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New Poll Supports the Goal of Judicial Merit Selection: Remove the Influence of Big Money and Campaigning

Denver, CO – A new poll, conducted by Justice at State and Harris Interactive, shows a huge majority of adults believe big campaign contributions can create the appearance of bias in court cases. This poll was released just prior to the U.S. Supreme Court hearing arguments in the *Caperton v. Massey* case out of West Virginia – a case that questions when a judge should be disqualified from hearing a case in which one of the parties contributed significant funds to said judge's election campaign. In this case, the judicial campaign received \$3 million dollars from Massey Energy Corp and its CEO.

“These findings support the judicial merit selection and retention election system established in Colorado over 40 years ago that removed partisan politics and fundraising from our state judicial system. The Colorado Judicial Institute was originally founded to support merit selection and educate the public on the benefits of a judiciary free from the appearance of bias brought about by fundraising and campaigning,” said Bob Miller, board chair of the Colorado Judicial Institute. Colorado does not have contested judicial elections and therefore the campaign contribution issue is not applicable. However, a ruling by the US Supreme Court in this case could have an impact on recusal standards throughout the nation.

CJI, along with numerous public groups, joined an amicus brief filed by Justice at Stake in the Caperton case indicating our concern over the influence campaign fundraising and massive campaign expenditures can have on judicial independence and public confidence in the judiciary.

The full text of the Justice at Stake announcement and links to the poll data are below.

The Colorado Judicial Institute: A Shared Vision of Judicial Excellence

The mission of the 29-year old non-partisan, non-profit Colorado Judicial Institute is: 1) to preserve and enhance the independence and excellence of Colorado courts, 2) to further public understanding of the Colorado judicial system, and 3) to ensure that the courts meet the needs of the people.

Justice At Stake
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Poll: Huge Majority Wants Firewall Between Judges, Election Backers

On Brink of Supreme Court Case, Public Says Bias Likely When Campaign Cash Is Involved

By overwhelming margins, U.S. adults doubt that elected judges can be impartial in cases involving their biggest election campaign financial supporters, and the public says judges should step aside from such cases, according to a new national poll by Harris Interactive.

Moreover, 81 percent say judges should not decide whether they can fairly hear a case, saying that another judge should weigh the facts when a judge's neutrality is challenged.

The poll comes as the Supreme Court prepares to consider when judges whose campaign supporters appear before them should step aside.

“Americans overwhelmingly believe that campaign cash has no place in the courtroom,” said Bert Brandenburg, executive director of the Justice at Stake Campaign, a nonpartisan watchdog that works to protect courts from special-interest and partisan agendas. “They are very skeptical that a judge can be impartial when one side has spent big dollars to help put them on the bench.”

In recent years, special interest spending on judicial races has soared, leading former Justice Sandra Day O'Connor and other

prominent jurists to say there is an appearance that justice is “for sale.”

A landmark Supreme Court case called *Caperton v. Massey* also is bringing attention to the issue.

In that case, coal executive Don Blankenship, whose company faced a \$50 million jury award, spent \$3 million on his own independent campaign to elect a new West Virginia Supreme Court justice. The justice, Brent D. Benjamin, cast the deciding vote to overturn the lawsuit. As in most states, Benjamin had the final word on whether he should leave the case, and he refused to do so.

According to a survey conducted by Harris Interactive and commissioned by the Justice at Stake Campaign, 81 percent say judges should not decide motions asking them to step aside, saying that other neutral jurists should make that call. Only 11 percent believed that judges should decide whether they can appropriately participate in a case.

Moreover, 68 percent said they would doubt a judge’s impartiality if one party to a case had spent \$50,000 to elect the judge. An even greater share, 73 percent, said they would doubt a judge’s neutrality if one side in a case spent \$1 million to elect the judge. Those who doubted a judge’s impartiality outnumbered those who didn’t by margins of about 3 to 1.

The amount of money made no significant difference in attitudes on whether a judge should recuse him or herself from cases involving a party who spent \$50,000 or \$1 million to elect the judge. In both cases, about 85 percent felt a judge should step aside, and only about 10 percent felt the judge should stay.

A separate USA Today poll found that about 90 percent believe judges should not hear cases involving campaign contributors.

Brandenburg noted that the American Bar Association, the Brennan Center for Justice and others are exploring a wide range of reforms, so that judges are not even perceived to offer special treatment to election supporters. These include having neutral judges review motions for a judge to step aside—a reform overwhelmingly supported in the poll.

Although the *Caperton* case examines only whether now-Chief Justice Benjamin violated a litigant’s constitutional rights, nearly all 50 states have additional judicial rules requiring judges to step aside if a reasonable person might question their fairness.

“These polls show a clear verdict, and elected judges should be aware of it,” Brandenburg said. “For most Americans, cases involving major financial supporters fail the smell test. The public believes everyone is entitled to a fair day in court, before an impartial judge.”

To learn more about the *Caperton v. Massey* case, and about potential reforms of recusal rules for judges, see the

Justice at Stake online [Caperton v. Massey resource site](#), or visit Brennan Center for Justice pages on [Caperton](#) and recusal reform.

About the Survey

The poll was conducted by telephone by Harris Interactive on behalf of the Justice at Stake Campaign between February 12 and February 15, 2009, among 1,006 U.S. adults ages 18+. Full survey results [can be found here](#). For further information on the survey, including methodology and weighing variables, contact Charles Hall, Justice at Stake, 202-588-9454, or chall@justiceatstake.org, Michelle Melamud, Harris Interactive, 212-539-9517, or MMelamud@harrisinteractive.com.

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