

Campaign contributors and the Pennsylvania Supreme Court

by Malia Reddick and James R. DeBuse

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 proposed by PMC 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 ten-year term, they stand for retention. The governor fills vacancies that arise between elections through appointment, but appointees to the appellate courts are not eligible to run for election. Although campaign contributions 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 reached an all-time high in 2007, when general-election candidates for two supreme court seats brought in more than \$7.75 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 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 the 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 401 cases, 112 of which were civil cases.² Cases involving campaign contributors were the rule rather than the exception.

• In 75 of the 112 cases (67 percent), at least one of the litigants, attorneys, or firms involved had con-

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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 AOC, as these are the cases where litigants on both sides are private parties and potential contributors to judicial campaigns. In the remaining 289 cases, one of the litigants was a state or local governmental entity.

tributed to the election campaign of at least one justice.

- In 33 cases (29 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 52 of the 112 cases (46 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 22 cases a single party had donated to the campaigns of four justices; in 27 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.

- In 8 of these 52 cases, two of the parties had contributed to at least four justices, and in 4 cases, three parties had done so.

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

avored 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.

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 proposed by Pennsylvanians for

Modern Courts and 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. ❧

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Colorado’s *Our Courts*: A model for adult public education

by Russell Carparelli

Judge: Good morning. I’d like to begin today’s proceedings a bit differently than usual. Plaintiff and defendant, I know you each want to prevail in today’s trial. But, apart from your desire to win, please tell me how you want me to conduct today’s proceedings.... Those of you who are not parties, but are here to watch these proceedings, do you care how I conduct these proceedings? What do you think is important?

When judges and other speakers participating in Colorado’s *Our Courts* project have asked these questions of thousands of adult audience members, those designated as plain-

tiffs or defendants consistently say they want a chance to tell their sides of the story, they do not want the court to favor one side over the other, and they want the court to apply the law correctly and consistently. Audience members designated as nonparties agree. They want the court to conduct all proceedings consistently, regardless of the identity of the parties, because they want to be confident their neighbors are being treated fairly, and they want to be confident that, if they are ever parties, they will be treated fairly. The speaker then displays a picture

of the inscription on the pediment of the United States Supreme Court, “Equal Justice Under Law.”

Since October 2007, Colorado’s *Our Courts* adult education project has given presentations to nearly 200 adult audiences and more than 6500 audience members throughout Colorado.¹ Most presentations are given

1. In February 2007, we picked *Our Courts* as the name that perfectly described our mission to provide nonpartisan information programs to adult audiences to further public knowledge and understanding of the state and federal courts in Colorado. Months later, we discovered that Justice Sandra Day O’Connor, Arizona State University, and The Sandra Day O’Connor Project at Georgetown Law had selected a similar name, “Our Courts, 21st Century Civics,” for their web-based education project, which is designed to teach students civics and inspire them to be active participants in our democracy. When we told Justice O’Connor about the name of our project, she congratulated us on our success and expressed her support.