

Big Business is Still Dominating State Supreme Courts

By Billy Corriher September 2016

Center for American Progress



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Contents

- 1 Introduction and summary**
- 3 Tilting the law in favor of corporations**
- 15 Conclusion: Reform judicial selection to minimize the influence of money**
- 17 About the author**
- 18 Appendix**
- 35 Endnotes**

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.¹ 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.”² 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.*³

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.⁴

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.⁵ 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.”⁶ 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.”⁷ 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.⁸ 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.⁹ Many courts were targeted by big business after they struck down tort reform laws for violations of state constitutional rights.¹⁰ The legal battles over tort reform helped to escalate the political battle for control of state supreme courts.¹¹

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.¹² The Republican State Leadership Committee, or RSLC, has been—by far—the biggest spender in recent supreme court elections.¹³ In the past few years, the RSLC’s largest funder has been the U.S. Chamber of Commerce.¹⁴ The chamber gave the organization \$3 million in 2014, twice as much as the next-largest contributor: tobacco company Reynolds American.¹⁵ The RSLC spent big in recent supreme court elections in Illinois, West Virginia, and elsewhere;¹⁶ while, in North Carolina, the state’s chamber of commerce was the only independent spender in the recent Supreme Court primary.¹⁷

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.

Tilting the law in favor of corporations

Thirty-eight states elect their supreme courts,¹⁸ and every year more of these elections are being flooded with campaign cash.¹⁹ Most of the courts that have seen multimillion-dollar elections are now dominated by conservative justices who rule more often for corporations and against individuals. In 2012, the Center for American Progress examined hundreds of rulings from the six state supreme courts that had seen the most campaign cash between 1992 and 2011—Alabama, Ohio, Texas, Michigan, Illinois, and Pennsylvania.²⁰ The supreme courts in those six states ruled for corporate defendants in an average of 71 percent of the cases studied.²¹ Corporate defendants at the Michigan Supreme Court had a success rate of 78 percent.²² From 2002 to 2010, the Ohio Supreme Court ruled for corporate defendants in a shocking 89 percent of the cases studied.²³

This new report revisits the same six state supreme courts to see whether these trends have changed since 2012. This report uses the same methodology as the 2012 report, except that it breaks down the results by individual justices. The appendix on page 18 lists all divided rulings by these courts in cases since 2011 where an individual or individuals filed suit against a corporation. The results show that these courts voted in favor of corporate defendants 73 percent of the time, although the Illinois and Pennsylvania courts had much lower rates. Where public comments were not already available, CAP sought comment directly from the judges who are named in this report as tending to rule in favor of corporate litigants.

According to the report's findings, corporate defendants going before the Alabama Supreme Court had an 82 percent success rate and an even higher favorable rate with several individual justices. The Ohio Supreme Court ruled for corporate defendants in 77 percent of the cases studied, but Justices Terrence O'Donnell and Sharon Kennedy voted for corporate defendants in more than 90 percent of the cases studied. The Illinois Supreme Court ruled for corporate defendants in 62 percent of the cases studied, but it has only issued 13 decisions since 2011 that met CAP's criteria.

The justices with the highest rate of votes for corporations benefited from campaign contributions from corporations and/or groups funded by corporations or secret donors. Republican Party groups—funded by the U.S. Chamber of Commerce and big business—have dominated recent supreme court elections in Michigan, North Carolina, and elsewhere.²⁴

It bears noting that a judge's ruling in favor of certain parties or a campaign donor does not necessarily mean that the judge was motivated by the donation or anything improper. As CAP has previously stated, "Scholars and others studying correlations between judicial rulings and campaign cash—or between rulings and elections—cannot read judges' minds . . . These kinds of correlations—whether they reflect causation or not—raise doubts about the impartiality of judges."²⁵ While there is no way to prove that judges are unduly influenced by campaign contributions, the appearance of bias can be just as damaging to the public's perception of judicial independence as actual bias. Polls show that the vast majority of Americans believe that campaign cash influences judges.²⁶

For a 2013 report from the American Constitution Society, Joanna Shepherd-Bailey, a professor of law and economics at Emory University, examined thousands of cases from all 50 state supreme courts and found:

*The more campaign contributions from business interests justices receive, the more likely they are to vote for business litigants appearing before them in court. Notably, the analysis reveals that a justice who receives half of his or her contributions from business groups would be expected to vote in favor of business interests almost two-thirds of the time.*²⁷

Shepherd-Bailey noted that, in addition to the possibility of campaign cash influencing decisions, the correlation could be caused by "selection bias,"²⁸ writing, "Judges who are already ideologically or otherwise predisposed to vote in favor of business interests are likely to draw campaign financing from business groups and, by virtue of those resources, are more likely to be elected."²⁹

Texas Supreme Court rules against those poisoned by asbestos

In the early 1940s, Joseph Emmite took a job at the Union Carbide plant in Texas City, Texas, installing insulation containing asbestos. He worked there until 1979, when he developed a kidney disorder and began suffering from chronic fatigue, weakness, and vertigo.³⁰ When he died in 2005, Emmite's family filed a wrongful

death suit against Union Carbide, claiming his death was linked to exposure to asbestos. A lung specialist brought in by his doctors diagnosed Emmite with pulmonary asbestosis.³¹ The suit claimed that prior to his death, Emmite “had been unable to walk for two years because of a deteriorated hip joint, he was unable to feed himself, [and] he had dementia.”³²

However, just one month before Emmite died, Gov. Rick Perry (R) signed a bill creating new requirements for filing lawsuits for injuries or deaths caused by asbestos. Among other requirements, plaintiffs now have to file a physician’s report based on a “detailed physical examination” that includes a pulmonary function test to measure lung function.³³

In 2014, the Texas Supreme Court threw out the Emmites’ lawsuit because their physician’s report did not include a pulmonary function test—but the lung specialist who diagnosed Emmite with asbestosis testified that his patient was physically and mentally incapable of performing the test.³⁴ The court rejected the Emmite family’s argument that the statute was unconstitutional because it applied retroactively. The Texas Constitution prohibits retroactive laws, and the court even acknowledged that “the statute’s effect” on the Emmite case was retroactive because it barred a lawsuit for an injury that had already happened.³⁵

However, the court weighed the public’s interest in the retroactive law against the Emmite family’s interest in compensation for losing a father to asbestos poisoning. The Texas Legislature claimed that Texas had more asbestos lawsuits than any other state, and it attributed this to “lawsuits filed by persons who had been exposed to asbestos, but who were not suffering from asbestos-related impairment.”³⁶ The Legislature said this limited the resources available for those who are actually impaired and that it had a negative effect on “employers, employees, and the court system.”³⁷

It is clear, however, that throwing out the Emmite family’s lawsuit did nothing to address the so-called crisis of asbestos litigation. The Texas Legislature’s intent was to keep plaintiffs whose lungs were not impaired from filing lawsuits. But expert witnesses testified that Emmite’s lungs were clearly impaired, although the required tests were impossible to administer because of his failing health.³⁸ Texas Supreme Court Justice Debra Lehrmann’s dissent in the case argued that the family did not “fall into the category of persons whom the legislature intended to prevent from bringing suit.”³⁹ A dissent by Justice Jeffrey Boyd accused the court of rewriting “an unambiguous statute to achieve the result the court believes the legislature must have intended.”⁴⁰

This was not the first case in which the court broadly construed a Texas law that imposed burdensome requirements on injured plaintiffs. A 2013 CAP report, “No Justice for the Injured,” examined a case in which the court applied the tough new requirements for medical malpractice lawsuits to a suit involving a claim of assault brought against a doctor accused of fondling a teenage patient’s breasts.⁴¹ The case was thrown out because, as in the Emmite lawsuit, the plaintiff failed to file a required physician’s report.⁴²

From 2011 to 2016, the Texas Supreme Court ruled for corporate defendants over individual plaintiffs in 69 percent of the 26 cases studied by CAP.⁴³ Several of the individual justices, however, had lower rates.⁴⁴ Two of the court’s nine members, Chief Justice Nathan Hecht and Justice Don Willett, voted for corporate defendants more than 70 percent of the time.⁴⁵ Justice Willett has pointed out that “the laws we interpret are enacted by a very business-friendly legislature. My court doesn’t put a finger on the scale to ensure that preferred groups or causes win, but the legislature certainly does.” Texas’s laws are certainly stacked against injured plaintiffs,⁴⁶ but as discussed above, the state Supreme Court has broadly construed the state’s draconian tort reform laws.

Both Chief Justice Hecht and Justice Willett have expressed concern about the appearance of impartiality resulting from campaign cash while at the same time denying any undue influence of that money on their decisions. Both jurists expressed vague support for reform.⁴⁷ Justice Phil Johnson noted that his campaign has created a process for returning some contributions from “anyone related to cases pending.”⁴⁸ He also said, “If anyone ever had a question [about my impartiality], they could move to recuse me and I would consider it.” But he added that he’s “never” had anyone move to have him recused.⁴⁹

These three Texas justices were elected with millions of dollars in support from corporations and from the law firms representing those corporations. Three of the four incumbents reelected in 2014, Justice Johnson, Justice Jeff Brown, and Chief Justice Hecht, received hundreds of thousands of dollars in campaign contributions from oil and gas companies.⁵⁰ The largest donor to the justices seeking re-election in 2014 was Texans for Lawsuit Reform,⁵¹ a group that advocates for tort reform laws that limit injured plaintiffs’ ability to sue.⁵² Texans for Lawsuit Reform contributed more than \$100,000 to these three justices’ re-election bids that year, according to the National Institute on Money in State Politics.⁵³

Ohio Supreme Court ignores constitution to limit liability for workplace safety violation

In March 2008, Melvin Myers, a welder at Precision Steel Services in Toledo, Ohio, was operating a crane with an 8,000-pound electromagnet to move a 1,200-pound hunk of metal. The magnet slipped off its hook and the metal crushed Myers' hand, injuring it so badly that it had to be amputated. The hook holding the magnet did not have a safety latch, even though both the manufacturer and Precision Steel's operations manager warned that it should.⁵⁴

Myers was awarded workers' compensation for medical expenses and lost wages. He applied for further compensation for the violation of a specific safety requirement, or VSSR, and the Ohio workers compensation commission granted the VSSR award.⁵⁵ But the Ohio Supreme Court overruled that decision. The court read the requirements for a VSSR award very narrowly and determined that, despite Precision Steel's failure to follow safety guidelines, the company was not at fault because the rule didn't specifically designate a hook latch as a safety device.⁵⁶

Ohio Supreme Court Justice William O'Neill, the lone Democrat on the seven-member court,⁵⁷ dissented and pointed out that the justices blatantly defied the Ohio Constitution's requirement that courts not overturn the workers' compensation commission's decisions on VSSR awards.⁵⁸ Justice O'Neill argued that it would be unreasonable for Ohio law to outline every required safety feature and that expert testimony established that a safety latch on the crane was absolutely essential for workers' safety.⁵⁹

The Ohio Supreme Court—like many high courts around the country—has displayed an obvious tendency to rule in favor of corporate defendants. According to CAP's 2012 report—"Big Business Taking Over State Supreme Courts"—the Ohio Supreme Court ruled for corporations in 32 out of the 36 cases studied.⁶⁰ This trend continues today. Between 2011 and 2016, the Ohio Supreme Court ruled against individual plaintiffs and for corporate defendants in 39 of 48 cases studied, an average of 77 percent.⁶¹ Justice Robert Cupp, on the court until 2013, voted for corporate defendants in 87 percent of the cases studied,⁶² although he told CAP that his rulings "were made solely in conformity with the law applicable to the case . . . without regard to the nature, form or identity of the parties before the court. . . . Any implications or inferences to the contrary are unwarranted, incorrect, and inappropriate."⁶³

One member of the court, Justice Sharon Kennedy, has voted for corporate defendants in 94 percent of cases since joining the court in 2013. Justice Judith French, who also joined the court in 2013, voted for corporate defendants in 84 percent of the cases studied.⁶⁴ Both justices won their re-election bids in 2014 after raising more than \$1 million in campaign contributions with large donations from lobbyists, the insurance industry, and oil and gas companies.⁶⁵ Justice French's campaign was also aided by hundreds of thousands of dollars in spending by American Freedom Builders, a conservative secret-money group that does not disclose its donors.⁶⁶ In past state Supreme Court elections, other secretive groups linked to the Ohio Chamber of Commerce were the top spenders.⁶⁷

Justice Terrence O'Donnell also ruled in favor of corporations in more than 90 percent of the cases studied by CAP.⁶⁸ *The New York Times*, in an earlier analysis of Ohio Supreme Court Cases, found that Justice O'Donnell voted for his campaign contributors more than 90 percent of the time,⁶⁹ but he alleged that the cases were selectively chosen and that the results were misleading.⁷⁰ Justice O'Donnell told the paper, "The reality is that contributions follow the judicial philosophy of the candidate."⁷¹ Justice French similarly responded to the CAP study by saying that "a review of the thousands of cases I have decided as a judge—not just a handpicked few—will show that I decided cases based on the law, not the parties."⁷²

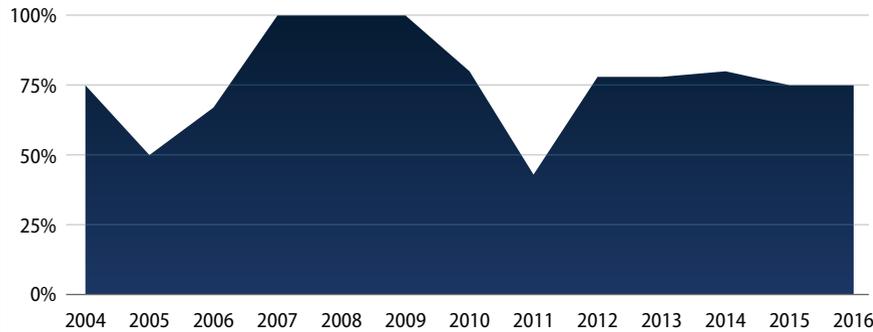
Justice Judith Ann Lanzinger, who voted for corporations in 76 percent of the cases studied, said in a law review article, "We never consult campaign reports before considering and deciding how to vote, for the identities of parties are irrelevant to the determination of the legal issues before us."⁷³ Chief Justice Maureen O'Connor, who voted for defendants in 73 percent of the cases studied,⁷⁴ has also denied that contributions influence the justices' decisions.⁷⁵

Notably, Justice O'Neill and Republican Justice Paul Pfeifer—who, unlike their colleagues, were elected without relying on large campaign contributions—voted in favor of injured plaintiffs in more than three-quarters of the cases.⁷⁶

FIGURE 1

Success rate for corporate defendants in divided cases by the Ohio Supreme Court

The Ohio Supreme Court has ruled more often for corporations and against injured plaintiffs in cases in which at least one justice dissented



Source: Case information found in the Lexis-Nexis legal database. See Lexis Total Research System, "Welcome," available at www.lexis.com (last accessed June 2016).

Alabama Supreme Court forces injured patient into mandatory arbitration

In January 2013, Lorene Jones was admitted to Whitesburg Gardens, a long-term rehabilitation facility in Huntsville, Alabama, following knee replacement surgery. At the time of her admission, Jones was heavily sedated with painkillers. Without her permission, Jones's daughter signed the admission documents, which contained a clause compelling arbitration for any legal claims against the facility.⁷⁷ Two years later, Whitesburg Gardens' employees injured Jones when they dropped her while attempting to move her, according to a lawsuit recently decided by the Alabama Supreme Court.⁷⁸

At the initial trial, Whitesburg Gardens sought to send the case to arbitration, based on the admission documents signed by Jones's daughter.⁷⁹ In arbitration, the parties agree to have their dispute resolved through a binding decision by a third-party arbitrator who is not a judge.⁸⁰ Studies have shown that arbitration tends to favor corporate defendants, so mandatory arbitration would give Jones a much lower chance of being compensated for her injuries.⁸¹

Jones's lawyers argued that she was not competent when the paperwork was signed and thus could not have agreed to arbitration. The trial court denied Whitesburg Gardens' motion to compel arbitration, but the Alabama Supreme Court reversed that ruling and forced Jones into arbitration.⁸²

In his dissent, Chief Justice Roy Moore pointed out that if Jones was competent and able to make decisions, as Whitesburg Gardens argued, then the facility should have gotten her signature, rather than her daughter's. The chief justice further argued that no one can be forced to submit to an arbitration to which they have not agreed.⁸³

CAP's 2012 report on big business and state supreme courts highlighted how the nine-member Alabama Supreme Court, which is now fully Republican, tilts heavily in favor of corporate defendants, particularly in cases involving binding arbitration clauses. The report included 73 divided rulings by the court from 1998 to 2010 on whether to compel arbitration. In 52 of those cases, the court ruled to force arbitration.⁸⁴

In recent years, the Alabama Supreme Court has continued its tendency to rule overwhelmingly in favor of corporate defendants. This report's appendix includes 62 rulings by the court since 2011, and the court ruled for the defendant in 51 of those cases—82 percent of the time.⁸⁵ To be fair, a number of the justices had much lower rates of voting for corporate defendants.⁸⁶ But Justices Lyn Stuart, Michael Bolin, and Greg Shaw ruled for the defendants more than 85 percent of the time.⁸⁷ A spokesperson for Justice Bolin's campaign said he “doesn't keep track” of donors who appear in court and only “rules on the law.”⁸⁸

Justices Glenn Murdock and Tommy Bryan won elections in 2012 with hundreds of thousands of dollars from big business groups, including two groups that advocate for tort reform laws.⁸⁹ Justice Murdock received nearly half a million dollars from one of those groups, the Medical Association of the State of Alabama, but he voted for corporate defendants at a lower rate.⁹⁰ Justice Bryan ruled for corporate defendants in 81 percent of the cases studied,⁹¹ but he said that no donor has ever told him, “I want you to rule a certain way.”⁹²

Of the Alabama justices, only Chief Justice Moore clearly favors injured plaintiffs over corporate defendants.⁹³ For his 2012 election, the chief justice did not receive backing from big business interests or from the Republican establishment, instead

relying on money and support from Christian conservative groups. The chief justice is currently suspended pending an ethics investigation into whether he defied a federal court order that brought marriage equality to Alabama.⁹⁴

An attack on Michigan's public employee unions

This year, the eight-justice U.S. Supreme Court failed to reach a decision on the merits in several important cases, including a lawsuit that, according to a recent CAP report, threatened “the economic security of more than 7 million public-sector workers and their families.”⁹⁵ That report discussed the Court’s 4-4 split decision in *Friedrichs v. California Teachers Association*, a lawsuit challenging public-sector unions’ right to collect so-called fair share fees from nonmembers.⁹⁶ These fees from nonunion members help fund the costs of collective bargaining, which benefits all employees. The Court’s tied vote upheld, by default, a lower court’s decision to uphold fair share fees. But, as the report stated, “anti-worker activists will continue to sue unions in an effort to diminish workers’ rights.”⁹⁷

Although public-sector workers dodged a bullet at the U.S. Supreme Court, Michigan workers were not as lucky. In 2015, the Michigan Supreme Court ruled that it is unconstitutional for the state’s public-sector unions to collect fair share fees.⁹⁸ The Michigan Legislature had prohibited the state’s Civil Service Commission from requiring fair share fees, but the court’s 4-3 ruling went even further, ruling that the commission never had the authority to require fair share fees, as it had for decades.⁹⁹

The Michigan Supreme Court’s opinion, like the plaintiffs in *Friedrichs*, used language that suggested a concern for workers who are unwilling to pay fair share fees, despite the financial benefits of the union’s collective bargaining. The opinion by Chief Justice Robert Young described the fees as “mandatory” and “involuntary.”¹⁰⁰ Chief Justice Young said the commission cannot authorize collective bargaining and then “foist the administrative costs of that choice onto anyone else.”¹⁰¹ In dissent, Justice Mary Beth Kelly noted that without fair share fees, “the employee would receive the benefit of the [union’s] mandated services without paying for those services.”¹⁰²

The seven-member court struck down the commission's fair share rule by interpreting the fees as a "tax," which can only be imposed by the state Legislature.¹⁰³ Even though the constitution grants the Civil Service Commission broad authority to regulate "all conditions of employment" for civil service jobs, the Michigan Supreme Court said that the constitution did not give the commission the authority to collect fees.¹⁰⁴

The court's interpretation of the fair share fees as taxes was divorced from reality. The fees were paid not to the commission, but instead to the employees' unions. The four-justice majority responded that "the commission is the true beneficiary of the collective bargaining process."¹⁰⁵ Though it is not really clear what this means, the court seems to be saying that because the commission authorizes the collective bargaining, it benefits from the fair share fees paid to the unions.¹⁰⁶

Justice Kelly was the only Republican on the court to dissent. Her opinion cited the constitutional amendments that granted the commission broad authority in 1940.¹⁰⁷ These amendments also authorized the Legislature to regulate public employees "except those in the state classified civil service." Justice Kelly said the law banning fair share fees is unconstitutional "to the extent that it seeks to regulate employee relations for a class of individuals who have been expressly exempted from such regulation."¹⁰⁸ The voters of Michigan had ratified a constitutional amendment to limit the Legislature's authority over certain public employees, but the Michigan Supreme Court disregarded this amendment. Justice Kelly also pointed out that, despite the majority's concerns about employees' paychecks, "the employees themselves have chosen, for better or worse, to organize" through a union.¹⁰⁹

The nonpartisan elections for Michigan Supreme Court—in which the candidates are nominated by political parties—have been dominated by money that is not disclosed in campaign finance reports, mostly from the state political parties or the Michigan Chamber of Commerce. In the 2014 Supreme Court race, the Michigan Campaign Finance Network reported that nearly half of the \$10 million in spending was not reported, with all of the undisclosed spending "supporting the Republican nominees."¹¹⁰

The state Democratic Party spent nearly as much as its GOP counterpart in 2010 and 2012,¹¹¹ and many of its largest donors were lawyers or law firms with a financial stake in cases in Michigan courts.¹¹² In the 2006 and 2008 Supreme Court elections, the Michigan Chamber of Commerce spent millions.¹¹³

The 2012 CAP report on big business and the courts shows that all of this corporate money has helped elect a conservative majority to the Michigan Supreme Court that rules more often in favor of corporate defendants and against injured individuals. Since the release of the 2012 report, the court has issued few rulings that meet the criteria of the study due to an increase in the number of unanimous decisions, which were not included in the report.

However, in 14 out of 15 cases examined by CAP from 2011 to 2016, the court ruled for corporate defendants. In 2011 and 2012, eight of the 12 rulings broke down along party lines—three Democrats ruling against the defendants and four Republicans voting for them. The pattern of mostly 4-3 rulings did not hold in 2013, when only three cases met the criteria. The court did not issue any divided rulings in the last few years. Of the opinions reported on the court’s website, the percentage of unanimous rulings grew from a low of 28 percent in the 2011-12 term to an astounding 92 percent in the current term.¹¹⁴ As currently constituted, the court has five Republican members and two Democrats.¹¹⁵

TABLE 1
Unanimous rulings by the Michigan Supreme Court, 2009–2016

The share of unanimous rulings has increased sharply

Term	Number of cases	Number of unanimous decisions	Share of unanimous decisions
2009–2010	42	13	31%
2010–2011	32	11	34%
2011–2012	46	13	28%
2012–2013	35	15	43%
2013–2014	38	24	63%
2014–2015	33	20	61%
2015–2016	26	24	92%

Source: Michigan Supreme Court, “Opinions of the Michigan Supreme Court,” available at <http://courts.mi.gov/courts/michigansupremecourt/clerks/pages/opinions.aspx> (last accessed July 2016).

Until the recent turn toward bipartisanship and unity, the Michigan Supreme Court was bitterly divided and voted often along party lines.¹¹⁶ In 2013, the then recently retired Justice Elizabeth Weaver wrote *Judicial Deceit: Tyranny and Unnecessary Secrecy at the Michigan Supreme Court*, a book about her experience on the high court. A 2008 University of Chicago study examined state supreme courts and found that the Michigan Supreme Court was the most “influenced by partisan considerations.”¹¹⁷

Many members of the court have acknowledged the problem of campaign contributions. Chief Justice Young said, “My advisers tell me I’ll have to raise \$1 million or more to run a Supreme Court race. How can this not be a problem? The public has a right to ask: ‘If you have to raise \$1 million, can you really be impartial?’”¹¹⁸ Justice Stephen Markman warned that the integrity of the court is being challenged by the large amounts of campaign cash. However, he said that he does not believe “there is any justice on our court who would ever be influenced by” campaign contributions.¹¹⁹ Justice Brian Zahra said during his 2014 campaign that he is “not influenced by special interests.”¹²⁰

Conclusion: Reform judicial selection to minimize the influence of money

Judicial elections are seeing a rise in campaign cash, and much of this money comes from corporations that want judges who will be good for their bottom line. Five of the six state supreme courts studied for this report—all except the Pennsylvania Supreme Court—exhibited a tendency to vote more often for corporations and against injured plaintiffs.¹²¹

Interestingly, Pennsylvania saw the most expensive judicial election in history last year, with more than \$15 million spent in its Supreme Court race.¹²² The candidates' biggest donor, by far, was an association of trial lawyers who typically represent injured plaintiffs, followed by a Philadelphia-based union.¹²³ The Pennsylvania Supreme Court rules for plaintiffs in 57 percent of cases, hardly the kind of numbers seen in favor of corporations at the other courts. The Illinois Supreme Court has also seen money from both big business and trial lawyers in its elections, and in 2014, the RSLC was—for the first time—outspent by a political action committee that received large donations from trial lawyers with a stake in pending cases.¹²⁴ However, Illinois only had 13 cases that fit the study's criteria, a sampling that was too small to draw any meaningful conclusions.

Those concerned about corporate campaign cash flooding courts should advocate for public financing for judicial campaigns, which can keep judges responsive to voters and small donors by lessening the influence of wealthy campaign contributors. For example, West Virginia recently rolled out a program to give Supreme Court candidates a few hundred thousand dollars in public funds if they qualify by raising small contributions.¹²⁵ Some municipalities have adopted innovative programs that use public matching funds to amplify the effect of small donor contributions.¹²⁶ The city of Seattle recently began sending residents \$25 vouchers—a total of four so-called democracy vouchers—that they can contribute to the municipal candidate of their choice.¹²⁷

Judges themselves can help by implementing tougher ethics rules that require judges to sit out cases involving campaign contributors. Currently, most states leave it up to judges to decide whether to recuse themselves to avoid the appearance of bias in lawsuits involving campaign donors.¹²⁸ Only a few states require recusal for cases involving litigants who have made campaign contributions above a certain dollar amount.¹²⁹ In 2014, Pennsylvania adopted a rule that requires judges to sit out a case if a campaign contribution “would raise a reasonable concern about the fairness or impartiality of the judge’s consideration.”¹³⁰

State legislatures can also create tougher rules. Unfortunately, the opposite occurred in Alabama two years ago, when state lawmakers repealed a law that required judges to recuse themselves from cases involving anyone who gave them more than \$4,000 in campaign contributions.¹³¹ The rule put in place in 2014 creates what is termed a “rebuttable presumption” that requires recusal only if a donor gives more than a certain percentage of the judge’s total campaign contributions and if it was “foreseeable” at the time of the donation that a case involving the donor would come before the court.¹³²

Worse yet, Wisconsin’s recusal rule was literally written by the state’s chamber of commerce, along with another big business group, and adopted by the Wisconsin Supreme Court in 2010. The rule says that campaign contributions can never be the sole basis for a judge’s recusal.¹³³ In 2015, when the state chamber of commerce and its allies faced a campaign finance investigation, the court’s conservative majority voted to end the investigation—even though prosecutors asked those justices to sit out the case because the groups involved had spent \$10 million to elect them.¹³⁴

To get money out of our courts altogether, reformers should push for an alternative to electing judges. The United States is the only country that chooses judges in this way, and the framers of the U.S. Constitution established a vastly different system that largely insulates judges from political pressure once they are on the bench. Judges should no longer be subjected to elections because the process inherently creates doubt about their impartiality.

America needs judges who are not elected with money from big business or trial lawyers who might appear before them. Judges need to be free to rule in favor of injured plaintiffs, if warranted by the facts and the law, without worrying about the support of campaign donors in the next election.

About the author

Billy Corriher is the Director of Research for Legal Progress at the Center for American Progress, where his work focuses on state courts, judicial elections, and the U.S. Supreme Court. In this role, Corriher has advocated for public financing of judicial elections and stricter ethics rules for elected judges. Corriher has also written op-eds and blog posts on judicial elections for the *L.A. Times*, *Newsweek*, and the *News & Observer* in Raleigh, North Carolina.

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Appendix

In order to examine the effect of campaign contributions on rulings in state high courts, the Center for American Progress compiled state supreme court rulings from six of the states that have been the prime targets of special-interest money in judicial elections between 2011 and 2016. This dataset includes cases in which an individual plaintiff filed suit against a defendant employer, corporation, insurance company, or other business. Also included in the data are cases in which the plaintiff sought workers' compensation or unemployment benefits.

The data included in this report only incorporate cases that demonstrate a court's ideological divide. To that end, the data incorporate only those rulings with dissenting opinions, as cases decided unanimously are ostensibly uncontroversial.

In some states, over a few years, there is a dearth of data, likely as a result of the state's high court issuing more unanimous rulings. This was particularly true in Michigan in recent years. Furthermore, the data do not include denials of petitions for rehearing nor denial of certiorari or appellate review, as these cases are largely issued without opinion, and do not demonstrate a court's ideology.

The cases are arranged by state and listed in chronological order by year. The dataset includes a total of 192 cases. The state high courts ruled for the corporate defendants in 136 cases 73 percent of the time. Only the Pennsylvania Supreme Court ruled more often for injured plaintiffs. In most of the states where judicial elections are flooded by campaign cash, the high courts are displaying a clear and obvious tendency to rule in favor of corporate defendants.

TABLE A1

Divided rulings in Alabama Supreme Court Cases involving individual plaintiffs and business defendants

Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice James Main	Justice Tommy Bryan	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Justice Greg Shaw	Chief Justice Roy Moore
2016	<i>Hinrichs v. General Motors of Canada Ltd.</i>	2016 Ala. LEXIS 81	✓	✓	✓	✓	✓				Did not participate	Did not participate
2016	<i>Hicks v. Wayne Farms LLC</i>	2016 Ala. LEXIS 64	✓	✓		✓	✓	✓		✓	Did not participate	Did not participate
2016	<i>Ex parte CVS Pharmacy LLC</i>	2016 Ala. LEXIS 66	✓	✓	✓	✓	✓	Did not participate		✓	✓	Did not participate
2016	<i>Jim Bishop Chevrolet-Buick-Pontiac-GMC Inc. v. Burden</i>	2016 Ala. LEXIS 58	✓	✓	✓	✓	✓	✓	✓	Did not participate	✓	
2016	<i>Ex parte Hubbard Properties Inc. and Warrior Gardens, LLC</i>	2016 Ala. LEXIS 29	✓	✓	✓		✓	✓			✓	
2016	<i>Kindred Nursing Centers East LLC v. Jones</i>	2016 Ala. LEXIS 26	✓	✓	✓	✓	✓	✓		✓	✓	
2016	<i>Farmers Insurance Exchange v. Morris</i>	2016 Ala. LEXIS 18		✓			✓				✓	✓
2016	<i>Marvin v. Healthcare Authority for Baptist Health</i>	2016 Ala. LEXIS 12	✓	✓	Did not participate	Did not participate	✓	✓			✓	
Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice James Main	Justice Tommy Bryan	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Justice Greg Shaw	Chief Justice Roy Moore
2015	<i>Federal Insurance Company v. Reedstrom</i>	2015 Ala. LEXIS 158	✓	✓	✓	✓	✓			✓	✓	
2015	<i>Brookwood Health Services v. Borden</i>	2015 Ala. LEXIS 147	✓	✓	✓		✓	Did not participate	✓	✓	✓	
2015	<i>Ameriprise Financial Services v. Jones</i>	2015 Ala. LEXIS 139	✓	✓	✓		✓	✓		✓	✓	
2015	<i>Alfa Life Insurance Corp. v. Reese</i>	2015 Ala. LEXIS 92	✓	✓	✓	✓	✓	✓		✓	✓	Did not participate
2015	<i>American Bankers Insurance Company v. Tellis</i>	2015 Ala. LEXIS 86	✓	✓	✓	✓	✓	✓		✓	✓	

Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice James Main	Justice Tommy Bryan	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Justice Greg Shaw	Chief Justice Roy Moore
2015	<i>Arrington v. Court-yard Citiflats LLC</i>	2015 Ala. LEXIS 80	✓	✓	Did not participate	✓	✓	✓		✓	✓	
2015	<i>Ex parte Quality Carriers Inc.</i>	183 So. 3d 930	✓	✓	✓	✓	✓	✓	Did not participate	✓	✓	
2015	<i>Ex parte Nicholson Manufacturing</i>	182 So. 3d 510	✓	✓	✓	✓	✓	✓	✓	✓	✓	
2015	<i>Rutledge v. Smart Alabama LLC</i>	183 So. 3d 147	✓	✓	Did not participate	✓	✓	✓	✓	✓	✓	
2015	<i>Hill v. Fairfield Nursing and Rehabilitation Center LLC</i>	183 So. 3d 923	✓	✓	✓	✓	✓	✓		✓		
2015	<i>Yamaha Motor Corp. v. McMahon</i>	183 So. 3d 145			✓	✓			✓		✓	
2015	<i>Burchfield v. Jim Walter Resources Inc.</i>	175 So. 3d 618	✓	✓	✓	✓	✓	Did not participate	✓	✓	✓	
2015	<i>Reyes v. Better Living Inc.</i>	174 So. 3d 342	✓	✓	✓	✓	✓	✓	✓	✓	✓	
2015	<i>Ex parte Hanvey</i>	179 So. 3d 135							✓			
Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice James Main	Justice Tommy Bryan	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Justice Greg Shaw	Chief Justice Roy Moore
2014	<i>Richards v. Baptist Health System</i>	176 So. 3d 179	✓	✓	✓	✓	✓	✓	✓	✓	✓	
2014	<i>Kilgo v. Smith</i>	177 So. 3d 884	✓	✓	✓	✓	✓	✓	✓	✓	✓	
2014	<i>Ex parte Progressive Direct Insurance Company</i>	169 So. 3d 1030	✓	✓	✓	✓	✓	✓	✓	✓	✓	
2014	<i>Ex parte Electric Insurance Company</i>	164 So. 3d 529	✓	✓	✓	✓	✓	✓	✓	✓	✓	
2014	<i>CVS Caremark Corp. v. Lauriello</i>	175 So. 3d 596	✓	✓	✓	✓	Did not participate	✓		✓	✓	✓
2014	<i>Babbitt v. Cullman Regional Medical Center Inc.</i>	167 So. 3d 303	✓	✓	✓	✓	✓	✓		✓	✓	
2014	<i>Wyeth Inc. v. Weeks</i>	159 So. 3d 649						✓	✓			✓

Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice James Main	Justice Tommy Bryan	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Justice Greg Shaw	Chief Justice Roy Moore
2014	<i>Guyoungtech USA Inc. v. Dees</i>	156 So. 3d 374	✓	✓		✓	✓		✓	✓	Did not participate	✓
2014	<i>Alfa Life Insurance Corp. v. Colza</i>	159 So. 3d 1240	✓	✓	✓	✓	✓	✓	✓	✓	Did not participate	
2014	<i>Ex parte Lambert Law Firm LLC</i>	156 So. 3d 939	✓	✓	✓	✓	✓	✓	✓	✓	✓	
2014	<i>Lindsay v. Baptist Health System</i>	154 So. 3d 90	✓	✓	✓	✓	✓	✓		Did not participate	✓	
2014	<i>Banks v. Spray</i>	149 So. 3d 1082	✓	✓	✓	✓	✓	✓	✓	Did not participate	Did not participate	
2014	<i>Ex parte Hodge v. Tombigbee Healthcare Authority</i>	153 So. 3d 734	✓	✓	Did not participate	✓	✓	✓	✓	✓	✓	
2014	<i>Vinson v. G & R Mineral Services</i>	150 So. 3d 749	✓	✓	✓	✓	✓	Did not participate	✓	✓	✓	
2014	<i>Ex parte Michelin North Am. Inc.</i>	161 So. 3d 164	✓	✓		✓	✓	✓	✓	✓	Did not participate	
Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice James Main	Justice Tommy Bryan	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Justice Greg Shaw	Chief Justice Roy Moore
2013	<i>Ex parte BASF Construction Chemicals LLC</i>	153 So. 3d 793	✓	✓			✓	✓	✓		✓	✓
2013	<i>O'Neal v. Bama Exterminating Company</i>	147 So. 3d 403	✓	✓	✓	✓	✓	✓		✓	✓	
2013	<i>Ex parte Safeway Insurance Company of Alabama</i>	148 So. 3d 39		✓			✓				✓	
2013	<i>Ex parte Schnitzer Steel Industries</i>	142 So. 3d 488	✓	✓	✓	✓	✓			✓	Did not participate	
2013	<i>Hosea O. Weaver & Sons v. Balch</i>	142 So. 3d 479	✓	✓		✓	✓	✓	✓	✓	Did not participate	✓
2013	<i>Ex parte General Motors of Canada Ltd.</i>	144 So. 3d 236	✓	✓	✓	✓	✓	✓	✓	✓	✓	

Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice James Main	Justice Tommy Bryan	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Justice Greg Shaw	Chief Justice Roy Moore
2013	<i>Fluker v. Alfa Mutual Insurance Company</i>	140 So. 3d 462	✓	✓		✓	✓	✓		Did not participate	Did not participate	✓
2013	<i>Hill v. Fairfield Nursing & Rehabilitation Center LLC</i>	134 So. 3d 396		✓		Did not participate						
2013	<i>Robertson v. Mount Royal Towers</i>	134 So. 3d 862	✓	✓	✓	✓	✓	✓	✓	✓	✓	
2013	<i>Health Care Authority For Baptist Health v. Davis</i>	158 So. 3d 397		✓			✓					✓
2013	<i>Pantry Inc. v. Mosley</i>	126 So. 3d 152	✓	✓	✓	Did not participate	✓	✓	✓	✓	✓	
2013	<i>Weir v. Aquilex Hydrochem LLC</i>	128 So. 3d 722	✓	✓	Did not participate	✓	✓	✓	✓	✓	✓	
2013	<i>Parker v. Mobile Gas Services Corp.</i>	123 So. 3d 499	✓	✓	✓	✓	✓	✓	✓	✓		Did not participate
Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice James Main	Justice Thomas Woodall	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Justice Greg Shaw	Chief Justice Charles Malone
2012	<i>Wallace v. Belleview Properties Corp.</i>	120 So. 3d 485	✓	✓	✓			✓	✓	✓		✓
2012	<i>Johnson v. Jefferson County Racing Association</i>	103 So. 3d 33	✓	✓	Did not participate	✓	✓		✓	✓	✓	✓
2012	<i>Webster v. Southeast Alabama Timber Harvesting LLC</i>	94 So. 3d 371	✓	✓	✓	✓	✓	✓		✓	✓	✓
2012	<i>Golden Gate National Senior Care LLC v. Roser</i>	94 So. 3d 365									✓	
2012	<i>Eagerton v. Vision Bank</i>	99 So. 3d 299							✓			
2012	<i>Ex parte Capstone Building Corp.</i>	96 So. 3d 77	✓	✓	✓		✓	✓	✓	✓	✓	Did not participate

Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice James Main	Justice Thomas Woodall	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Justice Greg Shaw	Chief Justice Charles Malone
2011	<i>Austin v. State Farm Mutual Auto Insurance Company</i>	82 So. 3d 654	✓	✓	✓	✓	✓	✓		✓	✓	✓
2011	<i>Lafarge North America Inc. v. Nord</i>	86 So. 3d 326	✓	✓			✓	✓	✓	✓	✓	
Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice James Main	Justice Thomas Woodall	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Chief Justice Sue Bell Cobb	Justice Charles Malone
2011	<i>Jenkins v. Lincoln Electric Company</i>	103 So. 3d 1	✓	✓	✓	✓	✓	✓	✓	✓		✓
2011	<i>Nail v. Publix Super Markets</i>	72 So. 3d 608							✓			
2011	<i>Norfolk Southern Railway Company v. Johnson</i>	75 So. 3d 624	✓	✓	✓	✓	✓	✓	✓	✓		✓
Year	Case	Citation	Defendant wins = ✓	Justice Lyn Stuart	Justice Champ Lyons	Justice Thomas Woodall	Justice Michael Bolin	Justice Tom Parker	Justice Glenn Murdock	Justice Alisa Wise	Chief Justice Sue Bell Cobb	Justice Charles Malone
2011	<i>Clayton v. LLB Timber Company</i>	70 So. 3d 283							✓			

Source: Case information found in the Lexis-Nexis legal database, available at www.lexis.com (last accessed August 2016).

TABLE A2
Divided rulings in Illinois Supreme Court cases involving individual plaintiffs and business defendants

Year	Case	Citation	Defendant wins = ✓	Chief Justice Rita Garman	Justice Charles Freeman	Justice Thomas Kilbride	Justice Robert Thomas	Justice Lloyd Karmeier	Justice Anne Burke	Justice Mary Ann This
2015	<i>Folta v. Ferro Engineering</i>	2015 IL 118070	✓	✓			Did not participate	✓	✓	✓
2015	<i>Price v. Philip Morris Inc.</i>	2015 IL 117687	✓	✓			Did not participate	✓	✓	✓

Year	Case	Citation	Defendant wins = ✓	Chief Justice Rita Garman	Justice Charles Freeman	Justice Thomas Kilbride	Justice Robert Thomas	Justice Lloyd Karmeier	Justice Anne Burke	Justice Mary Ann This
2013	<i>Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Commission</i>	2013 IL 115728	✓	✓	✓		✓	✓	✓	✓
2013	<i>Gruszczyk v. Illinois Workers' Compensation Commission</i>	2013 IL 114212			✓				✓	
2013	<i>Russell v. SNFA</i>	2013 IL 113909		✓			Did not participate			
Year	Case	Citation	Defendant wins = ✓	Justice Rita Garman	Justice Charles Freeman	Chief Justice Thomas Kilbride	Justice Robert Thomas	Justice Lloyd Karmeier	Justice Anne Burke	Justice Mary Ann This
2012	<i>Fennell v. Illinois Central Railroad Company</i>	2012 IL 113812	✓	✓	✓		Did not participate	✓	✓	✓
2012	<i>Lawlor v. North American Corp. of Illinois</i>	2012 IL 112530	✓	✓	✓		✓	✓	✓	✓
2012	<i>Martin v. Keeley & Sons Inc.</i>	2012 IL 113270	✓	✓	✓		✓	✓	✓	✓
2012	<i>Khan v. Deutsche Bank AG</i>	2012 IL 112219				✓				✓
2012	<i>Choate v. Industrial Harbor Belt Railroad Company</i>	2012 IL 112948	✓	✓	✓		✓	✓	✓	✓
2012	<i>Santiago v. E.W. Bliss Company</i>	973 N.E.2d 858		✓			✓			Did not participate
2012	<i>Simpkins v. CSX Transportation Inc.</i>	965 N.E.2d 1092			✓		Did not participate		✓	
Year	Case	Citation	Defendant wins = ✓	Justice Rita Garman	Justice Charles Freeman	Chief Justice Thomas Kilbride	Justice Robert Thomas	Justice Lloyd Karmeier	Justice Anne Burke	Justice Mary Ann This
2011	<i>Clark v. Children's Memorial Hospital</i>	955 N.E.2d 1065	✓	✓		✓	✓	✓	✓	✓

Source: Case information found in the Lexis-Nexis legal database, available at www.lexis.com (last accessed August 2016).

TABLE A3

Divided rulings in Michigan Supreme Court cases involving individual plaintiffs and business defendants

Year	Case	Citation	Defendant wins = ✓	Chief Justice Robert Young	Justice Michael Cavanagh	Justice Mary Beth Kelly	Justice Steven Markman	Justice Bridget McCormack	Justice Brian Zahra	Justice David Viviano
2013	<i>Admire v. Auto-Owners Insurance-Company</i>	494 Mich. 10	✓	✓		✓	✓	Did not vote	✓	Did not vote
2013	<i>LaJoyce v. Northern Michigan Hospitals Inc.</i>	493 Mich. 965	✓	✓		✓	✓	✓	✓	✓
2013	<i>LeFevers v. State Farm Mutual Auto Insurance Company</i>	493 Mich. 960	✓	✓		✓	✓	✓	✓	✓
Year	Case	Citation	Defendant wins = ✓	Chief Justice Robert Young	Justice Michael Cavanagh	Justice Mary Beth Kelly	Justice Steven Markman	Justice Diane Hathaway	Justice Brian Zahra	Justice Marilyn Kelly
2012	<i>Kim v. JPMorgan Chase Bank N.A.</i>	493 Mich. 98		✓		✓			✓	
2012	<i>Ile v. Foremost Insurance Company</i>	493 Mich. 915	✓	✓		✓	✓		✓	
2012	<i>Hill v. Sears, Roebuck & Company</i>	492 Mich. 651	✓	✓		✓	✓		✓	
2012	<i>Douglas v. Allstate Insurance Company</i>	492 Mich. 241	✓	✓		✓	✓		✓	
2012	<i>DeFrain v. State Farm Mutual Auto Insurance Company</i>	491 Mich. 359	✓	✓		✓	✓		✓	
2012	<i>Joseph v. Auto Club Insurance Association</i>	491 Mich. 200	✓	✓		✓	✓		✓	
Year	Case	Citation	Defendant wins = ✓	Chief Justice Robert Young	Justice Michael Cavanagh	Justice Mary Beth Kelly	Justice Steven Markman	Justice Diane Hathaway	Justice Brian Zahra	Justice Marilyn Kelly
2011	<i>Frazier v. Allstate Insurance Company</i>	490 Mich. 381	✓	✓	✓	✓	✓		✓	
2011	<i>McCue v. O-N Minerals (Michigan) Company</i>	490 Mich. 946	✓	✓		✓	✓		✓	
2011	<i>Findley v. DaimlerChrysler Corp.</i>	490 Mich. 928	✓	✓		✓	✓		✓	

Year	Case	Citation	Defendant wins = ✓	Chief Justice Robert Young	Justice Michael Cavanagh	Justice Mary Beth Kelly	Justice Steven Markman	Justice Diane Hathaway	Justice Brian Zahra	Justice Marilyn Kelly
2011	<i>Ligons v. Crittenton Hospital</i>	490 Mich. 61	✓	✓		✓	✓		✓	✓
2011	<i>Krohn v. Home-Owners Insurance Company</i>	490 Mich. 145	✓	✓		✓	✓		✓	
2011	<i>Bowens v. ARY Inc.</i>	489 Mich. 851	✓	✓	✓	✓	✓	✓	✓	

Source: Case information found in the Lexis-Nexis legal database, available at www.lexis.com (last accessed August 2016).

TABLE A4
Divided rulings in Ohio Supreme Court cases involving individual plaintiffs and business defendants

Year	Case	Citation	Defendant wins = ✓	Chief Justice Maureen O'Connor	Justice Terrence O'Donnell	Justice Judith Lanziger	Justice Sharon Kennedy	Justice Judith French	Justice Paul Pfeifer	Justice William O'Neill
2016	<i>Stolz v. J&B Steel Erectors Inc.</i>	2016-Ohio-1567	✓	✓	✓	✓	✓			✓
2016	<i>State ex rel. Boyd v. Scotts Miracle-Gro Company</i>	2016-Ohio-1508	✓	✓	✓		✓	✓	✓	✓
2016	<i>Radatz v. Federal National Mortgage Association</i>	2016-Ohio-1137	✓	✓	✓	✓	✓	✓		
2016	<i>Griffith v. Aultman Hospital</i>	2016-Ohio-1138			✓	✓				
Year	Case	Citation	Defendant wins = ✓	Chief Justice Maureen O'Connor	Justice Terrence O'Donnell	Justice Judith Lanziger	Justice Sharon Kennedy	Justice Judith French	Justice Paul Pfeifer	Justice William O'Neill
2015	<i>Dillon v. Farmers Insurance of Columbus Inc.</i>	47 N.E.3d 794	✓	✓	✓	✓	✓	✓		
2015	<i>State ex rel. Precision Steel Services Inc. v. Industrial Commission of Ohio</i>	47 N.E.3d 109	✓	✓	✓	Did not participate	✓	✓		

Year	Case	Citation	Defendant wins = ✓	Chief Justice Maureen O'Connor	Justice Terrence O'Donnell	Justice Judith Lanziger	Justice Sharon Kennedy	Justice Judith French	Justice Paul Pfeifer	Justice William O'Neill
2015	<i>Felix v. Ganley Chevrolet Inc.</i>	2015-Ohio-3430; 2015 Ohio LEXIS 2113; No. 2013-1746	✓	✓	✓	✓	✓	✓	✓	
2015	<i>Granger v. Auto-Owners Insurance</i>	40 N.E.3d 1110			✓		✓			
2015	<i>State ex rel. Metz v. GTC Inc.</i>	30 N.E.3d 941	✓	✓		✓	✓	✓		✓
2015	<i>State ex rel. Turner Construction Company v. Industrial Commission</i>	29 N.E.3d 969			✓		✓			
2015	<i>Cromer v. Children's Hospital Medical Center of Akron</i>	29 N.E.3d 921	✓	✓	✓	✓	✓	✓		✓
2015	<i>State ex rel. Hildebrand v. Wingate Transportation Inc.</i>	26 N.E.3d 798	✓	✓	✓	✓	✓	✓	✓	
Year	Case	Citation	Defendant wins = ✓	Chief Justice Maureen O'Connor	Justice Terrence O'Donnell	Justice Judith Lanziger	Justice Sharon Kennedy	Justice Judith French	Justice Paul Pfeifer	Justice William O'Neill
2014	<i>Hulsmeyer v. Hospice of Southwest Ohio Inc.</i>	29 N.E.3d 903						✓		
2014	<i>Pixley v. Pro-Pak Industries Inc.</i>	28 N.E.3d 1249	✓	✓	✓	✓	✓	✓		
2014	<i>State ex rel. Varney v. Industrial Commission of Ohio</i>	36 N.E.3d 109	✓	✓	✓	✓	✓	✓		
2014	<i>Friebel v. Visiting Nurse Association of Mid-Ohio</i>	32 N.E.3d 413	✓	✓	✓	✓	✓	✓		
2014	<i>Bank of America N.A. v. Kuchta</i>	21 N.E.3d 1040	✓	✓	✓	✓	✓	✓		
2014	<i>State ex rel. Parraz v. Diamond Crystal Brands Inc.</i>	21 N.E.3d 286	✓	✓	✓	✓	✓	✓	✓	
2014	<i>Burkhart v. H.J. Heinz Company</i>	19 N.E.3d 877	✓	✓	✓	Did not participate	✓	✓		✓
2014	<i>Auer v. Paliath</i>	17 N.E.3d 561	✓	✓	✓	✓	✓	✓		
2014	<i>State ex rel. Rogers v. Pat Salmon & Sons Inc.</i>	18 N.E.3d 402	✓	✓	✓	✓	✓	✓	✓	

Year	Case	Citation	Defendant wins = ✓	Chief Justice Maureen O'Connor	Justice Terrence O'Donnell	Justice Judith Lanziger	Justice Sharon Kennedy	Justice Judith French	Justice Paul Pfeifer	Justice William O'Neill
2014	<i>Hayward v. Summa Health System/Akron City Hospital</i>	11 N.E.3d 243	✓	✓	✓	✓	✓	✓		✓
2014	<i>State ex rel. Honda of America Manufacturing Inc. v. Industrial Commission of Ohio</i>	11 N.E.3d 1131			✓		✓	✓		
2014	<i>State ex rel. Sheppard v. Industrial Commission of Ohio</i>	11 N.E.3d 231	✓	✓	✓	✓	✓	✓		✓
Year	Case	Citation	Defendant wins = ✓	Chief Justice Maureen O'Connor	Justice Terrence O'Donnell	Justice Judith Lanziger	Justice Sharon Kennedy	Justice Judith French	Justice Paul Pfeifer	Justice William O'Neill
2013	<i>State ex rel. Kelsey Hayes Company v. Grashel</i>	6 N.E.3d 1128	✓	✓	✓	✓	✓			
2013	<i>Cullen v. State Farm Mutual Auto Insurance Company</i>	999 N.E.2d 614	✓	✓	✓	✓	✓	Did not participate		
2013	<i>Longbottom v. Mercy Hospital Clermont</i>	998 N.E.2d 419	✓	✓	✓	✓	✓	✓		
2013	<i>State ex rel. Sigler v. Lubrizol Corp.</i>	995 N.E.2d 204	✓	✓			✓	✓	✓	✓
2013	<i>State ex rel. Estate of Sziraki v. Administrator, Bureau of Workers' Compensation</i>	998 N.E.2d 1074	✓		✓	✓	✓	✓		
2013	<i>Bernard v. Unemployment Compensation Review Commission</i>	994 N.E.2d 437	✓	✓	✓	✓	✓	✓		
2013	<i>State ex rel. Scott v. Industrial Commission of Ohio</i>	990 N.E.2d 578	✓	✓	✓	✓	✓	✓	✓	
2013	<i>Marusa v. Erie Insurance Company</i>	991 N.E.2d 232			✓		✓	✓		
2013	<i>State ex rel. Haddox v. Industrial Commission of Ohio</i>	986 N.E.2d 939			✓		✓	✓		
Year	Case	Citation	Defendant wins = ✓	Chief Justice Maureen O'Connor	Justice Terrence O'Donnell	Justice Judith Lanziger	Justice Yvette McGee Brown	Justice Evelyn Lundberg Stratton	Justice Paul Pfeifer	Justice Robert Cupp
2012	<i>Houdek v. Thyssenkrupp Materials N.A. Inc.</i>	983 N.E.2d 1253	✓	✓	✓	✓	✓	✓		✓

Year	Case	Citation	Defendant wins = ✓	Chief Justice Maureen O'Connor	Justice Terrence O'Donnell	Justice Judith Lanziger	Justice Yvette McGee Brown	Justice Evelyn Lundberg Stratton	Justice Paul Pfeifer	Justice Robert Cupp
2012	<i>Beyer v. Rieter Auto. North America Inc.</i>	134 Ohio St. 3d 379	✓	✓	✓	✓	✓	✓		✓
2012	<i>Bennett v. Administrator, Ohio Bureau of Workers' Compensation</i>	982 N.E.2d 666	✓	✓	✓	✓	✓			✓
2012	<i>DiFranco v. FirstEnergy Corp.</i>	980 N.E.2d 996	✓	✓	✓	✓	✓	✓		✓
2012	<i>Holmes v. Crawford Machine Inc.</i>	982 N.E.2d 643			✓					✓
2012	<i>Branch v. Cleveland Clinic Foundation</i>	980 N.E.2d 970	✓	✓	✓	✓	✓	✓		✓
2012	<i>Hewitt v. L.E. Myers Company</i>	981 N.E.2d 795	✓	✓	✓	✓	✓	✓		✓
2012	<i>Flynn v. Fairview Village Retirement Community Ltd.</i>	970 N.E.2d 927	✓	✓	✓	✓	✓	✓		✓
2012	<i>In re All Cases Against Sager Corp.</i>	967 N.E.2d 1203	✓	✓	✓	✓	✓	✓		✓
2012	<i>Spencer v. Freight Handlers Inc.</i>	964 N.E.2d 1030			✓					
Year	Case	Citation	Defendant wins = ✓	Chief Justice Maureen O'Connor	Justice Terrence O'Donnell	Justice Judith Lanziger	Justice Yvette McGee Brown	Justice Evelyn Lundberg Stratton	Justice Paul Pfeifer	Justice Robert Cupp
2011	<i>Barbee v. Nationwide Mutual Insurance Company</i>	955 N.E.2d 995	✓	✓	✓	✓		✓		✓
2011	<i>King v. ProMedica Health Systems</i>	955 N.E.2d 348	✓	✓	✓	✓	✓	✓		✓
2011	<i>Starkey v. Builders Firstsource Ohio Valley LLC</i>	956 N.E.2d 267			✓					
2011	<i>State ex rel. Baker v. Coast to Coast Manpower LLC</i>	950 N.E.2d 924	✓		✓	Did not participate		✓		✓
2011	<i>Sutton v. Tomco Machining Inc.</i>	950 N.E.2d 938			✓	✓				✓

Source: Case information found in the Lexis-Nexis legal database, available at www.lexis.com (last accessed August 2016).

TABLE A5

Divided rulings in Pennsylvania Supreme Court cases involving individual plaintiffs and business defendants

Year	Case	Citation	Defendant wins = ✓	Chief Justice Thomas Saylor	Justice Michael Eakin	Justice Max Baer	Justice Debra Todd	Justice Christine Donohue	Justice Kevin Dougherty	Justice David Wecht
2016	<i>Glover v. Udren Law Offices P.C.</i>	2016 Pa. LEXIS 1255			Did not participate	✓		Did not participate		Did not participate
2016	<i>Jacobs v. Unemployment Compensation Board Of Review</i>	2016 Pa. LEXIS 983	✓		✓	✓	✓	✓		✓
Year	Case	Citation	Defendant wins = ✓	Justice Thomas Saylor	Justice Michael Eakin	Justice Max Baer	Justice Debra Todd	Justice Correale Stevens	Chief Justice Ron Castillo	Justice Seamus McCaffery
2015	<i>Socko v. Mid-Atlantic Systems Of CPA Inc.</i>	126 A.3d 1266			✓				Did not participate	Did not participate
2015	<i>O'Rourke v. Workers Compensation Appeal Board</i>	125 A.3d 1184	✓	✓	✓	✓		✓	Did not participate	Did not participate
2015	<i>Wert v. Manorcare of Carlisle PA LLC</i>	124 A.3d 1248			✓	✓			Did not participate	Did not participate
2015	<i>Polett v. Public Communications Inc.</i>	126 A.3d 895		✓	✓				Did not participate	Did not participate
2015	<i>Chamberlain v. Unemployment Compensation Board Of Review</i>	114 A.3d 385						✓	Did not participate	
Year	Case	Citation	Defendant wins = ✓	Justice Thomas Saylor	Justice Michael Eakin	Justice Max Baer	Justice Debra Todd	Justice Correale Stevens	Chief Justice Ron Castillo	Justice Seamus McCaffery
2014	<i>Allstate Property & Casualty Insurance Co. v. Wolfe</i>	105 A.3d 1181							✓	Did not participate
2014	<i>Braun v. Wal-Mart Stores Inc.</i>	106 A.3d 656		✓				Did not participate		Did not participate
2014	<i>Cruz v. Workers Compensation Appeal Board</i>	627 Pa. 28			✓			✓		
Year	Case	Citation	Defendant wins = ✓	Justice Thomas Saylor	Justice Michael Eakin	Justice Max Baer	Justice Debra Todd	Justice Joan Melvin	Chief Justice Ron Castillo	Justice Seamus McCaffery
2013	<i>Tooyey v. AK Steel Corp.</i>	623 Pa. 60		✓					Did not participate	

Year	Case	Citation	Defendant wins = ✓	Justice Thomas Saylor	Justice Michael Eakin	Justice Max Baer	Justice Debra Todd	Justice Joan Melvin	Chief Justice Ron Castille	Justice Seamus McCaffery
2013	<i>Ball v. Bayard Pump & Tank Company</i>	620 Pa. 289	✓		✓	✓	✓	Did not participate	✓	✓
2013	<i>Bowman v. Sunoco Inc.</i>	620 Pa. 28	✓	✓	✓		✓	Did not participate	✓	✓
Year	Case	Citation	Defendant wins = ✓	Justice Thomas Saylor	Justice Michael Eakin	Justice Max Baer	Justice Debra Todd	Justice Joan Melvin	Chief Justice Ron Castille	Justice Seamus McCaffery
2012	<i>Marlette v. State Farm Mutual Auto Insurance Company</i>	618 Pa. 617	✓	✓	✓	✓	✓	Did not participate	✓	
2012	<i>Diehl v. Unemployment Compensation Board of Review</i>	618 Pa. 592			✓		✓	Did not participate		
2012	<i>Bruckshaw v. Frankford Hospital of Philadelphia</i>	619 Pa. 135			✓			Did not participate		
2012	<i>Reott v. Asia Trend Inc.</i>	618 Pa. 228					✓	Did not participate		
2012	<i>Cooper v. Lankenau Hospital</i>	616 Pa. 550	✓	✓	✓	✓		Did not participate	✓	✓
2012	<i>Bole v. Erie Insurance Exchange</i>	616 Pa. 479	✓	✓	✓	✓	✓	Did not participate	✓	
2012	<i>Tayar v. Camelback Ski Corp.</i>	616 Pa. 385				✓		Did not participate		
2012	<i>Hostler v. Workers' Compensation Appeal Board</i>	615 Pa. 502	✓		✓	✓	✓	Did not participate	✓	✓
2012	<i>Daley v. A.W. Chesterton Inc.</i>	614 Pa. 335						✓		
2012	<i>Barnett v. SKF USA Inc.</i>	614 Pa. 463	✓	✓		✓	✓	✓	✓	
Year	Case	Citation	Defendant wins = ✓	Justice Thomas Saylor	Justice Michael Eakin	Justice Max Baer	Justice Debra Todd	Justice Joan Melvin	Chief Justice Ron Castille	Justice Seamus McCaffery
2011	<i>Samuel-Bassett v. Kia Motors America Inc.</i>	34 A.3d 1		✓				Did not participate		
2011	<i>Gentex Corp. v. Workers' Compensation Appeal Board</i>	611 Pa. 38		✓						
2011	<i>Orsag v. Farmers New Century Insurance</i>	609 Pa. 388	✓	✓	✓		✓	✓	✓	

Year	Case	Citation	Defendant wins = ✓	Justice Thomas Saylor	Justice Michael Eakin	Justice Max Baer	Justice Debra Todd	Justice Joan Melvin	Chief Justice Ron Castille	Justice Seamus McCaffery
2011	<i>Gillard v. AIG Insurance Company</i>	609 Pa. 65	✓	✓		✓	✓	✓	✓	
2011	<i>Ditch v. Waynesboro Hospital</i>	609 Pa. 464	✓	✓	✓	✓		Did not participate	✓	✓

Source: Case information found in the Lexis-Nexis legal database, available at www.lexis.com (last accessed August 2016).

TABLE A6
Divided rulings in Texas Supreme Court cases involving individual plaintiffs and business defendants

Year	Case	Citation	Defendant wins = ✓	Chief Justice Nathan Hecht	Justice Don Willett	Justice Debra Lehrmann	Justice John Devine	Justice Paul Green	Justice Jeff Brown	Justice Jeff Boyd	Justice Phil Johnson	Justice Eva Guzman
2016	<i>In re Nationwide Insurance Company of America</i>	59 Tex. Sup. J. 1483	✓	✓	✓	✓	✓	✓		✓	✓	
2016	<i>Union Pacific Railroad Company v. Nami</i>	59 Tex. Sup. J. 1407	✓	✓	✓	✓	✓	✓	✓	✓		✓
2016	<i>KBMT Operating Company LLC v. Toledo</i>	59 Tex. Sup. J. 1257	✓	✓		✓	✓	✓	✓			✓
2016	<i>Wood v. HSBC Bank USA N.A.</i>	59 Tex. Sup. J. 877		✓	✓			✓				
2016	<i>Garofolo v. Ocwen Loan Servicing LLC</i>	59 Tex. Sup. J. 920	✓	✓	✓	✓	✓	✓	✓			✓
2016	<i>Chesapeake Exploration LLC v. Hyder</i>	483 S.W.3d 870			✓	✓			✓			✓
Year	Case	Citation	Defendant wins = ✓	Chief Justice Nathan Hecht	Justice Don Willett	Justice Debra Lehrmann	Justice John Devine	Justice Paul Green	Justice Jeff Brown	Justice Jeff Boyd	Justice Phil Johnson	Justice Eva Guzman
2015	<i>Seabright Insurance Company v. Lopez</i>	465 S.W.3d 637									✓	
2015	<i>Genie Industries Inc. v. Matak</i>	462 S.W.3d 1	✓	✓	✓			✓	✓		✓	✓
2015	<i>PlainsCapital Bank v. Martin</i>	459 S.W.3d 550	✓	✓	✓	✓	✓	✓	✓		✓	

Year	Case	Citation	Defendant wins = ✓	Chief Justice Nathan Hecht	Justice Don Willett	Justice Debra Lehmann	Justice John Devine	Justice Paul Green	Justice Jeff Brown	Justice Jeff Boyd	Justice Phil Johnson	Justice Eva Guzman
2014	<i>Greene v. Farmers Insurance Exchange</i>	446 S.W.3d 761	✓	✓		✓	✓	✓	✓		✓	✓
2014	<i>Nath v. Texas Children's Hospital</i>	446 S.W.3d 355			✓			✓	✓	✓		
2014	<i>King Fisher Marine Serv. LP v. Tamez</i>	443 S.W.3d 838		✓			✓	✓				✓
2014	<i>Tenet Hospitals Ltd. v. Rivera</i>	445 S.W.3d 698	✓	✓	✓		✓	✓	✓	✓	✓	✓
2014	<i>Bostic v. Georgia-Pacific Corp.</i>	439 S.W.3d 332	✓	✓	✓			✓	✓		✓	✓
2014	<i>Jaster v. Comet II Construction Inc.</i>	438 S.W.3d 556	✓		✓	✓	✓			✓	✓	
2014	<i>In re Ford Motor Company</i>	442 S.W.3d 265					✓		✓	✓	✓	
2014	<i>Brookshire Bros. Ltd. v. Aldridge</i>	438 S.W.3d 9	✓	✓	✓	✓		✓		✓	✓	
2014	<i>Union Carbide Corp. v. Synatzske</i>	438 S.W.3d 39	✓	✓	✓			✓	✓		✓	
Year	Case	Citation	Defendant wins = ✓	Justice Nathan Hecht	Justice Don Willett	Justice Debra Lehmann	Justice John Devine	Justice Paul Green	Chief Justice Wallace Jefferson	Justice Jeff Boyd	Justice Phil Johnson	Justice Eva Guzman
2013	<i>Dyegy Inc. v. Yates</i>	422 S.W.3d 638	✓	✓	✓	✓		✓	✓	✓	✓	Did not participate
Year	Case	Citation	Defendant wins = ✓	Justice Nathan Hecht	Justice Don Willett	Justice Debra Lehmann	Justice Dale Wainright	Justice Paul Green	Chief Justice Wallace Jefferson	Justice David Medina	Justice Phil Johnson	Justice Eva Guzman
2012	<i>U-Haul International Inc. v. Waldrip</i>	380 S.W.3d 118	✓	✓	✓		✓	✓	✓	✓	✓	✓
2012	<i>Bison Building Materials Ltd. v. Aldridge</i>	422 S.W.3d 582		✓	✓					✓		
2012	<i>Texas West Oaks Hospital LP v. Williams</i>	371 S.W.3d 171	✓	✓			✓	✓	✓		✓	✓
2012	<i>In re XL Specialty Insurance Company</i>	373 S.W.3d 46			✓							
2012	<i>Texas Mutual Insurance Company v. Ruttiger</i>	381 S.W.3d 430	✓	✓	✓		✓				✓	✓

Year	Case	Citation	Defendant wins = ✓	Chief									
				Justice Nathan Hecht	Justice Don Willett	Justice Debra Lehrmann	Justice Dale Wainright	Justice Paul Green	Justice Wallace Jefferson	Justice David Medina	Justice Phil Johnson	Justice Eva Guzman	
2011	<i>Texas Mutual Insurance Co. v. Ruttiger</i>	54 Tex. Sup. J. 1642	✓	✓	✓		✓				✓	✓	✓
2011	<i>Omaha Healthcare Ctr. LLC v. Johnson</i>	344 S.W.3d 392	✓	✓	✓		✓	✓	✓			✓	✓

Source: Case information found in the Lexis-Nexis legal database, available at www.lexis.com (last accessed August 2016).

Endnotes

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