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McGraw overcomes negative ads to defeat Rowe

Supreme Court

By Chris Wetterich

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A barrage of advertising was not enough to stop state Supreme Court Justice Warren McGraw from securing the Democratic nomination for a 12-year term on the bench in Tuesday's primary.

McGraw, a figure in West Virginia politics for almost four decades, defeated his opponent, Greenbrier Circuit Judge Jim Rowe, with 98,721 votes, or 56 percent, to Rowe's 78,893 votes, or 44 percent, with 1,439 of the state's 1,965 precincts reporting.

Rowe and the state Chamber of Commerce accused McGraw of joining with two other justices to make decisions that drove businesses, doctors and people out of the state. McGraw blasted the alliance and said big, out-of-state corporations wanted to run him out of office.

McGraw said the results showed the negative campaign waged against him didn't resonate with the voters.

"I accept this as an endorsement of a philosophy by the people of West Virginia that they are happy to pick their own officials without out-of-state interference," he said. "It marked a new low in judicial campaigning."

The election was closer than expected. Polls late last week had McGraw with an almost 2-1 lead. It seemed that many undecided voters broke toward Rowe.

Despite the result, Rowe was heartened that his message had gotten through to voters.

"At the very least we've brought the situation with the court to the forefront, win or lose," he said. "The overriding purpose of this is to hold and make the court accountable to the people of this state and allow this state to succeed. I think people understand how important the court is to them."

As the campaign heated up in late April, the chamber began airing ads that ripped into the court. The ads run by the chamber called the court “good for lawsuits, bad for doctors.” The ads did not mention McGraw by name and were timed to coincide with the race’s final weeks.

Rowe raised \$703,251 — \$230,000 more than McGraw. Most of Rowe’s donations came from doctors, corporate defense attorneys and business groups. Rowe said his array of campaign contributions showed how deep his support was.

An overwhelming majority of McGraw’s donations came from trial lawyers and other attorneys. He also got significant support from labor groups, including the AFL-CIO and the Affiliated Construction Trades Foundation.

The West Virginia Consumers for Justice, a group chaired by the AFL-CIO’s treasurer, and the ACT Foundation provided their own deluge of pro-Supreme Court and pro-McGraw advertisements. The Consumers for Justice attacked Rowe’s votes in the Legislature to raise the gas and food taxes during a budget crisis in the administration of Gov. Gaston Caperton.

Rowe was a reluctant candidate, throwing himself fully into the Democratic race only after state House Speaker Bob Kiss and Kanawha Circuit Judge Charlie King opted out. Kiss was business’s favored candidate but quit the race, after claiming he wouldn’t be able to raise enough money and citing the toll it would take on his family.

Both candidates pledged to be fair to everyone who comes before the court. Rowe took issue with McGraw’s voting record on the bench, including the justice’s votes in favor of workers in workers’ compensation cases and a 1999 decision McGraw wrote that allowed people to sue companies for medical monitoring when they are exposed to harmful substances.

While accepting the chamber’s support, Rowe said he was a moderate and would not be beholden to his business supporters once he got on the bench.

“That would be just as bad as what I’m accusing my opponent of,” Rowe said.

McGraw charged that in exchange for business’s support, Rowe had committed to voting for insurance companies and “people who poison their neighbors” — a thinly veiled reference to Rowe’s criticism of the medical monitoring decision.

McGraw will face Republican lawyer Brent Benjamin of Charleston. In that race, Benjamin beat Rice with 37,945 votes, or 54 percent, to Rice's 32,940 votes, or 46 percent.

Benjamin said McGraw should be concerned about the general election considering how well Rowe did. Rowe and Benjamin have echoed each other in their criticism of the court being too activist.

"We're looking forward to a vigorous campaign," Benjamin said. "People have to wonder if he's capped out."

McGraw said he takes the general election campaign against Benjamin seriously.

"Every election contest is significant and I treat it as such. I campaign door-to-door and store-to-store," he said.

Both sides will have to reload their campaign treasuries. Benjamin raised only \$13,370 for the primary and McGraw spent most of his money fighting off Rowe.

Benjamin will face an uphill battle against McGraw. A Republican has not been elected to the state bench without first being appointed since 1924.

The next justices up for re-election are Starcher and Maynard in 2008.

McGraw first won a seat on the bench in 1998, defeating Republican Justice John McCuskey, who was appointed in 1998 by Gov. Cecil Underwood to fill the seat of Justice Thomas McHugh, who retired.

Rowe has been a Greenbrier Circuit judge since Caperton appointed him to the bench in 1997. He was elected to serve an unexpired term in 1998 and re-elected in 2000.

McGraw's career in West Virginia politics dates back to his election to the House of Delegates from Wyoming County in 1968. He went on to become state Senate president in 1980 and lost the Democratic nomination for governor in 1984.

Before serving as a judge, Rowe was a four-term member of the House of Delegates, serving as Judiciary Committee chairman and House majority leader.

Rowe wasn't sure whether this would be the last time he ran for statewide office, but said he enjoyed his current job as a circuit judge.

In an interview last week, McGraw declined to say that this would be the last time voters will see his name on a ballot, even though his court term lasts 12 years and he would be 77 when he is next up for re-election.

"I've learned in this business, you never say never," he said.

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