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September 21, 2015

Chief Justice Sharon G. Lee
Supreme Court
401 Seventh Avenue North
Nashville, TN 37219-1407

Dear Chief Justice Lee,

I am president of Public Citizen, a national public interest advocacy organization with more than 400,000 members and supporters. We actively litigate on a wide variety of issues in federal and state courts. Among our areas of litigation and advocacy focus are rules relating to election spending and ensuring the integrity of governmental offices.

I am writing to encourage Tennessee to consider the adoption of rule requiring litigants to disclose publicly all of their spending on judicial elections. This rule would be simple to administer and would work to protect the integrity of Tennessee's courts.

As you know, spending on judicial elections has soared in recent decades. Outside spending – election spending by organizations not coordinated with a candidate or party – has also soared, especially since the U.S. Supreme Court's 2010 *Citizens United* decision.

Concentrated spending on judicial elections by litigants poses the danger of undue influence over judges, whether conscious or not. The U.S. Supreme Court recognized this danger in *Caperton v. A.T. Massey Coal Co.*, holding that, “We conclude that there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent.” The constitutionally required remedy for such risk of bias, the Court held, is recusal.

Parties' ability to ask a judge to recuse him or herself is critically impaired, however, if they are able to discover if a litigating adversary has made election-related expenditures. Yet under existing campaign spending rules, donors are able to disguise their election-related expenditures by funneling them through organizations not required to disclose their donors. Such organizations include 501(c)(4) social welfare organizations and trade associations. Preventing the “serious risk of actual bias” from undermining the integrity of the judicial integrity requires addressing the problem of secret expenditures to influence judicial elections.

That remedy is easily available: litigants should be required to disclose their contributions to influence any judicial election in Tennessee, including to independent organizations spending money to influence judicial elections in Tennessee. Such a rule need not be complex; nor need it be difficult to administer, since the reporting requirement would rest on litigants making election-related expenditures, with no reporting or information-gathering burdens on the judiciary. I have attached a model version of what such a rule might look like.

Thank you very much for consideration of this proposal. My staff and I are available to discuss this concept at your convenience.

Sincerely,

Robert Weissman

**Litigant Disclosure of Political Spending
Model Proposal to Protect Court Integrity**

Under penalty of perjury, all parties and their counsel must file a disclosure statement with the Tennessee Supreme Court at the time of their first appearance in a case listing all contributions or expenditures they have made totaling in the aggregate \$200 or more in any election cycle during the prior 10 years –

- (1) to a candidate or candidate committee in a Tennessee judicial election;
- (2) to directly support or oppose a judicial candidate in Tennessee or influence a judicial election in Tennessee; or
- (3) to a political committee, political action committee, political party organization, independent expenditure organization, business association or non-profit entity known to the party or counsel to have spent money to support or oppose a judicial candidate or to influence a judicial election in Tennessee, or if the party or counsel expects such expenditure to be made to influence an upcoming judicial election.

Where the party or counsel is not an individual, the disclosures made by that party or counsel must fully disclose all such contributions made by related corporate or other legal entities, including but not limited to subsidiaries and affiliates.

Any disclosure statement must be updated annually, so long as a party maintains a case in any court in Tennessee.

The Tennessee Supreme Court shall develop a courtwide system of electronic filing and disclosure of the campaign disclosures required by this rule, which shall be posted on the Court's website in a searchable, sortable and downloadable format.