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Campaign Cash Mirrors a High Court's Rulings

By [ADAM LIPTAK](#) and JANET ROBERTS

COLUMBUS, Ohio — In the fall of 2004, Terrence O'Donnell, an affable judge with the placid good looks of a small-market news anchor, was running hard to keep his seat on the Ohio Supreme Court. He was also considering two important class-action lawsuits that had been argued many months before.

In the weeks before the election, Justice O'Donnell's campaign accepted thousands of dollars from the political action committees of three companies that were defendants in the suits. Two of the cases dealt with defective cars, and one involved a toxic substance. Weeks after winning his race, Justice O'Donnell joined majorities that handed the three companies significant victories.

Justice O'Donnell's conduct was unexceptional. In one of the cases, every justice in the 4-to-3 majority had taken money from affiliates of the companies. None of the dissenters had done so, but they had accepted contributions from lawyers for the plaintiffs.

Thirty-nine states elect judges, and 30 states are holding elections for seats on their highest courts this year. Spending in these races is skyrocketing, with some judges raising \$2 million or more for a single campaign. As the amounts rise, questions about whether money is polluting the independence of the judiciary are being fiercely debated across the nation. And nowhere is the battle for judicial seats more ferocious than in Ohio.

An examination of the Ohio Supreme Court by The New York Times found that its justices routinely sat on cases after receiving campaign contributions from the parties involved or from groups that filed supporting briefs. On average, they voted in favor of contributors 70 percent of the time. Justice O'Donnell voted for his contributors 91 percent of the time, the highest rate of any justice on the court.

In the 12 years that were studied, the justices almost never disqualified themselves from hearing their contributors' cases. In the 215 cases with the most direct potential conflicts of interest, justices recused themselves just 9 times.

Even sitting justices have started to question the current system. “I never felt so much like a hooker down by the bus station in any race I’ve ever been in as I did in a judicial race,” said Justice Paul E. Pfeifer, [a Republican](#) member of the Ohio Supreme Court. “Everyone interested in contributing has very specific interests.”

“They mean to be buying a vote,” Justice Pfeifer added. “Whether they succeed or not, it’s hard to say.”

Three recent cases, two in Illinois and one in West Virginia, have put the complaints in sharp focus. Elected justices there recently refused to disqualify themselves from hearing suits in which tens or hundreds of millions of dollars were at stake. The defendants were insurance, tobacco and coal companies whose supporters had spent millions of dollars to help elect the justices.

After a series of big-money judicial contests around the nation, the balance of power in several state high courts has tipped in recent years in favor of corporations and insurance companies.

In the 2002 Ohio judicial election, for example, two candidates won seats that year on the seven-member court after each raised more money than one of the candidates for governor that year.

Corporate Giving Increases

Judges are required by codes of judicial ethics to disqualify themselves whenever their impartiality might reasonably be questioned over financial or other conflicts. Even owning a few shares of stock in a defendant’s company or seeing a relative’s name on a brief generally requires automatic disqualification.

But there is an exception to this strict rule: campaign contributions. Very few judges in the states that elect the members of their highest court view contributions as a reason for disqualification when those contributors appear before them.

Many judges said contributions were so common that recusal would wreak havoc on the system. The standard in the Ohio Supreme Court, its chief justice, Thomas J. Moyer, said, is to recuse only if “sitting on the case is going to be perceived as just totally unfair.”

Duane J. Adams, a plaintiff in one of the class-action suits heard by Justice O’Donnell, concerning defective cars, said he questioned the impartiality of

the justices who ruled against him. Mr. Adams had sued DaimlerChrysler under the state's lemon law, and he grew angry when told that the company's political action committee had given money to justices in the majority.

"At the very least, it's a conflict of interest," Mr. Adams said. "These gentlemen, they should be prosecuted for what I consider is taking a bribe." He and the other plaintiffs did not contribute, but their lawyers gave to the campaigns of five of the justices.

Precisely what contributors want or get for their money is unclear. Some contributors say they have no agenda beyond ensuring that able and independent judges are elected. Others surely hope to influence the justices' votes in particular cases.

The middle ground, advanced by groups representing business, labor and plaintiffs' lawyers, is to support justices who hold views similar to their own. "Various interests see voting patterns," Chief Justice Moyer said. The alignment between contributions and votes, he said, is a matter of shared judicial philosophy.

If that is right, contributors are not trying to buy votes in particular cases. But they are trying to buy seats on the court.

And they are succeeding. Not long ago, the Ohio Supreme Court was controlled by liberal justices whose campaigns had been financed in large part by plaintiffs' lawyers and unions. Now that business groups are outspending their adversaries, the court has become dominated by more conservative justices. And the court's decisions are no longer markedly sympathetic to people claiming injuries.

Justice O'Donnell, a Republican, won his seat with the help of big contributions from the insurance, finance and medical industries. He is running for re-election this year, and his opponent, Judge William O'Neill, is making contributions an issue.

"We have to stop selling seats on the Ohio Supreme Court like we sell seats on the [New York Stock Exchange](#)," said Judge O'Neill, a Democrat on the 11th District Court of Appeals in Warren, in northeast Ohio. He says he will not accept contributions.

Justice O'Donnell, who has raised more than \$3 million since 2000, refused to be interviewed for this article despite more than a half-dozen requests to his

campaign, his chambers and the court. In a statement, he said, “Any effort to link judicial campaign contributions received by a judicial campaign committee for major media advertising to case outcomes is misleading and erodes public confidence in the judiciary.”

“A judge,” the statement said, “may fairly and impartially consider matters despite receipt of the campaign contribution by the campaign committee.”

Interest groups play a powerful and generally accepted role in races for legislative and executive positions. But their increasing role in identifying and supporting judicial candidates is at odds with the traditional concept of what judges do.

“The role of the judge and the role of the legislator are completely different,” said William K. Weisenberg, an [Ohio State](#) Bar Association official. “You want a legislator to vote the way you would vote. When you go into court, you want someone to listen to the facts and decide the case on the facts and the law. We don’t want the umpire calling balls and strikes before the game has begun.”

Influencing the Bench

Many judges concede that sitting on their contributors’ cases creates the perception that their votes can be bought. But in public, at least, most insist the perception is wrong.

“All the surveys I’ve seen indicate that generally 75 percent of the people believe that contributions influence decisions,” said Chief Justice Moyer, a Republican. But when asked if contributions played a role in courts’ decisions, he said: “I don’t believe they do. I know they don’t for me.”

That view is not universally held.

“It’s pretty hard in big-money races not to take care of your friends,” said Richard Neely, a retired chief justice of the West Virginia Supreme Court of Appeals. “It’s very hard not to dance with the one who brung you.”

Indeed, according to a survey of 2,428 state court judges conducted in 2002 by Justice at Stake, a judicial reform organization, almost half said campaign contributions influenced decisions. And more than half agreed that “judges should be prohibited from presiding over and ruling in cases where one of the sides has given money to their campaign.”

The Times study explored the influence of money on judicial decision-making by asking two basic questions about the Ohio Supreme Court. How often did it hear cases involving major contributors? And how did justices vote in those cases?

The study considered only cases that were both significant and difficult. It excluded procedural decisions, including whether to hear or reconsider a case. And only divided cases — those in which there was at least one dissent — were considered, because those presented the most contentious legal issues. In the 12 years ended this spring, there were about 1,500 such decisions.

The study looked at contributors who gave \$1,000 or more in the six years preceding the decision, the term length for justices.

It also considered, for the most part, only the contributors most directly affected by a ruling: the parties themselves and groups that filed supporting briefs urging the court to rule a certain way.

Contributions from lawyers were excluded from the study's main findings. Lawyers are far more likely than other contributors to give to judges across the ideological spectrum, and — because their firms often handle a wide variety of cases — they generally do not have the intensely focused interest in the outcome of a particular case that their clients do. More than 200 times, moreover, justices sat on cases after receiving contributions from lawyers on both sides.

The court's decisions, the study found, were rife with potential conflicts. In more than 200 of the 1,500 cases, at least one justice cast a vote after receiving a significant campaign contribution. On scores of occasions, the justices' campaigns took contributions after a case involving the contributor was argued and before it was decided — just when conflicts are most visible and pointed.

Contributors did well with those whose campaigns they had financed. Of the 10 justices in the Times study, 6 sided with contributors more than 70 percent of the time. Justice O'Donnell, who has been on the court for only three years and has participated in fewer decisions than most of the justices studied, had the highest rate — 91 percent.

Lawyers who gave money were not nearly as successful. Five justices voted for the positions represented by these contributors half of the time, and the

average rate was 55 percent. Recusals in cases involving contributors were all but unheard of.

Six of the seven sitting justices — all except Justice O’Donnell — agreed to interviews for this article, and all said contributions had not affected their decisions.

“There is a lot more to the story than the cold numbers suggest,” said Justice Maureen O’Connor, a Republican who voted for her contributors 74 percent of the time. Some cases are more significant than others, she said. Similarly, she and other justices criticized the decision to omit from the study the court’s terse rulings on whether to hear a case at all. Many of these decisions are routine or trivial, however, and the rulings themselves do not contain sufficient information to be readily categorized.

In his statement, Justice O’Donnell said that “selectively screening a limited number of case decisions results in a skewed outcome.” He did not elaborate.

But Justice Pfeifer, who voted for his contributors 69 percent of the time, backed the study’s methodology. “I quite frankly can’t think of another way,” he said. “You’re using the only yardstick that I’d know of that you can use.”

Several justices said they found Ohio’s money-fueled judicial elections distasteful and troubling. They pointed out, though, that Ohio law has mechanisms to limit contributions and to insulate justices from contributors, including a ban on personal solicitations by the justices. Some said they tried to avoid learning the identities of their many contributors, though they conceded it could sometimes be unavoidable. Justice Evelyn Lundberg Stratton, for instance, said she had attended 50 fund-raisers during her last campaign.

None of the justices interviewed suggested that more frequent recusals from contributors’ cases would be a positive step rather than a recipe for havoc. Last year, though, five justices did recuse themselves from a case involving a Republican fund-raiser, Thomas W. Noe. They had taken \$23,510 from Mr. Noe and his wife. Appeals court judges filled in for the justices.

“It is not necessary for a judge to recuse himself just because an attorney or party has contributed to his campaign,” Chief Justice Moyer said in a statement at the time. “However, this is a high-profile case with political implications and with potential personal consequences for the campaign contributor in question.”

Some legal experts say that recusal should be the rule and not the exception. Indeed, in 1999, the [American Bar Association](#) revised its Model Code of Judicial Conduct to require judges to disqualify themselves if they received campaign contributions of a certain amount from a party or its lawyer. But the bar association did not name an amount, leaving it to the states should they adopt the code. No state has adopted it.

Unlike campaign contributions, direct gifts to judges, even relatively small ones, almost always require disqualification.

In 2002, for instance, the Ohio Supreme Court reprimanded a lower-court judge for accepting football tickets from Stuart Banks, a lawyer who had appeared before the judge. Yet three of the justices who issued the reprimand had accepted at least \$1,000 each in contributions from Mr. Banks in the previous 10 years. Those same justices also sat on several cases in which Mr. Banks appeared before them.

Ruling on a Lemon Law

From the day he leased it in 1996, when it leaked transmission fluid all over the garage, Duane J. Adams's Dodge Caravan was nothing but trouble.

"My wife went to start it at the grocery store, and the battery blew up," Mr. Adams said. "We didn't feel safe in it."

Mr. Adams invoked Ohio's tough lemon law, which calls for a refund for defective cars. DaimlerChrysler took the car back after an arbitration found the car defective but deducted a \$6,000 "mileage fee."

Mr. Adams and other Ohio car buyers filed a class-action lawsuit against three car companies that routinely imposed such mileage fees in settlements and arbitrations. Drawing on a 1996 appeals court decision that banned the fees and the fact that the Ohio Legislature had rejected such fees when it enacted the law, an appeals court allowed the case to go forward in 2003.

In the first week of November 2004, while the case was pending in the Ohio Supreme Court, the political action committee of DaimlerChrysler, a defendant, gave \$1,000 each to the election campaigns of Chief Justice Moyer and Justice O'Donnell. Two months earlier, the committee of a second defendant, Ford, gave those same justices \$500 apiece. From 2000, when the suit was filed, to 2004, when it was decided, the affiliates of the three companies gave \$15,000 to four of the justices on the case.

Still, all four of the justices continued to sit on the case, and all of them were in the majority in the 4-to-3 decision issued on Nov. 10, 2004, just days after the last set of DaimlerChrysler contributions.

The justices ruled that the plaintiffs had voluntarily accepted settlement offers or arbitration awards with the mileage fee deducted. The ban on the fees applied only to lawsuits filed in court and not disputes resolved less formally, the majority said.

The three dissenting justices said the majority's ruling gave the plaintiffs an impossible choice: to pursue a lawsuit that could cost more than the car itself or to accept the reduced sum.

Elaine Lutz, a spokeswoman for DaimlerChrysler, defended the company's actions. "The contributions that companies' PAC's make are driven by the campaign calendar, not the judicial calendar," Ms. Lutz said. Candidates for the court may accept contributions for about a year before an election and four months afterward.

Lawyers for Ford also said it complied with Ohio law. "By definition," said one of the lawyers, John Beisner, "if you have an elective system, the judges are going to go to those with the greatest interest in the system to get their contributions."

Car company lawyers said the contributions were merely an effort to level the field against big-spending plaintiffs' firms. In the lemon-law case, though, the overall contributions were tilted heavily in favor of the companies and their own lawyers.

Mr. Adams and the other named plaintiffs gave no money to the justices. While the case proceeded, their lawyers contributed about \$12,000 to five of the seven justices in the case, dividing their money roughly evenly between a justice who voted for them and several who voted against them. The law firms representing the companies gave only to the justices in the majority, for a total of more than \$115,000.

That was consistent with national trends. "The current wars are epic battles between businesses and trial lawyers," said Bert Brandenburg, the executive director of Justice at Stake. "Over the past half-decade, business groups are outraising and outspending trial lawyers."

A week after the lemon-law case was decided, the court announced another ruling in favor of a business. This one halted a class action to support the medical monitoring of workers who had been exposed to beryllium, a potentially toxic substance. The vote was 5 to 2. Employees and the political action committee of the parent company of the defendant, Brush Wellman, gave a total of \$5,700 to four justices, more than \$2,600 of it after the case was argued and before it was decided. All four were in the majority.

Patrick Carpenter, a spokesman for Brush Wellman, said its political action committee “contributes to deserving candidates in the interest of advancing good government” and noted that the workers’ lawyers had also given to the justices. The lawyers gave about \$20,000 to several justices, though most voted against the workers. Mr. Carpenter also said the company had lost a 2002 decision by a 4-to-3 vote, before the court’s conservative wing took over.

Michael Fincher, a 48-year-old roofer who was a plaintiff in the beryllium suit, said the contributions meant he had not received impartial justice. “I don’t think it’s appropriate, period,” Mr. Fincher said.

Screening the Candidates

Business groups have turned picking potential justices into an art.

“They study very carefully the field of potential candidates, really studying their backgrounds and what makes them tick, and picking a person who is liable to be leaning their way,” said Justice Pfeifer, who has shown an independent streak in his 14 years on the court. He did not name names.

Justice O’Donnell’s campaign materials say he is “rooted in law enforcement” as the son of a Cleveland police officer. They also note that he served as a law clerk and taught elementary school students and paralegals. In 20 years on lower courts before his appointment to the Supreme Court in May 2003, he created a long paper trail of conservative decisions. On the Supreme Court, he has helped consolidate its transformation from a court that routinely ruled against corporations and insurance companies to one quite friendly to business interests.

In 2004, running to complete the six-year term to which he had been appointed, Justice O’Donnell had a million-dollar advantage over his opponent that led to an Election Day rout.

Now that same opponent, Judge O'Neill, is back for a rematch. His campaign slogan: "No money from nobody."

Contributing to candidates for states' highest courts can be money well spent in at least one sense: the courts are very powerful. They have the last word on most of the issues that come before them. The United States Supreme Court has no jurisdiction over cases that present pure questions of state law, and in any event it hears only about 80 cases a year.

The states use various methods to choose their judges. The approaches are often some combination of nominating commissions, governors' and legislative action, and popular voting, including partisan contests and retention elections. Political machines still play a role in some states. In the federal system, by contrast, judges are appointed by the president, confirmed by the Senate and awarded lifelong tenure.

"Although there may be no good method of selecting and retaining judges, there is a worst method, and Ohio is among the states to have found it," Paul D. Carrington and Adam R. Long wrote in a 2002 study of the Ohio Supreme Court in the law review of Capital University here in Columbus. "That worst method is one in which judges qualify for their jobs by raising very large sums of money from lawyers, litigants and special interest groups, and retain their offices only by continuing to raise such funds." The problem, the authors found, is not a new one, but one that grows with the sums involved.

Ohio started electing judges in 1851, and the system seems unlikely to change. Voters overwhelmingly rejected a proposed return to an appointive system in 1987. In the 1980's, a campaign for a seat on the Ohio Supreme Court cost \$100,000, compared with the \$2 million a candidate may raise and spend these days.

Much of the recent spending came from business groups furious with what they called a liberal "Gang of Four" on the court after a pair of 1999 decisions. One of the decisions struck down a law revising the treatment of injury cases. The other interpreted employers' insurance policies broadly to cover some off-the-job injuries.

In 2000, business groups mounted a multimillion-dollar campaign to unseat Justice Alice Robie Resnick, a Democrat who wrote the first decision and joined the second. One advertisement showed a female judge switching her vote after someone dropped a bag of money on her desk.

Her opponent was Judge O'Donnell. He refused to denounce the attack advertisements, which seemed to backfire with voters. Justice Resnick won the election with 57 percent of the vote.

From that election on, "Ohio became a poster child for everything that was wrong with judicial elections," said Mr. Weisenberg, the Ohio State Bar Association official.

Money poured in, from political parties, from trial lawyers and especially from business interests. Contributions from people and entities affiliated with the finance and insurance industries totaled more than \$800,000 in 2004. Doctors and the health care industry contributed more than \$440,000.

The Balance of Power Shifts

Interest groups on the other side give, too, and the justices they support overwhelmingly vote their way. But Justice Pfeifer says the balance of financial power has shifted to business groups.

"I don't care how well a trial lawyer does or how big a pot a labor union has," he said, "they can't begin to match the business corporations. It's not a fair fight."

Justice Stratton, a Republican, said the recent contributions from business groups were a predictable consequence of a series of rulings "very strongly in favor of trial lawyers."

"You only have the big money coming out," she said, "when the court has swung too much to the left or to the right."

In 2002, Lt. Gov. Maureen O'Connor, a Republican, won a seat on the court, replacing a more liberal Republican justice and altering the balance. Her campaign took more than \$330,000 from affiliates of insurance companies and medical groups. Not long after she joined the court, Justice O'Connor wrote the opinion that overruled the 1999 insurance decision. Only four years after the court ruled that employers' insurance policies covered many off-the-job injuries, it reversed course. "It serves no valid purpose to allow incorrect opinions to remain in the body of our law," Justice O'Connor wrote for the majority. The vote was 4 to 3.

The shift in personnel had a prompt impact on other cases, too. Since then, law firms that work mostly for plaintiffs have fared poorly in the court. A look at a sample of 14 big plaintiffs' firms showed that they won 64 percent of the

cases in the study before 2003. In the next three years, after the rise of the court's conservative wing, their success rate dropped to 17 percent. Since 1995, Ohio has imposed campaign contribution limits. They are \$3,000 from individuals and \$5,500 from organizations for each judicial election. Primary and general elections are counted separately.

A Critic Takes On the System

But, depending on how donations from individuals and political action committees are counted, the limits do not stop some businesses from making very large aggregate contributions. Affiliates, employees, officers and directors of the Cincinnati Insurance Company, for instance, gave more than \$200,000 to Ohio Supreme Court candidates from 1998 through 2004.

Joan Shevchik, a spokeswoman for the parent company of Cincinnati Insurance, Cincinnati Financial Corporation, cited the effort to overturn the 1999 decision as a reason for the contributions, but emphasized that the corporation itself gave nothing. "As insurance professionals," she said, "each of us sees up close the immediate impact that the Ohio Supreme Court has on the industry, our company and our policyholders."

There is a small printing press in the garage of Judge O'Neill. In the evenings, he and his children produce fliers for a long-shot no-money campaign for Justice O'Donnell's seat on the Ohio Supreme Court.

"We're going to do a million pieces for \$4,000 from my pocket," Judge O'Neill said, explaining that he will not accept a penny in contributions. Even some of his supporters view his effort as quixotic, notwithstanding the higher ratings Judge O'Neill gets from many Ohio bar associations.

"They're out soliciting the next million dollars to beat me," he said. "The insurance industry, the manufacturers and now the doctors treat the Ohio Supreme Court as a personal piece of property."

Justice Resnick, the last Democrat on the court, is retiring this year, and her seat is also open, making an all-Republican court next year a distinct possibility.

Marc Dann, a Democratic state senator running for attorney general, said Judge O'Neill's strategy might have been driven by necessity as well as principle.

“Best case,” Mr. Dann said, “maybe he goes to the plaintiff’s bar and labor unions, and maybe he raises \$300,000. To do a good week of TV in Ohio is \$750,000.”

Judge O’Neill’s assertion that seats on the Supreme Court are for sale infuriates many in the legal establishment in Ohio, and in July 2004 the Disciplinary Counsel of the Ohio Supreme Court began an investigation into whether Judge O’Neill had violated judicial ethics by making similar statements in the last campaign.

Judge O’Neill laughed when asked if the investigation worried him.

“I am a Vietnam veteran, and I lost my wife 10 years ago,” he said. “I raised four kids by myself. When you talk about fear, I fear big things in life. Being hauled before a disciplinary counsel does not qualify.”

For the time being, a federal judge has suspended the investigation on First Amendment grounds. If the Ohio Legislature is troubled by Judge O’Neill’s conduct, the federal judge, Ann Aldrich wrote, “the proper solution is to stop electing judges and make state judgeships appointed offices.”

Judge O’Neill disagreed. He likes elections, he said.

“We have more authority over people’s lives than anyone else in elected office,” he said. “We decide who goes to jail and who gets out of jail. We decide what happens to your life savings after you die. We decide whether or not you will be permitted to finish raising your child. I can’t think of any other industry that has a more profound impact on people’s lives. And it is arrogant at best that some committee should make this appointment.”

But Chief Justice Moyer said the flaws in Ohio’s approach were the product of elections.

“In a perfect world,” he said, “you would have justices being selected not based on the amount of money their campaign committees can raise from various interests, but on their character and record — and somewhat on judicial philosophy, certainly, but in a more abstract way.”

Adam Liptak reported from Columbus, Ohio, and New York, and Janet Roberts reported from New York. Mona Houck contributed reporting from New York.