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Big Business Taking over State Supreme Courts

How Campaign Contributions to Judges Tip the Scales
Against Individuals

Billy Corriher August 2012

Introduction and summary

In state courts across our country, corporate special interests are donating money to the campaigns of judges who interpret the law in a manner that benefits their contributors rather than citizens seeking justice. Americans are starting to wake up to this danger, according to recent polls, and are worried that individuals without money to contribute may not receive a fair hearing in state courts. In a recent poll 89 percent of respondents said they “believe the influence of campaign contributions on judges’ rulings is a problem.”¹

Judges swear an oath that they will answer to the law, not campaign contributors. If a person is wronged, he or she can hope to find impartial justice in a court, where everyone—rich or poor, weak or powerful—is equal in the eyes of the law. But this principle is less and less true with each passing judicial election.

Thirty-eight states elect their high court judges,² and enormous amounts of money are pouring into judges’ campaign war chests. Fueled by money from corporate interests and lobbyists, spending on judicial campaigns has exploded in the last two decades. In 1990 candidates for state supreme courts only raised around \$3 million, but by the mid-1990s, campaigns were raking in more than five times that amount, fueled by extremely costly races in Alabama and Texas.³ The 2000 race saw high-court candidates raise more than \$45 million.⁴

Since then, corporate America’s influence over the judiciary has grown. The U.S. Chamber of Commerce, in particular, has become a powerful player in judicial races. From 2001 to 2003 its preferred candidates won 21 of 24 elections.⁵ According to data from the National Institute on Money in State Politics, the chamber spent more than \$1 million to aid the 2006 campaigns of two Ohio Supreme Court justices,⁶ and in the most recent high court election in Alabama, money from the state’s chamber accounted for 40 percent of all campaign contributions.⁷

Corporate interest groups are finding more ways to circumvent disclosure rules and limits on campaign contributions. Spending by independent groups (not

officially affiliated with the candidates) has increased dramatically, surpassing high court candidates' spending in 2008.⁸ According to Justice at Stake, more than 90 percent of special interest TV ads in 2006 were paid for by pro-business interest groups.⁹ Conservative groups spent \$8.9 million in high court elections in 2010, compared to just \$2.5 million from progressive groups.¹⁰ These spending figures are incomplete because the disclosure rules for outside spending vary, so the source of the money in state court elections is often hard to discern.

The public can expect even more money to flood this year's judicial elections. Since the 2010 U.S. Supreme Court decision in *Citizens United v. Federal Election Commission*, corporations, unions, and individuals are now free from limits on campaign spending.¹¹ North Carolina is the only state with a robust public financing system for judicial elections, and it is also the first state to see a super political action committee, or super PAC—an entity spawned by *Citizens United* that allows for unlimited campaign spending—established to support a pro-corporate judge in this year's election.¹² The U.S. Supreme Court has also made it harder for public financing systems to remain viable by ruling that “matching” funds, distributed to publicly funded candidates when their opponents' spending exceeds a certain level, are a violation of free speech rights.¹³

If recent history is any guide, the trends are ominous for individuals suing corporations. The states that have seen the most money in judicial elections now have supreme courts that are dominated by pro-corporate judges. The Appendix to this report lists all high court rulings on cases where an individual sues a corporation from 1992 to 2010 in the six states that have seen the most judicial campaign cash in that time period—Alabama, Texas, Ohio, Pennsylvania, Illinois, and Michigan. The data includes 403 cases from 2000 to 2010, and in those cases the courts ruled in favor of corporations 71 percent of the time.¹⁴ The high courts that have seen the most campaign spending are much more likely to rule in favor of big businesses and against individuals who have been injured, scammed, or subjected to discrimination.

With money playing such a large role in judicial elections, the interest groups with the most money increasingly have an advantage. In courtrooms across our country, big corporations and other special interests are tilting the playing field in their favor. Many Americans perceive our government and corporate institutions as interdependent components of a system in which powerful elites play by a different set of rules than ordinary citizens. Some feel that only those donating money can play a role in governing. The cozy relationship between government and big business has become increasingly clear in our judicial elections.

This report discusses how the soaring cost of judicial elections led to state supreme court decisions that favor corporate litigants over individuals seeking to hold them accountable. The report provides illustrations from six states—Alabama, Texas, Ohio, Nevada, Wisconsin, and Michigan—of how corporate interest groups that desire a certain outcome have donated money to judges, and the same judges have then interpreted the law in a manner that achieves their corporate donors’ desired outcome.

For some states, the report discusses how, after an influx of money from corporate interest groups, judges have abruptly changed the law by overruling recent precedent. In Ohio, for example, the insurance industry donated money to judges who then voted to overturn recent cases that the industry disfavored. In other states, such as Texas, the corporate-funded high court has interpreted the law to reach certain results that the state legislature rejected. This judicial policymaking by the Texas court has resulted in case law that favors energy companies funding the judges’ campaigns.

This problem is spreading to states that have never before seen expensive judicial races, such as Wisconsin, where independent spending by interest groups overwhelmed the state’s public financing system in the 2011 election. This trend is threatening a fundamental aspect of our democracy: the right of Americans to a fair trial. When judges operate like politicians, those who lack political influence cannot expect fairness.

The vast majority of legal disputes in the United States —95 percent—are settled in state courts.¹⁵ Those who have been harmed by an unsafe product or an on-the-job injury would most likely look to state courts for justice. With judges backed by big business taking over our courts, are there any remaining institutions that can hold powerful corporations accountable?

Americans will have a harder time using the courts to force employers and manufacturers not to cut back on safety to save money. Consumers will face steeper hurdles in holding accountable banks, payday lenders, and credit card companies that treat them unfairly. Millions of Americans have recently found themselves in state court for foreclosure proceedings. How would one of these struggling homeowners feel if the judges hearing the case had accepted campaign funds from big banks? Ordinary Americans cannot expect to get the same access to justice as special interests that donate millions to judges’ campaigns.

The explosion of money in judicial elections has led Americans to experience a crisis of confidence in their judiciary. According to a 2011 poll, 90 percent of those surveyed said judges should recuse themselves from cases involving campaign contributors,¹⁶ but recusal is extremely rare.

A party to a lawsuit in West Virginia repeatedly asked a state supreme court justice to recuse himself after an executive with the opposing party, a coal company, spent more than \$3 million through an independent entity to support the judge's election. The judge refused and cast the deciding vote overturning a \$50 million verdict against the coal company.¹⁷ In 2009 the U.S. Supreme Court ruled the judge should have recused himself. The court noted that the executive's contribution was three times more than the spending by the justice's own campaign. The U.S. Supreme Court stated, "Just as no man is allowed to be a judge in his own cause, similar fears of bias can arise when ... a man chooses the judge in his own cause."¹⁸

Even judges are alarmed at the growing influence of money on courts. A 2002 survey found that 84 percent of state judges are concerned about interest groups spending money on judicial campaigns.¹⁹ The Wisconsin Supreme Court recently warned of an inherent risk "that the public may inaccurately perceive a justice as beholden to individuals or groups that contribute to his or her campaign."²⁰ Justice Paul Pfeifer, a Republican on the Ohio Supreme Court, has criticized the money flowing into his state's judicial campaigns. "Everyone interested in contributing has very specific interests," Pfeifer said. "They mean to be buying a vote. ... whether they succeed or not, it's hard to say."²¹

Before the flood of corporate money began, media reports focused on judges being influenced by campaign donations from trial lawyers with cases pending before them.²² Corporate interests were concerned that donations from trial lawyers resulted in courts that favored individuals suing corporations. Businesses that were the frequent target of lawsuits, such as insurance and tobacco companies, pushed legislation to limit litigation.²³ This phenomenon also spurred big business to enter the fray of judicial politics.²⁴

As this report shows, this effort has been very successful. Even if the practice of trial lawyers donating to judicial campaign to influence judges was a problem, the corporate interests have more than compensated for any perceived disadvantage they faced. Donations from corporate America are now overwhelming donations from trial lawyers, labor unions, and groups that support progressive judicial candidates.²⁵

Some press reports and academic studies on this subject emphasize that a correlation between donations and a judge's rulings does not necessarily prove that the donations caused the judge to rule a certain way. Former Ohio Chief Justice Thomas Moyer, a supporter of public financing and tough recusal rules, suggested that interest groups donate based on "voting patterns" of the judges, not to influence a vote in a particular case.²⁶ In other words, some argue special interests are donating to obtain a judge with a certain philosophy, not a result in a particular case. This distinction, however, misses the point.

Wealthy special interests should not be able to shape the law, whether through buying a vote or buying a certain judicial philosophy. In the pages that follow, the report details how this is happening in six important states and presents a few recommendations to address this problem. To prevent the appearance of corruption, states can implement strong recusal rules to ensure parties before the court do not donate money to judicial campaigns to influence specific cases. State legislatures also should pass strong disclosure rules, so that citizens know who is funding political ads for judges.

Big business is tightening its grip on our courts. Instead of serving as a last resort for Americans seeking justice, judges are bending the law to satisfy the concerns of their corporate donors.

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