

Can Money Buy Justice?

Contributions to Ohio Supreme Court Candidates 2018



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1. EXECUTIVE SUMMARY

[Millions of dollars have poured into campaigns for Ohio's highest court.](#)¹ This includes money raised directly by candidates for justice and money spent on political advertisements by groups not directly affiliated with the candidates. Often, the source of this outside money is unknown, or “dark money.” Once elected, judges in Ohio can and do hear the cases of their campaign contributors. This creates — at the very least — an unseemly appearance of bias. It’s not surprising that such a system tests public confidence in the courts.

To make sure that money is not influencing the outcomes of judicial decisions, and to restore public confidence in our courts, Ohio should adopt commonsense recusal rules similar to those recommended by the American Bar Association (ABA). Indeed, Ohio can look to nearby states both for cautionary tales of what can go wrong when money weighs in from behind the bench and for ideas about workable recusal standards and procedures. Passing recusal reform for Ohio should be a top priority for fair courts advocates across the political spectrum.

2. INTRODUCTION

While the corrupting influence of money in politics is widely recognized, fewer voters are aware of how money impacts judicial elections as well as the behavior of judges once they are on the court. This report examines who contributed directly to the campaigns of Ohio Supreme Court candidates from January to August 2018, according to campaign finance filings, and shines a light on additional forms and sources of funding. Most importantly, it discusses the implications of having inadequate recusal procedures for Ohio judges² and how our judicial system is diminished and distorted when judges hear the cases of their campaign contributors.

Fundraising for the November election is far from over: This report uses the latest campaign finance filings to give the public a glimpse into donation patterns and to encourage the public to ask how these contributions impact the court.

Spotlighting the distortions wrought by the influence of money is part of a wider effort to make sure our courts deliver equal justice for all. We encourage you to read this report, follow the issue, and pressure the judiciary to create stricter rules for judicial recusal. We also call on the legislature to improve disclosure of the funding of political advertisements surrounding judicial elections. Only by working toward these goals can we begin to restore public trust in the judiciary.

1 “Million Dollar Courts in 2016,” Brennan Center for Justice at New York University School of Law. Available at <https://www.brennancenter.org/million-dollar-courts-2016>.

2 “Why Judges Sometimes Need to Step Aside,” Ohio State Bar Association. Available at <https://www.ohiobar.org/ForPublic/Resources/LawYouCanUse/Pages/LawYouCanUse-216.aspx>.

3. FOLLOW THE MONEY

Since 2000, Ohio has had [some of the country's most expensive judicial elections](#).³ In the past two decades, Supreme Court election campaigns have brought in over \$1 million in campaign contributions every election cycle. The figures for this election season point to a continuation of this trend. Candidates for Ohio Supreme Court justice have raised a combined \$884,700.58 so far this year.

Contributions* raised from January to August 2018 campaign finance filing⁴

Mary DeGenaro	(Republican Appointed Incumbent)	\$269,222.37
Melody Stewart	(Democratic Challenger)	\$129,212.00
Craig Baldwin	(Republican for Open Seat)	\$251,803.25
Michael P. Donnelly	(Democratic for Open Seat)	\$234,462.96
Total Contributions		\$884,700.58

* Includes both monetary and in-kind contributions.

The volume and sources of the money being spent on judicial elections in Ohio have changed over the past several decades. Laws governing recusal, disclosure and transparency should change as well, to keep up.

4. RECUSAL IS COMMON SENSE – BUT NOT THE LAW IN OHIO

The idea that judges should not be able to hear the cases of campaign contributors is such common sense that many people assume it is already the law—not so in Ohio and many other states.

Several opinion polls have shown that the public looks with great skepticism on the idea of judges hearing the cases of campaign contributors. For example, a [2013 poll](#) commissioned by Justice at Stake and the Brennan Center for Justice at New York University School of Law found that an overwhelming majority of voters viewed campaign donations and other special interest spending on judicial elections as having an influence on a judge's decisions on the bench. An astonishing 92 percent of voters polled said that “when one party in a court case has either donated directly to a judge's campaign or spent significantly on election materials designed to help elect the judge, the judge should step aside.”⁵

3 “Supreme Costs: 5 Midwestern States Have Among Most Expensive Judicial Elections in Nation,” Tim Anderson, *Stateline Midwest*, Volume 20, Number 11, November 2011. Available at <https://www.csgmidwest.org/policyresearch/1111judicialraces.aspx>.

4 Campaign finance filings from the Ohio Secretary of State, available at <http://codes.ohio.gov/orc/3517>.

5 “New Poll: Vast Majority of Voters Fear Campaign Cash Skews Judges' Decisions,” Brennan Center for Justice at New York University School of Law and Justice at Stake, October 29, 2013. Available at <https://www.brennancenter.org/press-release/new-poll-vast-majority-voters-fear-campaign-cash-skews-judges-decisions>.

The legal community agrees. Since 1999, the [ABA has recommended the mandatory disqualification](#)⁶ of any judges who have accepted large contributions from a party appearing before them. Although the ABA has left each state to choose the specific contribution amount that might trigger recusal, it reaffirmed this recommendation in February 2007 in its “Model Code of Judicial Conduct.”

In 2014, the ABA House of Delegates adopted a resolution urging states like Ohio to adopt judicial disqualification and recusal procedures that:

1. consider the fact that certain campaign expenditures and contributions made during judicial elections, including independent expenditures, raise concerns about the possible effects on judicial impartiality and independence;
2. are transparent;
3. provide for the timely resolution of disqualification and recusal motions; and
4. include a mechanism for the timely review of denials to disqualify or recuse “that is independent of the subject judge” and “to provide guidance and training to judges in deciding disqualification/recusal motions.”⁷

The Conference of Chief Justices [supported this resolution](#).⁸ Unfortunately, the Ohio Supreme Court has not worked to establish stricter recusal standards, and judges in Ohio routinely hear the cases of those who supported their candidacies.

In Ohio, recusal is rare

Surely all that money pouring in to support judicial candidates must result in a rash of recusals. Apparently not. A 2006 [examination of the Ohio Supreme Court](#) by *The New York Times*⁹ shone light on whether justices step away from cases involving their donors. The investigation found that Ohio Supreme Court justices routinely sat on cases after receiving campaign contributions from the parties involved or from groups that filed supporting briefs. Further, the newspaper found that, on average, justices voted in favor of contributors 70 percent of the time. In the 12 years since the story was published, Ohio Supreme Court justices recused themselves only nine times in 215 cases featuring the most direct conflicts of interest.

Just as referees shouldn’t receive money from athletic teams in the middle of a game, judges should not hear the cases of their campaign supporters. It is time for the Ohio Supreme Court to ensure judicial impartiality by adopting meaningful mandatory recusal standards.

6 “Judicial Disqualification Based on Campaign Contributions,” National Center for State Courts, Center for Judicial Ethics, November 2016. Available at <https://www.ncsc.org/~media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/Disqualificationcontributions.ashx>.

7 “Tort Trial and Insurance Practice Section, Judicial Division,” Executive Summaries, American Bar Association House of Delegates 2014 Annual Meeting, Boston, Massachusetts, page 220. Available at https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/2014_hod_annual_meeting_executive_summaries_index.authcheckdam.pdf.

8 “Resolution 8, in Support of American Bar Association Resolution 105C,” Conference of Chief Justices 2014 Annual Meeting. Available at <https://ccj.ncsc.org/~media/microsites/files/ccj/resolutions/07232014-support-of-aba-resolution-105c.ashx>.

9 “Campaign Cash Mirrors a High Court’s Rulings,” Adam Liptak and Janet Roberts, *The New York Times*, October 1, 2006. Available at <https://www.nytimes.com/2006/10/01/us/01judges.html>.

5. WHY RECUSAL IS IMPORTANT: TWO EXAMPLES FROM RECENT OHIO HISTORY

In 2004, Lisa Huff was injured when a tree limb fell on her during a thunderstorm. She sued the utility company and its parent company, FirstEnergy, as the tree was near a power line and, she claimed, had not been properly inspected or maintained. The first time the issue came to the Ohio Supreme Court, the justices ruled against FirstEnergy, denying an appeal the utility company had lodged that would have prevented the case from being heard at all. FirstEnergy's strategy then appeared to change. It began to funnel money to two justices on the court. The court then agreed to reconsider FirstEnergy's appeal. This time, the justices ruled in the company's favor. Former Justice Bill O'Neill, a judge who joined the Ohio Supreme Court in 2012 after this decision, said during his campaign that FirstEnergy's donations were "an attempt to buy the court." Certainly, Lisa Huff felt that way. Ohioans could reasonably question whether the money donated to judicial candidates had ultimately prevented her case against FirstEnergy from being heard.¹⁰

A second example is from 2015 and involved fracking interests' successful Ohio Supreme Court challenge of local protections for oil and gas development.¹¹ The decision was a major blow to towns and cities around Ohio and their independent efforts to protect the air, land and water of their communities. In his dissent from the majority opinion, Justice O'Neill, now on the court himself, raised the issue of the influence of campaign spending on the court:

"Let's be clear here. ... What the drilling industry has bought and paid for in campaign contributions they shall receive. The oil and gas industry has gotten its way, and local control of drilling-location decisions has been unceremoniously taken away from the citizens of Ohio."¹²

In fact, the author of the majority Ohio Supreme Court opinion, Justice Judith French, received tens of thousands of dollars in campaign contributions from natural gas interests when she was elected in 2014, including contributions from the law firm that represented the fracking company challenging the local fracking ordinances.¹³ While there is no evidence proving that the campaign contributions influenced the court, the appearance of bias can be just as damaging to the public's perception of judicial independence as actual bias.

10 "State Judicial Ethics Rules Fail to Address Flood of Campaign Cash From Lawyers and Litigants," Billy Corriher and Jake Paiva, Center for American Progress, May 7, 2014. Available at <https://www.americanprogress.org/issues/courts/reports/2014/05/07/89068/state-judicial-ethics-rules-fail-to-address-flood-of-campaign-cash-from-lawyers-and-litigants-2/>.

11 State ex rel. Morrison v. Beck Energy, 37 N.E. 3d 128 (Ohio 2015). Available at <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2015/2015-Ohio-485.pdf>.

12 "Ohio's Oil-and-Gas Industry Donations, Ruling Tied?" Darrel Rowland, Columbus Dispatch, February 22, 2015. Available at <http://www.dispatch.com/article/20150222/NEWS/302229853>.

13 "French, Judith L: Top Industries," National Institute on Money in State Politics. Available at <http://www.followthemoney.org/entity-details?eid=13010054&default=candidate>.

6. CAMPAIGN CONTRIBUTIONS TO OHIO SUPREME COURT JUSTICE CANDIDATES, JANUARY-AUGUST 2018

Examination of contributions and donor patterns serves two purposes. It helps inform Ohioans, and it provides information for the Ohio Supreme Court. Here are the January 2018 to August 2018 reports for candidates running for Ohio's Supreme Court.



MARY DEGENARO

Republican candidate for justice

Appointed incumbent

Amount raised Jan.-Aug. 2018: **\$269,222**

Top sectors Jan.-Aug. 2018:

Lawyers and lobbyists **\$84,969**

Insurance **\$81,200**

Mary DeGenaro's top organizational contributions*

Organization Type	Number or Contributions	Amount
Cincinnati Financial <i>Insurance</i>	6	\$10,475
State Farm <i>Insurance</i>	1	\$7,000
Allied Construction Trades <i>Construction union</i>	1	\$7,000
Bricker & Eckler <i>Law firm</i>	1	\$7,000
Dworken & Bernstein <i>Law firm</i>	16	\$7,000
Grange Mutual Casualty Company <i>Insurance</i>	2	\$7,000
Murray Energy <i>Coal mining</i>	1	\$7,000
Nationwide Mutual Insurance <i>Insurance</i>	1	\$7,000
NiSource <i>Natural gas utility</i>	1	\$7,000
Ohio Insurance Agents Association <i>Insurance</i>	1	\$7,000
Ohio National Financial Services <i>Insurance and finance</i>	2	\$7,000
Ohio State Medical Association <i>Physicians</i>	1	\$7,000
Vorys, Sater, Seymour & Pease <i>Law firm</i>	1	\$7,000
Westfield Insurance <i>Insurance</i>	1	\$7,000

* Organizational totals include Political Action Committees (PACs)/Political Contributing Entities (PCEs) and employees. Totals include monetary and in-kind contributions.



MELODY STEWART

Democratic candidate for justice
Challenger

Amount raised Jan.-Sept. 5, 2018: **\$129,212**

Top sectors Jan.-Sept. 5, 2018:

Lawyers and lobbyists **\$57,460**
Unions **\$22,000**

Melody Stewart’s top organizational contributions*

Organization Type	Number of Contributions	Amount
Service Employees International Union <i>Service union</i>	2	\$10,000
Vorys, Sater, Seymour & Pease <i>Law firm</i>	2	\$7,200
Ohio Education Association <i>Teachers union</i>	1	\$7,000
Ohio Association for Justice <i>Trial lawyers</i>	1	\$5,000
Nurenberg, Paris, Heller & McCarthy <i>Law firm</i>	1	\$5,000
Mellino Law Firm <i>Law firm</i>	1	\$3,800
Taft Stettinius & Hollister <i>Law firm</i>	9	\$3,625
United Steelworkers <i>Steelworks union</i>	1	\$3,500

* Organizational totals include PACs/PCEs and employees. Totals include monetary and in-kind contributions.



CRAIG BALDWIN

Republican candidate for justice

Open seat

Amount raised Jan.-Sept. 4, 2018: **\$251,803**

Top sectors Jan.-Sept. 4, 2018:

Insurance **\$81,175**

Lawyers and lobbyists **\$59,616**

Craig Baldwin's top organizational contributions*

Organization Type	Number of Contributions	Amount
Cincinnati Financial <i>Insurance</i>	5	\$9,975
State Farm <i>Insurance</i>	5	\$7,875
Bricker & Eckler <i>Law firm</i>	3	\$7,600
Grange Mutual Casualty Company <i>Insurance</i>	3	\$7,100
Allied Construction Trades <i>Construction union</i>	1	\$7,000
Nationwide Mutual Insurance <i>Insurance</i>	1	\$7,000
NiSource <i>Natural gas utility</i>	1	\$7,000
Ohio Insurance Agents Association <i>Insurance</i>	1	\$7,000
Ohio National Financial Services <i>Insurance and finance</i>	2	\$7,000
Ohio State Medical Association <i>Physicians</i>	1	\$7,000
Vorys, Sater, Seymour & Pease <i>Law firm</i>	1	\$7,000
Westfield Insurance <i>Insurance</i>	1	\$7,000

* Organizational totals include PACs/PCEs and employees. Totals include monetary and in-kind contributions.



MICHAEL P. DONNELLY

Democratic candidate for justice

Open seat

Amount raised Jan.-Sept. 5, 2018: **\$234,462**

Top sectors Jan.-Sept. 5, 2018:

Lawyers and lobbyists **\$158,485**

Unions **\$21,750**

Michael P. Donnelly's top organizational contributions*

Organization Type	Number of Contributions	Amount
Service Employees International Union <i>Service employees union</i>	2	\$10,000
Vorys, Sater, Seymour & Pease <i>Law firm</i>	3	\$7,750
Dworken & Bernstein <i>Law firm</i>	2	\$7,500
Ohio Education Association <i>Teachers union</i>	1	\$7,000
Siegel Jennings <i>Law firm</i>	4	\$6,150
Calfee, Halter & Griswold <i>Law firm</i>	1	\$6,000
McDermott & Hickey <i>Law firm</i>	3	\$5,196
Nurenberg, Paris, Heller & McCarthy <i>Law firm</i>	2	\$5,000
Ohio Association for Justice <i>Trial lawyers</i>	1	\$5,000
Kelley & Ferraro <i>Law firm</i>	3	\$4,200

* Organizational totals include PACs/PCEs and employees. Totals include monetary and in-kind contributions.

7. OTHER SOURCES AND FORMS OF FUNDING FOR JUDICIAL CANDIDATES

a) Independent expenditures

It is important to remember that the direct contributions to candidates detailed in this report are just a small part of the money in Ohio Supreme Court elections. Voters should also be aware of independent expenditures or political advertisements that are not coordinated with the candidates' campaigns. Often, the sources of the funding for these political ads are not clear. The lack of transparency has led this spending to be called "dark money."

For example, the Partnership for Ohio's Future, an affiliate of the Ohio Chamber of Commerce, has participated in judicial elections by buying advertising not coordinated with the judicial candidates' official campaigns ("independent expenditures") for the past 15 years. In 2010, the Supreme Court decided the case of *Citizens United v. Federal Election Commission* (FEC).¹⁴ This historic court ruling permitted corporate and union independent expenditures to pay for political advertisements, sometimes called electioneering communication. Post *Citizens United*, the Partnership has voluntarily reported its expenditures. However, it has chosen not to report the source of its own funding.¹⁵ In other words, the ad buys continued, but the identity of those footing the bill is now hidden.

Despite opening the floodgate to corporate money in elections, it is important to note that the *Citizens United* ruling did in fact state that disclosure of the names of donors funding political advertisement is constitutional. Former Justice Anthony Kennedy writing for the majority highlighted the importance of disclosure:

"...prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected official accountable for their positions and supporters."¹⁶

Requiring disclosure of the donors supporting these ads would be an important step toward transparency and fairness. When voters can't see who is bankrolling efforts to influence them to select a particular judge, they can't begin to understand *why* or what they need to do to counteract any undue or unfair influence. It's also important to remember that while the public may be unaware of who funds political ads in judicial elections, political insiders (including the judicial candidates themselves) may know the identity of the donors.

This study reflects contributions to the candidates, which may constitute merely the tip of the iceberg regarding political spending on these races.

On September 18, the U.S. Supreme Court denied a move that would have allowed nonprofit organizations that run political advertisements supporting or opposing candidates to keep the donors' identities hidden as long as the donors had not designated their contributions specifically for the advertisement. The ruling¹⁷ in *Crossroads v. CREW, et al.* highlights that disclosure is constitutional.

Ohio's campaign finance disclosure law¹⁸ has not been updated to include contributions made by corporations. This omission has left voters without information about who is attempting to influence their votes. The last serious attempt to improve disclosure regarding these political ads occurred in 2010, when the Republican-controlled Ohio Senate passed [a bill](#)¹⁹ requiring disclosure of independent expenditures made by corporations and prohibited

14 *Citizens United v. Federal Election Commission*, Supreme Court of the United States, October 2009. Available at <https://www.supremecourt.gov/opinions/09pdf/08-205.pdf>.

15 See Appendix A for reporting documents from Partnership for Ohio's Future.

16 Op cit.

17 *Crossroads v. Crew et al.* 18A274. Available at <https://www.politico.com/f/?id=00000165-ee02-d789-a9e5-ee97acaa0001>.

18 Ohio Revised Code 3517.1011. Available at <http://codes.ohio.gov/orc/3517>.

19 Ohio General Assembly Archives, Substitute Senate Bill 240. Available at http://archives.legislature.state.oh.us/bills.cfm?ID=128_SB_240.

foreign corporations from funding these advertisements. This bill was sponsored by the Republican candidate for Ohio secretary of state, Jon Husted. The Democrat-controlled House did not follow suit. Although legislation to improve transparency has been proposed since 2010, these bills have not even made it past the first hurdle of a committee vote. So far in the 132nd general assembly session, [House Bill 610](#)²⁰ (sponsored by State Representative Kathleen Clyde, D-Kent) has not received a single hearing.

Recent spending in Ohio Supreme Court elections²¹

	2014	2016
Total Spending: Ohio Supreme Court Races	\$3,261,542	\$3,353,641
Candidate Fundraising Total	\$2,539,392	\$3,117,471
Noncandidate Spending Total (special interests and political parties)	\$722,150	\$236,170
Percentage of Total Spending That Is Noncandidate Spending (including dark money)	22.1%	7%
TV Spending Total	\$1,753,740	\$1,321,670

20 Ohio General Assembly Legislation, House Bill 610. Available at <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-610>.

21 Candidate contribution information was provided by the National Institute on Money in State Politics. Sources for independent expenditures by interest groups and political parties include state financial disclosures, television spending estimates provided by Kantar Media/Campaign Media Analysis Group (CMAG) to the Brennan Center for Justice at New York University, ad contracts posted on the Federal Communications Commission website and Federal Elections Commission (FEC) filings. The Brennan Center for Justice and the National Institute on Money in State Politics have a series of studies tracking dollars in judicial elections, including their most recent report, “Who Pays for Judicial Races? The Politics of Judicial Elections 2015-16,” “Who Pays for Judicial Races? The Politics of Judicial Elections 2015-16,” Alicia Bannon, December 14, 2017. Brennan Center for Justice at New York University School of Law. Available at <https://www.brennancenter.org/publication/politics-judicial-elections>.

b) Political parties

In addition to independent expenditures from outside groups, political parties play a large role in judicial elections. Ohio Supreme Court candidates are nominated by their political parties and participate in partisan primaries. Money channeled through parties can be substantial and have a significant impact on judicial races.

Top contributions from political party and candidate committees to each of the candidates (January 1-July 31, 2018)

Candidate Party	Political Party Committee	Contribution
Mary DeGenaro <i>Republican</i>	Promoting Our Republican Team ²² (affiliated with U.S. Senator Rob Portman)	\$3,500
	Carroll County Republican Central Committee	\$1,000
	Geauga County Republican Party	\$500
Melody Stewart <i>Democrat</i>	Cincinnatus ²³ (affiliated with Cincinnati mayor John Cranley)	\$2,000
	Cuyahoga County Democratic Women's Caucus	\$1,000
	Marcia Fudge for Congress	\$500
	Committee to Elect Chase Ritenauer	\$500
Craig Baldwin <i>Republican</i>	Promoting Our Republican Team (affiliated with U.S. Senator Rob Portman)	\$3,500
	Friends of Tiberi	\$1,000
	Fairfield County Republican Party	\$500
	Geauga County Republican Party	\$500
Michael P. Donnelly <i>Democrat</i>	Pickaway County Democratic Executive Committee	\$250
	Elect Tim Dobeck Committee	\$200
	Butler County Progressives	\$150
	Committee to Elect Hollie Lauren Gallagher	\$150

8. CAPERTON V. A.T. MASSEY COAL CO.: A CAUTIONARY TALE FROM A NEIGHBOR

Judicial independence can be clouded by political advertisements that are not directly tied to judicial candidates. A stunning example comes from Ohio's neighbor, West Virginia. Hugh Caperton, the president of Harman Mining Company, filed a lawsuit against A.T. Massey Coal Company in 1998. He alleged that Massey acted fraudulently, leading to the Harman Mining Company going out of business. The lawsuit was contentious and worked its way to

22 For more information about the Promoting Our Republican Team PAC, visit opensecrets.org/pacs/lookup2.php?strID=C00440032

23 For more information about the Cincinnatus PAC, visit opensecrets.org/pacs/lookup2.php?strID=C00574228&cycle=2018

the West Virginia Supreme Court. In the time between a verdict in *Caperton v. A.T. Massey Coal Co.*²⁴ and Massey Coal's appeal to the West Virginia Supreme Court of Appeals, in 2006, Don Blankenship, chairman and chief executive officer of Massey Energy Co., reportedly made campaign expenditures of \$3 million to defeat a sitting judge, Justice Warren McGraw.²⁵ Much of the \$3 million was donated to a non-profit organization called And for the Sake of the Kids. This non-profit ran ads focused on defeating Justice McGraw. Judicial candidate Brent Benjamin also received \$317,000 in direct support from Blankenship. Benjamin's campaign was successful, and he took the bench in 2004. Benjamin twice rejected motions by Caperton that he recuse himself because Blankenship's "extraordinary" financial support for Benjamin's campaign created a "constitutionally unacceptable appearance of impropriety."²⁶ The West Virginia Supreme Court reversed a \$76 million award won by Caperton. Benjamin joined the 3-2 majority.

Caperton was determined to take his call for recusal all the way to the U.S. Supreme Court. In 2009, the majority of the highest court in the land determined that the Due Process clause of the Fourteenth Amendment — which requires judges to recuse themselves not only when there is actual bias but also when "extreme facts" create a "probability of bias"²⁷ — had been violated. Post *Citizens United v. FEC*, recusal due to significant political spending not officially coordinated with judges' campaigns has become even more important.²⁸ For recusal to work properly in the context of outside spending, greater transparency is essential so that the donors of these ads can be identified and judges can properly step aside.

9. IT DOESN'T HAVE TO BE THIS WAY: RECUSAL IN GEORGIA AND MICHIGAN

GEORGIA: Under the "Rules of the Supreme Court of Georgia," if a justice subject to a disqualification request by a party declines to recuse, the remaining justices decide the motion to disqualify. To ensure a full quorum, the disqualified or nonparticipating justice is replaced "by a senior appellate justice or judge, a judge of the Court of Appeals or a judge of a superior court whenever deemed necessary."²⁹ Furthermore, Georgia's [Judicial Qualifications Commission](#)³⁰ serves as one potential model for an independent oversight board. The commission has the authority to investigate members of the State Bar of Georgia and reprimand them for unethical behavior, which includes judges who fail to recuse themselves as prescribed by the state bar association's code of conduct. ([Tennessee](#)³¹ and [Texas](#)³² have similar judicial conduct boards.)

24 "Caperton v. Massey," Brennan Center for Justice at New York University School of Law, June 8, 2009. Available at <http://www.brennancenter.org/legal-work/caperton-v-massey>.

25 Brief for Petitioners *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009), Docket 08-22 Available at <https://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/08-22.htm>.

26 Ibid.

27 556 U.S. 868 (2009); Docket 08-22 Available at <https://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/08-22.htm>.

28 "Setting Recusal Standards after Caperton v. A.T. Massey Coal Company," Brennan Center for Justice at New York University School of Law. Available at <http://www.brennancenter.org/legal-work/caperton-v-massey>.

29 "Rules of the Supreme Court of Georgia," Supreme Court of Georgia, Rule 57. Available at <https://www.gasupreme.us/rules/rules-of-the-supreme-court-of-georgia/>.

30 The Judicial Qualifications Commission of the State of Georgia website: https://app.gajqc.com/functions_procedures.cfm.

31 Tennessee Courts Board of Judicial Conduct website: <http://www.tncourts.gov/boards-commissions/court-judiciary/faqs>.

32 Texas State Commission on Judicial Conduct website: <http://www.scjc.texas.gov/>.

On the issue of campaign contributions, Georgia has consistently held that judges are not required to recuse themselves because they received political contributions from one of the parties in a case. Rather, the judge should consider:

- the amount of the contribution or support;
- the timing of the contribution or support;
- the relationship of the contributor or supporter to the parties;
- the impact of the contribution or support;
- the nature of the contributor’s prior political activities or support and prior relationship with the judge;
- the nature of the impending matter or pending proceeding and its importance to the parties or counsel;
- the contributions made independently in support of the judge that are over and above the maximum allowable contribution to a judicial candidate; and
- any factor relevant to the issue of campaign contribution or support that causes the judge’s impartiality to be questioned.³³

MICHIGAN: Previously, Michigan’s rules “provide[d] no avenue to redress a decision by a justice who refuse[d] to disqualify himself, no matter how much evidence [was] produced that the justice [was] indeed actually biased.”³⁴ Under a rule adopted by the Michigan Supreme Court in 2009, however, if a challenged justice denies a motion for disqualification, the litigant may appeal to the full court, and “[t]he entire Court shall then decide the motion for disqualification de novo.”³⁵ The judge must address the facts in a written response and determine if they will recuse themselves or not. If not, the remaining judges on the panel must address the petitioner’s motion with a written response, determining whether the justice should be disqualified. Although Michigan has seen some frivolous motions to recuse under this rule, on the whole, the rule provides both parties to the cases and the general public a better sense of why a particular recusal decision occurs. More information is better.³⁶

10. A WAY FORWARD FOR OHIO: RECOMMENDATIONS

To restore faith in our justice system, and to maintain the system’s fairness, Ohio must adopt commonsense standards for recusal, transparency and disclosure. Here are the measures supported by Common Cause Ohio and the Ohio Fair Courts Working Group.

Establish disqualification or withdrawal standards based on campaign contributions and expenditures

A rule should be established by the Ohio Supreme Court to trigger disqualification of judges after the receipt of a large aggregate contribution, not just from a single donor but collectively from all donors associated with a party

33 Georgia Code of Judicial Conduct, Rule 2.11 Disqualification and Recusal, section A (4). Available at https://www.gasupreme.us/wp-content/uploads/2016/09/Code_of_Judicial_Conduct_09_22_16.pdf.

34 *Grievance Administrator v. Fieger*, Supreme Court of Michigan, Docket No. 127547, December 2006. Available at <https://caselaw.findlaw.com/mi-supreme-court/1384190.html>.

35 Michigan Court Rules, Chapter 2 (Civil Procedure), Rule 2.003, Section D (3). Available at http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/Documents/HTML/CRs/Ch%202/Court%20Rules%20Book%20Ch%202-Responsive%20HTML5/index.html#t=Court_Rules_Book_Ch_2%2FCourt_Rules_Chapter_2%2FCourt_Rules_Chapter_2.htm.

36 See also a report from the Brennan Center for Justice, “Promoting Fair and Impartial Courts Through Recusal Reform,” Adam Skaggs and Andrew Silver, Revised August 2011. Available at https://www.brennancenter.org/sites/default/files/legacy/Democracy/Promoting_Fair_Courts_8.7.2011.pdf.

to litigation or with counsel. An example of aggregate contributions that could trigger disqualification would be contributions from corporate officers, management-level employees and law firm partners. Parties in court cases should be required to report any campaign expenditures that they made to support judges to the courts as part of the conflict-of-interest paperwork.

Pass legislation requiring disclosure of independent expenditures in judicial races

Ohio needs better disclosure of independent expenditures so that Ohioans can track contributions to political advertisements for candidates for the Ohio Supreme Court. Ohio's campaign finance disclosure law has not been updated since the *Citizens United v. FEC* decision in early 2010. In a [5-4 opinion](#) written by Justice Anthony Kennedy, the U.S. Supreme Court held that corporations have a First Amendment right to spend unlimited amounts of money from their general treasury funds to influence elections, as long as that spending was "independent" of candidates. Surprisingly, Justice Kennedy wrote that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption."³⁷

This decision gave corporations the ability to spend unlimited amounts on political ads calling for the election or defeat of individual candidates, and it gave rise nationally to super political action committees (PACs). Nothing in the *Citizens United v. FEC* decision prohibited federal or state officials from requiring disclosure of corporate dollars, yet Ohio did not update its disclosure rules, thus allowing dark money to influence our judicial elections.

The identities of donors of political advertisements supporting or opposing judicial candidates should be provided to the public so that citizens can consider the source of the information. This disclosure is also essential so that judges can properly recuse themselves.

11. SUMMARY AND CONCLUSIONS

The post *Citizens United* era is one of massive campaign spending, much of it from dark money sources. Times have changed, but Ohio laws governing judicial elections have not kept pace. To restore confidence in our courts, Ohio's recusal, disclosure and transparency laws must be updated. In this report, Common Cause Ohio has outlined the scope of the problem and recommended specific, practical and actionable steps to remedy the problem.

Having confidence in the fairness and integrity of our courts is important in and of itself. Since the judiciary serves as a check on the other branches of government, faith in the independence and impartiality of the courts is intrinsically tied to a broader sense of trust in government.

37 *Citizens United v. Federal Election Commission*, Supreme Court of the United States, October 2009. Available at <https://www.supremecourt.gov/opinions/09pdf/08-205.pdf>.

12. METHODOLOGY

The database is based on the campaign finance filings of candidates for the Ohio Supreme Court. These filings were submitted electronically by the candidate committees to the Ohio Secretary of State's Office and are available online at [sos.state.oh.us/campaign-finance](https://www.sos.state.oh.us/campaign-finance).³⁸ The contributions captured in the filings are from January 2018 to September 6, the date of the August monthly filing. Thus, some candidates included contributions from early September.

The methodology for this study is based on the "Follow the Money Handbook," by Larry Makinson, senior fellow at the Sunlight Foundation.

To identify the employers of contributors, the Common Cause Ohio used the following:

- Databases of insurance agents, available from the Ohio Department of Insurance;
- A list of lobbyists in Ohio, from the Joint Legislative Ethics Committee;
- A list of contributors to PACs in Ohio;
- A database of attorneys provided by Martindale-Hubbell; and
- Search engines such as Google.

For each candidate, the total amount in the Contributions to Candidates for Justice of the Ohio Supreme Court campaign finance database includes the following:

- Contributions received,
- Contributions received at a social or fundraising event,
- In-kind contributions received, and
- Contributions the candidates gave to their own campaigns.

The campaign finance profiles provided in this report do not include information from the "Statement of Other Income" provided electronically by the candidates, which includes interest, refunds, returns and other noncontribution income.

Union contributions include only those from union political contributing entities. Political party contributions include only political party and candidate committee and leadership PAC donations. Organizational contributions include donations from individual employees as well as those from PACs. It should be noted that unidentified individual donors whose last names and street addresses match a known donor are identified as the known donor.

38 "Campaign Finance," Ohio Secretary of State. Available at <https://www.sos.state.oh.us/campaign-finance/>.

13. CURRENT RULES FOR JUDICIAL ELECTIONS

The [Ohio rules for judicial elections](#)³⁹ are in the Ohio Code of [Judicial Conduct](#).⁴⁰ Contributions from individuals to candidates for the Ohio Supreme Court are limited to \$3,800. Organizations—including PACs, political contributing entities and law firms—are limited to \$7,000. Political parties can contribute \$347,600. It should be noted that none of the candidates faced a challenger during the May partisan primary who would have triggered contribution limits for both elections. There is a ban on judicial candidates personally receiving contributions. There is a ban on most personal solicitations, except:

- General requests when speaking to an audience of 20 or more individuals;
- Letters from campaigns that direct contributions to the committee, not the candidate;
- General requests in text format via an electronic communication (excluding voice or video); and
- Donations from immediate family members (but not close friends).

While many campaign rules are established by the Ohio Supreme Court, the [Ohio General Assembly](#) established rules for the disclosure of campaign contributions and expenditures. It also established rules for electronic filing so that these contributions are available online throughout the election.⁴¹

14. ACKNOWLEDGMENTS

Common Cause Ohio is part of Common Cause, founded in 1970 by John Gardner, a non-partisan good government watchdog whose 1.2 million members nationwide work together to build a democracy that works for all of us. Common Cause is one of the country’s most effective organizations working to reduce the influence of special interest money in politics, breaking down barriers to participation, ensuring transparency in government, and protecting the free flow of information. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voice heard in the political process.

This report was produced with the support of small dollar contributions from people in Ohio and across the country who believe in transparent, open, and accountable government and a democracy that works for all of us.

Support was also provided by the Piper Fund and we’d like to thank program officer Kathy Bonnifield, and executive director Melissa Spatz for their leadership on fair courts in Ohio and nationwide.

The report was written by Catherine Turcer, Common Cause Ohio executive director, and Mia Lewis, campaigns coordinator.

The authors and editors extend our thanks to Karen Hobert Flynn, president of Common Cause for her leadership and guidance; the Common Cause Ohio Advisory Board and the Common Cause Ohio Emeritus Board for their tireless volunteer spirit and leadership in Ohio; Scott Blaine Swenson, vice president for communications for editing and production management; Kerstin Diehn for layout and design; Cynthia Williams for copy editing; Christina Monroe for website development; and Elena Nunez, state liaison.

39 “Judicial Candidate Information,” Ohio Board of Professional Conduct. Available at <https://www.bpc.ohio.gov/judicial-candidates>.

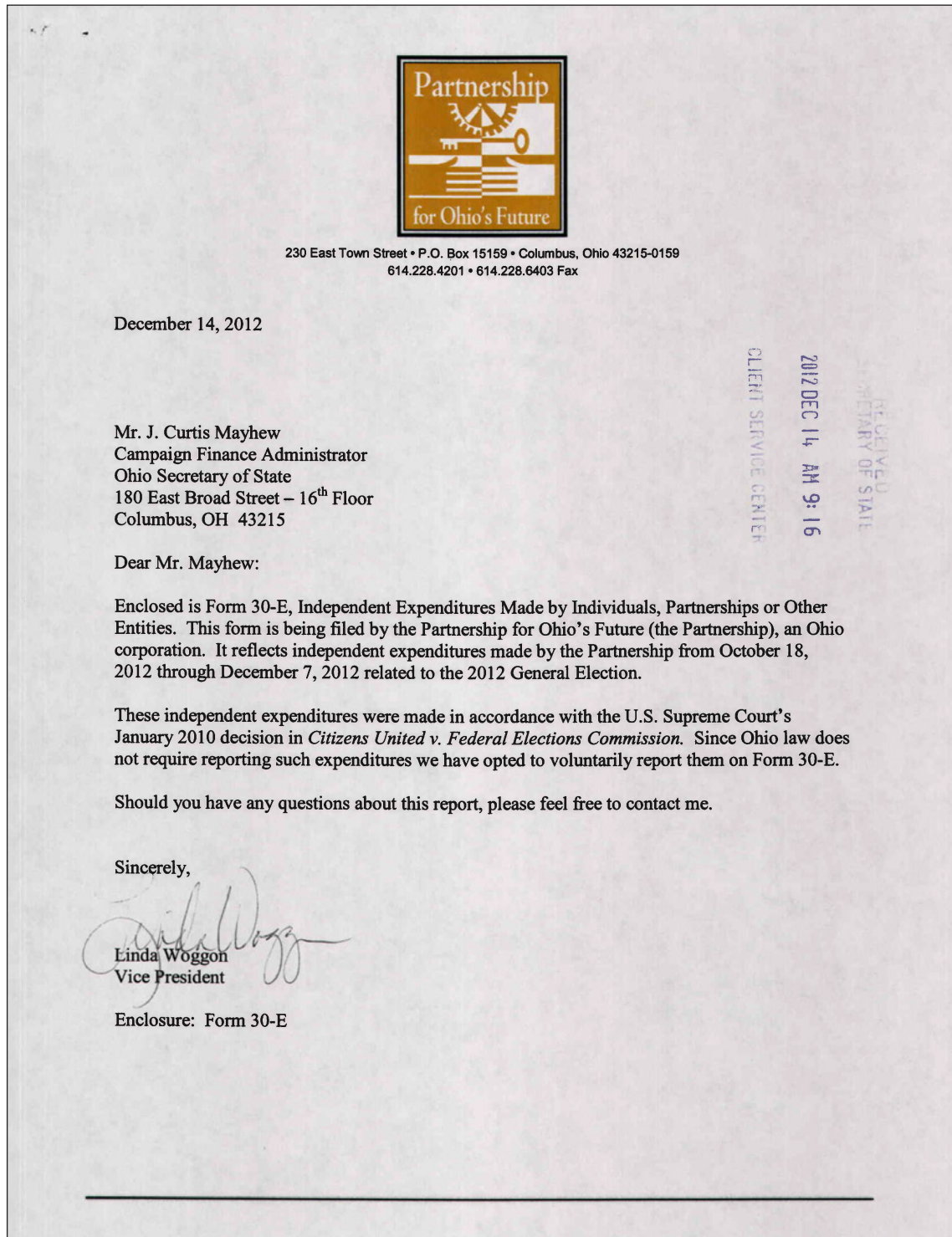
40 Ohio Code of Judicial Conduct, Canon 4, page 69. Available at <http://www.supremecourt.ohio.gov/LegalResources/Rules/conduct/judcond0309.pdf#Canon4>.

41 Ohio General Assembly Archives, House Bill 119. Available at http://archives.legislature.state.oh.us/bills.cfm?ID=123_HB_119.

15. APPENDICES

Appendix A

Disclosure letters from Partnership for Ohio's Future:



Independent Expenditures Made by Individuals, Partnerships or Other Entities*

Prescribed by Secretary of State 07/05

Name of Individual, Partnership or Other Entity Partnership for Ohio's Future										
Street Address 230 E. Town St.										
City Columbus					State OH		Zip Code 43215			
Type of Report (Place X to the left of report type)	<input type="checkbox"/>	Pre-Primary	<input type="checkbox"/>	Post-Primary	<input type="checkbox"/>	Pre-General	<input checked="" type="checkbox"/>	Post-General	<input type="checkbox"/>	Annual
Date of Election	1	M	1	0	D	6	1	2	Y	<input type="checkbox"/>
							<input type="checkbox"/>	Pre-Special	<input type="checkbox"/>	Post-Special
									<input type="checkbox"/>	Semiannual

Candidate or Ballot Issue Kristina Roegner				<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose		If Candidate, Office Sought Ohio House				
To Whom Paid CTV Media										
Address 1490 Manning Parkway				Purpose TV Ads		M	D	Y	Amount	
						1	0	2	1	\$1,989.00
City Powell				State OH		Zip Code 43065				
Candidate or Ballot Issue Nathan Burd				<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose		If Candidate, Office Sought Ohio House				
To Whom Paid Midnet Media										
Address 15 Jackson Street				Purpose Graphic & Web Design		M	D	Y	Amount	
						1	0	2	4	\$1,335.00
City Minster				State OH		Zip Code 45865				
Candidate or Ballot Issue Anthony DeVitis				<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose		If Candidate, Office Sought Ohio House				
To Whom Paid Midnet Media										
Address 15 Jackson Street				Purpose Graphic & Web Design		M	D	Y	Amount	
						1	0	2	4	\$1,335.00
City Minster				State OH		Zip Code 45865				

*Other Entities do not include corporations, labor organizations, campaign committees, legislative campaign funds, PACs, political contributing entities (PCEs) or political parties.

THE INFORMATION CONTAINED IN THIS REPORT IS MADE UNDER PENALTY OF ELECTION FALSIFICATION. WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

Signature: *Linda S. Woggon* Date: 12/13/12
Linda S. Woggon, Vice President
 Print Name (and Title, if applicable)

Page Total \$ **\$4,659.00**

Appendix B

Additional Resources From the Brennan Center for Justice

1. “Secret Spending in the States,” by Chisun Lee, Katherine Valde, Benjamin T. Brickner, and Douglas Keith, June 26, 2016. Available for download at <https://www.brennancenter.org/publication/secret-spending-states>.

“Dark money spending — together with a new phenomenon we’ve identified as ‘gray money’ — have surged in state and local elections. This report, the most comprehensive empirical look yet at the impact of secret spending beyond the federal level, finds that fully transparent spending has declined from 76 percent in 2006 to just 29 percent in 2014 in six states where data was available.”

Also included are best practices for disclosure reform.

2. “Promoting Fair and Impartial Courts Through Recusal Reform,” by Adam Skaggs and Andrew Silver, August 8, 2011. Available for download at <http://www.brennancenter.org/publication/promoting-fair-and-impartial-courts-through-recusal-reform>.

“To assist state courts in responding to the need for recusal reform, the Brennan Center for Justice has collected model rules that provide a blueprint for state implementation.”

3. “Judicial Recusal Reform: Toward Independent Consideration of Disqualification,” by Matthew Menendez and Dorothy Samuels, November 30, 2016. Available for download at <https://www.brennancenter.org/publication/judicial-recusal-reform-toward-independent-consideration-disqualification>.

“This report examines an important but underscrutinized challenge for fair and impartial courts: the procedural rules governing judicial disqualification.”

Appendix C

Total Contributions to Candidates for Ohio Supreme Court Justice*

Election year	Amount
2008	\$2,448,653
2010	\$2,901,074
2012	\$3,549,186
2014	\$2,514,993
2016	\$3,117,471

* These totals were compiled by the National Institute on Money in State Politics. For more information, visit followthemoney.org.



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