

⁹¹ See National Center for State Courts, JUDICIAL CAMPAIGNS AND ELECTIONS, http://www.judicialselection.us/judicial_selection/campaigns_and_elections/campaign_financing.cfm?state ("Between 1990 and 2000, combined spending by supreme court candidates in Illinois increased 37%, and primary election spending grew by 132%."); see, e.g., ILLINOIS STATE BOARD OF ELECTIONS, CONTRIBUTIONS LIST, <https://www.elections.il.gov/CampaignDisclosure/ContributionsSearchByAllContributions.aspx> (search with "JUSTPAC" as "Last Name or Only Name" and "10/12/2004 Thru 10/13/2004" as "Received Date") (reporting on contributions made by JUSTPAC to Justice Lloyd A. Karmeier in the amount of \$150,000 on October 12, 2004 and \$186,125 on October 13, 2004).

⁹² Bert Brandenburg & Roy A. Schotland, *Keeping Courts Impartial Amid Changing Judicial Elections*, DÆDALUS, Fall 2008, at 102, 104, <http://www.jstor.org/stable/40544065>.

⁹³ *A Vote of Confidence for Supreme Court Justice Lloyd Karmeier*, CHI. TRIB. (Oct. 27, 2014), <http://www.chicagotribune.com/news/opinion/editorials/ct-supreme-appellate-court-endorse-edt-20141027-story.html>.

v. *State Farm*.⁹⁴ The trial court awarded policyholders \$1 billion in damages for the insurer's fraudulent use of inferior parts to repair cars.⁹⁵ After Justice Karmeier was elected, he voted to overturn this ruling.

The 2004 election hounds him today. Recently, a federal judge ordered him to sit for a deposition in a RICO lawsuit against State Farm that stems from the insurer's campaign donations.⁹⁶ In 2014, Justice Karmeier barely survived a bitterly contested retention election that attracted more than \$2 million to attack his record.⁹⁷

Justice Karmeier also voted in 2005 to overturn a \$10.1 billion judgment in *Price v. Philip Morris Inc.*⁹⁸ The trial court ruled that the tobacco firm fraudulently marketed light cigarettes as a less harmful smoking alternative.⁹⁹ The tobacco industry and other business groups donated heavily to Justice Karmeier.¹⁰⁰ Plaintiffs asked for his recusal but he declined.¹⁰¹ A short time later, he voted in the majority to reverse the judgment against Phillip Morris.¹⁰²

On the Democratic side, Justice Charles Freeman has been on the Illinois supreme court since 1990. In 2002, after his best year for campaign donations in 2000, Justice Freeman wrote the court's opinion in *Dillon v.*

⁹⁴ James Sample, *The Campaign Trail: The True Cost of Expensive Court Seats*, SLATE (Mar. 6, 2006), http://www.slate.com/articles/news_and_politics/jurisprudence/2006/03/the_campaign_trial.html (revealing that Justice Karmeier received over \$350,000 in direct contributions from State Farms employees, lawyers and others, plus over \$1 million more from groups to which State Farm contributed). For background information on the *Avery case*, see generally *Avery v. State Farm Auto. Ins. Co.*, 835 N.E.2d 801 (Ill. 2005).

⁹⁵ *Avery v. State Farm Mut. Auto. Ins. Co.*, 1999 WL 34978867 (Ill. Cir. Ct. 1999) (reporting that the jury awarded \$243,740,000 in direct damages and \$212,440,000 for installation damages; and that the court additionally ordered the company to disgorge \$130,000,000 for the money that the insurer saved by using sub-standard parts and also pay \$600,000,000 in punitive damages).

⁹⁶ *Hale v. State Farm Mutual Auto. Ins. Co.*, 2014 WL 6854416 (S.D. Ill. 2014) (alleging that State Farm devised a scheme to elect Judge Lloyd Karmeier to the Illinois supreme court and conceal its involvement in the financing and management of the campaign so that Justice Karmeier could participate in the *Avery* case). To review the order to depose Justice Karmeier, see *Hale v. State Farm Mutual Auto. Ins. Co.*, 2016 WL 813709 (S.D. Ill. 2016).

⁹⁷ Brian Mackey, *Supreme Tort: The Campaign to Fire Justice Lloyd Karmeier*, ST. LOUIS PUB. RADIO (Feb. 2, 2015), <http://news.stlpublicradio.org/post/supreme-tort-campaign-fire-justice-lloyd-karmeier#stream/0> (reporting that Justice Karmeier was retained by 2,921 votes, which accounts for eight-tenths of a percentage point, even though the plaintiff bar spent huge sums to defeat Justice Karmeier— for example, Clifford Law Firm in Chicago donated \$250,000).

⁹⁸ *Price v. Philip Morris Inc.*, 848 N.E.2d 1 (Ill. 2005), at 31-32.

⁹⁹ *Price v. Philip Morris Inc.*, 2003 WL 22597608 (Ill. Cir.Ct. 2003), at *4.

¹⁰⁰ Dorothy Samuels, *Judges for Sale*, N.Y. TIMES (Dec. 12, 2006), <https://nyti.ms/2ltcOPF>.

¹⁰¹ *Id.*

¹⁰² *Id.*

Evanston Hospital.¹⁰³ The opinion changed 80 years of precedent by allowing Illinois courts to recognize damages for the increased risk of future injury—in other words, damages for speculative injuries.¹⁰⁴

In November 2010, Thomas Kilbride, another Democratic justice, was at the center of an intense campaign controversy over his then-recent vote with the majority in *Lebron v. Gottlieb Memorial Hosp.*¹⁰⁵ By a 4-2 vote, the Illinois supreme court struck down a state statute that capped certain non-economic damages in medical malpractice cases.¹⁰⁶ Up for a retention vote, Justice Kilbride received more than \$2 million from the state Democratic Party and labor unions, while business groups spent \$600,000 to oppose him.¹⁰⁷ At the time, the money spent on this campaign made it the second highest judicial retention campaign.¹⁰⁸ Justice Kilbride prevailed in a close contest, receiving 65.88% of his district's votes—a victory margin of less than six percentage points in a race with only one candidate.¹⁰⁹

B. State Regulation of Judicial Campaigns

Some judges become entangled in ethics probes over their legal problems.¹¹⁰ Putting those examples of character flaws aside, I ask here how Illinois compares to other states in regulating judicial campaign ethics. There is no easy way to quantify an answer, but no Illinois judge has been disciplined in the past decade for campaign violations.¹¹¹

¹⁰³ *Dillon v. Evanston Hosp.*, 771 N.E.2d 357 (Ill. 2002).

¹⁰⁴ *Id.* at 503.

¹⁰⁵ Carrie Johnson, *No Opponent, But Big Money in Illinois Justice's Race*, NPR SPECIAL SERIES ELECTION 2010 (Oct. 26, 2010), <http://www.npr.org/templates/story/story.php?storyId=130810189>. See generally *Lebron v. Gottlieb Mem. Hosp.*, 930 N.E.2d 895 (Ill. 2010).

¹⁰⁶ *Id.*

¹⁰⁷ Johnson, *supra* note 105.

¹⁰⁸ *Id.*

¹⁰⁹ *Thomas Kilbride*, BALLOTPEdia, https://ballotpedia.org/Thomas_Kilbride (last visited Nov. 27, 2016).

¹¹⁰ See Erica Orden & Mike Vilensky, *New York Justice Resigns, Pleads Guilty to Receiving Bribe*, WALL STREET J. (June 29, 2016), <http://www.wsj.com/articles/n-y-supreme-court-judge-pleads-guilty-to-bribery-1467239239> (reporting that New York State Supreme Court Justice John Michalek was charged with receiving gifts from a political operative who had an interest in civil cases before the judge); Claudia Lauer, *Judge Resigns After Accused of Sexual Abuse Over 3 Decades*, CSL.COM (May 9, 2016), <https://www.ksl.com/?nid=157&sid=39702533&title=arkansas-judge-resigns-amid-sexual-misconduct-investigation> (reporting that Arkansas Cross County District Judge Joseph Boeckmann, Jr. resigned amid allegations that he traded sex for reduced sentences for defendants).

¹¹¹ Some have attempted to measure the impact of campaigns on court rulings. See, e.g., Adam Bonica & Michael J. Woodruff, *State Supreme Court Ideology And 'New Style' Judicial*, SSRN

The original source for state judicial codes is the Canons of Judicial Ethics, adopted by the American Bar Association in 1924.¹¹² The Illinois Code of Judicial Conduct¹¹³ was established in 1964 by the Illinois Judicial Conference, which used the Canons as its main source.¹¹⁴ A major scandal in 1969 involving two supreme court justices led to a constitutional overhaul of the judiciary.¹¹⁵ As a result, the high court adopted a commission's recommendations for new conduct rules for judges.¹¹⁶

In 1972, the American Bar Association replaced its Canons with the Model Code of Judicial Conduct.¹¹⁷ The new code provided a more detailed set of substantive rules for judicial ethics.¹¹⁸ But Illinois never fully embraced the Model Code. This helps to explain why the Illinois Judicial Inquiry Board rarely deals with complaints about fundraising and campaigning—the state lacks appropriate ethics rules.¹¹⁹

(Oct. 31, 2012) (measuring the ideology of state supreme court justices by using campaign finance records. For the last discipline case in Illinois involving unethical campaigning, see generally *People ex rel. Francis X. Golniewicz v. Ill. Court's Comm'n*, No. 05 CH 11679, 2006 WL 4660087 (Ill. Cir. Ct. Feb. 15, 2006).

¹¹² Brief of Amicus Curiae Conference of Chief Justices in Support of Respondent, at 8, *Williams-Yulee v. The Florida Bar* 135 S. Ct. 1656 (2015) (No. 13-1499), 2014 WL 7366052, at *8.

¹¹³ See generally CODE OF JUDICIAL CONDUCT (1986), <https://www.illinois.gov/jib/Documents/CODE%20OF%20JUDICIAL%20CONDUCT.pdf>.

¹¹⁴ Robert G. Underwood, *The Illinois Judicial System*, 47 NOTRE DAME L. REV. 247, 260 (1971-1972).

¹¹⁵ See Rubin Cohn, *The Illinois Judicial Department—Changes Effected by the Constitution of 1970*, 1971 ILL. L. F. 355, 380-82 (1971) (detailing Sherman Skolnik's successful efforts to force two Illinois supreme court justices to resign after they accepted stock in a Chicago bank from a defendant whose case they were to decide—and for whom they ruled favorably). For more details, see THE SPECIAL COMMISSION OF THE SUPREME COURT OF ILLINOIS, IN THE MATTER OF THE SPECIAL COMMISSION IN RELATION TO NO. 39797 (PEOPLE OF THE STATE OF ILLINOIS, APPELLANT V. THEODORE J. ISAACS ET AL), <http://press-pubs.uchicago.edu/manaster/commissionreport.html> (last visited Oct. 2, 2016) (“The Commission finds that [this Judge] has consistently engaged in a pattern of behavior that violated the judicial canons, demeaned the integrity of the judiciary, and brought the judicial office into disrepute . . . The Commission finds that the only appropriate remedy in this case is to remove and dismiss respondent from the office of Circuit Court Judge . . .”) and Kenneth A. Manaster, *ILLINOIS JUSTICE: THE SCANDAL OF 1969 AND RISE OF JOHN PAUL STEVENS* (2001) (analyzing the future U.S. Supreme Court Justice's investigation in this matter).

¹¹⁶ Cohn, *supra* note 115, at 375. For more background, see generally W. BRAITHWAITE, *WHO JUDGES THE JUDGES?* (1970); G. FIEDLER, *THE ILLINOIS COURTS IN THREE CENTURIES 1673-1973* (1973); and Frank Greenberg, *The Illinois “Two-Tier” Judicial Disciplinary System: Five Years and Counting*, 54 CHI. KENT L. REV. 69 (1977).

¹¹⁷ Brief of Amicus Curiae, *supra* note 112, at *8.

¹¹⁸ *Id.*

¹¹⁹ STATE OF ILLINOIS JUDICIAL INQUIRY BOARD, *SUMMARIES OF COMPLAINTS FILED WITH THE COURTS COMMISSION* (2016), <http://www.illinois.gov/jib/Pages/summariescomplain>

In particular, the Illinois Code is not equipped to deal with millions of dollars that fuel partisan elections. This problem traces to 1986, when Illinois belatedly updated its Code by using the ABA Code. Even then, the Illinois Judicial Ethics Committee accepted only parts of the Model Code.¹²⁰ By 1994, a study of Illinois courts voiced concern about the rapid growth in campaign funding for some elections and suggested monitoring for future funding practices.¹²¹ But no revisions address this concern— indeed, 1994 was the last time Illinois revised its Canon for “Inappropriate Political Activity.”¹²² Since then, campaign donations to judicial candidates have exploded exponentially.

ts.aspx. These cases include 15 CC-1 Filed February 6, 2015, Beatriz Santiago, Circuit Judge, Circuit Court of Cook County (related to refinancing of her mortgage); 14 CC-2, Filed July 24, 2014, Scott D. Drazewski, Circuit Judge, 11th Circuit, McLean County and Rebecca S. Foley, Circuit Judge, 11th Circuit, McLean County (related to their extramarital affair); 14 CC-1 Filed June 20, 2014, Joseph P. Hettel, Circuit Judge, 13th Circuit, LaSalle County (based on driving under the influence of alcohol); 13 CC-1 Filed August 13, 2013, Cynthia Y. Brim, Circuit Judge, Circuit Court of Cook County (based on inappropriate comments and battery in court); 12 CC-1 Filed July 13, 2012, Joseph C. Polito, Associate Judge, 12th Circuit, Will County (based on use of work computer to access pornographic websites during work hours in chambers); 11 CC-1 Filed February 18, 2011, Douglas J. Simpson, Associate Judge, Circuit Court of Cook County (based on improper influence of another judge in a matter involving auto shop where his car was being serviced); 10 CC-2 Filed November 8, 2010, Christopher G. Perrin, Associate Judge, 7th Circuit, Sangamon County (based on improper influence of another judge in a case involving daughter’s traffic citation); and 2010 CC-1 Filed September 24, 2010, Kenneth L. Popejoy, Circuit Judge, 18th Circuit, DuPage County (related to car accident and unsafe driving). *Id.*

¹²⁰ Andy Knott, *A New Code for Illinois Judges*, 1 CBA RECORD 11 (1987); CODE OF JUDICIAL CONDUCT: ANNOTATED BY OPINIONS OF THE ILLINOIS JUDICIAL ETHICS COMMITTEE, COMMITTEE COMMENTARY 2, <http://ija.org/ethicsop/annotation%20of%20Code%20of%20Judicial%20Conduct.pdf>.

It was . . . not feasible to recommend that the ABA canons be adopted verbatim. Specific provisions of the Illinois Constitution and statutes as well as circumstances unique to Illinois required that the canons be modified in accord with any superseding legal requirements and extraordinary circumstances. The committee commentary is primarily concerned with these modifications; however, wherever appropriate, the ABA commentary has been incorporated into the committee commentary.

Id.

¹²¹ Marlene Arnold Nicholson & Norman Nicholson, *Funding Judicial Campaigns in Illinois*, 77 JUDICATURE 294, 299 (1994).

¹²² CODE OF JUDICIAL CONDUCT, *supra* note 113. Rule 67- Canon 7, titled “A Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity,” was adopted Dec. 2, 1986 (eff. Jan. 1, 1987); amended April 20, 1987 (eff. Aug. 1, 1987); and amended Aug. 6, 1993 (eff. Mar. 24, 1994). *Id.* The Illinois Code has not changed over the past 22 years while judicial elections have exploded with multi-million dollar, nationally-financed campaigns. *Id.*

Serious problems with the state's Judicial Inquiry Board magnify the Code's deficiencies.¹²³ A recent audit of that agency's disciplinary system found the board operated for 811 days and 1,360 days without filling two constitutionally required positions for non-lawyers.¹²⁴ Overall, it had four vacancies in thirteen positions.¹²⁵ The board had 311 pending complaints, some for judicial misconduct and mental incapacity.¹²⁶ From 2012-2014, the board operated with two investigators, and one person who doubled as its executive director and general counsel.¹²⁷ Another analysis showed that the board's budget fell 15%, from \$785,000 in 2009 to \$680,000 in 2015.¹²⁸ Before its budget was cut, this tiny agency had six or seven employees to investigate complaints against judges.¹²⁹ Now, it imposes discipline in less than one percent of complaints.¹³⁰

This means that Illinois judges are not subject to increased scrutiny provided by the revised Model Code — and they are also immune from discipline due to a grossly ineffectual investigatory board. A direct comparison shows that the ABA Code is much more stringent than the Illinois Code in promoting public confidence in judges.¹³¹ States with stricter codes have won

¹²³ STATE OF ILLINOIS JUDICIAL INQUIRY BOARD, COMPLIANCE EXAMINATION 13 (June 30, 2014), <http://www.auditor.illinois.gov/audit-reports/Compliance-Agency-List/JIB/FY14-JIB-Comp-Full.pdf>.

¹²⁴ *Id.*

¹²⁵ *Id.* at 1.

¹²⁶ *Id.* at 10.

¹²⁷ *Id.* at 27.

¹²⁸ Emily Hoerner & Zoe Rosenbaum, *In Illinois, Punishment is Slow and Lenient for Errant Judges*, INJUSTICEWATCH (Dec. 4, 2015), <http://www.injusticewatch.org/projects/2015/illinois-court-commission-judge-punishment/>.

¹²⁹ See STATE OF ILLINOIS JUDICIAL INQUIRY BOARD, COMPLIANCE EXAMINATION, *supra* note 123 (exposing serious problems in enforcing judicial ethics). Due to board vacancies and underfunding, the Judicial Inquiry Board had “an inventory of 311 pending complaints,” including “a growing inventory level of pending complaints concerning alleged misconduct or physical or mental incapacity of judicial officers.” *Id.* at 10. The Board operated for 811 days and 1,360 days without filling constitutionally mandated board positions for non-lawyers. *Id.* at 13. From 2012-2014, the board operated with two investigators, and one person who served as its executive director and general counsel. *Id.* at 27.

¹³⁰ Hoerner & Rosenbaum, *supra* note 128.

¹³¹ Compare American Bar Ass'n, SIDE-BY-SIDE TEXT COMPARISON: 2007 MODEL CODE OF JUDICIAL CONDUCT WITH COMPARABLE PROVISIONS OF 1990 CODE, http://www.americanbar.org/content/dam/aba/migrated/cpr/pic/new_old.authcheckdam.pdf (“Rule 1.2, Canon 2, Promoting Confidence in the Judiciary: A judge *shall* act at all times in a manner that promotes public confidence in the *independence*, integrity, and *impartiality of the judiciary*, and *shall* avoid impropriety and the appearance of Impropriety.”) with CODE OF JUDICIAL CONDUCT, *supra* note 113, Rule 62, Canon 2 (“A Judge *Should* Avoid Impropriety and the Appearance of Impropriety in All of the Judge’s Activities . . . A judge *should* respect and

numerous federal court rulings that uphold judicial boards that enforce tight controls on judicial campaigning.¹³² In state court rulings, too, ethics boards have won enforcement cases involving limits on judicial campaigning.¹³³ During this recent period, however, Illinois' ethics board has been mute in these matters.

comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”). The ABA Code uses the mandatory “shall” while Illinois, by stating “should,” deprives its Code of sharp teeth for enforcement. *Id.* Nothing in the Illinois Code mentions the need for independence of the courts—a serious omission in a climate of campaigns financed by special interest groups. *Id.* The ABA Code, in contrast, strictly enjoins judges to maintain their independence. *Id.*

¹³² See, e.g., *Wolfson v. Concannon*, 811 F.3d 1176, 1181 (9th Cir. 2016) (holding that Arizona’s code restrictions on judicial endorsement and campaigning were narrowly tailored to achieve Arizona’s compelling interest); *Platt v. Bd. of Comm’rs on Grievs. & Discipline of Ohio Supreme Court*, 769 F.3d 447, 450 (6th Cir. 2014) (upholding Ohio Code of Judicial Conduct restrictions on personal and direct solicitation of campaign funds); *Wersal v. Sexton*, 674 F.3d 1010, 1013 (8th Cir. 2012) (upholding campaign restrictions imposed on judges and judicial candidates by the Minnesota Board of Judicial Standards); *Siefert v. Alexander*, 608 F.3d 974, 983-88 (7th Cir. 2010) (upholding Wisconsin regulations that prohibit judges and judicial candidates from personally soliciting or accepting campaign contributions); *Bauer v. Shepard*, 620 F.3d 704, 706 (7th Cir. 2010) (upholding regulations by Indiana Commission on Judicial Qualifications (ICJQ) and the Indiana Disciplinary Commission (IDC) that limit the political activities of judges). *But see, e.g., Sanders County Republican Cent. Committee v. Bullock*, 698 F.3d 741, 744 (9th Cir. 2012) (striking down a Montana law that criminalized a political party’s endorsement of judicial candidates as a violation of the First Amendment).

¹³³ See, e.g., *Winter v. Wolnitzek*, 482 S.W.3d 768, 770-76 (Ky. 2016) (ruling that judicial candidate violated state ethics law based on his disingenuous campaign statement); *Miss. Comm’n on Judicial Performance v. Clinkscales*, 192 So.3d 997, 998 (Miss. 2016) (upholding fine and admonishment of a judge for ethical breaches, including posting a campaign endorsement on social media); *In re Belk*, 691 S.E.2d 685, 686 (N.C. 2010) (removing judge from office for refusing to resign from board of private corporation); *In re Krause*, 141 So.3d 1197, 1198 (Fla. 2014) (upholding \$25,000 fine for judge who purchased a table at a Republican Party fundraiser with funds from her campaign); *In re Judicial Complaint Against Stormer*, 980 N.E.2d 1045 (upholding \$1,000 fine against judicial candidate for participating in, or receiving campaign contributions, during a judicial campaign fundraising event that identified donors by the amount of their contributions); *In re Judicial Campaign Complaint Against Moll*, 935 N.E.2d 436, 437 (2012) (upholding \$1,000 fine against judge whose campaign flyer made knowingly and recklessly misleading statements); *In re Judicial Campaign Complaint Against Lilly*, 965 N.E.2d 315, 315 (upholding fine against non-judge candidate for judicial office whose campaign literature misrepresented her identity by portraying her in judicial robe and bearing the word, “re-elect”). *But see In re Slaughter*, 480 S.W.3d 842, 844 (Tex. 2015) (overruling a sanction applied to a judge for her Facebook posts on criminal cases in her court).

C. U.S. Supreme Court Regulation of Judicial Campaigns

The recent growth in ethics cases involving judicial campaigning signifies a larger problem: more judges feel free to make political statements in ways that compromise their impartiality. The problem starts at the top, where Justice Scalia, Justice Alito, and Justice Ginsburg have tarnished the Supreme Court's reputation by engaging in openly partisan politics.¹³⁴ In state courts—where 90 percent of all cases are filed¹³⁵—this problem has more potential to undermine justice.¹³⁶

¹³⁴ See Jilian Fama & Meghan Kiesel, *Scalia's Two Cents: Justice Draws Criticism for Political Views in Decisions*, ABC NEWS (Mar. 14, 2013), <http://abcnews.go.com/Politics/OTUS/supreme-court-justice-antonin-scalias-political-outbursts/story?id=16694778> (reporting on Justice Scalia's publicly stated opposition to President Obama's immigration policies); Aliyah Frumin, *6 Other Times Justices Came Under Fire for Being too Political*, NBC NEWS (June 14, 2016), <http://www.nbcnews.com/news/us-news/6-other-times-justices-came-under-fire-being-too-political-n609416> (reporting that Justice Alito shook his head and mouthed "not true" when President Obama criticized the Court's ruling that removed spending caps on corporate campaigns); Michael D. Shear, *Ruth Bader Ginsburg Expresses Regret for Criticizing Donald Trump*, N.Y. TIMES (July 14, 2016), <https://nyti.ms/2ltcdhe> (reporting on Justice Ginsburg's strong views that Republican candidate Donald Trump was not fit to be president).

¹³⁵ See AMERICAN CONSTITUTIONAL SOCIETY FOR LAW & POLICY, 10 QUESTIONS AND ANSWERS ABOUT JUSTICE AT RISK: AN EMPIRICAL ANALYSIS OF CAMPAIGN CONTRIBUTIONS AND JUDICIAL DECISIONS (Question 10), http://www.acslaw.org/10_Questions_about_Justice_at_Risk.pdf.

¹³⁶ Two key examples illustrate the significance of this problem. In 2003, Alabama Chief Justice Roy Moore defied an injunction to remove a monument of the Ten Commandments from the State Judicial Building. William H. Pryor Jr., *Christian Duty and the Rule of Law*, 34 CUMB. L. REV. 1, 1-2 (2003). At the time, Chief Justice Moore argued that he and his supporters had a legal and moral duty to God that required disobedience of the injunction. *Id.* More recently, under Chief Justice Moore's direction the Alabama Supreme Court prohibited all probate judges from issuing marriage licenses to same-sex couples. *Ex parte State ex rel. Ala. Policy Inst.*, 200 So.3d 495, 552 (Ala. 2015). A federal district court judge then enjoined the Alabama's court's mandamus. *Strawser v. Strange*, No. 14-0424-CG-C, 2016 WL 3199523, at *3 (S.D. Ala. June 7, 2016). On May 6, 2016, the Alabama Judicial Inquiry Commission filed a complaint that charged him with willfully abusing his administrative authority by refusing to comply with this federal court injunction. Complaint at 26-32, *In re Moore* (No. 46) (Ala. Ct. of the Judiciary May 6, 2016). For an explanation of the unusual course of pending litigation, see Jacob Gershman, *Suspended Alabama Chief Justice Roy Moore Denies Going Rogue*, WALL ST. J. (June 21, 2016), <http://blogs.wsj.com/law/2016/06/21/suspended-chief-justice-roy-moore-denies-going-rogue/>. Appellate Justice Robert Steigmann offers an illustration of a different ethics problem in Illinois. In 2016, Justice Steigmann donated \$1,000 to a Champaign County public defender who challenged an incumbent state's attorney in the judge's appellate district. ILLINOIS STATE BOARD OF ELECTIONS, <https://www.elections.il.gov/campaigndisclosure/AllList.aspx?ID=31722&FileID=601802&ContributionType=AllTypes&Archived=True>. The donation was in

Politically active state judges undercut the foundational idea that courts must be independent of the political branches. The U.S. Supreme Court has begun to address political influence in the judicial system. *Caperton v. A.T. Massey Co.* ruled that the West Virginia supreme court denied a plaintiff due process when a newly elected justice refused to recuse himself after receiving \$3 million in campaign donations from the defendant.¹³⁷ In 2015, *Williams-Yulee v. Florida Bar* held that the state did not violate a judicial candidate's First Amendment speech rights after disciplining her for campaign solicitations.¹³⁸ In the most recent term, *Williams v. Pennsylvania* again confronted a case where a judge's appearance of bias was manifested in his campaigning.¹³⁹ These cases

tension with Illinois Judicial Code: "A judge shall not engage in any political activity except (i) as authorized under any other provision of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law." CODE OF JUDICIAL CONDUCT, *supra* note 113, at Rule 67, Canon 7, Point C. The fact that no provision in the Illinois judicial code expressly prohibits this type of donation—that is, a campaign preference by a sitting judge for a candidate for prosecutor (who is part of the executive branch)—undermines the state constitution's requirement that judicial power is independent of the political branches.

¹³⁷ *Caperton v. A.T. Massey Co.*, 556 U.S. 868, 868-70 (2009). A small coal operator won a \$50 million civil judgment against Massey, a larger company. *Id.* at 872. Massey's president spent more than \$3 million to help elect Brent Benjamin as a new justice to West Virginia's highest court. *Id.* at 884. Justice Benjamin arrived on the court in time to vote to reverse the entire \$50 million judgment. *Id.* at 886. Caperton appealed to the nation's high court, arguing that he was denied due process. *Id.* at 873. The Supreme Court ruled for Caperton, concluding that Justice Benjamin's participation presented a "serious risk of actual bias." *Id.* at 884. The Court elaborated: "Blankenship's campaign efforts had a significant and disproportionate influence in placing Justice Benjamin on the case . . . Blankenship's campaign contributions—in comparison to the total amount contributed to the campaign, as well as the total amount spent in the election—had a significant and disproportionate influence on the electoral outcome." *Id.*

¹³⁸ *Williams-Yulee*, *supra* note 70. Chief Justice John Roberts explained that "the role of judges differs from the role of politicians." *Id.* at 1667. He said that judges must strive "to be perfectly and completely independent." *Id.* at 1666. While subject to intense scrutiny because of the First Amendment, Florida's Judicial Canon outweighed Yulee's speech rights: "Judges, charged with exercising strict neutrality and independence, cannot supplicate campaign donors without diminishing public confidence in judicial integrity." *Id.*

¹³⁹ *Williams v. Pennsylvania*, ___ U.S. ___, 136 S.Ct. 1899, 1907 (2016). Ronald Castille, a district attorney in Philadelphia, approved a prosecutor's request in 1984 to seek the death penalty against Terrance Williams. *Id.* at 1903. Thirty years later, after a lower court stayed Williams' execution due to improper conduct by prosecutors, the state appealed to reinstate the execution. *Id.* at 1904. By this time, Castille had been elected as a justice on the Pennsylvania supreme court. *Id.* at 1904-05. After he declined a motion by Williams for recusal on grounds of bias, the case went before the U.S. Supreme Court. *See generally id.* Ruling that Castille's refusal to recuse himself violated Williams' due process rights, Justice Kennedy's opinion detailed how Castille's campaign emphasized his role in securing death penalty convictions. *Id.* at 1907-08. The Court dismissed Chief Justice Castille's defense that he had played only a

have the salutary effect of policing against judicial misconduct, but they only address a few examples of improper politicking.

IV. CONCLUSION

Political influence in Illinois courts will not subside as long as the state's judicial code aids and abets record levels of campaign spending on judicial elections. The following recommendations address the problems identified in this study.

1. Illinois should abolish partisan elections for judges.¹⁴⁰ The state should select and retain judges with a commission of non-lawyer citizens, lawyers, and judges who use merit criteria. This change is needed because political influence pervades Illinois courts.
2. Illinois courts will not deserve the confidence of its citizens until it updates its judicial code with current provisions of the ABA's Model Code. Judges are currently bound to an ethics code that is a relic from the 1970s through early 1990s—a period when little money was spent on judicial elections. While I find no evidence that judges are corrupt like recent

ministerial role in capital sentencing decisions. *Id.* Castille's campaign messages included news accounts of his statement that he "sent 45 people to death rows' as a district attorney." *Id.* at 1907 (citations omitted). More broadly, Williams stated that "the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself." *Id.* at 1909.

¹⁴⁰ My recommendation ignores the compelling points in the "Axiom of 80," as explained by Geyh in *supra* note 1.

Efforts to address threats to independence that arise in the context of selecting judges must take into account four political realities, that together constitute what I am calling the "Axiom of 80": (1) Roughly 80% of the public prefers to select its judges by election and does so; (2) Roughly 80% of the electorate does not vote in judicial elections; (3) Roughly 80% of the electorate cannot identify the candidates for judicial office; and (4) Roughly 80% of the public believes that when judges are elected, their decisions are influenced by the campaign contributions they receive.

Id. at 47. Prof. Geyh discouragingly concludes that "reformers conceded to the political necessity of judicial elections long ago, and now many appear poised to raise the white flag on merit selection systems that split the difference between purely appointive models and contested elections." *Id.* at 49.

governors,¹⁴¹ I find substantial evidence of influence peddling in judicial elections. Illinois judges should be held to stringent campaign standards that are common in other states.

3. Illinois needs a robust board to enforce judicial ethics. Judges should be disciplined for donating to candidates who run for prosecutor, engaging in retire-to-run shams, and double-dipping at the expense of taxpayers. Illinois should be more like states that discipline judicial candidates for campaign messages that degrade the impartiality of the judiciary. These reforms cannot be accomplished unless and until Illinois endows its judicial ethics board with enhanced powers, provides more funding for a proactive enforcement staff, and creates transparent methods to audit and disclose the financial interests of judges to the taxpaying public.

For now, Illinois courts are open for business—and open for labor unions, open for trial lawyers, open for political parties, and open for special interest groups that dole out money from deep campaign chests.

¹⁴¹ In important respects, Illinois leads the nation in political corruption. Four of its last seven governors have been sent to prison. Elizabeth Flock, *Rod Blagojevich is 4th Illinois Governor Jailed in Four Decades*, WASH. POST (Dec. 8, 2011), https://www.washingtonpost.com/blogs/blogpost/post/rod-bлагоjevich-4th-illinois-governor-jailed-in-four-decades/2011/12/08/gIQAFzvVfO_blog.html. A comprehensive study of convictions involving public officials from 1976 to 2008 ranked Illinois fourth in the nation for public corruption. Cheol Liu & John L. Mikesell, *The Impact of Public Officials' Corruption on the Size and Allocation of U.S. State Spending*, 74 PUB. ADMIN. REV. 346, 351 (2014). A different nation-wide audit of government ethics has low marks for Illinois, giving the state's judiciary an "F" on several objective metrics. Pam G. Dempsey, *Illinois Gets D+ Grade in 2015 State Integrity Investigation*, CTR. FOR PUB. INTEGRITY (Nov. 9, 2015), <https://www.publicintegrity.org/2015/11/09/18382/illinois-gets-d-grade-2015-state-integrity-investigation> (citing Illinois's inadequate process for evaluating the performance of judges and the state's failure to provide citizens with access to performance reviews of judges and audit of judges' asset disclosures).