



# Big Business is Still Dominating State Supreme Courts

By Billy Corriher September 2016

# Introduction and summary

The U.S. Chamber of Commerce, the billionaire Koch brothers, and their big-business allies have engaged in a decades-long effort to elect pro-corporate judges to state courts. In 1971, a corporate lawyer named Lewis F. Powell Jr. wrote a secret memo to the chamber arguing that big business was under attack from institutions he perceived as liberal: academics, the media, college students, and politicians.<sup>1</sup> He also cited the public's support for legislation to protect consumers and the environment. Powell lamented that “few elements of American society today have as little influence in government as the American businessman, the corporation, or even the millions of corporate stockholders.”<sup>2</sup> Powell suggested a solution:

*The Chamber . . . should consider assuming a broader and more vigorous role in the political arena. American business and the enterprise system have been affected as much by the courts as by the executive and legislative branches of government. Under our constitutional system, especially with an activist-minded Supreme Court, the judiciary may be the most important instrument for social, economic and political change.*<sup>3</sup>

Later that same year, Powell joined the U.S. Supreme Court following his nomination by President Richard M. Nixon. By the early 1990s, the Supreme Court had a clear conservative majority.<sup>4</sup>

The Chamber of Commerce and its state affiliates then began shifting their attention to state courts. In 2000, the chamber launched a \$10 million effort to elect judges “with strong pro-business backgrounds” in five states.<sup>5</sup> A law review article published around the same time by John Echeverria, a professor at Vermont Law School, reported that “a little known Oklahoma-based group with close ties to Koch Industries . . . has organized a nationwide program to promote the election of state judges sympathetic to business interests in environmental and other cases.”<sup>6</sup> Echeverria said the group operated under the name “Citizens for Judicial Review” during the 1996 election, and he called it “a kind

of nationwide franchising operation for pro-business advocacy in state judicial elections.”<sup>7</sup> Since that effort began, big business has spent millions of dollars to elect pro-corporate judges who tend to vote for corporate defendants and against injured workers or consumers.

The same pro-business groups have also aggressively argued for laws that limit the rights of injured individuals to sue corporations, health care providers, or anyone whose negligence contributed to the injury.<sup>8</sup> These so-called tort reform laws not only make it harder to file a lawsuit but can also limit the amount of money that juries can award to severely injured plaintiffs.<sup>9</sup> Many courts were targeted by big business after they struck down tort reform laws for violations of state constitutional rights.<sup>10</sup> The legal battles over tort reform helped to escalate the political battle for control of state supreme courts.<sup>11</sup>

In most states where this political battle was waged, big business won by electing Republican or conservative justices. In many Midwestern states considered battleground states during presidential elections, state supreme courts are dominated by Republican or conservative justices, just as the legislatures in the same states are dominated by GOP lawmakers.<sup>12</sup> The Republican State Leadership Committee, or RSLC, has been—by far—the biggest spender in recent supreme court elections.<sup>13</sup> In the past few years, the RSLC’s largest funder has been the U.S. Chamber of Commerce.<sup>14</sup> The chamber gave the organization \$3 million in 2014, twice as much as the next-largest contributor: tobacco company Reynolds American.<sup>15</sup> The RSLC spent big in recent supreme court elections in Illinois, West Virginia, and elsewhere;<sup>16</sup> while, in North Carolina, the state’s chamber of commerce was the only independent spender in the recent Supreme Court primary.<sup>17</sup>

All of this money in judicial elections—and the changes in state law that it has helped bring about—illustrates the need to reform the way America chooses judges. Voters should demand reform if they want judges who do not owe their election to money from big corporations or trial lawyers. Public financing for judicial campaigns can help keep judges from relying on wealthy donors. Judges and legislators should also implement stricter ethics rules to keep judges from hearing cases involving campaign donors.

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