

# Business donations to judges' campaigns often equal friendly rulings

Published: June 11, 2013

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WASHINGTON — State supreme court justices are favoring the corporate interests that finance their election campaigns, a comprehensive new study concludes.

With more judicial elections now awash in dollars, the study of several thousand court decisions found a relationship between business-affiliated contributions and how justices voted. The more business money a supreme court justice has received, the more likely she or he is to support business litigants, according to the yearlong study by the American Constitution Society, a liberal advocacy group.

“We have reason to be worried,” study author Joanna Shepherd said Tuesday. “Business groups tend to spend far more on judicial elections than any other interest group.”

An economist and associate professor at Emory University Law School, Shepherd analyzed 2,345 court decisions issued between 2010 and 2012, along with more 175,000 contribution records.

An elected judge who receives 1 percent of his or her contributions from the business sector votes, on average, for pro-business position about 46 percent of the time, according to the study. A judge who receives a quarter of his or her contributions from business votes with business 62 percent of the time, the study found. A judge who receives half from business votes with business about two-thirds of the time.

As with legislative campaign contributions, though, the new analysis raises a vexing chicken-and-egg question about whether donations change voting behavior or simply reflect common interests between donor and recipient. Many judicial decisions, moreover, defy any connection to campaign contributions.

The California Supreme Court, for instance, issued a unanimous decision in February that blocked an asbestos injury lawsuit filed against a dissolved corporation. It might count as a pro-business ruling, but two of the justices who joined it – Chief Justice Tani G. Cantil-Sakauye and Justice Goodwin Liu – have yet to raise money or face a retention election.

In still other cases, a lawsuit will pit one company against another, so that business both wins and loses. In April, for instance, the Texas Supreme Court ruled in a case where a

health care company faced off against the Aetna insurance company. Shepherd said the new study omitted such business-vs.-business cases.

Business organizations say they cannot afford to ignore what happens in the courts.

“America’s civil justice system is the world’s most expensive justice system and our nation’s legal system is in crisis,” the U.S. Chamber of Commerce’s Institute for Legal Reform states on its website. “The cost is taking a toll on everyone.”

Unlike federal judges, who are appointed for life, state supreme court justices can face voters in several different ways.

Some states, like California and Kansas, have retention elections in which voters decide whether to keep an appointed judge after a certain period of service.

Nine states, like Texas, have partisan elections for judges, while 12 others, including North Carolina and Kentucky, have nonpartisan elections. Other types of selection procedures are also used.

The new study found the relationship between business contributions and judicial voting in the states with partisan and nonpartisan elections, but not in states with retention elections.

In addition, Democratic judges show a stronger relationship between business contributions and judicial voting than do Republicans. Shepherd speculated that Republican judges are already more disposed to side with business interests.

For the 2009-2010 election cycle, the most recent for which complete data is available, state supreme court candidates raised more than \$38 million overall. This was six times more than was raised during the 1989-90 election cycle. Though the new report does not itemize specific campaigns or cases, other public records show what’s happening on the ground.

Last year, for instance, Republican John Devine raised \$273,000 in his campaign to defeat a fellow Republican, Justice David M. Medina, for a seat on the Texas Supreme Court. Medina raised \$587,000 for the race. Both men drew most of their money from donors identified as lawyers or lobbyists, according to records compiled by the American Judicature Society, a nonpartisan group of lawyers, judges and others concerned about improving the legal system.

Outside groups are also paying for independent advertising, as in a concerted but ultimately unsuccessful campaign last year to unseat three Florida Supreme Court judges.

“The fundraising for judicial campaigns has skyrocketed,” said Caroline Frederickson, president of the American Constitution Society.

In a 2009 decision involving an earlier West Virginia Supreme Court race in which a coal company played a major role, the U.S. Supreme Court noted some of the problems that can arise.

“Not every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge’s recusal,” Justice Anthony Kennedy wrote for the 5-4 majority.

But he added: “There is a serious risk of actual bias . . . 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.”