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TEXAS COMMISSION ON JUDICIAL SELECTION

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DIRECT EXPENDITURES IN JUDICIAL RACES

- Independent expenditures (known as “direct expenditures” under the Texas Election Code) in Texas judicial elections are increasing.
- Direct expenditures in Texas judicial races have increased in each election cycle for the past ten years.
- To be lawful, direct expenditures cannot be coordinated with a candidate’s campaign.
- As a result, a candidate’s influence over political messaging continues to decrease, while the influence of outside interests increases.

2020 8-DAY COMPARISON INCUMBENT SUPREME COURT JUSTICES VS HYBRID DIRECT EXPENDITURE PAC

- According to 8-day pre-election reports, a newly formed “hybrid PAC” made approximately \$4.3 million in direct expenditures to support incumbent Supreme Court justices.
- In that same time period, the candidates themselves made approximately \$1.2 million in expenditures to communicate with voters.
- In the final days for the campaign, direct expenditures for candidates tripled the expenditures made by those candidates.

“OFF-SEASON” DIRECT EXPENDITURES

- Independent expenditures related *to an election* must be timely and accurately disclosed.
- However, a “campaign expenditure” (including a “direct campaign expenditure”) is made “in connection with a campaign for elective office or on a measure.”
- Direct expenditures that are unrelated to an election would fall under the general description of “issue advocacy.”
- Issue advocacy (including advocacy related to a pending court case) is not subject to the restrictions or disclosure requirements of Title 15.

ISSUE ADVOCACY AIMED AT AN ELECTED JUDICIARY

- The consequences of issue advocacy aimed at an elected judiciary are potentially significant:
 - The sources and amounts of expenditures need not be disclosed to the public.
 - Direct expenditures may serve as the basis for recusal of judges.
 - Judges may feel subjected to political pressures throughout their term.
 - Outside forces may influence judicial decision-making in real time.
 - Diminished trust in both the judicial election process and the legal system more broadly.