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Fight over Tennessee Supreme Court justices costly so far

by Andy Sher
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NASHVILLE — Spending in the ongoing fight over the re-election of three Tennessee Supreme Court justices has now topped \$575,000, according to an independent group.



And those figures are just for television ads as justices and their allies battle conservative Republican groups seeking to oust them, according to an independent group.

New figures released Wednesday by the nonpartisan Brennan Center for Justice show Justices Connie Clark, Sharon Lee and Gary Wade as well as an independent group, Tennesseans for Fair Courts, have spent about \$316,000 on TV ads so far.

The ads seek to defend the justices, who were appointed by former Democratic Gov. Phil Bredesen. All three are in a retain/reject retention election Aug. 7.

Meanwhile, two groups, the Tennessee Forum and the State Government Leadership Foundation, a national Republican group, have spent a combined \$254,890 on television attacking the justices, according to the Brennan Center.

But that's not counting money spent on radio, direct mail, phone banking and other efforts by these groups and others, a list which includes the Tennessee chapter for Americans for Prosperity, a national group affiliated with the billionaire conservative Koch brothers.

It's all part of an effort led by the powerful Republican state Senate Speaker Ron Ramsey.

Among these groups' charges are that the justices are "liberal" and soft on crime. A Tennessee Forum ad contends they "advanced Obamacare."

The state justices point out, correctly, that they never heard a case involving the Affordable Care Act. Federal courts did. Opponents say the ad is based on the Supreme Court being in charge of naming the Tennessee attorney general. And Ramsey and some Republicans are furious with Cooper for, among other reasons, not having joined with mostly Republican state attorneys general in suing to block the federal Affordable Care Act. The case was ultimately decided by the U.S. Supreme Court.

The pro-justice group Tennesseans for Fair Courts ran an ad charging, "outrageous -- attacking our Supreme Court justice. But experts punched holes in the smear campaign."

Laurie Kinney with the nonpartisan group Justice at Stake said the ruckus in Tennessee is disturbing.

"I think unfortunately what we're seeing is a continuation of a trend we've seen in other states in recent years and that is the tendency toward greater politicization and spending in judicial retention races," Kinney said.

It's a cause for concern, she said, "when we see judges forced to campaign like politicians, to raise funds from the very parties who might appear before them and then [have] money spent by outside groups which may have political agendas and which also wrests control from the justices themselves in the conduct of the campaign."

State House Majority Leader Gerald McCormick, R-Chattanooga, is backing the effort to defeat the

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justices.

"I've given money to one of the national groups," he said. "I think a lot of the money is coming from Tennessee."

He said "there's a good case to be made that these guys and girls, they're just politicians running for office. And they say they're above the fray and they're for a nonpolitical Supreme Court and it's just baloney."

If they just acknowledged they were Democrats and sought support from Republicans, independents and Democrats and pledged to be "fair and honest ... that would be fine," McCormick said. "But this absolute facade that they're putting on, that they're somehow nonpolitical, it's dishonest. I think they're lying to us."

He said all three have been "big givers" to Democratic candidates "all their lives." And McCormick believes in a state that's "overwhelmingly Republican, there's probably three Republican judges or attorneys who can serve on the Supreme Court and do just as good a job or better."

Retired Tennessee Supreme Court Chief Justice Mickey Barker of Signal Mountain sees the effort to oust the justices as stemming from an attack by one branch of government, the Republican-controlled Legislature, on the judicial branch. Add in special interests that help fund the outside groups and it spells trouble, he said.

"What's at stake is our judicial system in the state of Tennessee," said Barker, who recently appeared in a pro-retention commercial for the justices. "Is it a system that is going to be fair and completely impartial or is it a system that's going to be controlled by special interests and political bosses. That's what's at stake."

He noted that Ramsey said in an interview, "I want a court that thinks like me. Well, I hope that doesn't happen. I want a court that thinks like they want to follow the law and the facts."

This week there were two new developments as early voting in the election nears its end on Saturday. The first was Ramsey putting out a video on social media that provides step-by-step instruction on how to vote against the justices, cautioning the retention ballot comes near the end of a lengthy ballot.

The second is an email sent Thursday by Tennessee Right to Life President Brian Harris to the group's members. While TRLF is working for a proposed amendment on the November ballot making the Tennessee Constitution neutral on the issue of abortion, Harris says in the email, "Amendment 1 is only necessary because of the judicial arrogance of the Tennessee Supreme Court."

He wrote "equally important is the matter of judges who place their policy preferences over those of the people. The opportunity to 'replace' Justices Clark, Lee and Wade sends a strong message that we expect our judges to interpret the Constitution, not re-write it."

Barker was taken aback that a link was being made from the 2000 case to the three justices.

"None of the current members of the Tennessee Supreme Court had anything to do with that case," Barker said of the ruling in which he was the lone dissenting vote in the 4-1 decision making abortion a "fundamental right."

Recalling his 28-page dissent against the majority opinion in the case, Barker said one of justices later died and the three others retired.

"Blaming them [Clark, Lee, Wade] for something that's happened with the previous court is simply wrong," Barker said.

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about Andy Sher...

Andy Sher is a Nashville-based staff writer covering Tennessee state government and politics for the Times Free Press. A Washington correspondent from 1999-2005 for the Times Free Press, Andy previously headed up state Capitol coverage for The Chattanooga Times, worked as a state Capitol reporter for The Nashville Banner and was a contributor to The Tennessee Journal, among other publications. Andy worked for 17 years at The Chattanooga Times covering police, health care, county government, ...

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