



Campaign Contributors and the Pennsylvania Supreme Court

Since the late 1980s, an organization called Pennsylvanians for Modern Courts (PMC) has been working to improve the process for selecting Pennsylvania's judges, among other judiciary reforms. The Pennsylvania General Assembly is currently considering legislation that would establish a merit selection system for the state's appellate judges. Under the proposal, an independent, bipartisan commission would screen applicants and identify the best qualified candidates, the governor would appoint one of those candidates with approval from the senate, and the public would vote periodically on whether the judge should remain in office. Calls for selection reform in Pennsylvania are motivated by a desire to maintain public confidence in the independence and impartiality of the state's courts.

Concerns about public confidence in the courts are due in large part to the state's current system for selecting judges. Pennsylvania's judges run in partisan elections to attain their seats. At the completion of an initial four-year term (and then every ten years thereafter), they stand for retention. The governor fills vacancies that arise between elections through appointment, but according to practice, appointees to the appellate courts generally agree not to run for election to a full term following the appointed term. Although campaign contributions directly from corporations and labor unions are prohibited, there are no limits on the amounts that individuals and PACs may contribute to judicial candidates.

The amount of money raised by candidates in contested judicial elections in Pennsylvania has been cause for concern since the late 1980s. While most states did not see million-dollar elections for their high courts until 2000, Pennsylvania experienced them as early as 1989. In the sole supreme court race that year, the two general-election candidates raised nearly \$2.5 million, according to data collected by the National Institute on Money in State Politics. Judicial campaign fundraising for a single supreme court seat reached an all-time high in 2009, when two general-election candidates brought in nearly \$4.7 million.

Grounds for fears

According to recent national polling, the public worries that campaign contributions influence judicial decisions. The American Judicature Society is providing research in support of PMC's selection reform efforts, and one component of this research is a study demonstrating that there are grounds for such fears in Pennsylvania. AJS undertook an analysis of the frequency

with which contributors to supreme court justices' campaigns later appeared before the court. The study examined civil cases decided by the supreme court in 2008 and 2009, and ascertained the number of cases in which at least one of the litigants, attorneys, or law firms involved had made a contribution to at least one justice.¹ Case data was obtained from the Administrative Office of Pennsylvania Courts and campaign contribution data was provided by the National Institute on Money in State Politics.

Six of the seven justices serving on the Pennsylvania Supreme Court in 2008 and 2009 ran in contested partisan races to attain their seats, while the seventh justice was appointed by the governor to fill a vacancy on the court. These six justices raised a total of nearly \$8 million, with an average of \$1.3 million, in their election campaigns. Nearly \$2.4 million, or 30 percent, of these contributions came from attorneys, law firms, and legal PACs.

In 2008 and 2009, the Pennsylvania Supreme Court decided 82 civil cases.² Cases involving campaign contributors were the rule rather than the exception.

- In 49 of the 82 cases (60 percent), at least one of the litigants, attorneys, or firms involved had contributed to the election campaign of at least one justice.

- In 21 cases (26 percent), a contribution had been made by more than one of the parties in the case.

It was also common for a single party—typically a large law firm—to have made a contribution to more than one of the justices' campaigns.

- In 26 of the 82 cases (32 percent), a single litigant, attorney, or firm in the case had contributed to at least four of the six justices who ran in contested elections.

- In 11 cases a single party had donated to the campaigns of four justices; in 14 cases a single party had made contributions to five justices; and in 3 cases, a single party had given campaign money to all six justices who won their seats.

This analysis does not establish, nor does it attempt to establish, that these campaign contributions influenced the court's decisions in these cases—that the justices either favored contributors or disfavored non-contributors. But it does suggest that citizens and litigants may have reason to question the fairness and impartiality of the court's decisions based on the frequency with which contributors to the justices' election campaigns later appear before them.

¹ The analysis is limited to "major" contributors—i.e., those who contributed at least \$1000. It includes direct contributions to justices' campaigns, as well as contributions to attorney PACs that contributed to justices' campaigns. There were three such PACs that made substantial contributions to justices serving in 2008 and 2009—Philadelphia Future PAC, Committee for a Qualified Judiciary, and Committee for a Better Tomorrow.

² The analysis is confined to civil cases, as classified by the AOPC, as these are the cases where litigants on both sides may be private parties and potential contributors to judicial campaigns.

This study provides only a partial picture of the extent to which money in judicial campaigns has the potential to erode Pennsylvanians' confidence in their courts. It does not track contributions from PACs other than attorney and law firm PACs. Non-legal PACs, including political party PACs, provided nearly \$2.9 million, or 36 percent, of the campaign dollars raised by six of the seven justices serving on the Pennsylvania Supreme Court in 2008 and 2009. This research also does not consider third-party spending on behalf of supreme court candidates, which has skyrocketed in high court races in Pennsylvania and across the country in the last decade and is likely to soar even higher in the wake of the U.S. Supreme Court's recent decision in *Citizens United v. FEC*.

The merit selection legislation currently under consideration in the Pennsylvania General Assembly is a promising solution to the problem of money in judicial elections and the threat it presents to judicial legitimacy. Judicial merit selection and retention systems substantially reduce the need for judges to raise campaign contributions and limit opportunities for special interests to exert disproportionate influence in the selection of judges. At the same time, such systems ensure that the most highly qualified candidates reach the bench and that judges are held appropriately accountable to the voters.