



Public Financing of Judicial Races Can Give Small Donors a Decisive Role

Billy Corriher December 12, 2012

This report is the fifth and final report in a series on different policies that could help mitigate the influence of corporate campaign cash in judicial elections. The reports are intended for advocates or legislators who want to ensure our justice system works for everyone, not just those with enough money to donate.

The 2012 elections saw spending records shattered as the unlimited campaign cash unleashed by *Citizens United* and other federal court cases funded billions of dollars in independent expenditures.¹ Candidates in state supreme court races across the country spent a record \$27.8 million for television advertising, and more than half of this money came in the form of independent expenditures, according to Justice at Stake and the Brennan Center for Justice—two groups that track money in judicial elections.² Spending on judicial races exceeded \$1 million in 10 states.³ This money, as usual, came from corporations, lawyers, and others with a stake in cases before these courts. Judicial campaign contributions often give rise to conflicts of interest when judges rule on cases involving their campaign donors.

Public financing programs can drastically limit the opportunity for lawyers, corporations, or others to influence the law through campaign contributions. In most public financing systems, candidates must qualify for public subsidies by raising a certain amount of small contributions.⁴ The participating candidates must agree to certain conditions, such as spending limits and pledging to forgo private funds.⁵ North Carolina, for example, has a public financing system in which appellate court candidates must raise roughly between \$40,000 and \$80,000 in small contributions to qualify for public funds.⁶ Participating candidates receive more than \$200,000 in public financing, but they can only spend that sum and the qualifying contributions on their campaigns.⁷ New Mexico instituted a similar system for statewide judicial races in 2007.⁸

North Carolina's program has been held out as a model for other states considering reforms to keep special interest money out of judicial campaigns, but this year's election saw the system overwhelmed by independent spending as the state's options for regulating campaign finance were sharply limited by recent U.S. Supreme Court cases.

Like New Mexico and other states,⁹ North Carolina offered publicly financed candidates “matching funds” whenever their opponents and the groups supporting their opponents spent more than the amount available through the public subsidy. This matching funds system, however, was ruled unconstitutional under a 2011 U.S. Supreme Court case, which held that distributing funds to publicly financed candidates in response to an opponent’s spending is effectively a “penalty” for the opponent’s political speech.¹⁰

While the traditional form of “matching funds” is now unconstitutional, some jurisdictions have implemented “small-donor matching” systems in which public funds are used to “multiply” the impact of small donors. If a state offers five-to-one matching funds for small donations, for example, a \$200 contribution becomes a \$1,000 contribution. These systems have not yet been implemented for judicial campaigns. But if these systems were put in place, small-donor matching could help states shore up public confidence in judicial integrity and drastically change the pool of campaign funds on which judicial candidates rely, while also providing candidates the flexibility needed to respond to unlimited independent spending.

Given the explosive growth in judicial campaign cash, states should act quickly to implement viable public financing programs that do not violate U.S. Supreme Court precedents. Recent polls suggest that the vast majority of citizens believe that campaign contributions affect judicial rulings.¹¹ A 2011 poll from Justice at Stake, a nonpartisan campaign to keep courts fair and impartial, found that “94 percent of North Carolina voters believe campaign contributions have some sway on a judge’s decision.”¹² The millions spent in the 2012 race for the North Carolina Supreme Court is unlikely to assuage these concerns.

Several organizations spent around \$2.5 million to help conservative Justice Paul Newby win re-election. Much of this money came from corporate interests like the North Carolina Chamber of Commerce and two tobacco companies that benefited from a 2009 ruling¹³ authored by Newby.¹⁴ The largest donation, by far, was nearly \$1.2 million from the Republican State Leadership Committee, which helped the Republican-led North Carolina state legislature draft its recent redistricting map.¹⁵ Those maps are being challenged in a lawsuit by civil rights groups alleging that the drafters used race as a proxy for political party and disenfranchised minority voters.¹⁶ Under judicial ethics rules, Justice Newby will have to decide whether he “should disqualify himself” because his “impartiality may reasonably be questioned.”¹⁷ While this case was pending before the North Carolina Supreme Court, the Republican State Leadership Committee contributed about half of the millions of dollars spent to re-elect Justice Newby and keep a 4-3 conservative majority on the court.

This type of conflict of interest is exactly what North Carolina was hoping to avoid a decade ago, when it began offering public financing to appellate court candidates. A 2002 statute established a public financing system for judicial campaigns to prevent

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special interests from influencing the law.¹⁸ As the state was debating the issue, Judge James Wynn of the North Carolina Court of Appeals said the existing system allowed those with an interest in pending cases too much influence. Judge Wynn said it was “like letting major league baseball players contribute money to influence the selection of umpires to call their games.”¹⁹

The effort was a resounding success in keeping special interests from influencing the composition of the court and its decisions. In 2002 candidates for the state supreme court raised around \$800,000, with more than half of this money coming from lawyers or business interests.²⁰ In the 2008 race, by contrast, candidates raised almost \$700,000, and 72 percent of that came from the public financing program.²¹

This year’s election, however, saw independent spending from special interests outside the state overwhelming North Carolina’s public financing system. The U.S. Supreme Court, in cases like *Citizens United*, has struck down restrictions on independent spending and made it easier for those with money to use their resources to influence elections. Entities with an interest in cases before the North Carolina Supreme Court spent \$2 million in 2012 to elect their preferred judge. Justice Newby’s opponent lost, having been massively outspent by the independent groups supporting the incumbent. The challenger would have qualified for matching funds if a recent U.S. Supreme Court case had not made those funds unavailable.²²

Constitutional limits on public finance

In a landmark 1976 campaign finance case, *Buckley v. Valeo*, the U.S. Supreme Court upheld a public financing system for presidential candidates. The *Buckley* Court reviewed a federal statute that instituted broad reforms of federal campaigns in the wake of the Watergate scandal, asking whether the reforms violate the First Amendment.²³ The federal public financing system was upheld by the Court as a means of furthering, not abridging, political speech. The Court said that Congress, in establishing this system, sought to “facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.”²⁴

In a 2011 case, *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, the U.S. Supreme Court cast many public financing systems into doubt by ruling that traditional matching funds are unconstitutional.²⁵ The *Bennett* case concerned an Arizona public financing program for statewide candidates—not including judicial candidates—who agree to certain spending and contribution limits. Participating candidates were eligible for traditional matching funds.²⁶ For every dollar the privately financed campaign spent above the amount of public financing, the state gave a dollar to the publicly financed candidate.²⁷

In an opinion by Chief Justice John Roberts, a five-justice majority described the matching funds as a “penalty” on privately financed candidates who spend above a certain amount on political speech.²⁸ “The direct result of the speech of privately financed candidates and independent expenditure groups is a state-provided monetary subsidy to a political rival.”²⁹ The Court ruled that this “penalty” on speech violates the First Amendment rights of privately financed candidates.

Arizona argued the funds were necessary to combat corruption and the appearance of corruption through its public financing system, but the Court claimed the real goal of the matching funds was to “level the playing field” in political races.³⁰ The Court stated, “The *First Amendment* embodies our choice as a Nation that, when it comes to such speech, the guiding principle is freedom—the ‘unfettered interchange of ideas—not whatever the State may view as fair.”³¹

Justice Elena Kagan wrote a stinging dissent describing the matching funds as a “viewpoint-neutral” government subsidy for speech, which the Court had never before held unconstitutional. Justice Kagan argued the matching funds program results in more speech, not less speech, since it provides more money for campaigning.³² The majority responded that any increase in speech comes “at the expense of impermissibly burdening (and thus reducing) the speech of privately financed candidates and independent expenditure groups.”³³

After the ruling in *Bennett*, some states repealed their matching funds provisions, and federal courts struck down others.³⁴ Yet, as Justice Kagan noted in her dissent, public financing systems must be flexible because “the dynamic nature of our electoral system makes *ex ante* predictions about campaign expenditures almost impossible.”³⁵ This is especially true in judicial elections. Without matching funds, how can public financing keep pace with the unpredictable, skyrocketing costs of judicial campaigns? Some states and localities are experimenting with a promising new system of small-donor matching funds, a new form of public financing that provides candidates flexibility and vastly expands the pool of campaign donors to include ordinary citizens.

Empowering small donors by “multiplying” their contributions

In the wake of *Bennett*, some states are looking to New York City’s public financing system as a model. The city gives participating municipal candidates \$6 in matching funds for each \$1 of the first \$175 that a city resident donates to a campaign.³⁶ These funds multiply the impact of small donations. A \$175 donation, for example, becomes a \$1,225 donation. New York City’s system has had great success in making small donors much more important relative to large donors in campaign fundraising.³⁷ Instead of relying solely on wealthy campaign contributors, candidates receive most of their private campaign donations from middle-class and working-class donors who are matched by public funds.

The city's Campaign Finance Board reports, "The most common individual contribution size for candidates participating in the Campaign Finance Program for the 2009 election was \$100," compared to state-level campaigns, in which more than half of the contributions were \$5,000 or more.³⁸ The city's 2009 election saw organizations like political action committees, or PACs; corporations; or unions contributing only 6.8 percent of campaign cash, compared to 65.1 percent in state-level elections.³⁹

According to a recent study by the Campaign Finance Institute, the "percentage role of small donors was higher in every [New York City] election after 2000."⁴⁰ The Campaign Finance Institute found that the system made the pool of campaign donors more diverse and more representative of the city's population. Nearly all of New York City's "census block groups" were home to at least one small donor, and the blocks where citizens gave small donations had "higher levels of poverty, higher percentages of non-whites, higher percentages of adult residents who did not complete high school," and so forth.⁴¹

Advocates for campaign finance reform argue that this system has allowed candidates "to fuse their fundraising efforts with voter outreach, and has incentivized political engagement by communities that can only afford modest contributions—communities all too often ignored by traditionally funded candidates."⁴² The system has given rise to "house parties"—small political gatherings where ordinary citizens can learn about candidates and make small contributions.⁴³

The state of New York, among others, is considering a small-donor matching system for statewide elections,⁴⁴ and some major cities have already adopted similar systems.⁴⁵ Several states match small contributions on a dollar-for-dollar basis,⁴⁶ but this does not have the same dramatic effect on campaign finance as "multiplier" matching funds. A few states, including Rhode Island and New Jersey, provide two-for-one matching for certain candidates who agree to lower contribution limits and other conditions.⁴⁷ A bill was recently introduced in the U.S. House of Representatives to implement a system like the one in New York City for federal elections.⁴⁸

Small-donor matching for judicial races

Because campaign cash is particularly problematic in judicial races, these small-donor matching programs could be useful in states that elect their judges. Legislators might accept contributions from corporations or industries affected by legislation, but unlike judges, a legislator's vote on a single bill will rarely impact just one campaign contributor. Judges, on the other hand, make decisions that affect specific individuals and corporations. This means that whenever an attorney or a party before a court contributes to a judge's campaign, there is a more harmful conflict of interest than the type seen in the political branches of government. The surge in judicial campaign cash has led citizens to believe that judges are more responsive to campaign contributors than to the law.⁴⁹

The U.S. Supreme Court recognized the unique interests at stake in judicial campaigns in a 2009 case involving an extreme conflict of interest stemming from the 2004 election for the West Virginia Supreme Court. Justice Brent Benjamin won a seat on the state's high court after benefiting from \$3 million in independent spending funded by the chief executive officer of Massey Coal, which had a \$50 million verdict against it pending before the court.⁵⁰ These donations amounted to three times the amount raised by the campaign itself. After Justice Benjamin won by fewer than 50,000 votes, he cast the deciding vote to overturn the \$50 million verdict against Massey Coal. The U.S. Supreme Court ruled that the plaintiff's due process rights were violated by Justice Benjamin's refusal to recuse himself after he received "extraordinary" political support from the coal company.⁵¹ The Court said, "Just as no man is allowed to be a judge in his own cause, similar fears of bias can arise when ... a man chooses the judge in his own cause."⁵²

The state of West Virginia, in the wake of the scandal, created a pilot public financing program for the 2012 state supreme court election. The legislature said the program would "protect the impartiality and integrity of the judiciary and strengthen public confidence in the judiciary."⁵³ The system included "matching funds," but the state refused to disburse the money because of the ruling in *Bennett*.⁵⁴ The West Virginia Supreme Court agreed with the state, but it permitted the publicly financed candidate to raise money outside of the public financing program.⁵⁵ If it wishes to implement the public financing program for all high court candidates, West Virginia will have to replace the matching-funds provision with something that will keep public financing viable but pass constitutional muster.

A system of small-donor matching funds fits that description. It provides publicly financed candidates the flexibility they need given the unpredictable cost of judicial campaigns. Because these funds are not disbursed in reaction to an opponent's expenditures, they cannot be construed as a "penalty" for speech like the matching funds at issue in *Bennett*.

In a state such as West Virginia, where only a few women and African Americans have ever served on the high court, small-donor matching can also make the bench more diverse and more representative of the state's population. Some studies have found that potential candidates who are female or members of a racial minority face high hurdles in deciding whether to run for office.⁵⁶ These potential candidates often lack access to established fundraising networks.

When candidates rely on existing fundraising networks, they are looking to a very small sliver of the population. The Center for Responsive Politics reports that in 2012 a mere 0.37 percent of the population was responsible for two-thirds of all federal campaign contributions of more than \$200, and two-thirds of those contributions came from men.⁵⁷ The Associated Press surveyed the same contributions at the presidential level and concluded that "more than 90 percent came from majority white neighborhoods."⁵⁸ Because donors are disproportionately white and male, women and racial minorities may not feel as confident in their chances of raising enough money to compete.

Furthermore, incumbents almost always have a fundraising advantage over their challengers,⁵⁹ and women and minorities are much less likely to be incumbents than white men. A 2009 study found that just 12.8 percent of state supreme court justices belong to a racial minority group, and only 31.9 percent are women.⁶⁰ A recent study found that female candidates are more likely than male candidates to take advantage of public financing.⁶¹ By vastly broadening the base of potential contributors, small-donor matching can make courts more diverse and give challengers a better chance at defeating incumbents.

Restoring the public's confidence in the judiciary

Many judges have recognized the toll that politicization exacts on the public's view of the courts and have joined in calls for reform. Justice James Nelson of the Montana Supreme Court laments the time that judges are forced to devote to politics and fundraising. During his last judicial race, Justice Nelson said he had little time to devote to the actual job of deciding cases. Instead, he said, "I became a full time politician for ten months."⁶² Citizens do not want the schedule of judges to resemble those of members of Congress, who now spend more time communicating with fundraisers and campaign donors than deliberating policy choices.⁶³

In Wisconsin the public's perception of the state supreme court has been damaged by nasty attack ads funded by millions of dollars in independent spending. A July 2011 poll of Wisconsinites found that only 33 percent of respondents had confidence in their state supreme court, with 88 percent reporting concerns that "campaign spending and the deteriorating tenor of judicial elections are tarnishing the reputation of the Wisconsin Supreme Court."⁶⁴

In 2007 the court asked the legislature to provide adequate public financing for high court races, warning that "the public may inaccurately perceive a justice as beholden to individuals or groups that contribute to his or her campaign."⁶⁵ The legislature complied in 2009, and both candidates received public financing for the 2011 Wisconsin Supreme Court race. The public financing system, however, was overwhelmed by more than \$3.5 million in independent spending.⁶⁶ Conservative Justice David Prosser was supported by millions of dollars from big business groups. Nearly half of the money supporting Justice Prosser came from Citizens for a Strong America, a shadowy organization affiliated with Americans for Prosperity—the political advocacy group founded by billionaire brothers Charles and David Koch.⁶⁷

Why might the Koch brothers have an interest in helping the court's conservative, pro-corporate majority stay in power? The 4-3 majority emerged as a result of the 2009 election, after which the four pro-corporate justices voted to reject a widow's lawsuit against a company whose asbestos-laden products may have killed her husband.⁶⁸ In 2005 Koch Industries purchased the huge paper and building products manufacturer Georgia-Pacific—

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the target of more than 340,000 asbestos lawsuits from employees and others who developed cancer or lung disease.⁶⁹ In buying Georgia-Pacific, Koch Industries assumed these liabilities, and thus, it has an interest in how the law of asbestos liability develops.

Campaign cash has allowed special interests to shape the law by influencing the composition of the Wisconsin high court, and this has damaged Wisconsin citizens' confidence in judicial impartiality. Justice Ann Walsh Bradley said the high court is caught "in the crossfire of the battle being fought between special interest groups," and she says the money from these groups has led to "hyper-partisanship" on the bench.⁷⁰ Justice Prosser referred to one of his colleagues as a "total bitch" and is accused of putting Justice Bradley in a "chokehold."⁷¹ The court has been bitterly divided over these and other ethical issues.

After it was overwhelmed in the 2011 elections, Wisconsin's judicial public financing system was repealed by the Republican-led state legislature.⁷² But a system of small-donor matching funds could reduce the opportunities for special interests to influence the law and restore Wisconsinites' confidence in their judiciary. Wisconsin advocates of campaign finance reform have proposed a statewide public financing system that matches a donation of \$50 or less with four-for-one matching funds (three-for-one for donations between \$50 and \$100).⁷³

If such a system were implemented, the conflicts of interest created by large campaign contributions from litigants or attorneys would be minimized as judicial candidates funded their campaigns through small donations from their middle- and working-class constituents. These small donations would be amplified by public financing and in turn, citizens would perceive judges as beholden to small donors and voters, not wealthy campaign contributors.

Conclusion

The amount of money in judicial elections has exploded, and now that special interests are increasingly using independent spending to circumvent contribution limits, this trend shows no signs of slowing. Citizens are therefore justified in asking whether a judge might be influenced by millions of dollars in campaign cash.

States should step in to curb the growing influence of campaign cash on judges by implementing robust public financing programs. Before the 2012 election in North Carolina saw a torrent of independent spending, the state's public financing system was a model. Without traditional matching funds, however, the publicly financed challenger could not contend with the millions in independent spending on behalf of the incumbent justice.

States that offer public financing must contend with the reality of unlimited independent expenditures.⁷⁴ Even before it ruled traditional matching funds unconstitutional, the U.S. Supreme Court had begun weakening restrictions on campaign finance.⁷⁵ Public

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financing programs for judicial races must provide some mechanism that allows participating candidates to keep pace with independent spending.

One promising option is small-donor matching funds that provide the flexibility needed to keep judicial public financing systems viable in this era of skyrocketing campaign costs. If a privately financed candidate benefits from millions in campaign cash or millions in independent spending, the publicly financed candidate can seek out more small donors to keep pace. The system would also avoid the First Amendment problems created by traditional matching fund systems. The disbursement of small-donor matching funds is not related in any way to the campaign funds of privately financed candidates, so it cannot be construed as “punishing” political speech.

Effective public financing systems for judicial races would permit judges to spend more time deliberating cases and writing opinions, rather than devoting their energy to fundraising. Small-donor matching systems would also lead to courts that are more diverse—courts that more closely resemble the populations they serve.

As with existing public financing systems, some candidates may choose not to participate. But if the terms of small-donor matching were as generous as New York City’s program—\$6 for every \$1 in small donations—the candidates who do not participate would be leaving money on the table.

Some have pointed to the successful candidacies of New York Mayor Michael Bloomberg, who spent hundreds of millions of dollars of his own money in his campaigns, as evidence that the city’s system does not keep money out of elections.⁷⁶ Likewise, the sole publicly financed candidate in West Virginia faced a self-financed candidate who spent a million dollars of her own money.⁷⁷ A wealthy candidate using her or his own money, however, does not give rise to any conflict of interest. A judge cannot participate in a corrupt transaction with him or herself.

Public financing, moreover, can help candidates stay competitive in races against self-financed candidates. One candidate who faced Mayor Bloomberg stated, “It is irrational to argue against a system that enables a diverse group of people to run competitive campaigns because a wealthy candidate can occasionally outspend a participating candidate.”⁷⁸

Public financing systems based on small-donor matching would magnify the impact of small donations, making the pool of campaign contributors broader and more representative of a state’s population. Rather than being responsive to corporations and lawyers that have tons of money to donate, judges would be beholden to ordinary citizens making small donations. This would be an important step toward a justice system that works for all citizens, not just those with money to spend influencing the law.

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Endnotes

- 1 *Citizens United v. FEC*, 558 U.S. 310 (2010). The Supreme Court ruled unconstitutional a ban on certain independent political spending by corporations and unions, reasoning that “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.” *SpeechNOW.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010). The D.C. Circuit Court of Appeals ruled unconstitutional limits on contributions to organizations making independent expenditures, based on *Citizens United*.
- 2 Justice at Stake Campaign and Brennan Center for Justice, “Judicial Election TV Spending Sets New Record, Yet Voters Reject Campaigns to Politicize Judiciary,” Press release, November 7, 2012, available at http://www.justiceatstake.org/state/judicial_elections_2012/election-2012-news-releases/?judicial_election_tv_spending_sets_new_record_yet_voters_reject_campaigns_to_politicize_judiciary&show=news&newsID=15337.
- 3 *Ibid.*
- 4 Maine, for example, requires candidates to announce their intention to participate in its “Clean Elections” program and to raise a certain number of \$5 contributions to qualify for public subsidies. Me. Rev. Stat. Ann. 21-A § 1125. To qualify in Arizona, candidates for the state legislature must collect 200 \$5 contributions, and gubernatorial candidates must collect 4,000 \$5 contributions. A.R.S. §§ 16-946, 16-950 (2012).
- 5 See: M.R.S. 21-A § 1125(6) (2012). “After certification, a candidate must limit the candidate’s campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission.” A.R.S. § 16-947 (2012). The Arizona law requires that publicly financed candidates agree that they “will not accept private contributions.”
- 6 North Carolina law defines the minimum qualifying contributions as an amount of small donations (less than \$500) from at least 350 voters that add up to at least 30 times the filing fee for running for the office. N.C. Gen. Stat. § 163-278.62 & 64. The maximum for qualifying contributions equals 60 times the filing fee. N.C. Gen. Stat. § 163-278.62. The filing fee for a candidate for associate justice on the North Carolina Supreme Court is currently \$1,372. See: “Candidacy Filing Fees,” available at <http://www.ncsbe.gov/content.aspx?id=64> (last accessed November 2012). The minimum qualifying contributions must therefore equal at least \$41,160 but no more than \$82,320.
- 7 N.C. Gen. Stat. § 163-278.64(d)(3).
- 8 Voter Action Act, 2007 N.M. Laws 2; N.M. Stat. Ann. § 1-19A (2012).
- 9 N.M. Stat. Ann. § 1-19A-14 (2012).
- 10 *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 131 S.Ct. 2806 (2011) The Supreme Court ruled unconstitutional a system of “matching” funds distributed to publicly financed candidates in response to their opponents’ spending. *N.C. Right to Life PAC v. Leake*, No. 5:11-CV-472-FL (4th Cir. May 18, 2012) The Fourth Circuit overruled a previous case and relied on *Bennett* to strike down North Carolina’s matching funds program.
- 11 A 2010 poll from Justice at Stake found that 71 percent of respondents said they “believe campaign expenditures have a significant impact on courtroom decisions.” Justice at Stake, “Solid Bipartisan Majorities Believe Judges Influenced by Campaign Contributions,” Press release, September 8, 2010, available at http://www.justiceatstake.org/newsroom/press_releases.cfm/9810_solid_bipartisan_majorities_believe_judges_influenced_by_campaign_contributions?show=news&newsID=8722. A 2009 Gallup/*USA Today* poll found that 89 percent of respondents said they “believe the influence of campaign contributions on judges’ rulings is a problem.” Joan Biskupic, “Supreme Court case with the feel of a best seller,” *USA Today*, February 16, 2009, available at http://www.usatoday.com/news/washington/2009-02-16-grisham-court_N.htm.
- 12 Justice at Stake and North Carolina Center for Voter Education, “N.C. Voters: Campaign Contributions Influence Court Rulings,” Press release, February 22, 2011, available at http://www.justiceatstake.org/newsroom/press_releases.cfm/nc_voters_campaign_contributions_influence_court_ruling?show=news&newsID=10005.
- 13 *North Carolina v. Phillips Morris USA, Inc.*, No. 2A05-4 (N.C. Nov. 6, 2009) (unpublished decision), available at <http://www.aoc.state.nc.us/www/public/sc/opinions/2009/pdf/2-05-4-4.pdf>.
- 14 Sharon McCloskey, “Now playing on your phone: ‘Newby Tough but Fair?’,” *The Progressive Pulse*, November 7, 2012, available at <http://pulse.ncpolicywatch.org/2012/11/07/new-playing-on-your-phone-newby-tough-but-fair>; Chris Kromm, “Justice for Sale? Backers of shadow groups pushing money into NC judicial election may have high stakes in outcome,” *Facing South*, October 30, 2012, available at <http://www.southernstudies.org/2012/10/justice-for-sale-shadow-group-pushing-money-into-nc-judicial-election-is-backed-by-interests>.
- 15 Justice for All NC, “48-Hour Notice, North Carolina State Board of Elections,” November 5, 2012, available at http://www.app.sboe.state.nc.us/cf_pdf/2012/20121105_121121.pdf.
- 16 Plaintiff-Appellee’s Motion for Recusal of Justice Paul Newby, *Dickson v. Rucho*, No. 11 CVS 16896 (N.C. Nov. 21, 2012), available at <https://dl.dropbox.com/u/49063581/Motion%20for%20Recusal%20of%20Justice%20Newby/Plaintiff-Appellees%20File-Stamped%20Motion%20for%20Recusal%20of%20Justice%20Paul%20Newby.pdf>.
- 17 N.C. Code of Judicial Conduct Canon 3(C)(1). The North Carolina Supreme Court in 2003 weakened its ethics rules by removing language that required judges to avoid conduct that presents “the appearance of impartiality.” See: *Lange v. Lange*, 357 N.C. 645, 588 S.E.2d 877 (2003). The North Carolina Supreme Court held in 1951 that if the judge finds that the recusal motion is of “sufficient force” to require findings of fact, the judge should refer the matter to another judge. See: *Ponder v. Davis*, 233 N.C. 699, 65 S.E.2d 356 (1951). If the judge reaches the same decision, the party may file a complaint with the North Carolina Judicial Standards Commission. See: N.C. Gen. Stat. § 7A-376 (2012). Neither the ethics rules nor North Carolina case law specifies campaign contributions as a basis for recusal. The U.S. Supreme Court, however, has recently ruled that a litigant’s due process rights were violated by “extraordinary” political support provided to a judge by the opposing litigant. See: *Caperton v. Massey Coal Co.*, 129 S. Ct. 2252 (2009).
- 18 Judicial Campaign Reform Act, 2002 N.C. Adv. Legis. Serv. 158, 2001 N.C. SB 1054. The bill’s stated purpose is protecting “voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections ... since impartiality is uniquely important to the integrity and credibility of the courts.”
- 19 Democracy N.C., “Attorneys Supply 70% of Campaign Money Raised by Candidates for State’s Top Court” (2002), available at <http://www.democracy-nc.org/downloads/JudicialElecAttyReliancePR062002.doc>.
- 20 “Graphic: How the Public Campaign Fund has reduced the role of private money in elections for the N.C. Supreme Court,” available at <http://www.ncjudges.org/jcra/graphic-contributions.html> (last accessed November 2012).
- 21 “High Court Candidates, North Carolina 2008,” available at http://www.followthemoney.org/database/StateGlance/state_candidates.phtml?f=J&y=2008&s=NC.

- 22 *N.C. Right to Life PAC v. Leake*, No. 5:11-CV-472-FL (4th Cir. May 18, 2012) The Fourth Circuit Court of Appeals relied on *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S.Ct. 2806 (2011) to strike down the state's matching funds.
- 23 The Court struck down limits on campaign expenditures as unconstitutional, but they upheld limits on contributions, disclosure rules, and the public financing system. *Buckley v. Valeo*, 424 U.S. 1 (1976).
- 24 *Ibid.*, p. 92-93.
- 25 *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S.Ct. 2806 (2011).
- 26 *Ibid.*, p. 2813-14.
- 27 *Ibid.*, p. 2814-15. Once a publicly financed campaign spent above the threshold, Arizona's system matched 94 percent of the expenditures. The state deducted six percent to account for "fundraising costs."
- 28 *Ibid.*
- 29 *Ibid.*, p. 2821.
- 30 *Ibid.*, p. 2824-2826.
- 31 *Ibid.*, p. 2826 (italics in original).
- 32 *Ibid.*, p. 2833-2836.
- 33 *Ibid.*, p. 2821.
- 34 See, for example: *N.C. Right to Life PAC v. Leake*, No. 5:11-CV-472-FL (4th Cir. May 18, 2012) The Fourth Circuit Court of Appeals invalidated North Carolina's matching funds provision. A 2011 statute repealed Maine's matching funds program. An Act Regarding the Matching Funds Provisions of the Maine Clean Election Act, 2011 Me. Laws 558 .
- 35 *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, p. 2832.
- 36 New York, N.Y., Administrative Code § 3-701-720, available at <http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLADCOT3C7+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=44215594+&TARGET=VIEW>.
- 37 A study from the Campaign Finance Institute says the system has increased "the proportional role of small donors" and increased "the number of people who contribute." Michael Malbin, Peter Brusoe, and Brendan Glavin, "Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States," *Election Law Journal* 11 (1) (2012): p. 4.
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