

Vote of No Confidence: The 2002 Texas Supreme Court Election

I. Introduction

The Texas judiciary's confidence crisis is beginning to feedback upon itself. It was million-dollar judicial elections that created Texas' judicial confidence crisis in the first place. Now this crisis, in turn, is shaping the state's judicial elections in profound ways.

Perhaps the most telling sign of crisis lies in the number of justices abandoning ship. In the last two years, four justices resigned from the court before completing their terms or declined to seek reelection. Justice Alberto Gonzales quit the court in late 2000 to become White House Counsel, followed by Justice Gregg Abbott, who has resigned to run for Texas Attorney General. Justices Deborah Hankinson and James Baker are not seeking reelection when their terms end this year.¹ Justice Priscilla Owen, who has been nominated for the federal 5th Circuit Court of Appeals, also will leave the court if she wins Senate confirmation to that post. Even Chief Justice Phillips reportedly underwent considerable soul searching before deciding to seek reelection this year in order to lend continuity to a court undergoing enormous turnover.

Befitting an institution in crisis, there are many extraordinary aspects of the 2002 Texas Supreme Court elections. These include:

- A mass exodus of justices puts a *majority* of five of the court's nine seats up for election;
- Both major parties are running candidates for all five seats (whereas Democrats fielded no candidates in 2000, when there were three supreme races);²
- Veteran incumbents will retain no more than *two* of the five seats up for election;³
- This year brought the first competitive primaries since 1994,⁴ including one in which a poorly funded primary challenger knocked out a well-funded incumbent;
- A national GOP PAC took the unusual step of taking sides in two high-court primary races in an apparent attempt to preserve ethnic and racial diversity on the Republican Party ticket;
- The U.S. Supreme Court recently struck down gag rules that had prevented judicial candidates from campaigning on controversial issues; and
- To protest Texas' judicial-selection system, Chief Justice Tom Phillips recently pledged to limit his reelection spending to the \$20,000 that he already has raised.

Each aspect of this unusual election has been influenced by the Texas judiciary's confidence crisis—wherein judges undermine public confidence in their rulings by taking campaign money from special interests with cases before the courts.

¹ Justice Baker stepped down early, allowing Governor Perry to appoint someone to run with an incumbent advantage: neophyte Justice Mike Schneider.

² "Democrats Plot Return To Texas Supreme Court," *Dallas Morning News*, March 10, 2002.

³ In July 2002 Governor Perry appointed neophyte incumbent Mike Schneider to complete the last months of resigning Justice James Baker's term.

⁴ When Raul Gonzales defeated Rene Haas.

II. Total Money Raised

This report analyzes the money raised to date by major-party Texas Supreme Court candidates. As of their latest campaign filings (covering through June 30, 2002), the 10 major-party Texas Supreme Court candidates that survived the primaries raised a total of almost \$3 million for the 2002 elections. This total jumps to \$4.7 million when the \$1.7 million raised by four failed GOP primary candidates is included.

Texas Supreme Court Money Races

Reported Fundraising Between July 2001 and June 30, 2002

Primary Survivors

Court Place	Party	Current Candidates	Amount Raised	Reported Cash On Hand
CJ	R	Thomas Phillips (I)	\$5,103	\$21,625
CJ	D	Richard G. Baker	\$2,600	\$0
1	R	Michael Schneider (I)	\$580,274	\$276,419
1	D	Linda Yanez	\$245,260	\$0
2	R	Jesse W. Wainwright	\$699,595	\$0
2	D	James N. Parsons	\$129,497	\$93,063
3	R	Wallace Jefferson (I)	\$908,458	\$226,961
3	D	William Moody	\$91,065	\$0
4	D	Margaret Mirabal	\$315,332	\$177,688
4	R	Steve Smith	\$5,500	\$5,505
TOTALS:			\$2,982,684	\$801,261

Notes: Four candidates reported zero cash on hand, though their previous reports would suggest that they had money (see the last disclosure section). Besides his \$5,505 on hand, Smith also has \$10,323 in loans from himself.

Primary Losers

Court Place	Party	Primary Losers	Amount Raised
2	R	Elizabeth Ray	\$662,285
2	R	John Hill Cayce	\$270,614
3	R	Samuel J. Lee	\$79,416
4	R	Xavier Rodriguez (I)	\$708,048
TOTAL:			\$1,720,363

Note: Lee did not report *raising* any money; he reported *spending* \$79,416 of his own money.

I = Incumbent

After the primary and four months away from November's general election, the financial frontrunners for five high court seats already had raised an average of \$501,752. This figure would have been much higher if not for several anomalies this election. Prominent among these was the fact that veteran incumbents, who enjoy a major fundraising advantage, sought to retain just three of the five available court seats, with one incumbent falling victim to a primary upset.⁵ Moreover, Chief Justice Tom Phillips—who raised \$1.4 million in 1996—pledged in July 2002 to limit his campaign spending to the

⁵ Governor Perry appointed non-veteran incumbent Michael Schneider to the court in July 2002.

\$20,000 already stashed in his war chest.⁶ After reporting the receipt of just \$5,000 this election cycle, Phillips said he adopted this unprecedented spending cap to protest Texas’ “dysfunctional method of choosing judges.”⁷ For this reason, a powerful GOP fundraiser raised less money than every other 2002 major-party Supreme Court candidate except, not coincidentally, Phillips’ own underfunded Democratic opponent: Richard Baker, an attorney at Baker & Zbranek in Liberty, Texas.

The leading Supreme Court fundraiser was Justice Wallace Jefferson, the only other veteran incumbent justice left in this election.⁸ Positioned to raise well over \$1 million, Jefferson already has raised \$908,458, or 10 times the \$91,065 reported by his Democratic challenger, El Paso District Court Judge William Moody.

No. 2 fundraiser Jesse Wainwright raised \$699,595—more than five times the \$129,497 raised by his Democratic opponent, state District Judge James Parsons of Palestine, Texas. A Houston District Court judge, Wainwright emerged victorious from an exorbitant, three-way GOP primary race that was decided in a runoff. Business interests initially split their support between Wainwright and John Cayce, the chief justice of the 2nd Court of Appeals in Fort Worth who was knocked out in the first primary. Cayce’s defeat consolidated Wainwright’s business support in the runoff, when he defeated Houston District Court Judge Elizabeth Ray. Ray, who outraised her primary opponents, was a maverick GOP candidate who took much of her money from trial lawyers who usually back Democrats. By the end of June 2002, these three GOP candidates had raised more than \$1.6 million just for the Place 2 race alone.

Place 2 GOP Primary Fundraising

Place 2 High Court Candidate	Total Raised At 3/12/02 Primary	Total Raised At 4/9/02 Runoff
John Hill Cayce	\$238,459	(Lost First Primary)
Elizabeth Ray	\$439,078	\$650,286
Jesse Wainwright	\$220,346	\$444,662
TOTAL:	\$897,883	\$1,094,948

Nipping at Wainwright’s heels, Michael Schneider raised \$580,274 by the end of June, shortly before Governor Perry made him a neophyte incumbent by appointing him to the high court slot vacated by Justice James Baker. The former chief justice of Houston’s First District Court of Appeals, Schneider raised more than twice the \$245,260 raised by Democratic opponent Linda Yanez, a justice of the Thirteenth District Court of Appeals in Edinburg.

Finally, Margaret Mirabal is the only Democratic financial frontrunner. A justice of Houston’s First District Court of Appeals, Mirabal raised \$315,332, or 57 times the

⁶ Phillips’ cash on hand includes \$18,602 in his officeholder account and \$3,023 in his PAC. He also disclosed that he has benefited from independent spending by Texans for Lawsuit Reform.

⁷ “Justice Vows Not To Take contributions,” *Dallas Morning News*, July 13, 2002.

⁸ GOP Governor Rick Perry appointed Justice Jefferson in early 2001 to replace Justice Alberto Gonzales, who resigned to become White House counsel.

\$5,500 raised by opponent Steven Smith (who also has \$10,323 in outstanding loans from himself). Smith overcame even greater odds, however, when he won a shoestring GOP primary race against incumbent Justice Xavier Rodriguez, who raised \$708,048.⁹

Smith, who represented white plaintiffs in the *Hopwood* case that ended affirmative action at Texas' public universities, kicked off his frugal campaign by filing a lawsuit targeting the Texas Code of Judicial Conduct, which bars judicial candidates from taking positions on issues subject to court rulings. The lawsuit itself violated this code, revealing that Smith opposes: affirmative action; "Robin Hood" poolings of school revenues; and the liberal use of judicial waivers to the Texas law that otherwise requires minors seeking an abortion to notify their parents. In June, a 5-4 majority of the U.S. Supreme Court struck down a similar judicial gag rule in Minnesota as an unconstitutional violation of free speech. This precedent led Smith to prevail in his lawsuit in August.¹⁰ Many observers said that Smith owes his primary victory over a well-funded incumbent to those GOP primary voters who voted for a safe-sounding Anglo name over the more exotic "Xavier Rodriguez."¹¹ Such white flight arguably was the very result that the Republican National State Election Committee sought to avoid when it contributed \$25,000 to Rodriguez before the primary (see below).

⁹ Governor Perry appointed Rodriguez in 2001 to replace Justice Gregg Abbott, who resigned to run for Texas Attorney General.

¹⁰ *Republican Party of Minnesota v. White*. See "Limits on Judicial Candidates Are Lifted," *Austin American-Statesman*, June 28, 2002; and "Court Rejects Provision Limiting Texas Judicial Hopefuls' Speech," *Dallas Morning News*, August 10, 2002.

¹¹ "Name Game Cost GOP Candidate," *Houston Chronicle*, March 25, 2002.

III. Top Donors

Having analyzed the major-party candidates who raised \$5 million so far for the 2002 Texas Supreme Court elections, this report now identifies the top donors to these candidates. Law firms are the biggest donors to judicial races, with four law firms each giving more than the biggest non-law firm donor: Texans for Lawsuit Reform.¹² Defense firms accounted for eight of the top-10 law-firm donors, including the top two donors to the court: Vinson & Elkins and Fulbright & Jaworski. Two plaintiff firms also ranked among the top 10 firms: Fleming & Associates and Watts & Heard.

Top Donors To All 10 Surviving Major-Party Supreme Court Candidates

Top Law Firm Donors

Law Firm Source	Firm Type	Total	Top Recipient
Vinson & Elkins	Defense	\$124,305	Wainwright
Fulbright & Jaworski	Defense	\$64,720	Schneider
Fleming & Associates	Plaintiff	\$62,500	Mirabal
Baker Botts	Defense	\$59,960	Wainwright
Beirne Maynard & Parsons	Defense	\$53,050	Jefferson
Haynes & Boone	Defense	\$43,200	Wainwright
Watts & Heard	Plaintiff	\$41,500	Jefferson
Locke Liddell & Sapp	Defense	\$40,125	Jefferson
Thompson & Knight	Defense	\$33,050	Wainwright
Jackson Walker	Defense	\$32,535	Schneider

Top Other Donors

Non-Law Source	Description	Total	Top Recipient
Texans for Lawsuit Reform	Business tort group	\$55,056	Wainwright
Texas Medical Association	Physician trade group	\$40,026	Wainwright
Bass Family	Diversified oil interests	\$38,500	Jefferson
Perry Homes	Homebuilder	\$35,000	Jefferson
HillCo PAC	Lobby firm	\$35,000	Wainwright
USAA	Insurance company	\$29,825	Wainwright
Republican Nat'l State Elections Com.	GOP	\$25,000	Jefferson
Peter O'Donnell	Retired investor, banker	\$25,000	Wain./Jeff.
Texas Civil Justice League	Business tort group	\$21,467	Wainwright
Beecherl Investments	Diversified oil interests	\$21,000	Wainwright

Nine of the top 10 non-law donors represent business interests. They include Texas' two business tort groups, two diversified oil fortunes, a major homebuilder, corporate lobby firm and an insurer (note that homebuilder Bob Perry also supplied most of the money raised in 2002 by the PAC of the HillCo lobby firm). The list also includes a powerful physician trade group that traditionally allied with defense interests (although doctors have begun surfacing as plaintiffs in HMO lawsuits) and Peter O'Donnell, a retired investor and GOP activist.

¹² Law firm contributions include those of the firm, its political action committee and its attorneys.

Finally, the Republican National State Elections Committee (RNSEC) also made this top-10 list by virtue of the \$25,000 each that it gave to incumbent Justices Wallace Jefferson and Xavier Rodriguez *before* the Republican primary. It is extremely unusual for a party PAC to pick sides in primary battles. Yet in this case RNSEC ranks among the top three donors to both Jefferson and Rodriguez. This unusual behavior may have been an attempt by the Republican Party to preserve as much racial and ethnic diversity as possible on its statewide ticket. If so, this effort yielded mixed results. While Jefferson—the court’s first African-American justice—survived the primary, Hispanic Justice Rodriguez lost to one of Texas’ leading opponents of affirmative action.

**Top Donors To Each Surviving
Major-Party Supreme Court Candidate**

Place	Candidate	Top Donors	Description	Amount
CJ	Baker	Bob Cassity	Moss Hill Lumber Co.	\$1,000
CJ	Baker	Douglas M. Cameron	Security State Bank	\$1,000
CJ	Baker	Steve Barr	Construction company	\$500
CJ	Phillips	Governor Bush Committee	Bush’s gubernatorial PAC	\$5,000
1	Schneider	Vinson & Elkins	Defense firm	\$28,200
1	Schneider	Fulbright & Jaworski	Defense firm	\$20,300
1	Schneider	Mithoff & Jacks	Plaintiff firm	\$20,000
1	Yanez	Tammy Tran & Assoc.	Immigration law	\$25,000
1	Yanez	Watts & Heard	Plaintiff firm	\$20,000
1	Yanez	Edwards Law Firm	Plaintiff firm	\$10,000
2	Parsons	Nix Patterson & Roach	Plaintiff firm	\$30,000
2	Parsons	Roberts & Roberts	Plaintiff firm	\$15,000
2	Parsons	Law Offices of Frank Branson	Plaintiff firm	\$10,000
2	Wainwright	Vinson & Elkins	Defense firm	\$38,175
2	Wainwright	HillCo PAC ¹³	Lobby firm	\$30,000
2	Wainwright	TX Medical Assoc.	Physician trade group	\$26,970
3	Jefferson	Vinson & Elkins	Defense firm	\$29,730
3	Jefferson	Republican Nat’l State Elections Com.	GOP	\$25,000
3	Jefferson	Bass Family	Diversified oil interests	\$20,500
3	Jefferson	Watts & Heard	Plaintiff firm	\$20,500
3	Moody	Maloney Law Firm	Plaintiff firm	\$10,100
3	Moody	Com. to Assist 34th Dist Court Judge	Judge Moody’s PAC	\$7,000
3	Moody	Scherr Legate & Ehrlich	Plaintiff firm	\$4,500
4	Mirabal	Fleming & Associates LLP	Plaintiff firm	\$50,000
4	Mirabal	Vinson & Elkins	Defense firm	\$12,550
4	Mirabal	Fulbright & Jaworski	Defense firm	\$11,200
4	Smith	Louis Beecherl	Diversified oil interests	\$5,000
4	Smith	Fred C. Morse III	Retired family trust mgr	\$500

The top-dollar Jefferson-Moody and Wainwright-Parsons races generally follow the stereotype wherein plaintiff firms are the top donors to Democratic judicial candidates and Republicans rely on defense firms and business interests. Even here, however, the

¹³ Most of the money this PAC raised in 2002 came from homebuilder Bob Perry.

title for Justice Jefferson’s No. 3 donor is shared by both the oil-rich Bass family and plaintiff firm Watts & Heard. In the Schneider-Yanez race, two of Republican Michael Schneider’s top donors are defense firms but the third is plaintiff firm Mithoff & Jacks. While two of the top three donors to Democrat Linda Yanez are plaintiff firms, her No. 1 donor is the immigration law firm Tammy Tran & Associates (which was a major donor to Republican Attorney General John Cornyn). Similarly, the top donor to Democrat Margaret Mirabal is a plaintiff firm, but her next two largest donors are the defense firms Vinson & Elkins and Fulbright & Jaworski. Finally, the top donors to Mirabal opponent Steve Smith, as well as to chief justice candidates Tom Phillips and Richard Baker, defy generalization since these three candidates raised little money from few sources.

Of the three high court candidates who were knocked out in the Republican primary, only John Hill Cayce fits the stereotype in which defense firms and business interests underwrite GOP judicial campaigns. In contrast, all three of the top donors to the campaign of primary opponent Elizabeth Ray were plaintiff firms and a plaintiff firm also ranked among the top donors of failed GOP incumbent Xavier Rodriguez.

**Top Donors To Each Failed
Major-Party Supreme Court Candidate**

Place	Candidate	Top Donors	Description	Amount
2	John Hill Cayce	Kelly Hart & Hallman K PAC	Law firm to Bass family	\$20,000
2	John Hill Cayce	Bass Family	Diversified oil interests	\$18,501
2	John Hill Cayce	Texans for Lawsuit Reform	Business tort group	\$13,430
2	Elizabeth Ray	Williams Bailey	Plaintiff firm	\$50,000
2	Elizabeth Ray	O’Quinn Laminack & Pirtle	Plaintiff firm	\$45,000
2	Elizabeth Ray	Fleming & Associates	Plaintiff firm	\$35,000
4	Xavier Rodriguez	Fulbright & Jaworski	Defense firm	\$30,250
4	Xavier Rodriguez	Republican Nat’l State Elections Com	GOP	\$25,000
4	Xavier Rodriguez	Watts & Heard	Plaintiff firm	\$20,000

IV. Ethics & Disclosure Issues

The Judicial Campaign Fairness Act (JCFA), which took effect in June of 1995, subjected Texas judicial campaigns to contribution limits¹⁴ Although these limits are absurdly high, one current candidate managed to violate the spirit of this law.

Texas law says that a Texas Supreme Court candidate can take up to \$5,000 from an individual, \$30,000 from a law firm and \$300,000 from a political action committee in each *election*. Under this law, a candidate who has a primary, runoff and general election all within one *election cycle* may hit these limits three separate times. In already raising \$50,000 from the Houston plaintiff firm Fleming & Associates, Judge Margaret Mirabal, appears to have violated the *spirit* of the legal limits on law-firm donations since she faced no opponent in the Democratic primary. Texas Ethics Commission lawyers say Mirabal escapes the *letter* of the law, however, because the limits apply to each election in which a candidate is “involved.” The Texas Ethics Commission has interpreted involvement to mean any election in which a candidate appears on the ballot—even if that candidate is unopposed, as Mirabal was in her primary. This interpretation lets candidates in uncontested primaries have it both ways. On the one hand, the primary is recognized as another “election” in which they can raise money up the limits. On the other hand, they are not required to file the disclosure reports that candidates in contested races must file before the primary. It is hard to believe that this was the legislature’s intent.

Although candidates’ disclosure of donor information has improved dramatically from pre-JCFA days, some candidates still fall woefully short. Luddite candidates Sam Lee and Steve Smith, for example, failed to file any of their disclosure reports electronically, thereby imposing needless burdens on anyone seeking to access or analyze these data. James Parsons and William Moody filed their July reports electronically but just filed paper reports in January. Parsons also won the booby prize for failing to disclose the employers and occupations of his donors. When Parsons reported raising \$110,197 in his July report, for example, he just disclosed a single donor’s employer. Candidates should not be allowed to keep money that they do not fully disclose as required by law. Under this standard, Parsons arguably would have been more diligent if he only could keep the \$100 that he fully disclosed.

Finally, several candidates for Texas’ highest civil court appear not to be properly disclosing their campaign “cash-on-hand,” as required by law. Candidates William Moody, Jesse Wainwright and Linda Yanez dubiously reported that they had no cash-on-hand in their July reports. Based on what they reported raising and spending in earlier reports, it appears that Wainwright had an estimated \$314,618 on hand, Yanez had \$34,441 and Moody had \$17,504. Richard Baker's campaign reported raising more contributions than it spent. This suggests that it had some money left over, even though the campaign reported that it had no cash on hand. Baker also reported spending \$13,721 of his own money. In the absence of serious penalties, many candidates apparently treat campaign disclosure laws as if they were voluntary.

¹⁴ For more on limits, see the appendix of “Checks & Imbalances,” Texans for Public Justice, April 2000.