

The Morning After:



Last-minute
Contributions
In Texas' 2002
Primary Elections

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The Morning After: Last-Minute Contributions In Texas' 2002 Primary Elections

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Texans for Public Justice is a non-profit, non-partisan advocacy and research organization that tracks the role of money in Texas politics.

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I. Introduction

Texas politics officially became more dangerous than unprotected sex in February 1997. That's when the FDA approved the use of the morning-after pill to allow a woman who has just had unsafe sex to prevent pregnancy. Voters have no such remedy in Texas, where they often do not learn the *amounts* nor the *origins* of prodigious inflows of campaign funds *until after an election is over*. This system subjects voters to rude awakenings the morning after an election, when they may confront a public official-elect who no longer resembles the candidate who courted them during their campaign honeymoon.

Texas elections law generally requires candidates to file itemized contribution and expenditure reports every six months.¹ These biannual reports are the *only* disclosures filed by candidates who face no opponent in their primary or general election.² Candidates in *contested* primaries, run-offs or general elections must file additional disclosures that are respectively due 30 days and eight days before a contested election. The last report—due eight days before the election—covers contributions and expenditures made up until 10 days before the election. Finally, during the last nine days of a campaign, non-judicial candidates resort to individual “telegram reports” to report large contributions (of at least \$200 for house candidates and \$1,000 for statewide and senate candidates). Since campaigns file telegram reports within 48 hours of receiving a donation, most contributions received in the last two days of a campaign are disclosed in the semi-annual reports that are filed months after the corresponding election is over. Judicial campaigns do not even file the telegram reports, assuring that last-minute contributions are disclosed after the election.

The media cannot report on contributions that are not disclosed and rarely report on any of the irregular telegram reports that are filed in the final days of a campaign. As a result, this last-minute money typically eludes the public's radar altogether. While the public remains in the dark, political insiders know that controversial donations can be made in the eleventh hour to evade pre-election scrutiny.

Because a disproportional share of this money flows to candidates in close races, the outcomes of some Texas elections arguably are determined by late money that evades public scrutiny until after the affected election is over. For example, the largest recipient of late money in the 2002 primaries was Senator Jeff Wentworth. Wentworth narrowly fended off a primary challenge by John Shields, winning the primary by a margin of 1,216 votes (51.17 percent) in an election marred by serious voting irregularities.³ Wentworth received \$157,435 in the last nine days of that campaign, with \$22,600 flowing on the day before the election or on election day itself. Anti-gambling voters might have been interested to know, for example, that the casino-owning Tigua Indian Reservation gave Wentworth \$10,000 the day before the election.

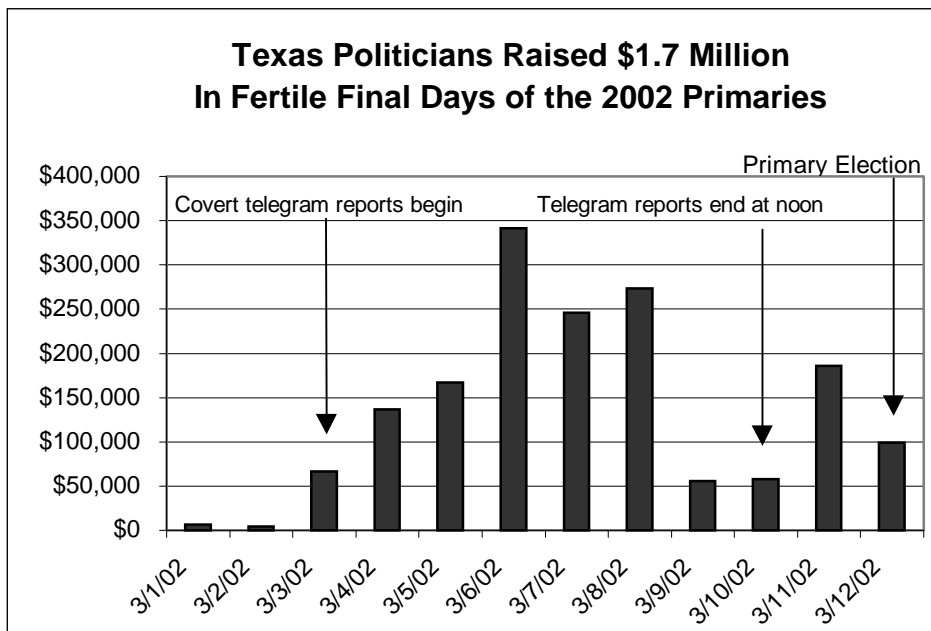
Voters favoring reproductive choice, on the other hand, might have been interested to know that Austin investors David and Douglas Hartman moved \$25,000 eight days before the election to John Shields, who opposed Wentworth—the Texas Legislature's only pro-choice Republican. John Shields donor David Hartman is a major backer of the conservative *Lone Star Report*, which is critical of reproductive choice.⁴ Significantly, neither the Hartmans nor the Tiguas contributed to this race earlier in the campaign when there was greater risk of pre-election scrutiny. Shields also received \$395,000 in campaign loans in the last nine days of his primary campaign, echoing the 1998 lieutenant governor's race, which Rick Perry narrowly won after chemical magnate William McMinn and anti-abortion activist James Leininger guaranteed a last-minute \$1.1 million campaign loan. Perry borrowed that money from a bank that David Hartman founded.⁵

As stealth funds start flowing for the 2002 general election, this report reveals which donors and candidates made the greatest use of last-minute funds in the 2002 *primary* and *runoff*.

II. The Morning After the Primary

As already discussed, campaign contributions made in the last nine days of Texas political campaigns generally elude public scrutiny, while contributions made in the last 48 hours of an election cycle typically are not disclosed until months after an election is over. This report tracks 102 state candidates who faced contested primaries for statewide and district-based office on March 12, 2002 and who filed electronic disclosure reports on these campaigns. Twenty-two of these candidates are tracked a step further, through their primary runoff election on April 9, 2002.

The 102 candidates studied here raised \$18.7 million for their primary election, with \$1.7 million (9 percent) eluding public scrutiny by flowing in the last nine days of the primary election.⁶ Of these late funds, \$343,328 (20 percent) flowed in the last two campaign days, meaning that it typically was not reported until months after the election was over. The accompanying graph plots the daily amount of money that these candidates raised in the last 12 days of the 2002 primaries. Note that contributions begin shooting up on March 3, 2002, the first day that candidates began filing often-overlooked telegram reports. Another spike occurs the day before the election. Contributions made on that day typically are not disclosed at all until the next semi-annual report, which is not due until a couple of months after the election.



Top recipients

The 20 candidates who benefited the most from this late-flowing money (see table) received almost \$1.2 million of it, or 69 percent of the total. The top four recipients of this money were senate candidates, headed by Senator **Jeff Wentworth**. Wentworth beat primary challenger **John Shields** by just 1,216 votes. The only other recipient of more than \$100,000 in late money was **Bill Ratliff**, who became lieutenant governor in the reshuffling that followed George W. Bush's ascension to the White House.⁷ After Ratliff came two House members seeking a senate promotion: Reps. **Kim Brimer** and Juan "Chuy" Hinojosa.

Primary's Top 20 Morning-After Candidates

Candidate	All Primary Money Raised	Last-9-Day Money	Last-9-Day Money (%)	Party	Office (Dist.)	Share of Vote (%)
Jeff Wentworth	\$889,351	\$157,435	18%	R	S-25	51%
Bill Ratliff	\$375,279	\$105,303	28%	R	S-1	70%
Kim Brimer	\$447,575	\$71,480	16%	R	S-10	63%
Juan Hinojosa	\$386,521	\$69,625	18%	D	S-20	*43%
Elizabeth Ray	\$438,342	\$67,117	15%	R	SC	*43%
Xavier Rodriguez	\$680,716	\$65,049	10%	R	SC	47%
Wallace Jefferson	\$652,937	\$63,236	10%	R	SC	62%
Sandra Watts	\$124,000	\$62,526	50%	D	DJ-117	57%
Kenn George	\$644,549	\$60,950	9%	R	Land Com	43%
Kyle Janek	\$748,670	\$58,800	8%	R	S-17	66%
Craig Estes	\$821,768	\$56,450	7%	R	S-30	58%
Dale Wainwright	\$218,536	\$53,900	25%	R	SC	*31%
Gary Polland	\$414,943	\$50,193	12%	R	S-17	34%
Kip Averitt	\$790,341	\$43,660	6%	R	S-22	58%
John H. Shields	\$439,622	\$39,148	9%	R	S-25	49%
Tom Ramsay	\$145,060	\$35,850	25%	D	Ag Com	57%
Mary Denny	\$96,300	\$32,745	34%	R	H-63	60%
David Bernsen	\$515,736	\$26,425	5%	D	Land Com	62%
Edmund Kuempel	\$266,099	\$24,697	9%	R	H-44	66%
Brian McCall	\$142,040	\$21,550	15%	R	H-66	69%
TOTALS:	\$9,238,385	\$1,166,139	13%			

Note: S = Senate, SC = Supreme Court, DJ = District Judge, Com = Commissioner, H = House.
* Went into a runoff election.

Judicial candidates also gobbled up enormous amounts of late money, led by Texas Supreme Court candidate **Elizabeth Ray**, who was defeated by **Dale Wainwright** in a runoff. Supreme Court incumbents **Xavier Rodriguez** and **Wallace Jefferson** also were major late-money recipients. Corpus Christi resident **Sandra Watts** was the sole district judge candidate to make the list. This judicial late money is particularly troubling since judicial candidates do not even file telegram reports, thereby assuring that their late money goes undisclosed until months after the polls close.

Of the top-20 overall recipients of late money, Watts was the most dependent on eleventh-hour contributions, which accounted for half of her primary war chest. Late money supplied 34 percent of the primary war chest of Rep. **Mary Denny**, the top House recipient of late money. Late money accounted for 28 percent of Ratliff's war chest and 25 percent of the war chests of Wainwright and Agriculture Commissioner candidate **Tom Ramsay**.

Top donors

Given that eleventh-hour contributions elude pre-election scrutiny, it is interesting that the accompanying list of the top 12 sources of this money includes some controversial donors. Plaintiff lawyers account for two of the top five sources of late money (**Mikal Watts** and **Nix Patterson & Roach**). The No. 1 late donor is trial lawyer Mikal Watts, who gave a belated gift of \$60,000 to his mom, judicial candidate Sandra Watts.

The second largest source of late money, the Washington, D.C.-based **Republican National State Elections Committee** (RNSEC), gave \$25,000 apiece to minority Texas Supreme Court incumbents Wallace Jefferson and Xavier Rodriguez. This money was controversial because party PACs do not usually pick sides in primary battles. The GOP may have weighed in this time to try to preserve racial and ethnic diversity on its statewide ticket.

Primary's Top Morning-After Contributors

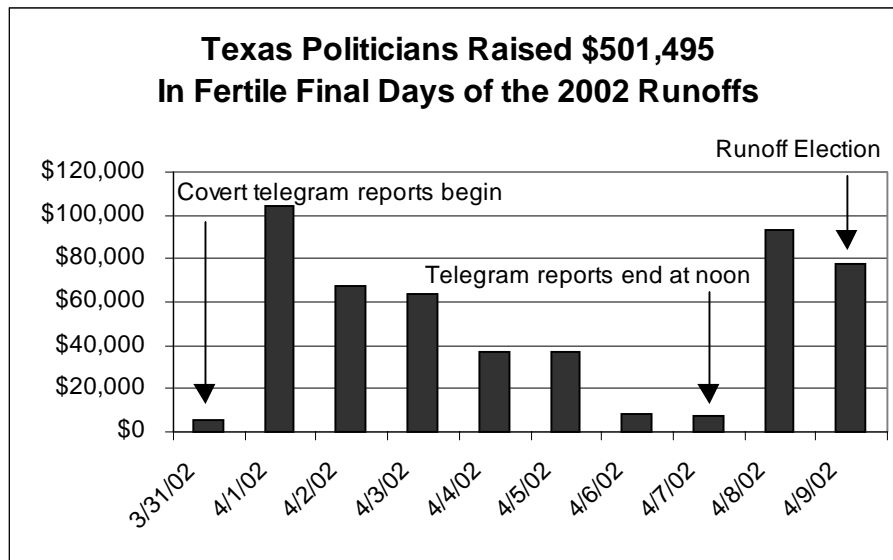
Donor	City	Interest	Amount	Top Recipient
Mikal Watts	Corpus	Plaintiff lawyer	\$60,000	Sandra Watts
GOP Nat'l State Elections Com.	Washington	GOP	\$50,000	Jefferson/Rodriguez
Tigua Indian Reservation	El Paso	Gambling	\$41,000	Hinojosa/Wentworth
TX Medical Assoc.	Austin	Doctors	\$38,336	Jeff Wentworth
Nix Patterson & Roach	Daingerfield	Plaintiff lawyers	\$35,000	Tom Ramsay
TX Aggregates & Concrete Assoc.	Austin	Concrete	\$30,000 *	
TX Bell Employee PAC	Austin	Communications	\$21,200	Kim Brimer
TX Assoc. of Realtors	Austin	Real Estate	\$20,000	William Ratliff
Texans For Governmental Integrity	San Antonio	See Jim Leininger	\$17,000	Mary Denny
Douglas Hartman	Austin	Investments	\$15,500	John Shields
James Leininger	San Antonio	Hospital beds	\$15,000	Ed Harrison
Texas Mortgage Bankers	Houston	Home Loans	\$15,000	Brimer/Ratliff
TOTAL:			\$358,036	

* Top recipients were Averitt, Brimer, Galloway & Ratliff at \$5,000 apiece.

Other major controversial donors of late money include the **Tigua Indian Reservation** (which has fought legal battles with the state over its casinos), the **Texas Aggregates and Concrete Association** (concrete interests have upset their neighbors with toxic air emissions),⁸ and **James Leininger** along with his PAC **Texans for Governmental Integrity**. Leininger founded Kinetic Concepts, Inc. to make hi-tech hospital beds that rotate to prevent bedsores. FDA accident reports and private lawsuits suggest that the rotating beds also have injured nurses and patients. This prompted Leininger to promote weaker business liability laws, despite the fact that his company is a plaintiff that has won some of the largest verdicts in Texas history.⁹

II. The Morning After the Runoff

Twenty-two candidates with primaries that had to be decided in runoff elections raised \$1.2 million more for their runoffs, of which \$501,495 (41 percent) eluded public scrutiny by moving in the last nine days of the election. Of these late funds, \$178,638 (36 percent) flowed in the last two days of the campaign, when contributions are typically not reported until months after the election is over. The accompanying graph plots the daily amount of money that these candidates raised in the last 12 days of the 2002 runoffs. Note that contributions shot up on April 1, 2002, the day after candidates began filing their oft-overlooked telegram reports. Another major spike occurs the day before the election. Contributions made on that day typically are not disclosed until a couple of months after the election is over.



Top recipients

The 10 candidates who benefited the most from this late-flowing money (see table) received \$456,801 of it, or 91 percent of all covert runoff cash. Supreme Court candidate **Dale Wainwright** was the No. 1 recipient of this money; his opponent, **Elizabeth Ray**, ranked No. 3 and Court of Criminal Appeals hopeful **Timothy Taft** also ranked in the top 10 recipients of this late money. Late judicial money is especially disturbing since judicial candidates do not file telegram reports, thereby assuring that their late money goes undisclosed until months after the polls close.

The remaining top recipients of runoff late money are legislative candidates, led by Senate contender **Juan “Chuy” Hinojosa**. **Tracy King** was the top House candidate, followed by **Jodie Laubenberg**.

Of the top-10 recipients, House candidate Jodie Laubenberg was the most dependent on late money, which accounted for 90 percent of her runoff war chest. Taft, King and Wainwright also relied on late money for more than half of their runoff funds.

Runoff's Top 10 Morning-After Candidates

Candidate	All Runoff Money Raised	Last-9-Day Money	Last-9-Day Money (%)	Party	Office (Dist.)	Share of Vote (%)
Dale Wainwright	\$223,527	\$136,744	61%	R	SC	55%
Juan Hinojosa	\$277,325	\$120,249	43%	D	S-20	55%
Elizabeth Ray	\$210,950	\$36,750	17%	R	SC	45%
Tracy O. King	\$56,720	\$35,130	62%	D	H-80	48%
Jodie Laubenberg	\$35,200	\$31,600	90%	R	H-89	53%
Timothy Taft	\$38,259	\$26,550	69%	R	CCA	42%
Maria Luisa Flores	\$40,220	\$18,215	45%	D	H-51	49%
Martha Wong	\$40,106	\$16,606	41%	R	H-134	51%
Mike Lawshe	\$47,673	\$12,507	26%	R	H-89	47%
Jack Stick	\$23,325	\$11,225	48%	R	H-50	69%
TOTALS:	\$993,305	\$456,801	46%			

Note: SC = Supreme Court, S = Senate, H = House, CCA = Court of Criminal Appeals.

Top donors

The top donor of runoff late money was Houston appeals judge Timothy Taft, who contributed to his own failed bid for a seat on the Court of Criminal Appeals. The No. 2 source of late runoff money was **Texans for a Republican Majority**, which sought to influence Republican primaries. This PAC's top donor is tort warrior James Leininger (who directly contributed \$5,000 in late runoff money to Jodie Laubenberg). No. 3 donor Joseph Phillips heads Phillips Properties, which owns a chain of gas-station convenience stores.

While plaintiff lawyers ranked among the top late donors in the primary, they did not make the top-10 runoff list, which is dominated by corporate defense interests that primarily gave to judicial candidates. Texas' top two business PACs that promote weaker tort laws, the **Texas Civil Justice League** and **Texans for Lawsuit Reform**, both appear on this list, as do the corporate defense firms **Beirne Maynard & Parsons** and **Vinson & Elkins**. Another major supporter of weak liability laws, homebuilder **Bob Perry**, also appears on this list.

Finally, the oil-rich **Bass family** covered all of its bases in the Texas Supreme Court runoff. The Bass-controlled **Texas Progress Fund** gave \$5,000 to Dale Wainwright on April 2, 2002. That same day another Bass political fund, the **PSEL PAC**, gave \$5,000 to Elizabeth Ray, Wainwright's failed runoff opponent.

Runoff's Top Morning-After Contributors

Donor	City	Interest	Amount	Top Recipient
Timothy Taft	Houston	Appeals judge	\$22,000	Timothy Taft (self)
Texans for a Republican Majority	Austin	GOP	\$22,000	Gattis/Laubenberg
Joseph F. Phillips	Mission	Convenience stores	\$20,000	Juan Hinojosa
Texas Civil Justice League	Austin	Weaker tort laws	\$19,582	Dale Wainwright
William B. 'Dub' Yarborough	Midland	Oil & ranching	\$10,500	Tracy King
Beirne Maynard & Parsons	Houston	Corporate lawyers	\$10,000	Dale Wainwright
Bass Family	Ft. Worth	Diversified oil fortune	\$10,000	Ray/Wainwright
Bob Perry	Houston	Homebuilding	\$8,000	Mark Cole
Texans For Lawsuit Reform	Houston	Weaker tort laws	\$7,500	Dale Wainwright
Vinson & Elkins	Dallas	Corporate lawyers	\$7,000	Dale Wainwright
TOTALS: \$136,582				

V. End Notes

¹ Contributions of less than \$50 must be reported but need not be itemized.

² These unopposed candidates do not report the money that they raise after June 30th of an election year until more than two months after the general election is over (the deadline is January 15 of the next year).

³ "Wentworth, Shields Battle Still In Air," *Austin American-Statesman*, March 13, 2002.

⁴ See *Lone Star Report*: "Biting the Hand That Feeds You," November 29, 2000; "Update: Charitable campaign still funding activists," October 26, 2001.

⁵ Hartman, who sold his Hartland Bank to Compass Bancshares in 1999, is an ex-director of Leininger's Texas Public Policy Foundation. Shields' last-minute loans included \$300,000 from himself, \$70,000 loan from flight-school founder Richard Fessler and \$25,000 loan from San Antonio's G.L. Guerra, Jr.

⁶ This report just tracks contributions of \$100 or more.

⁷ Citing the pernicious role of money in politics, Ratliff abandoned a short-lived lieutenant governor campaign in June 2001, electing to seek his old senate seat instead.

⁸ "Lege May Put Cement Shoes On Concrete Industry's Foes," TPJ's *Lobby Watch*, March 20, 2001.

⁹ "Bed Makers' Case Awaits Jury Verdict," *San Antonio Express-News*, September 26, 2002; "Huge Antitrust Verdict Against Hospital Bed Maker," *Texas Lawyer*, October 7, 2002.