



For Immediate Release
January 8, 2009

Contacts:
Bruce F. Freed, CPA executive director,
301-233-3621

Karl Sandstrom Perkins Coie LLP,
202-434-1639

Prof. William S. Laufer, director, Zicklin
Center for Business Ethics Research, The
Wharton School, University of
Pennsylvania, *917-257-0168*

CPA, Zicklin Center for Business Ethics Research call mandatory judicial recusal essential to avoid conflicts of interest

File amicus brief in landmark “Corporate Influence” case

Washington, DC – To “enable companies to act ethically without sacrificing their right to speak on important public issues,” the Center for Political Accountability and the Zicklin Center for Business Ethics Research at the University of Pennsylvania’s Wharton School called on the U.S. Supreme Court to require mandatory recusal by judges in cases where one of the parties has financially supported the election of the judge. The CPA and Zicklin filed an amicus brief in a landmark case – *Caperton v. Massey* -- on corporate political spending in judicial races earlier this week.

The CPA and Zicklin drew the Court's attention to the dilemma that a responsible company confronts when its adversary in a case spends a substantial sum to elect a judge. The dilemma is created by the pressure on companies to respond in-kind to the political spending in order to protect its shareholders.

“For ethical and financial reasons, most corporations would prefer to avoid spending money on an election that involves candidates for a seat on a court where it has a matter pending,” the brief said. “In today’s election environment, however, a corporation must consider the likelihood that its opponent in high-stakes litigation may actively support one or more of the judges that will hear its case.”

The way out, the CPA and Zicklin wrote, is “Mandatory recusal of judges who receive substantial support from the parties before them...” Such a step, they continued, “would simultaneously facilitate ethical business behavior and safeguard First Amendment activity.” As their brief emphasized, “a society cannot expect its businesses to behave ethically if it does not create conditions where ethical behavior, if not rewarded, is at least not punished in the marketplace.”

The CPA brief can be accessed at www.politicalaccountability.net. The other briefs are available at www.brennancenter.org/massey.

The case, which will be argued before the Supreme Court this coming March, involves Justice Brent Benjamin of the Supreme Court of Appeals of West Virginia, who refused to recuse himself from the appeal of the \$50 million jury verdict, even though the CEO of A.T. Massey Coal Co., the lead defendant, spent \$3 million supporting his campaign for a seat on the court—more than 60% of the total amount spent to support Justice Benjamin's campaign. After winning election to the court, Justice Benjamin cast the deciding vote in the court's 3-2 decision overturning that verdict.

CPA executive director Bruce Freed said the *Caperton* case raised issues that go to the heart of the Center's effort to promote responsible corporate political activity. “Companies cannot be expected to behave ethically if they pay a price in the courtroom for doing what is right,” he said.

“Spending in judicial elections traps companies in a ‘prisoner’s dilemma,’” Karl Sandstrom, the Center's counsel, said. “A company either spends to protect itself or refrains and runs the risk of sacrificing its shareholders interests. Mandatory recusal resolves that dilemma.”

Wharton Prof. William S. Laufer, director of the Zicklin Center, said, “The Zicklin Center is proud to join the CPA in raising concerns about the affects of corporate political influence. The *Caperton* case reveals how much work must still be done to account for this influence.”

Established in 1997, the Zicklin Center sponsors and disseminates leading research on business ethics and corporate social responsibility. It provides policymakers with tools to meet ethical challenges that arise in complex business transactions. For more information, visit www.zicklincenter.org.

A non-partisan, non-profit organization, the CPA was founded in late 2003 and is dedicated to ensuring transparency and accountability of corporate political spending for the benefit of shareholders, the public, and the political process. For more information, visit www.politicalaccountability.net.