Summary of *Caperton v. A. T. Massey Coal Co.*, 129 S. Ct. 2252 (2009)

Reversing a decision of the West Virginia Supreme Court of Appeals, the U.S. Supreme Court held in a 5-4 decision that the campaign efforts of the principal officer of one of the parties "had a significant and disproportionate influence in placing Justice Benjamin on the case" and, therefore, required Benjamin's recusal under the Due Process Clause of the U.S. Constitution.

After a West Virginia jury found Massey Coal Co. liable for fraudulent misrepresentation, concealment, and tortious interference with existing contractual relations and awarded Caperton $50 million in damages, West Virginia held its 2004 judicial elections. Knowing the Supreme Court of Appeals would consider the appeal, Don Blankenship, Massey's chairman and principal officer, supported Brent Benjamin rather than Justice Warren McGraw, the incumbent justice seeking re-election. He contributed the $1,000 statutory maximum to Benjamin's campaign committee, donated almost $2.5 million to "And For The Sake Of The Kids," a § 527 political organization that opposed McGraw and supported Benjamin, and spent just over $500,000 on independent expenditures for direct mailings, letters soliciting donations, and television and newspaper advertisements to support Benjamin. Benjamin won by fewer than 50,000 votes. Justice Benjamin denied motions by Caperton to disqualify him based on the conflict caused by Blankenship's campaign involvement. With Benjamin participating, the court twice voted 3-2 to reverse the $50 million verdict.

Justice Kennedy wrote the majority opinion, which emphasized that it was not questioning Justice Benjamin's subjective finding that he was impartial or determining whether he was actually biased. The Court noted the difficulty of judges' inquiring into "their subjective motives and purposes in the ordinary course of deciding a case."

> The judge inquires into reasons that seem to be leading to a particular result. Precedent and stare decisis and the text and purpose of the law and the Constitution; logic and scholarship and experience and common sense; and fairness and disinterest and neutrality are among the factors at work. To bring coherence to the process, and to seek respect for the resulting judgment, judges often explain the reasons for their conclusions and rulings. There are instances when the introspection that often attends this process may reveal that what the judge had assumed to be a proper, controlling factor is not the real one at work. If the judge discovers that some personal bias or improper consideration seems to be the actuating cause of the decision or to be an influence so difficult to dispel that there is a real possibility of undermining neutrality, the judge may think it necessary to consider withdrawing from the case.
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> The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules. Otherwise there may be no adequate protection against a judge who simply misreads or misapprehends the real motives at work in deciding the case. The judge's own inquiry into actual bias, then, is not one that the law can easily superintend or review, though actual bias, if disclosed, no doubt would be grounds for appropriate relief. In lieu of exclusive reliance on that personal inquiry, or on appellate review of the judge's determination

> respecting actual bias, the Due Process Clause has been implemented by objective standards that do not require proof of actual bias.

The majority emphasized that not every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge's recusal, but found "this is an exceptional case."

> We conclude that there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent. The inquiry centers on the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election.

The Court found that the $3 million Blankenship contributed to unseat the incumbent and replace him with Benjamin was disproportionate, eclipsing the total spent by all other Benjamin supporters, exceeding by 300% the amount spent by Benjamin's campaign committee, and exceeding by $1 million the total spent by the campaign committees of both candidates combined. Stating the question whether Blankenship's campaign contributions were a necessary and sufficient cause of Benjamin's victory was not the proper inquiry, the Court found that Blankenship's campaign contributions "had a significant and disproportionate influence on the electoral outcome. And the risk that Blankenship's influence engendered actual bias is sufficiently substantial that it 'must be forbidden if the guarantee of due process is to be adequately implemented.'" The Court also emphasized the temporal relationship, stating "it was reasonably foreseeable, when the campaign contributions were made, that the pending case would be before the newly elected justice."

> Although there is no allegation of a quid pro quo agreement, the fact remains that 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—without the consent of the other parties—a man chooses the judge in his own cause. And applying this principle to the judicial election process, there was here a serious, objective risk of actual bias that required Justice Benjamin's recusal.

The Court rejected the arguments of Massey and its amici (and the dissenting justices) that a decision requiring recusal would result in a flood of recusal motions, stating the facts of the case "are extreme by any measure" and noting that most disputes over disqualification will be resolved by the code of judicial conduct. The Court concluded:

> It is true that extreme cases often test the bounds of established legal principles, and sometimes no administrable standard may be available to address the perceived wrong. But it is also true that extreme cases are more likely to cross constitutional limits, requiring this Court's intervention and formulation of objective standards. This is particularly true when due process is violated.

The focus of the dissenting opinion written by Chief Justice Roberts, in which Justice Scalia, Justice Thomas, and Justice Alito joined, was the vagueness of disqualification on grounds of "probability" or "appearance" of bias. The new rule, it argued, did not create a "judicially discernible and manageable standard" and would inevitably lead to an increase in allegations that judges are biased, eroding public confidence in judicial impartiality more than an isolated failure to recuse in a particular case. For example, Chief Justice Roberts identified 40 questions that will have to be determined now in cases involving campaign expenditures. The dissent concluded that limiting application of the holding to extreme cases was not a sufficient limit, arguing "all future litigants will assert that their case is really the most extreme thus far." The dissent also disagreed that the case was extreme, noting that Justice Benjamin and his campaign had no control over how Blankenship's independent expenditures were spent, that large independent expenditures were also made in support of Justice Benjamin's opponent by an independent group that received large contributions from the plaintiffs' bar, that Blankenship had made large expenditures in connection with several previous West Virginia elections, and that it was not clear that Blankenship's expenditures affected the outcome of this election.

Justice Scalia's also argued in a separate dissenting opinion that the decision would erode rather than preserve public confidence in the nation's judicial system.

> What above all else is eroding public confidence in the Nation's judicial system is the perception that litigation is just a game, that the party with the most resourceful lawyer can play it to win, that our seemingly interminable legal proceedings are wonderfully self-perpetuating but incapable of delivering real-world justice. The Court's opinion will reinforce that perception, adding to the vast arsenal of lawyerly gambits what will come to be known as the Caperton claim. The facts relevant to adjudicating it will have to be litigated—and likewise the law governing it, which will be indeterminate for years to come, if not forever. Many billable hours will be spent in poring through volumes of campaign finance reports, and many more in contesting nonrecusal decisions through every available means.
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> A Talmudic maxim instructs with respect to the Scripture: "Turn it over, and turn it over, for all is therein." . . . Divinely inspired text may contain the answers to all earthly questions, but the Due Process Clause most assuredly does not. The Court today continues its quixotic quest to right all wrongs and repair all imperfections through the Constitution. Alas, the quest cannot succeed—which is why some wrongs and imperfections have been called nonjusticiable. In the best of all possible worlds, should judges sometimes recuse even where the clear commands of our prior due process law do not require it? Undoubtedly. The relevant question, however, is whether we do more good than harm by seeking to correct this imperfection through expansion of our constitutional mandate in a manner ungoverned by any discernable rule. The answer is obvious.

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