



# SHOW US THE MONEY

## An Analysis of Political Donations to the Texas Supreme Court

October 2008

### Introduction

It is often suggested that campaign contributions lead to favorable treatment by elected officials. Does this extend to the Texas Supreme Court? Only the justices themselves can answer whether causation exists between campaign contributions and favorable treatment at the Court. However, our months-long analysis of contributions to the justices from parties who have been involved in cases that have reached a published opinion certainly indicates a correlation between amounts of money given and success at the Court.

In order to determine whether a pattern of favoritism exists for large donors to the campaigns of members of the Texas Supreme Court, Texas Watch analyzed campaign contributions given to all sitting Texas Supreme Court justices from 2000 through 2008.<sup>1</sup> We examined who gave money, the amounts of money given, whether these contributors had cases before the Court during this period, and what the success rate of those contributors with cases was.

It has been widely reported that the Court's docket is full of parties who routinely help fill the coffers of the justices' campaigns. Our friends at Texans for Public Justice<sup>2</sup> have taken the lead over the years in analyzing and exposing the role of campaign cash in judicial races. We are not attempting to re-visit those issues here, nor do we attempt to draw explicit conclusions about the role money plays in influencing the Court. We leave that to our readers. However, many of our findings are striking:

- From 2000-2008, justices on the Texas Supreme Court have accepted campaign contributions totaling \$10.86 million.
- 10.8% of the Court's total contributions since 2000 have come from two powerful and decidedly pro-defendant political action committees with a keen interest in limiting the legal rights of individual Texans – HillCo PAC, Texans for Lawsuit Reform – and their major funders, partners, and board members.
- The justices accepted fully 50% of their total contributions from the small number of donors (92) who gave more than \$10,000 and had cases before the Court.
- As the number of cases one has before the Court increases, so does the amount of political contributions. Donors with 10 or more cases give nearly four times as much as donors with just 5 cases.

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<sup>1</sup> See [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

<sup>2</sup> See [www.tpj.org](http://www.tpj.org).

- The average success rate for those who gave *less* than \$10,000 was 54%, while the average for those who gave *more* than \$25,000 was 64%. This means that the largest donors won cases 19% more frequently than did smaller donors.
- There appears to be a strong correlation between the amount of money contributed and an entity's chance of success with the Court. Large donors who gave the most in campaign contributions had dramatically higher win rates than those who gave less to the justices' campaigns.

## Methodology

We looked at all contributions to the nine justices currently sitting on the Texas Supreme Court reported since 2000 (the year to which online ethics records are available through the Texas Ethics Commission). The Judicial Campaign Fairness Act lays out explicit time periods during which judges who voluntarily opt to comply are permitted to raise campaign funds, as well as contribution limits from individuals, political action committees, and law firms.<sup>3</sup> All nine members of the Court have opted to comply with the limitations established by the Act. There were more than 11,000 individual contributions reported. Many donors contributed numerous times, so there were not nearly as many individual donors.

We examined all Supreme Court cases in which a donor participated as a party or as an attorney. For the purpose of determining success rate, we labeled each case either a success or a loss based on whether the Court affirmed or overturned the appellate result of that party's case. While many cases are not so simply categorized, the vast majority of cases clearly favor one party over the other even if the "winning" party does not get all of its demands met. Using all cases in which a donor directly participated (and excluding cases in which a donor only submitted an amicus curiae brief), we calculated success rates for every donor that had a case before the Court.

We thus analyzed donors in three ways: 1) by amount of money given from 2000-2008 to the justices who are currently sitting on the Court, 2) by success rates, and 3) by number of cases before the Court.

For several types of analyses, we were particularly interested in what we term "large donors" – those who have given a cumulative total of \$10,000 or more to individual justices since 2000. In order to calculate the full amount contributed by a law firm, company, or political action committee (PAC), we included both the amount given by the donor itself and the amounts given by its employees. There have been just 94 donors that fall into the "large donor" category.

## Findings

From 2000-2008, justices on the Texas Supreme Court have accepted campaign contributions totaling \$10.86 million. There were hundreds of individual donors totaling more than 11,000 individual contributions. The average individual contribution was \$955 and the median was \$300 – indicating that many of these contributions were far above the average. What do these numbers mean though? Without context, these numbers reveal nothing but that each of the justices – like any other politician – has taken large sums of money over the years. In this section, we will discuss various analyses we conducted and frame their importance.

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<sup>3</sup> See [www.ethics.state.tx.us/guides/JCOH\\_guide.htm](http://www.ethics.state.tx.us/guides/JCOH_guide.htm).

### ***Analysis Based on Number of Cases Before the Court***

There were 437 individual donors with cases before the Court since 2000. 92 of those (21% of those with cases) gave more than \$10,000. Justices on the Court accepted \$5.4 million – or 50% of the total amount of contributions reported – from this small number of large donors.

The most striking finding here is not that the Court accepts campaign contributions from large donors with business before the Court. That would surprise no one. However, it is notable that the level of contributions rises dramatically with the number of cases. For instance, whereas donors with 5 cases before the Court made an average contribution of \$35,191, those with 10 or more cases averaged \$133,392 in contributions. That is a nearly four-fold increase in the average amount donated to the justices' campaigns.

<b>Number of Cases Before the Court</b>	<b>Number of \$10,000+ Donors</b>	<b>Average Contribution Amount</b>
2	13	\$18,135
5	8	\$35,191
10+	21	\$133,392

### ***Analysis Based on Amount of Money Contributed***

One of the most revealing ways to analyze these numbers is to look at each donor and determine his or her rate of success before the Court. The average rate of success for all donors with cases before the Court was 56%. The average success rate for those who gave *less* than \$10,000 was 54%, while the average for those who gave *more* than \$25,000 was 64%. This means that the largest donors won cases 19% more frequently than did smaller donors. It is notable that the more one gives, the higher their level of success.

<b>Amount Contributed</b>	<b>Success Rate</b>	<b>Number of Donors with Cases before the Court</b>
Average of all donors	56%	437
Less than \$10,000	54%	345
\$10,000 - \$24,999	58%	44
More than \$25,000	64%	48

### ***Analysis Based on Success Rate of Large Donors***

The average amount of money given by large donors with a 70% or higher success rate before the Court was approximately \$68,626. The average rate given by those with a success rate below 50% was \$30,938. This means that large donors who had a win rate of 70% or higher gave more than twice as much money to the justices on average as those large donors with win rates below 50%. Based on these numbers alone, there appears to be a strong correlation between the amount of money contributed and an entity's chance of success with the Court.

<b>Success Rate of \$10,000+ Donors</b>	<b>Average Amount Given</b>
Less than 50%	\$30,938
50% to 69%	\$64,841
70% or more	\$68,626

### ***Contributions from Political Action Committees***

Forty-three political action committees (PACs) have given more than \$10,000 since 2000, and two of those have given more than \$150,000: Hillco PAC and Texans for Lawsuit Reform (TLR). Hillco is

a business-related PAC whose primary contributor is mega-builder Bob Perry. Mr. Perry's company Perry Homes had a landmark case pending at the Court for a number of years which was recently decided in his favor. TLR is a pro-defendant civil justice-related PAC whose sole mission is to limit access to the legal system by shielding insurance companies, polluters, and corporate wrongdoers from accountability.

Because of the large volume of campaign contributions, we examined these two PACs in greater detail. For both of these PACs, we further analyzed all of the people who contributed \$25,000 or more to the PAC and board members or partners of the PAC. We totaled the amount of money given to the justices on the Texas Supreme Court from the PACs themselves, their board members (or partners), and their donors who gave \$25,000 or more to the PAC from 2000-2008.

Hillco PAC and TLR, along with their major funders, partners, and board members, provided total combined contributions to the Court of \$1,181,953. This total comprises a staggering 10.8% of the Court's total contributions since 2000 from just two powerful and decidedly pro-defendant political action committees.

### ***Terrible Ten Analysis***

Texas Watch has been analyzing Texas Supreme Court opinions for 12 years, and every year we have listed what we believe to be the most anti-consumer cases of the term. Donors to the Court have participated in most of these cases. While the public can draw their own conclusions about the impact these donations had on the justices' decision making, this is a factor that deserves scrutiny. Again, money given to justices does not necessarily establish causation; however, there is a clear correlation between the amount of money given and any given party's chances of success.

We have compiled all of the money that was given to justices on the Court by parties and firms involved in the Terrible Ten cases from the 2000-01 term through the 2006-07 term, and the results are again clear. Parties and firms who represented consumers in these cases have donated \$821,113 since 2000 while parties and firms on the defense side have given \$2,927,138 – meaning that defense interests have outspent consumer interests by more than 3.5 times. In cases where a firm was involved in multiple cases on the consumer or defense side, their contribution was only counted one time.

We have highlighted ten of the Terrible Ten cases below in which the defense side of the case considerably outspent the consumer side in terms of donations to the justices. Impact statements are included with these cases to demonstrate the true cost to consumers and the real world payout for business and anti-consumer interests.

#### ***Fiess v. State Farm Lloyds*** (Brister 7-2) (2007)

**Impact:** Home insurance policy holders will not be able to receive compensation for mold damage

Money given by attorneys and parties on the consumer side: \$0

Money given by attorneys and parties on the defendant's side: \$256,383

#### ***Loram Maintenance of Way, Inc. v. Ianni*** (2006) (Green 9-0)

**Impact:** Allows companies to condone illegal drug use by its employees without fear of liability.

Money given by attorneys and parties on the consumer side: \$0

Money given by attorneys and parties on the defendant's side: \$189,276

***In re Weekley Homes, L.P.*** (Brister 8-0) (2005)

**Impact:** Limits open access to our courts by forcing an individual into binding arbitration even if that person never signed an arbitration agreement with the company

Money given by attorneys and parties on the consumer side: \$0

Money given by attorneys and parties on the defendant's side: \$298,250

***Diamond Shamrock Refining Co. v. Hall*** (Hecht 7-0) (2005)

**Impact:** Allows negligent industrial plant owners to escape responsibility by ignoring clear evidence of gross negligence

Money given by attorneys and parties on the consumer side: \$2,950

Money given by attorneys and parties on the defendant's side: \$255,423

***BMG Direct Marketing, Inc. v. Peake*** (O'Neill 9-0) (2005)

**Impact:** Prevents a customer from recovering illegal fees charged by a company by improperly utilizing a legal maneuver never applied to private businesses.

Money given by attorneys and parties on the consumer side: \$0

Money given by attorneys and parties on the defendant's side: \$190,613

***Volkswagen of America, Inc. v. Ramirez*** (Wainwright 6-2) (2004)

**Impact:** Undermines reasonable citizen juries by unconstitutionally expanding the Supreme Court's scope of review

Money given by attorneys and parties on the consumer side: \$0

Money given by attorneys and parties on the defendant's side: \$193,663

***Nissan Motor Co. v. Armstrong*** (Brister 8-0) (2004)

**Impact:** Creates additional barriers for consumers introducing relevant and pertinent evidence that illustrates a pattern in product liability cases

Money given by attorneys and parties on the consumer side: \$12,000

Money given by attorneys and parties on the defendant's side: \$485,000

***In re Bridgestone/Firestone*** (Hecht 8-0) (2003)

**Impact:** Creates barriers for consumers to obtain critical evidence by creating almost impossible evidentiary standards for plaintiffs

Money given by attorneys and parties on the consumer side: \$51,000

Money given by attorneys and parties on the defendant's side: \$557,082

***Excel Corp. v. Apodaca*** (Hankinson 9-0) (2002)

**Impact:** Increases liability protections for employers by making it harder for injured employees to hold employers accountable

Money given by attorneys and parties on the consumer side: \$1,250

Money given by attorneys and parties on the defendant's side: \$140,539

***In re Halliburton Co.*** (Phillips 9-0) (2002)

**Impact:** Allows employers to unfairly impose mandatory binding arbitrations agreements covering all forms of employment disputes

Money given by attorneys and parties on the consumer side: \$1,250

Money given by attorneys and parties on the defendant's side: \$428,000