



Strong Recusal Rules Are Crucial to Judicial Integrity

Billy Corriher November 20, 2012

This report is the fourth in a series on different policies that could help mitigate the influence of corporate campaign cash in judicial elections. The reports are intended for advocates or legislators who want to ensure our justice system works for everyone, not just those with enough money to donate.

Since the 2000 election season, state supreme court races have seen a surge in campaign cash. State supreme court candidates from 2000 to 2009 raised more than \$200 million—two and a half times more than the amount raised in the previous decade.¹ A report from Justice at Stake, an advocate for fair courts, found that judicial elections in 2012 set a spending record, with \$27.8 million shelled out for television advertising alone.² This flood of campaign cash has flowed from corporations, interest groups, and lawyers seeking to influence the composition of state high courts and the rulings issued by those courts.

This abundance of campaign donations has sometimes led to alarming conflicts of interest. Unlike legislators, judges make decisions that impact specific individuals or entities, which means the avoidance of any bias or partiality is critical. Under the ethical rules and guidelines in place in most states, judges must disclose any campaign donations from parties or attorneys before their courts, and they must refrain from hearing a case if it would give rise to “impropriety or the appearance of impropriety.”³ This standard, however, is vague and leaves much to interpretation.

Judges sometimes recuse themselves from cases involving litigants or lawyers who have given money to their campaigns, but all too often judges refuse to abstain in the face of glaring conflicts of interest. This has caused the public to doubt the impartiality of judges. According to several recent polls, more than three quarters of respondents believe that campaign cash influences rulings.⁴

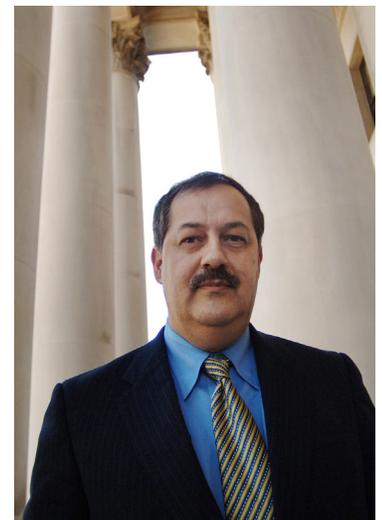
The North Carolina state legislature acknowledged these concerns in 2002, when it overhauled its judicial elections process and established public financing for qualified candidates for the state’s appellate courts.⁵ This system kept special interests from influencing the law and allowed North Carolina judicial candidates to avoid the ethical dilem-

mas that have plagued other states.⁶ The 2012 election, however, saw the state’s public financing system overwhelmed by “independent spending” as organizations supporting conservative Justice Paul Newby spent more than \$2.5 million in his successful re-election bid.⁷ Funding these organizations were tobacco companies, education advocates, and health care interests—groups with a stake in cases before the North Carolina Supreme Court. The largest donation, by far, was \$875,000 from the Republican State Leadership Committee, a national group dedicated to electing Republicans to state offices.⁸

One of those cases before the North Carolina high court involves a lawsuit filed by the state chapter of the National Association for the Advancement of Colored People, or NAACP, among others, alleging that Republican legislators discriminated against African American voters in redrawing the state’s legislative districts. The plaintiffs allege that the drafters of the redistricting map purposely diluted the political power of “minority voters” by using race as a proxy for political party. A lower court granted the plaintiffs’ motion to access information about how the map was drawn.⁹ That decision, which is now being challenged in the high court, is seen as a precursor to the North Carolina Supreme Court eventually ruling on the legality of the redrawn legislative map. With the redistricting issue looming, the Republican Party and corporate interest groups used independent spending to influence the 2012 North Carolina Supreme Court election. Newby will have to decide whether all that independent campaign cash supporting his candidacy means that he should recuse himself from the case.

In a 2009 case the U.S. Supreme Court tackled the ethical dilemmas that arise from huge judicial campaign donations from parties before a court. The Court in *Caperton v. Massey Coal Co.* held that “extraordinary” campaign donations from Don Blankenship, CEO of Massey Coal, violated the plaintiff’s due process rights. The plaintiff in *Caperton* was the owner of a small mining company who sued the much larger Massey corporation, alleging that it “destroyed” his business. The jury awarded the plaintiff \$50 million, but while the case was pending before the West Virginia Supreme Court, Blankenship spent \$3 million to help elect a Republican justice to that court.¹⁰ The newly elected justice refused to recuse himself from the lawsuit, even though two of his colleagues had done so.¹¹ The justice cast the deciding vote to overturn the verdict on a technicality.¹²

The U.S. Supreme Court held that the Constitution required the West Virginia justice to recuse himself. Justice Anthony Kennedy’s opinion said Blankenship’s “extraordinary contributions were made at a time when he had a vested stake in the outcome. 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.”¹³ Kennedy noted that the Constitution “demands only the outer boundaries of judicial disqualifications” and that states can implement stronger rules.¹⁴



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Massey Energy President Don Blankenship stands beneath the columns of the Capitol Dome, during the first day of the 2005 legislative special session in Charleston, W.Va.

Judges refuse to police themselves

The most recent American Bar Association Model Code of Judicial Conduct instructs judges to disclose any potential conflicts of interest and requires recusal when campaign contributions exceed a certain amount. Leaving it to states to fill in the blanks, the rule says recusal is mandated when “a party, a party’s lawyer, or the law firm of a party’s lawyer has within the previous ___ years made aggregate contributions to the judge’s campaign in an amount greater than ___.”¹⁵ In the wake of the *Caperton* decision, a few states strengthened their recusal rules, but most states have not responded to the ethical dilemmas that have emerged as campaign cash has flooded judicial elections.¹⁶

Some state supreme courts have even weakened their recusal standards in recent years. In a 2010 decision by the Wisconsin Supreme Court, a four-justice majority of conservative justices voted for an inadequate recusal rule.¹⁷ The court adopted the watered-down standards articulated by a number of conservative organizations, including the Wisconsin Realtors Association and Wisconsin’s Manufacturers and Commerce. These corporate-funded groups subsequently donated nearly a million dollars to support Justice David Prosser’s successful re-election in 2011, keeping in place the court’s four-justice conservative majority.¹⁸ The new rule states that campaign donations or independent expenditures by a litigant or an attorney can never be the sole basis for recusal.¹⁹

The four conservative Wisconsin justices rejected an alternate proposal from the League of Women Voters to mandate recusal when a party contributes to a justice’s campaign. The League argued the court must have “rules for recusal which remove any perception that justices and judges are beholden to those who contribute to their campaigns.”²⁰

Wisconsin Justice Ann Walsh Bradley dissented from the order adopting the standard urged by the corporate interest groups, expressing alarm that judges’ campaigns can now ask parties before the court for campaign contributions. “Judges must be perceived as beyond price,” Bradley stated. She criticized the majority for adopting “word-for-word the script of special interests that may want to sway the results of future judicial campaigns.”²¹ The Wisconsin high court’s four-justice majority seems intent on making it easier for big money to influence the judiciary, at the expense of litigants without resources to contribute to political campaigns.

One substantial donor to judicial campaigns—insurance giant State Farm—saw several recusal requests directed toward a beneficiary of the company’s generosity, Illinois Supreme Court Justice Lloyd Karmeier, in a class action lawsuit in which a jury awarded a \$1 billion verdict against the insurer. According to the plaintiffs in that case, the company spent millions of dollars to elect Karmeier to the Illinois Supreme Court in 2004. The class action lawsuit was brought by millions of policyholders who claimed State Farm had violated their insurance policies and consumer protection laws by offering inferior parts to repair their cars. Justice Karmeier was elected to the court while the

case was pending. The plaintiffs asked Justice Karmeier to recuse himself because State Farm’s employees and lawyers had donated around \$350,000 to his campaign, but he declined. Justice Karmeier voted to overturn the verdict.²²

The plaintiffs, claiming they had discovered new connections between the judge’s campaign and State Farm, filed a new lawsuit in the fall of 2011 alleging that State Farm—through political groups such as the U.S. Chamber of Commerce and the Illinois Civil Justice League—“recruited Karmeier, directed his campaign, had developed a vast network of contributors, and funneled as much as \$4 million to the campaign” in an effort to influence the outcome of the appeal.²³ State Farm has sought to dismiss the lawsuit, arguing that it rehashes many of the claims asserted in the previous case.²⁴

Some judges oppose stricter recusal rules on the basis of their “duty to sit,” which requires them to hear cases and controversies before them. Because they belong to the courts of last resort for many cases, state supreme court justices who refuse to abstain often cite this notion.

Even when judges seek to recuse themselves, this duty has sometimes made it impossible for them to do so. In a 2000 Nevada Supreme Court case, a trial court judge recused himself from hearing a lawsuit brought by two plaintiffs whose land was seized through eminent domain for a private redevelopment project.²⁵ After the case was assigned to the judge, four casinos that would benefit from the redevelopment project gave contributions to the judge’s campaign.²⁶ The landowners asked the judge to recuse himself because of the contributions and because two of the witnesses were casino executives who gave money to the judge’s campaign.

To his credit, the judge agreed and abstained. But after three other trial court judges similarly recused themselves, the redevelopment authority persuaded the Nevada Supreme Court to order the original judge to hear the case. In issuing its order, the high court noted “this recurring problem of campaign contributions” but said a rule requiring recusal due to campaign contributions would “severely and intolerably obstruct the conduct of judicial business.”²⁷ In other words, campaign cash from litigants and attorneys is so pervasive that requiring recusal in these circumstances would make it impossible for judges to do their jobs.

The Nevada plaintiffs—their land taken to provide a parking deck for the same casinos that donated to the judge’s campaign—likely found little solace in the judge’s “duty to sit.” This legal axiom predates multimillion-dollar judicial campaigns and ignores the damage they have done to public confidence in the judiciary.

Several years after the Nevada high court’s decision, the *Los Angeles Times* described the Nevada judiciary as rife with conflicts of interest, displaying a “style of wide-open, frontier justice that veers out of control across ethical, if not legal, boundaries.”²⁸ The

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Nevada high court in 2009 adopted a rule requiring recusal when a judge’s “impartiality might reasonably be questioned,” but the justices rejected two proposals to specify when campaign contributions require recusal.²⁹ One rule would have kicked in when contributions exceed \$50,000, and the other would have required recusal when a party or law firm provides 5 percent or more of a judge’s campaign funding.³⁰

When courts are left to police themselves, the strength of a court’s standards depends on the will of a majority of the justices. The Michigan Supreme Court has taken a step in the right direction, but not every justice is on board. The court recently adopted a rule that permits the entire court to review motions to recuse a justice. Under the rule, a justice must respond in writing to requests for recusal, and if he or she decides not to abstain, the party making the request can appeal that decision to the entire court.³¹

Two of the Michigan court’s seven justices, however, have refused to participate in these appeals. Justice Maura Corrigan, dissenting in one such case, argued that Michigan’s recusal standard is too high:

*The rule effectively gives a majority of justices carte blanche to disqualify their colleagues simply by articulating its impressions of why a challenged justice’s participation appeared improper, without regard to the existence of the traditional, more objective grounds for recusal such as personal bias, involvement in the case, or economic interest in the case.*³²

Corrigan also argues that the rule “nullifies the electoral choice of the people of Michigan by permitting the Court to decide which justices may participate in a given case.”³³

Justice Corrigan’s objections are based on outdated notions of judicial impartiality. Ethics rules have been strengthened as campaign cash has flooded judicial elections. A personal financial stake in a case is no longer the only basis for demanding recusal. In *Caperton*, the U.S. Supreme Court quoted the then-existing version of the American Bar Association Model Code of Judicial Conduct, which instructed judges to avoid “the appearance of impropriety.” The Court noted that this rule has been adopted by “almost every state.”³⁴ The Court explicitly did not find any actual bias or impartiality on the part of the judge in *Caperton*, but recusal was still required because of the risk of bias.

Justice Corrigan’s stance illustrates the folly of leaving it to judges to police themselves on ethical issues. If two more justices were elected to the Michigan bench who share Corrigan’s views, the justices could revoke the rule. Legislative action is necessary to ensure recusal rules are more consistent, legislative.

Legislatures should pass real recusal reform

Despite the steep rise in judicial campaign cash, courts have failed to implement the tough recusal rules needed to ensure public confidence in judicial impartiality. *Caperton* may provide some relief from the most extraordinary and blatant conflicts of interests, but it is not enough. State legislatures should pass laws that specify when recusal is required.

Only five states explicitly require recusal when campaign contributions reach a certain threshold.³⁵ In California a judge cannot hear a case if he or she has received campaign contributions of more than \$1,500 from a party or a lawyer in the case.³⁶ Alabama similarly requires a trial court judge's recusal when a litigant or attorney has given more than \$2,000 to the judge's campaign. For appellate judges, the threshold is \$4,000.³⁷ The Alabama law states: "Under no circumstances shall a justice or judge solicit a waiver of recusal or participate in any way when . . . the contributions of a party or its attorney exceed the applicable limit."³⁸ The statute instructs the high court to promulgate rules allowing motions to recuse under these standards to be heard by lower court judges.³⁹

The Alabama law was passed in 1995, but it remains stuck in legal limbo. The Alabama Attorney General's office initially submitted the rule to the U.S. Department of Justice for "preclearance" under⁴⁰ Section 5 of the Voting Rights Act, which requires certain jurisdictions with a history of racial discrimination in voting to "pre-clear" any changes in voting with the federal government. After the department asked for more information on the rule, the office sought to revoke its submission, claiming the rule was not subject to preclearance. The state and federal government have yet to resolve the issue. The Alabama high court, meanwhile, has refused to implement the rule until it is precleared.⁴¹ Rejecting a lawsuit seeking to break this stalemate, a federal court recently referred to the situation as a "game of political chicken, with both players staring (or perhaps winking) at each other."⁴²

Alabama was on the leading edge of the trend of exploding campaign costs for high court races. The 2006 high court race saw candidates spend \$13.5 million—nearly half of all the money spent on high court races nationwide that year.⁴³ Candidates in the 2010 Alabama Supreme Court election accepted dozens of contributions higher than the \$4,000 threshold, with some contributors forking over tens of thousands of dollars to the judges' campaigns.⁴⁴ Because the recusal rule is unenforced, however, the judges can hear cases involving these campaign contributors. Alabama citizens and their state legislators should demand that the court honor this law, which is now nearly 20 years old.

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Alabama and California use a specific monetary threshold. One scholar recently suggested using a standard of “five to ten percent of the judge’s total campaign expenditures.”⁴⁵ *Caperton* similarly relied on criteria such as “a contribution’s relative size in comparison to the total amount of money contributed to the campaign.”⁴⁶ As long as recusal rules are based on vague standards of “impropriety,” judges will be able to avoid recusal in the face of large campaign contributions.

Additionally, recusal statutes should cover independent expenditures made on behalf of a judge’s campaign. Spending by groups that are independent of judicial campaigns has risen sharply in recent elections. According to the Justice at Stake report, in the 2012 election independent spending on television ads exceeded the amount spent by campaigns.⁴⁷ In *Caperton*, the coal executive’s influence on the 2004 West Virginia Supreme Court election was mostly in the form of independent spending. Even though the coal executive’s direct contribution to the candidate was rather modest, the U.S. Supreme Court held that his indirect contributions—in the form of a \$2.5 million donation to a group criticizing the judge’s criminal decisions and \$500,000 spent on ads by the executive himself—resulted in an unconstitutional conflict of interest.⁴⁸

Independent spending allows interest groups to circumvent campaign contribution limits, and if allowed to remain unchecked, they will continue to play a crucial role in judicial races. The U.S. Supreme Court, in cases like *Citizens United*, has loosened restrictions on independent spending, and the federal agency regulating campaign finance is paralyzed by a partisan stalemate.⁴⁹ Omitting independent expenditures from recusal rules would present a huge loophole for litigants and lawyers looking to influence judges.

If state legislatures do not implement mandatory recusal rules, they should at least follow the Michigan high court’s lead and allow review of a recusal decision by an entire court. The judge facing the alleged conflict of interest should not be the only person deciding the issue. After all, if a judge has a conflict of interest in a lawsuit, he or she also has a conflict of interest in deciding whether to hear the suit.

Some judges might express alarm at legislatures crafting ethics rules for the judicial branch, citing concerns about separation of powers. The courts, however, retain their role as interpreters of their respective state constitutions, meaning that any rules that violate the constitutional separation of powers can be stricken. These rules generally leave the ultimate decision on recusal in the hands of judges, so they do not give other branches control over who hears a specific case. More importantly, these concerns gloss over the damage that conflicts of interest inflict on the public’s perception of the judiciary. Unlike laws allowing legislatures to override court rules or giving politicians more control over judicial selection, recusal rules govern the ethics of judges, and they are only necessary in states in which the high courts have failed to respond adequately to the swelling tide of campaign cash.

Conclusion

The explosion of money in judicial politics has brought renewed attention to the issue of judicial ethics. Conflicts of interest like those in *Avery v. State Farm* and *Caperton v. Massey Coal Co.* shock the consciences of citizens and cause them to question the integrity of the judiciary. The Supreme Court's *Caperton* ruling may provide relief in some of the most egregious cases, but states must go further.

State legislatures should pass rules mandating recusal when the campaign contributions of a party or its attorneys reach a certain point. The legislatures can base the threshold on a certain dollar amount, based on the historical cost of judicial elections, or on a percentage of a candidate's total contributions. A bright-line rule would not allow judges any wiggle room to avoid recusal. It would also discourage special interests from donating too much money to judicial candidates they favor because doing so would mean that the judges, once on the bench, could not hear their cases.

Recusal statutes should also govern independent expenditures, which play an increasingly important role in judicial elections. The defendant in *Caperton* used independent expenditures to evade contribution limits, and omitting this money from recusal rules would leave a glaring loophole for those seeking to curry favor with judges.

Polls show that the vast majority of citizens are concerned that campaign cash affects judges' rulings.⁵⁰ This is a bipartisan concern, and the public must demand that state legislators take action. Citizens should also hold judicial candidates to account for these concerns about impartiality. Voters should reward high court candidates who run on a platform of recusal reform.

Coal executive Hugh Caperton saw his business destroyed by a much larger corporation and won a jury verdict for his losses, but then saw the larger corporation work to elect a judge who overturned the verdict. In 2010 Caperton said he had "experienced firsthand the devastation and destruction that big money campaign donations are causing in judicial elections and ultimately, in our courts." He lamented, "It appears that justice is indeed for sale." Mandatory recusal rules would go a long way toward disabusing citizens of the notion that judges and by extension, justice, can be bought.

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Endnotes

- 1 High court candidates from 2000 to 2009 spent \$210,859,178, which amounts to 2.6 times more than the \$82,460,441 spent from 1990 to 1999. See: "National Overview Map, Total Dollars for all High Court Candidates," available at <http://www.followthemoney.org/database/nationalview.phtml?l=0&f=J&y=2012&abbr=0> (last accessed November 9, 2012).
- 2 Justice at Stake Campaign, "Judicial Election TV Spending Sets New Record, Yet Voters Reject Campaigns to Politicize Judiciary," Press release, November 7, 2012, available at http://www.justiceatstake.org/state/judicial_elections_2012/election-2012-news-releases/?judicial_election_tv_spending_sets_new_record_yet_voters_reject_campaigns_to_politicize_judiciary&show=news&newsID=15337.
- 3 The American Bar Association Model Code of Judicial Conduct, Rule 1.2, instructs judges to avoid "impropriety and the appearance of impropriety." The association notes that 28 states use Rule 1.2 or something similar. See: American Bar Association CPR Policy Implementation Committee, "Comparison of ABA Model Code and State Variations, Rule 1.2: Promoting Confidence in the Judiciary," March 12, 2012, available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1_2_authcheck-dam.pdf.
- 4 Joan Biskupic, "Supreme Court case with the feel of a best seller," *USA Today*, February 16, 2009, available at http://www.usatoday.com/news/washington/2009-02-16-grisham-court_N.htm. Biskupic discusses a poll where 89 percent of respondents said they "believe the influence of campaign contributions on judges' rulings is a problem." A 2010 poll found that 70 percent of Democrats and Republicans believed campaign donations have a "significant impact" on judges' rulings. See: Justice at Stake, "Solid Bipartisan Majorities Believe Judges Influenced by Campaign Contributions," Press release, September 8, 2010, available at http://www.justiceatstake.org/newsroom/press_releases.cfm/9810_solid_bipartisan_majorities_believe_judges_influenced_by_campaign_contributions?show=news&newsID=8722.
- 5 The bill stated its purpose as protecting "voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections ... since impartiality is uniquely important to the integrity and credibility of the courts." See: Judicial Campaign Reform Act, 2002 N.C. Adv. Legis. Serv. 158. 2001 N.C. SB 1054
- 6 In 2002 candidates for the North Carolina supreme court raised around \$800,000, and more than half of the money came from lawyers or business interests. Sixty-four percent of the campaign funds in the 2004 race came from the public financing fund. North Carolina Center for Voter Education, "Graphic: How the Public Campaign Fund has reduced the role of private money in elections for the N.C. Supreme Court," 2010, available at http://www.ncjudges.org/jcra/graphic_contributions.html.
- 7 Craig Jarvis, "More than 2.5 million raised so far by outside groups in state Supreme Court race," *The News & Observer*, October 30, 2012, available at <http://www.newsobserver.com/2012/10/30/2450677/more-than-25-million-raised-so-far.html>.
- 8 Mark Binker, "Will Campaign Contributions Come up in Court Cases?," WRAL.com, November 14, 2012, available at <http://www.wral.com/will-campaign-contributions-come-up-in-court-cases-/11773709/>.
- 9 Bruce Mildwurf, "Many questions from NC Justices on map records," WRAL.com, July 10, 2012, available at <http://www.wral.com/news/state/nccapitol/story/11299460/>.
- 10 *Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252 (2009).
- 11 Justice Elliott Maynard recused himself after pictures surfaced of him on vacation with the same coal executive while the appeal was pending. Justice Larry Starcher recused himself "based on his public criticism of [coal executive Don] Blankenship's role in the 2004 elections." *Ibid.*, 2258.
- 12 *Ibid.*
- 13 *Ibid.*, 2265.
- 14 *Ibid.*, 2267.
- 15 American Bar Association, "Model Code of Judicial Conduct," Rule 2.11(A)(4).
- 16 Brennan Center for Justice, Justice at Stake Campaign, "2 Years after Landmark Ethics Case, Courts Lag on Campaign-Cash Rules," Press release, June 6, 2011, available at http://www.justiceatstake.org/newsroom/press_releases.cfm/2_years_after_landmark_ethics_case_courts_lag_on_campaigncash_rules?show=news&newsID=10754.
- 17 *In the Matter of Amendment of the Code of Judicial Conduct's Rules on Recusal*, Nos. 08-16, 08-25, 09-10, and 09-11 (Wis. July 7, 2010), available at <http://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=51874>. XX MORE INFO NEEDED
- 18 Brennan Center for Justice, "Judicial Public Financing in Wisconsin – 2011," April 5, 2011, http://www.brennancenter.org/content/resource/judicial_public_financing_in_wisconsin_2011.
- 19 *In the Matter of Amendment of the Code of Judicial Conduct's Rules on Recusal*.
- 20 The League of Women Voters Wisconsin Education Fund, "In re creation of rules for recusal when a party or lawyer made contributions effecting a judicial campaign," Petition to the Supreme Court of Wisconsin, June 2008, available at <http://www.wicourts.gov/supreme/docs/0816petition.pdf>.
- 21 *In the Matter of Amendment of the Code of Judicial Conduct's Rules on Recusal*.
- 22 *Avery v. State Farm*, 216 Ill. 2d 100 (2005).
- 23 *Hale v. State Farm*, No. 3:12-cv-006600, 3 (S.D.Ill. May 26, 2012), available at http://www.princetonautobody.com/Archive/SF_RICO.pdf. "The investigation, led by a retired FBI Special Agent, uncovered that to gain reversal of the \$1.05 billion judgment in the *Avery Action*, State Farm ... recruited Karmer, directed his campaign, had developed a vast network of contributors, and funneled as much as \$4 million to the campaign. Then, after achieving Karmer's election, State Farm deliberately concealed all of this from the Illinois Supreme Court while its appeal was pending."
- 24 Bethany Krajelis, "Class action suit alleges RICO enterprise in *Avery v. State Farm*," *The Madison-St. Clair Record*, September 26, 2012, available at <http://madisonrecord.com/news/246926-class-action-suit-alleges-rico-enterprise-in-avery-v-state-farm>.
- 25 *City of Las Vegas Downtown Redevelopment Agency v. Eighth Judicial Circuit*, 5 P.3d 1059 (Nev. 2000).
- 26 "In August 1998, the underlying action was assigned to Judge Denton. Later that same year, Judge Denton conducted a successful campaign to retain his seat, during which time he received contributions ranging from \$ 150.00 to \$ 2,000.00 from four casinos involved in or affiliated with the redevelopment project." *Ibid.*, 1061.
- 27 *Ibid.*, 1062.

- 28 Michael J. Goodman and William C. Rempel, "In Las Vegas, They're Playing with a Stacked Judicial Deck," *Los Angeles Times*, June 8, 2006, available at <http://articles.latimes.com/2006/jun/08/nation/na-vegas8>.
- 29 "In the Matter of the Amendment of the Nevada Code of Judicial Conduct," available at http://www.leg.state.nv.us/courtrules/scr_cjc.html.
- 30 Ibid.
- 31 Michigan Judicial Institute, "Judicial Disqualification in Michigan—Revised Edition" (2012), available at <http://courts.michigan.gov/education/mji/Publications/Documents/JDO.pdf>.
- 32 *Pellegrino v. Ampco Sys. Parking*, 789 N.W.2d 777, 789 (2010) (Corrigan, J., dissenting and refusing to participate).
- 33 Ibid.
- 34 *Caperton v. Massey Coal*, 1225.
- 35 Adam Skaggs and Andrew Silver, "Promoting Fair and Impartial Courts through Recusal Reform" (New York: Brennan Center for Justice, 2011), available at http://brennan3cdn.net/09c926c04c9eed5290_e4m6iv2v0.pdf.
- 36 2010 Cal. Stat. 686 (2010) (amending Cal. Code Civil Procedure § 170.1)
- 37 Ala. Code § 12-24-2.
- 38 Ibid.
- 39 Ibid.
- 40 42 U.S.C.S. § 1973c.
- 41 Peter Hardin, "Court: 'Political Chicken' Game over Alabama Recusal Law," Gavel Grab Blog, July 26, 2011, available at <http://www.gavelgrab.org/?p=23098>.
- 42 *Luther v. Strange*, 796 F. Supp. 2d 1314, 1331, n. 7 (2011) (parentheses in original).
- 43 "National Overview Map, Total Dollars for all High Court Candidates," 2006, available at <http://www.followthemoney.org/database/nationalview.phtml?l=0&f=J&y=2006&abbr=1>.
- 44 "High Court Candidates, Alabama 2010," available at http://www.followthemoney.org/database/StateGlance/state_candidates.phtml?f=J&y=2010&s=AL.
- 45 Charles Raley, "Judicial Independence in the Age of Run-away Campaign Spending: How More Vigilant Court Action and Stronger Recusal Statutes can Reclaim the Perception of an Independent Judiciary," *Case W. Res.* 62 (2011): p. 175.
- 46 *Caperton v. A.T. Massey Coal Co*, 2255.
- 47 Justice at Stake Campaign, "Judicial Election TV Spending Sets New Record, Yet Voters Reject Campaigns to Politicize Judiciary," Press release, November 7, 2012, available at http://www.justiceatstake.org/state/judicial_elections_2012/election-2012-news-releases/?judicial_election_tv_spending_sets_new_record_yet_voters_reject_campaigns_to_politicize_judiciary&show=news&newsID=15337.
- 48 *Caperton v. A.T. Massey Coal Co*.
- 49 *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010); Jonathan Backer, "Dysfunction on Display at FEC Oversight Hearing," Brennan Center for Justice, November 4, 2011, available at http://www.brennancenter.org/blog/archives/gridlock_and_dysfunction_on_display_at_fec_oversight_hearing.
- 50 Biskupic, "Supreme Court case with the feel of a best seller." Biskupic discusses a poll where 89 percent of respondents said they "believe the influence of campaign contributions on judges' rulings is a problem."