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McGraw wins battle, but business war rages

By Chris Wetterich

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The campaign to unseat state Supreme Court Justice Warren McGraw is not over. Not by a long shot.

McGraw beat Greenbrier Circuit Judge Jim Rowe, his opponent in Tuesday's Democratic primary, convincingly with 142,758 votes to Rowe's 110,006 — a 56 percent to 44 percent margin. But Rowe's supporters in the business community plan to continue their campaign against McGraw and what they view as an activist court.

Many feel Rowe did better than expected considering he was behind McGraw by a 2-to-1 margin in polls conducted about a week before the election. The business community's message resonated with voters and can be carried on by the Republican nominee, Charleston lawyer Brent Benjamin, business groups say.

"We intend to continue talking about the problems identified by business people throughout West Virginia," said Steve Roberts, president of the state Chamber of Commerce.

Supporters of McGraw are ready to continue the battle.

"We have no reason to think this race is over with," said AFL-CIO treasurer-secretary Kenny Perdue, who also runs a pro-McGraw interest group, West Virginia Consumers for Justice. "They are without a doubt thinking they can round up all of the Republican votes and the 40 percent or so they got on the Democratic side [for Rowe]."

Benjamin still seems to face an uphill battle. No Republican has been elected to the court without first being appointed since 1924 and Benjamin is not well-known statewide.

Roberts said the chamber's latest figures show it spent about \$830,000 in ads that said the Supreme Court's decisions drive business, doctors and people out of the state. That figure does not include money spent in the campaign's final days, which has not yet been reported.

The ads, which do not mention McGraw by name, will continue to be on television in the coming days while the Chamber re-evaluates its buy, Roberts said.

Bill Bissett, president of Citizens Against Lawsuit Abuse, said his organization will also continue to hammer away at McGraw and the court.

“I think you saw in this campaign probably the most aggressive debate on what kind of people should serve on the Supreme Court,” he said. “There were connections made between the court and economic climate in Supreme Court.”

CALA, which claims 30,000 members statewide, was responsible for a sizable chunk of the direct mail arriving in voters’ mailboxes and recorded telephone calls in the final days of the campaign.

Bissett declined to say how much CALA spent and said the group is not required to disclose its spending under state law.

The McGraw campaign and its independent supporters in labor decried the tactics, saying the race was an effort by large, out-of-state corporations to buy a seat on the court.

“It was gutter politics,” said Steve White, president of the Affiliated Construction Trades Foundation. “They’re relentless and well-funded. What’s at stake for them is huge profits.”

The ACT Foundation and the AFL-CIO were active in the campaign’s final days with phone banks, door-to-door visits and direct mail literature. Each said it will continue get-out-the-vote efforts and purchase its own television commercials as the November election draws closer.

White said labor was united behind McGraw, unlike in the Democratic gubernatorial campaign. The ACT Foundation spent about \$52,000 during the campaign on its pro-Supreme Court ad that depicted big business as a bully.

The Consumers for Justice spent “hundreds of thousands of dollars” on pro-McGraw, pro-Supreme Court ads, said Perdue, who could not provide an exact figure.

The only regret by some in business is that House Speaker Bob Kiss did not make the race. Roberts said the chamber's polling showed Kiss had a 25 percent statewide name recognition in August 2003 while Rowe had about 5 percent name recognition when he entered the race in 2004.

"Numerically, you have to assume someone who already has 25 percent name recognition would have had a leg up," Roberts said.

Robert Rupp, a political science professor at West Virginia Wesleyan University, said the heavy spending on ads gave people the impression the race was close when it was not.

"In politics, [a margin of victory of] 10 points is a landslide," he said. "It could have been a perfect storm and it wasn't."

That won't stop McGraw's opponents from taking another shot at him in November because they believe their issues resonated, and despite Benjamin's own lack of name recognition, Rupp said.

"Like President Bush, they're going to want to make incumbency the issue, not the challenger," he said.

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