

## Winning State Supreme Court Races: Options for Democratic Donors

State officials of all stripes have become more powerful and influential in recent years than at nearly any time in memory. This reflects gridlock and inaction at the federal level, but also how states have been handed power more explicitly, with many rulings from the Roberts era U.S. Supreme Court giving states wide latitude over voting and other areas of law and public policy.

This shift in power has elevated the importance of state courts, and especially state supreme courts. In nearly half the states, judges on these courts are elected directly by voters. This means that unlike with the federal courts, donors and volunteers have a direct way to support progressive jurisprudence and hold bad actors accountable, donating their time or money to individual candidates, campaigns, or organizations engaged in electoral work.

In this brief, Blue Tent explains how donors should approach races for state supreme courts throughout the country and offers options for giving impactfully. We also analyze big-picture spending on state court races, and explain the varying processes for electing judges.

### What's at Stake

In 2022, [87 of the country's 344 state supreme court seats](#) are up for election, including many in current or emerging swing states where a court's balance of power is at stake. In Ohio, Republicans hold a 4-3 advantage on the court, but three GOP-held seats are up this year, including two incumbents and an open race for the court's chief justice. In North Carolina, liberals hold a 4-3 majority on the court, but two of their seats are up in 2022. Michigan, another state with a slim 4-3 Democratic majority, will see one Democratic member and one Republican member run for re-election.

With the current conservative supermajority on the U.S. Supreme Court, the stakes for state courts have rarely been higher. The nation's highest court has repeatedly punted important constitutional claims down to the states, with conservative legislatures and lawyers pushing for further deference still. If the Supreme Court were to overturn *Roe v. Wade* this summer, for instance, then each individual state would be responsible for determining abortion rights. Many states already have [blanket abortion bans](#) written into law, while others are passing new legislation

in anticipation of the court's ruling. If Roe is overturned, state supreme courts may have the final say over the constitutionality of abortion at the state level.

In Michigan, where Democrats hold a 4-3 majority on the supreme court, Gov. Gretchen Whitmer has filed suit to invalidate the state's preexisting abortion ban. In Kansas, the state's seven member court ruled that the state constitution protected a woman's right to an abortion in 2019; five of the six justices who sided with the majority are facing retention elections this year, coinciding with a push from state Republicans for a constitutional amendment outlawing abortion.

But abortion is not the only issue that will continue to fall to state courts. Recent SCOTUS rulings have **vastly curtailed** the role of federal judges in litigation on gerrymandering and redistricting, giving judges at the state level greater power over the process. Similarly, election challenges like those the Trump campaign and other Republicans brought forward in 2020 may begin and end at the state level in 2022 and 2024. State and federal judges by and large **dismissed** vacuous claims of mass voter fraud and election rigging in 2020, but future elections may be a different story. GOP officials and lawyers will be more practiced the next time around, and their challenges—especially in the midterms—may appear more defensible when aimed at smaller, tighter races, rather than the entirety of a presidential election. Further, if SCOTUS's trend of kicking issues down to states continues with election challenges, the makeup of these courts could decide any number of electoral outcomes.

### **Strategies for Impact**

State supreme courts are a particularly difficult area for the average person to make informed, strategic, and impactful donations. The campaigns themselves are often extremely well funded on both sides, with the Brennan Center for Justice calculating the total spending for state supreme court races in 2020 at nearly **\$100 million**, more than \$60 million of which came directly from campaigns. Another \$35 million came from outside groups, primarily dark money sources and billionaire-backed organizations. Yet even with hefty campaign budgets and increasingly large stakes, state supreme court races often don't attract the same level of national or even state-level attention from the general public.

Part of the reason for this is likely the **complexity and variation** in how state supreme courts are chosen. Most states do not directly elect supreme court judges, who are instead chosen by some combination of the governor, state legislature, and/or a judicial commission. A handful of these

same states, however, hold “retention elections” for judges, wherein the public solely votes on whether a judge should serve another term. If the judge loses their retention election, a new appointment is made.

Thirteen states directly elect their judges in nonpartisan elections, and another eight use partisan elections. In some partisan election states, the primaries are decided within the parties themselves. In others, however, the states use a “jungle primary” where all candidates are listed on the ballot, and the top two vote-getters advance, regardless of their party. (In most of these states, if a primary candidate wins more than 50% of the vote, no runoff is required.) In nonpartisan elections, the jungle primary is also how general election candidates are chosen, the only difference being that no party affiliations are listed.

Michigan is unique in its supreme court elections, as candidates are chosen by state party conventions, but then appear on the ballot without partisan affiliation. Illinois and New Mexico hold partisan elections for judges, who then only face retention elections at the end of their terms. Illinois, Kentucky, Mississippi, and Louisiana are the only states where supreme court justices are elected in districts rather than statewide.

On the right, Republicans have centralized their operations and funding for supreme court races through the [Judicial Fairness Initiative](#), a wing of the Republican State Leadership Committee. As is often the case, Democrats have taken a more decentralized approach, with independent state-level groups funneling large amounts of cash and boots on the ground into judicial elections. In 2020, a small group of progressive activists and donor advisors launched a similar effort to rally money and infrastructure around state supreme court races called the Justice Project. The startup group is working to guide some \$20 million into key races across four states in 2022.

Democrats currently hold a one-seat majority in key states including Michigan and North Carolina, while Republicans hold a slim advantage in Ohio. In 2022, however, Democrats are facing a difficult electoral picture, with strong potential for lower turnout among progressives and a motivated Republican base, all backed by a centralized money operation focused on the levers of state power. Incumbent state supreme court judges are also highly advantaged: according to Ballotpedia, of the 419 state supreme court judges to run for reelection since 2000, only 29—[less than seven percent](#)—have lost. This is bad news in Arizona, Georgia, and Texas, where only incumbent candidates are running, all of whom are Republicans.

## Options for Donors

Clearly, state supreme court races present a unique challenge to the average progressive donor.

Here's our advice for pitching in on these complicated but important campaigns:

- **Donate directly to candidates.** Giving directly to candidates is almost always the best way to support an individual race. Direct donations can be used for a wider variety of purposes than donations to a Super PAC or outside group, and are less likely to be spent purely on expensive ad buys. In nonpartisan state court races, getting money to candidates early can be especially important, as the lack of party affiliation could lead voters to unintentionally split their tickets or support incumbents by default. Candidates especially worth supporting to defend democracy in key states include **Richard Bernstein** and **Kyra Harris Bolden** in Michigan; **Sam Ervin** and **Lucy Inman** in North Carolina; and **Jennifer Brunner, Terri Jamison**, and **Marilyn Zayas** in Ohio. Donors can split a donation to all of these candidates, plus Montana Justice **Ingrid Gayle Gustafson** (liberals have a one vote majority on the Montana supreme court) through Justice Project's [slate on ActBlue](#).
- **Donate to grassroots organizing groups in key states.** In Blue Tent's [2022 donor strategy guidance](#), we explain that the best way to support a broad array of Democrats running for office in a given state is to give to grassroots organizing groups. Organizing is a highly effective and important strategy for both long and short-term power building. Targeting groups in key states is also a great way to “double-dip” as a donor, because you're giving to both help elect progressives now, while contributing to big picture infrastructure needed for future elections. Michigan, North Carolina, Ohio, Nevada, and Arizona are all holding several important, competitive elections this year, including for the supreme court. All five states will also be potentially decisive in the 2024 presidential race. Some of Blue Tent's favorite groups in these states include [Progress Michigan](#), [Carolina Federation](#), and [LUCHA](#) in Arizona. The Movement Voter Project's [funds](#) also offer an easy way for donors to support grassroots organizing groups in specific states.
- **Give to select Democratic state parties.** While many states still hold nonpartisan judicial elections, some of this year's most important races are in states with partisan or semi-partisan ballots. In these races, giving to the state party can be an easy way to support multiple important campaigns, including those for the courts. Blue Tent will have more specific

recommendations in the coming months on which state parties to consider supporting to influence supreme court races.

### **Conclusion**

For Democrats, the 2022 midterms are largely about playing defense and laying a foundation for the future. This is precisely the case for focusing on state supreme court races, where even the rosier feasible outcomes would do little to advance short-term progressive change. Winning these races is about preventing an empowered right-wing from running roughshod over core rights like abortion access, while cutting off avenues to subvert democracy in future elections. State judges will likely play a major role in Republican election challenges, and will be tasked with sorting through the wreckage of conservative rulings at the U.S. Supreme Court. Democrats ignore these races at their own peril.

### **You may also want to check out:**

- [Winning State Attorney General Races: Options for Democratic Donors](#)
- [Winning Secretary of State Races: Options for Democratic Donors](#)
- [Shaping the Federal Courts: How Donors Can Make a Difference](#)
- [In Minnesota, a Battle to Control the State Legislature](#)

