

Hidden Rivers

HOW TRADE

ASSOCIATIONS

CONCEAL

CORPORATE

POLITICAL

SPENDING,

ITS THREAT

TO COMPANIES,

AND WHAT

SHAREHOLDERS

CAN DO

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ABOUT THE CENTER FOR POLITICAL ACCOUNTABILITY

A public interest advocacy group, the Center for Political Accountability (CPA) is spearheading a nationwide shareholder initiative to bring transparency and accountability to corporate political spending. Since October 2003, it has been working with institutional investors and other groups to persuade companies to disclose and require board oversight of their political spending. A growing number of companies are agreeing to political disclosure and accountability.¹

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trade associations

have become

the Swiss

bank accounts

of American

politics

EXECUTIVE SUMMARY

Hidden Rivers is the first in-depth examination of how trade associations have become the Swiss bank accounts of American politics and the threat this poses to shareholders, directors and companies. The report takes on greater saliency as attempts since 2002 to limit the flow of corporate political money have only created new rivers, many hidden from public view.

Trade associations are now significant channels for company political money that runs into the tens if not hundreds of millions of dollars. In 2004, more than \$100 million was spent by just six trade associations on political and lobbying activities, including contributions to political committees and candidates. None of this spending is required to be disclosed by the contributing corporations. In the rare instances where associations and related groups report their spending, they do not divulge the companies whose money underwrote their political activities.

As the report details, the hidden rivers of political spending by trade associations and other tax-exempt organizations aggravate the risks to shareholder value. By using trade associations as conduits, companies can give political money and then claim ignorance when the money ends up supporting organizations and candidates they may not want to be publicly associated with. It also prevents investors and directors from learning about indirect corporate political spending and evaluating the risks.

A 2005 study by the Center for Political Accountability entitled *The Green Canary* examined how company soft money political contributions (donations made with corporate funds) threatened shareholder value. Hidden Rivers

underscores the need to expand disclosure and board oversight to include political spending by companies through trade associations and related groups.

The report looks at how some of the largest trade associations have evolved into activist political players and become involved in controversial social issues since the mid-1990s. It questions whether the political agenda of these groups is really in alignment with their members. Two surveys by CPA in 2005 indicate they may not be. Using case studies of hotly contested judicial elections in seven states where companies were heavily involved directly and indirectly in 2004, the authors illustrate how trade associations and related organizations are playing an increasingly prominent role as proxies for corporate political involvement. The case studies also demonstrate how difficult it is to identify and trace the money, if it can be uncovered.

By examining races in Illinois, Ohio, West Virginia, Alabama, Mississippi, Louisiana and Texas, the report shows how corporate support can be hidden and how direct and indirect political spending can ensnare companies in contentious social issues that may endanger their reputations.

The report identifies 18 leading companies whose donations jeopardized both their business and reputation. These companies, which include leaders in the pharmaceutical, life insurance, beverage and automotive sectors, have personnel policies regarding gay employees that were in direct conflict with the positions of judicial candidates who the companies directly or indirectly supported or provided help to in 2004. Opposition to gay rights was a key part of their campaigns. The authors chose this area because the positions of both the candidates and the various companies were public. Unlike many areas which require a company-specific analysis to determine whether a judicial candidate's views are in accord with the company's interests, this one is more general and makes the analysis easier.

In another case, the report looks at direct and indirect funds provided by several high-profile companies to a Mississippi Supreme Court race where the candidate was alleged to have run a racist campaign.

Assessing the risks, the report warns that the absence of disclosure and accountability in trade association political spending prevents shareholders from getting a full picture to evaluate a company's political expenditures and denies directors information critical to carrying out their fiduciary responsibility to oversee all of a company's activities. As pointed out previously, hidden and unaccounted for political contributions have aided and abetted corporate mismanagement and tarnished company reputations.

The report concludes with a seven-point action agenda. Key items include company disclosure and board approval of trade association payments used for political purposes, trade association transparency and accountability for their political spending, and the withdrawal by companies from trade associations that refuse to consult with them or seek their approval for political spending or activity. The seven measures would help end hidden corporate political spending through trade associations and other tax-exempt groups and assure that company funds are truly being used to promote the interest of the company and its shareholders.

Denied one path, [political money] seeks another route.

Much of it may disappear...and become an underground river.

New Routes, Same Risks

INTRODUCTION

The best way to understand how political money flows is to think of water running down a mountainside. Denied one path, the water seeks another route. Much of it may disappear into crevices and become an underground river.

Such is the case today with corporate money. Congressional efforts to limit corporate money in politics have redirected the flow. These efforts have created new rivers, many hidden from public view. Prominent among these new channels are trade associations. In response to recent legislation, tens if not hundreds of millions of political dollars have shifted to trade associations and allied groups. The fact that there is essentially no disclosure of the sources and limited disclosure of the recipients of political spending by these organizations makes them the new preferred route for infusing corporate money into politics.² The result is that it is nearly impossible for shareholders to follow that money, learn whether it is being used in ways that create serious conflicts for companies and threaten their reputations and economic interests, and hold companies accountable for their political expenditures.

² see page 75

hidden rivers 2006

Hidden Rivers is the first examination of this new development, the dollars involved, and the substantial risks it poses to companies and their directors and shareholders. Because of the lack of transparency, the total amount of money involved is a matter of guesswork. Nevertheless, the Center found that just six leading politically active trade associations spent \$107 million on political and lobbying activities in 2004 alone. That is the aggregate amount listed by those groups on their federal tax returns. However, a reliable breakdown of those expenditures is not available. Despite these problems, the figure provides an indication of

the scope of trade association political activity underwritten with corporate funds. As this report demonstrates, shareholders, directors and the public ignore this vast source of unaccountable political spending at their peril.³

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An earlier study by the Center for Political Accountability (CPA) entitled *The Green Canary* explored how political contributions made with corporate funds can threaten shareholder value. It examined how the absence of political transparency and accountability aided and abetted corporate mismanagement and threatened company reputations. The report described how management's failure to perform due diligence when disbursing funds for political purposes resulted in company money ending up supporting groups and candidates with positions that conflicted with the publicly stated positions and policies of the corporate donors.⁴

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The Bi-Partisan Campaign Reform Act (BCRA) of 2002 was the most recent attempt to staunch the flow of unlimited political contributions, popularly referred to as "soft money." Soft money contributions to the political action committees of elected officials, political parties, party committees and groups such as the Democratic and Republican governors associations totaled \$507,931,960 at the federal level alone in the 2002 election cycle. Of that amount, more than one third—\$184,232,761—came from corporations.⁵ While BCRA cut off those donations to national party committees, congressional campaign committees and congressional leadership committees, it had the unintended effect of redirecting the money to other groups.⁶

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Data compiled by Political Money Line, a subscription campaign finance reporting service, give a partial picture of the shift's magnitude. In the pre-BCRA 2002 election cycle, companies contributed \$32 million to leadership committees run by elected officials. As a result of BCRA's restriction, those contributions dropped to \$3.2 million two years later.⁷ On the other hand, 527s that are allowed by BCRA to accept corporate soft money saw those contributions almost triple. Thus, the Democratic and Republican governors associations, Republican State Leadership Committee

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and Democratic Legislative Campaign Committee received \$48.7 million from companies in the 2004 cycle, up from \$17.8 million two years earlier.

What does not show up is the movement of corporate political money to trade associations and related entities. The reason is that companies often prefer secrecy. Despite the fact that the precise amount of money is unknown, anecdotal evidence provided by associations indicates that it is significant. For example, the U.S. Chamber of Commerce said that it spent up to \$30 million on political activity in the 2004 cycle.⁸

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The use of trade associations as conduits ... allows companies to give political money and then claim they didn't know that it ended up supporting organizations and candidates with which they may not want to be publicly associated.

The use of trade associations as conduits for political spending allows companies to give political money and then claim they didn't know that it ended up supporting organizations and candidates with which they may not want to be publicly associated. It also prevents investors and directors from learning about indirect corporate political spending and being able to evaluate the risks that trade association spending creates for shareholder value.⁹

⁹ see page 76

However, that companies fund associations inextricably links the two. In the case of political spending, the association is acting much like the agent of its corporate members, with companies bearing the risks of its activity.

This report builds on The Green Canary and expands the focus to corporate political spending through trade associations and related entities. It looks at the growing involvement of trade associations like the U.S. Chamber, the Business Roundtable (BRT) and the National Association of Manufacturers (NAM) in controversial

¹⁰ see page 76

issues and electoral politics. It suggests that company payments to the associations and closely linked groups like the BRT's Coalition for the Modernization and Protection of America's Social Security (Compass), the Chamber of Commerce and its Institute for Legal Reform (ILR), Americans for Job Security and the American Tort Reform Association (ATRA) have become the "new soft money."¹⁰

To illustrate what this development means for companies and shareholders, the report examines several state judicial races to see how trade associations and closely allied groups served as conduits for corporate political money. Wherever possible, it traces the money from its corporate source to the candidate beneficiary and finds that some of the political expenditures that the report has been able to trace have created conflicts of interest and reputational problems for the corporate underwriters. The CPA found instances of prominent companies with progressive human resource and diversity policies directly and indirectly underwriting candidates taking strong positions against gay rights and helping fund TV spots on behalf of a candidate accused of running a racist campaign. The report also highlights a major problem—the unreliability and serious gaps in the reporting of political spending—which create considerable obstacles to uncovering and following the money.

The report analyzes the risks that the use of trade association and related conduits poses to shareholders. Warning that the "new" soft money poses as serious a threat to shareholder value as the "old" soft money, it concludes that company payments to trade associations and other tax-exempt organizations that are used for political activity should be disclosed and accounted for along with political contributions made directly by companies. It also concludes that companies should require that trade associations and related entities to which they make payments report to companies about their expenditures for political purposes.

The Changing Role of Trade Associations: Conduits for the “New Soft Money”

Trade associations have been longtime players on the Washington political scene. One of the first was the National Association of Manufacturers, founded in 1895 as the mega corporations of the Gilded Age were being created. By 1912, business and its trade groups were proliferating and the U.S. Chamber of Commerce was established to be the association of business associations and to speak for the business community.

The purpose of these associations was to serve member companies.¹¹ They focused on lobbying, reporting on government and policy decisions, and educating members on participating in the political process.¹² Political giving was secondary to representation, and hot button issues that could embarrass members were studiously avoided. It’s a model that’s still followed by most smaller and industry-specific associations.

¹¹ see page 76

¹² see page 76

the multi-million dollar political expenditures of some of the top associations and their involvement with controversial social issues are creating problems for their member companies.

Over the past decade, however, some of the largest trade associations have evolved into activist political players and major conduits for corporate political money. This has enhanced the already strong political clout of these associations. But in an ironic twist, the multi-million dollar political expenditures of some of the top associations

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and their involvement with controversial social issues are creating problems for their member companies.¹³ It is becoming increasingly less clear whether the political agenda of these groups are really in alignment with their members. Indeed, two surveys by the CPA in 2005 to gauge the level of company engagement in Social Security reform and the level of director awareness of NAM's involvement in federal judicial nomination battles indicate corporate unease with association political and issue activity.

Today, the nation's leading trade groups—the U.S. Chamber of Commerce, NAM, the BRT, the American Insurance Association (AIA) and the American Forest and Paper Association (AFPA) among others—are setting their own political agendas that range well beyond their members' policy positions, taking on controversial political and social issues, and raising millions of dollars that they funnel into political and issue campaigns. This includes underwriting thinly veiled “issue” ads supporting or opposing candidates, funding state judicial races, promoting the changes in Social Security, mounting campaigns for federal judicial nominees, and intervening directly in political campaigns.

Behind the Change

For the big umbrella groups, the change began in the early 1990s as U.S. politics became more polarized on a number of social issues. The new atmosphere put pressure on business associations to become more political and partisan and created an insatiable demand for political money to a degree not seen before. According to one observer, “Washington's corporate offices and trade associations began to resemble miniature campaign committees, replete with pollsters and message consultants. To supplement [political action committee] giving, which is limited by federal election laws, corporations vastly increased their advocacy budgets, with trade associations spending millions of dollars in soft money on issue ad campaigns in congressional districts.”¹⁴

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Business associations also found themselves squeezed by the K Street Project. That effort was named after the street

Major Trade Associations and Related Entities Discussed in Report

GROUP	NON-PROFIT STATUS	REPORTED DUES IN 2004	LOBBYING & POLITICAL EXPENDITURES IN 2004 /% OF DUES	MEMBERSHIP DISCLOSURE
U.S. Chamber of Commerce	501(C)(6)	\$65,304,138	\$28,858,192 /44	None
National Association of Manufacturers (NAM)	501(C)(6)	\$24,725,950	\$5,563,615 /23	None
American Tort Reform Association (ATRA)	501(C)(6)	\$2,879,191	\$1,925,157 /67	Limited (A "Sample List" of 65 members is available on ATRA's website)
Business Roundtable	501(C)(6)	\$22,908,863	\$4,975,322 /22	Full Disclosure
American Taxpayers Alliance (ATA)	501(C)(4)	NOT AVAILABLE	NOT AVAILABLE	None
Americans for Job Security (AJS)	501(C)(6)	\$7,000,506	\$0	None
Pharmaceutical Research & Manufacturers of America (PhRMA)	501(C)(6)	\$183,924,063	\$65,910,529 /36	Full Disclosure

The information presented in this table is available on the 2004 Form 990 ("Return of Organization Exempt from Income Tax") for each respective organization. The dues are reported on line 85C, and the lobbying and political expenditures are reported on line 85D, for each organiza-

tion except for Americans for Job Security (AJS). AJS's dues are reported on line 3, and the organization claims no political expenditures. AJS reports that in 2004 substantially all dues were nondeductible by members.

on which some of Washington's prominent lobbying firms had their offices. Launched in 1995 by Reps. Tom DeLay (R-Texas) and Bill Paxson (R-N.Y.), the House Majority Whip and House Republican campaign committee chairman, its purpose was to make companies and business trade associations choose a side in political battles where their interests were not directly at stake. The project sought to force business to become more partisan and to redirect their political spending in support of ideological agendas that many had previously, and deliberately, sidestepped.¹⁵

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Several developments paved the way for the new trade association role. One was the U.S. Chamber firing its chief lobbyist, William Archey, in 1993 because of the association's move to work with the Clinton administration on healthcare reform. This angered congressional Republican leaders who brought intense pressure on the chamber to remove Archey and take a much more overtly partisan stance.¹⁶

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Another was a heightened reliance on front groups by companies to carry out and mask their political activity. Indeed, it became a central part of their political strategy as seen in the health insurance industry's "Harry and Louise" ads in 1993-94 to defeat the Clinton administration's healthcare plan. The ads were the product of the Coalition for Health Insurance Choices (CHIC), a group that was created, according to strategist Blair G. Childs, "to provide cover for your interest. We needed cover because we were going to be painted as the bad guy."¹⁷ With its funding secret, CHIC also allowed companies to avoid accountability for their political activity.

¹⁷ see page 77

A third was the accession of Thomas J. Donohue to the U.S. Chamber's national presidency in 1997. According to the Wall Street Journal, "he pledged to dispel what he said was the chamber's image as a 'sleeping giant, missing in action from many important political battles.'" Donohue did that by boosting chamber membership and contribution levels among the nation's largest corporations. That gave him the wherewithal to expand the association's funding for general operations from \$3 million in 1997 to

\$35 million in 2000, with another \$20 million raised for special projects.¹⁸ This set the stage for the group to become much more interventionist on the political front. It also raised the bar for other business groups.

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The last was the creation in 1997 of a new type of trade association that was used solely as a conduit for corporate political spending. Such a group is Americans for Job Security (AJS). Essentially a paper organization, it represents no industry or group of companies as do traditional associations. The group has no e-mail address or website.¹⁹ What it does is provide a vehicle for secretly raising and spending unlimited amounts of money to run political ads under the cover of “issue advocacy.” According to media accounts, it has been underwritten by million-dollar gifts from the AIA and the AFPA. Pharmaceutical companies and “500 corporate and individual members help subsidize the organization with contributions that have been as high as \$100,000.”²⁰

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AJS’s opaqueness helps companies conceal their political activity and insulate them from accountability. This leaves shareholders without the ability to learn whether companies in which they’re invested are political contributors.

Turning Point: the 2000 Elections

By the 2000 elections, associations such as the U.S. Chamber and its affiliates and AJS had become major conduits for corporate political money to campaigns. The Michigan Senate race illustrates how it worked. Software giant Microsoft used that state’s Chamber of Commerce to funnel more than \$250,000 into the election. The money was to pay for ads attacking Rep. Debbie Stabenow (D) who was challenging the incumbent Spencer Abraham (R) for the seat. Given the secrecy surrounding corporate political contributions, Microsoft’s involvement in the race would have gone unnoticed but for newspaper reports in October 2000 about Microsoft’s “unregulated ‘soft money’ contributions being moved through the Michigan chamber, whose name appeared on the political ads.”²¹

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Pharmaceutical companies also used the U.S. Chamber to direct upwards of \$20 million to pay for political spots in hotly contested U.S. Senate races in 2000. One was Michigan and the target was Stabenow. The U.S. Chamber of Commerce continues to be actively engaged as a conduit for secret political spending through early 2006.²²

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Similarly, companies ran \$10 million to \$12 million through AJS in five Senate races. Its political ads cost more than \$700,000 in Michigan alone. The spots praised Abraham and attacked his Democratic opponent. AJS also spent upwards of \$500,000 in the Washington State U.S. Senate contest where, according to the Campaign Finance Institute, it served as a conduit for Microsoft money.²³

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For the U.S. Chamber, expenditures of its Michigan affiliate presaged a broader conduit strategy. The following year, the Wall Street Journal noted “that [U.S. Chamber] ...created several special accounts to take in money for projects on behalf of individual companies or groups of companies with a common policy goal.”²⁴

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As an association representing members with diverse and sometimes conflicting interests, the chamber’s conduit activity—for example, siding with the particular business interests of Microsoft and the brand name pharmaceutical companies—raises serious questions about whose interests the group represents. At a minimum, the association’s behavior creates an appearance of favoring the interests of one member or a group of members over other members. This, in turn, leads to questions about whether the chamber’s conduit activity may be working against the interests of some of its members. Because those payments and the memberships of many trade associations are not disclosed, member companies and their shareholders don’t have the information to answer these questions.

The U.S. Chamber’s electoral involvement can also be direct and blunt. In the 2004 campaign, for example, it fielded people to work against the re-election of Sen. Tom Daschle (D-S.D.). A chamber press release issued the day after the election took credit for “putting 215 people on

the ground in 31 states, sending 3.7 million pieces of mail, placing 5.6 million phone calls, and sending more than 30 million e-mails.” At the same time, the chamber created a newspaper in Madison County, Illinois, to wage war on judges it considered to be unsympathetic to tort reform.²⁵

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In a related development, the U.S. Chamber targeted state judicial campaigns and created the Institute for Legal Reform (ILR) in 1998 as its vehicle for the effort. Money was key and by 2000, the chamber had raised more than \$5 million for state judicial campaigns in Michigan, Mississippi, Ohio, Illinois and Alabama. Many of the targeted judicial candidates had ruled against companies that were contributing to the chamber’s efforts.²⁶ Through these state elections, the chamber began its campaign to reshape the judiciary of these states. Raising and channeling secret political money was central to achieving its goal.

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The ILR works closely with another group, the American Tort Reform Association (ATRA), which serves as a conduit for corporate political spending in state judicial races. Organized as a 501(c)(6), the same provision of the Internal Revenue Code used for trade associations, ATRA is a national network of 45 state-based organizations working to curb plaintiffs’ lawsuits against companies.²⁷

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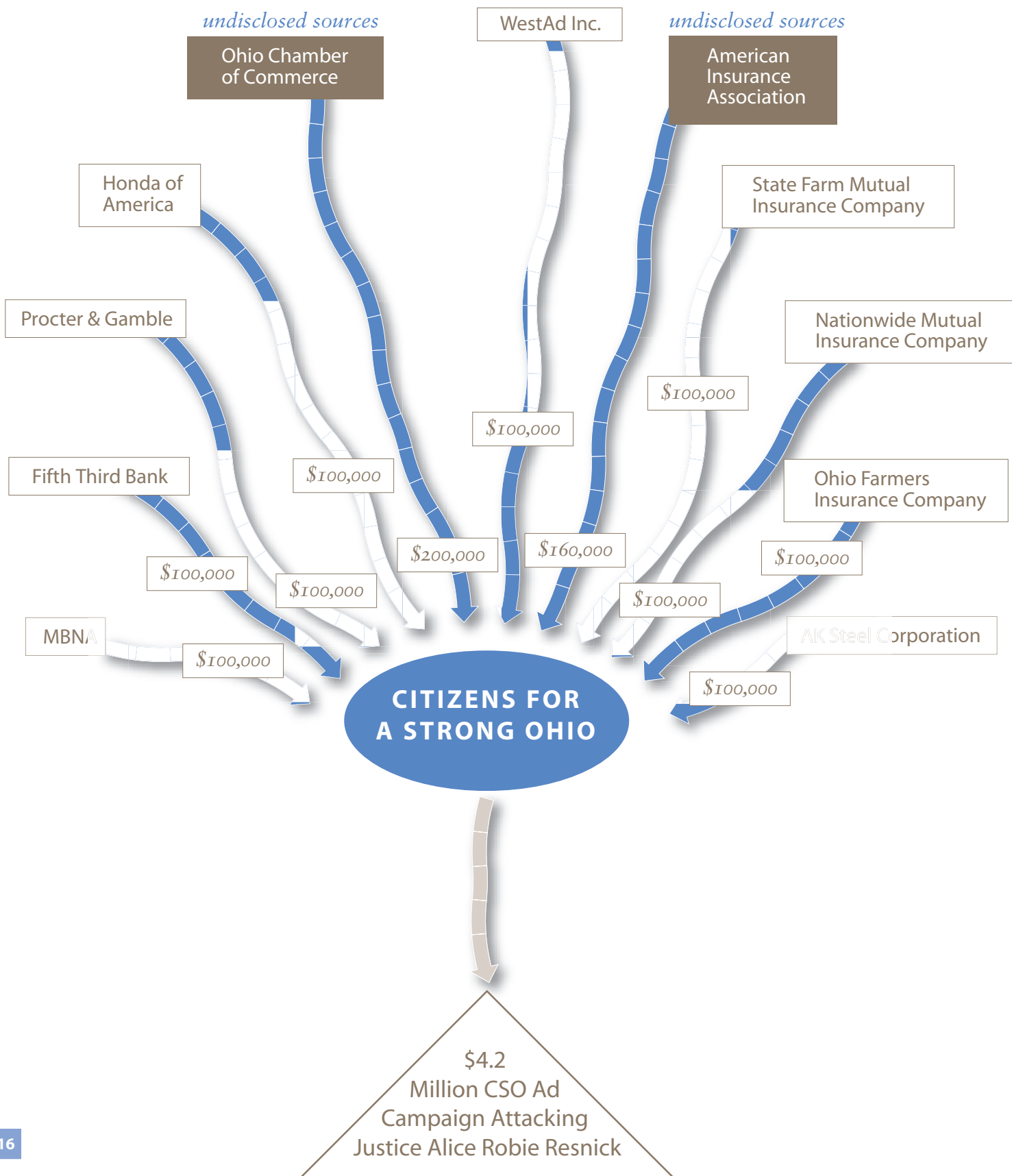
As an example of their symbiotic relationship, ATRA’s release of its report, “Bringing Justice to Judicial Hellholes,” in December 2004 was followed by an ILR press release applauding the report.²⁸

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The strategy followed by the U.S. Chamber and ATRA allows them to distance themselves from the campaigns they are underwriting. Thus, corporate contributions become a hidden river as they go to state chambers, political action committees and other groups that make the political expenditures. The Institute for Money in State Politics, a non-partisan organization that reports on state-level political spending, points out that weak donor disclosure at the state level makes it difficult to track involvement of such groups in judicial elections.²⁹

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TOP CONTRIBUTORS TO CITIZENS FOR A STRONG OHIO: 2000 OHIO SUPREME COURT RACE



SOURCE: Citizens for a Strong Ohio and "Ohio Chamber Reveals Contributors." Toledo Blade, January 29, 2005.

Refining the Chamber's Role

An examination of a 2000 Ohio Supreme Court race details the conduit roles of both the U.S. and Ohio Chambers. The Ohio group funneled corporate money into an ultimately unsuccessful campaign against State Supreme Court Justice Alice Robie Resnick. It contributed \$200,000 to Citizens for a Strong Ohio, an organization that accepted around \$4 million in undisclosed corporate contributions. In this case, the chamber's conduit stratagem backfired. The Ohio Elections Commission held that the association had improperly used corporate money to pay for political advertisements. Under the threat of substantial fines, the state chamber revealed—five years after the election—that the previously secret donors to its effort included Nationwide Insurance, Honda, DaimlerChrysler, Procter & Gamble, Enron, AT&T, and MBNA. The corporate donors would have remained hidden without a successful legal challenge brought against the chamber. Even with that, the names of the corporate underwriters of the Ohio Chamber's own \$200,000 contribution remain secret.³⁰

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In addition to developing the U.S. Chamber's electoral politics activity, Donohue, its national president, was refining a behind-the-scenes political role for the association. In effect, it would allow companies to rent the association by offering it as a cover for promoting company-specific issue and political agendas in return for hefty contributions. The Wall Street Journal exposed the effort of Qwest Communications International to remain in the background as it sought to defeat federal legislation in 2000 that could have blocked the company's expansion overseas. As described by the paper, Donohue, "who considered [Philip] Anschutz [the company's CEO] a potential \$1 million donor to the chamber," proposed a "most striking innovation." The idea was to offer "individual companies and industries the chance to use the chamber as a means of anonymously pursuing their own political ends."³¹

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The Chamber could do this by using the secrecy afforded by its nonprofit status. Since nonprofits aren't required to

disclose the details of where they receive their funding or where they spend their money, it became a convenient vehicle “for those such as Mr. Anschutz who sometimes like to operate under the radar.”³²

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By 2005, the Chamber had become the leading vehicle for hiding corporate political activity and spending. “A large part of the chamber’s job appears to be taking unpopular stances that its members, by themselves, are unwilling or unable to pursue,” the New York Times reported.³³ As Donohue was quoted as saying four years earlier, “We gave [companies] a means to do this. We gave them a mechanism to do this. We showed them that we have the courage to do this.”³⁴

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Following the Leader

Taking their cue from the U.S. Chamber’s political activism, the Business Roundtable (BRT), the spokesgroup for CEOs of the nation’s top publicly held companies, and the National Association of Manufacturers (NAM), the voice of American manufacturing, are playing highly visible public roles on such controversial issues as revamping Social Security and the political fight over federal judicial nominees.³⁵

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Business groups have been involved in Social Security late 1990s. However, the BRT’s creation of the Coalition for the Modernization and Protection of America’s Social Security (Compass) in 2002 marked a major change by putting the association in a much more political, high-profile role. By 2005, Compass had been assigned the responsibility for organizing business community support for the Bush administration’s overhaul effort. The group announced plans to spend \$20 million, a goal that the Wall Street Journal reported the organization was unlikely to meet because “donors and activists had other priorities, like fighting for conservative judges.”³⁶

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NAM’s plans for a multi-million dollar campaign for the confirmation of Bush administration appellate nominees, disclosed in January 2005, openly moved trade associations into the hitherto off-limits territory of contentious social issues.³⁷ Explaining the significance of the develop-

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ment, the Los Angeles Times noted that “the corporate world has long shied away from such controversial issues as abortion,...[Taking on the judicial issue] puts the business lobby on the same side as social conservatives.”³⁸

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Under pressure from its members, NAM later backed away from its planned push. In its stead, the association launched the American Justice Partnership, a group similar to the chamber’s ILR that works on the state level to restrict the right of injured consumers to sue companies.³⁹

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These moves have raised the stakes of association political and issue involvement for companies. Corporate payments to trade groups that end up in the pockets of controversial recipients or that underwrite contentious public policy positions can affect a company’s reputation, its relationship with stakeholders, its competitive position and the level of risk that it manages.⁴⁰ Ultimately, shareholders bear the risks of questionable direct and indirect corporate political spending. By virtue of their membership in and paying dues to trade associations, companies are associated with the groups’ political activism and the views espoused by the recipient candidates and organizations.⁴¹ Looked at another way, the company-trade association relationship is similar to that of principal and agent. It can be argued that as principals, companies could bear responsibility for the actions of their trade association agents.

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CED and CPA Surveys: Company Disengagement

A survey by the Committee for Economic Development (CED), a leading public policy organization composed of business executives, in early 2005 on the attitudes of business leaders toward corporate political giving shows a deep level of concern and, surprisingly, disengagement. Two-thirds of the respondents said some or a lot of pressure was placed on them to make political contributions. Seven-in-ten said that they viewed non-connected political organizations as “a corrupting influence on the political process” and four-in-five said these organizations “amount to a circumvention of campaign finance law.” On the other hand, the survey found that executives didn’t pay close attention to their company’s political spending.

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Only six percent said they “are certain that their company donated to 527s.”⁴²

This lackadaisical attitude isn’t surprising. As the CPA found, many companies seek to have it both ways when it comes to political involvement. According to two CPA surveys conducted in 2005, some of the respondent companies publicly tried to keep their distance from trade association political activity by saying that they had taken no position on certain issues while those same companies were paying dues to the trade associations actively involved with those issues.

In March 2005, the CPA sent a questionnaire on Social Security reform to companies on the Fortune 500 list. CEOs were asked whether their companies had taken a position on the issue, were involved in lobbying on it, and had financially supported the effort, directly or indirectly. The center also asked about the extent of their company’s activity, the business rationale for it, the names of the groups the company was funding or providing support to, and the amounts of the donations.

Most companies didn’t respond. Only Pfizer and H. J. Heinz were willing to go on the record in support of the Bush administration’s efforts to revamp Social Security. Fourteen companies said they had not taken a position or were not involved in the effort. However, many of the companies belonged and paid dues to associations promoting the administration’s position.

A Duke Energy spokesperson wrote that the company “has not taken and would not expect to take a position on the best way to deal with concerns surrounding Social Security.” His explanation: it is “an important issue but not one on which we feel it appropriate to commit our resources as a corporate citizen.” However, the company, which is a BRT member, added, “While Duke Energy itself is not engaged in the debate on Social Security, some of these organizations may be engaged, and such engagement does not in itself cause us to question our affiliation.”

companies

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Likewise, Tyson Foods, Eaton and Entergy, which belong to groups active in the Social Security reform effort, claimed not to have taken a position on the issue.

Asked whether they reported to the board of directors on the company's contributions and Social Security reform activities, all of the participating companies answered no or not applicable or provided no response.⁴³

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On the judicial nominations, a CPA survey of 750 directors of 60 companies that are members of NAM's board found a similar dissonance regarding trade association use of the company's funds for controversial political activities. The center asked the directors whether they had been informed and had approved of NAM's use of their company's money for the judicial lobbying initiative. In its letter to directors, the CPA noted that some of the nominees held positions that conflicted with publicly stated policies and employment practices of their companies or had taken positions on controversial issues on which the companies had consciously refrained from any involvement.

Following is a sample of the responses:

The senior vice president and general counsel of utility giant American Electric Power (AEP) wrote that "AEP does not typically inform AEP board members about each position taken by the many organizations of which AEP is a member...NAM actively promotes and publicizes its own positions, and our board members have many sources of information about NAM and general business and political issues other than AEP."⁴⁴

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Two Corning directors responded that the company had "no knowledge regarding the public relations effort cited in your letter" and thanked the CPA for "bringing this matter to our attention."⁴⁵ They said the company's "most recent 12/10/04 National Association of Manufacturers membership invoice received (and paid by Corning) stated it was for 'Membership Dues Payment', without elaboration concerning specific uses to be made of the dues."⁴⁶

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Abbott Laboratories wrote that it knew nothing about NAM's efforts on federal judicial nominations.⁴⁷ Only

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Southern Co. and General Electric said they were not contributing to NAM's judicial activities.⁴⁸

The low response, however, belied the survey's impact. Apparently, the survey prompted companies to query NAM about its activities on the judicial nominations. That, in turn, may have led NAM to retreat from its previously announced judicial lobbying plans. In a confidential, members-only memo dated April 26, 2005, Patrick Cleary, senior vice president for communications, wrote that the association wasn't conducting a campaign on the federal judicial nominations but was using the American Justice Partnership, a group NAM created, to push for state-level legal reform. His statement was at odds with NAM president John Engler's comments about undertaking a multi-million dollar campaign for Bush administration judicial nominees quoted in the Los Angeles Times almost four months earlier.⁴⁹

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* * * * *

This report, along with the surveys conducted by CED and the CPA, documents substantial gaps in political disclosure, a widespread lack of internal controls over political spending and a general unwillingness of corporations to accept responsibility for the political activities of those organizations that they underwrite. Unless corrected, the problems and the risks associated with these new rivers of corporate political giving will only increase. Case studies of several state judicial races in 2004 presented in the next two chapters illustrate the scope of the activity and just how serious the risks are.

State Judicial Races:

Case Studies of The “New Soft Money” at Work

Overview

This chapter focuses on hotly contested judicial elections in Illinois, Ohio, West Virginia, Alabama, Mississippi, Louisiana and Texas where companies were heavily involved directly and indirectly in 2004.⁵⁰ These races demonstrate how trade associations and related organizations are playing an increasingly prominent role as proxies for corporate political involvement. The absence of effective public disclosure and unreliable and incomplete campaign finance reporting in many states makes a broader study extremely hard. This glimpse into the use of trade association conduits, nevertheless, provides important insights into how corporations are funding controversial political agendas without board and shareholder oversight and the risks this creates.

⁵⁰ see page 80

Developing the picture is very much like an archaeological dig. Fortunately, the fragments put together in this chapter indicate how trade associations are providing cover for massive corporate political spending. It underscores the need for transparency and accountability in corporate political spending through associations and other conduits. More broadly, it demonstrates the need for extending good corporate governance practices to political spending in order to protect shareholder value.

The details and consequences of the money flow are presented from two angles. The first focuses on Illinois, Ohio and West Virginia, where tens of millions of dollars were funneled through trade associations and related entities. It pays special attention to the largely unseen role of corporations in financing certain campaigns. The second focuses on Alabama, Mississippi, Louisiana and Texas and demon-

strates how indirect political spending threatens company reputations. To understand the risks of that spending, the center examined the positions of recipient candidates and the publicly stated policies and practices of the corporate donors. By comparing them, it uncovers troublesome conflicts that companies appear not have recognized or to have ignored. These conflicts could have a significant impact on relations with stakeholders and on shareholder value.

I. Illinois, Ohio and West Virginia: The Dollar Dimension, The Trade Association Conduit Role

Illinois, Ohio and West Virginia in 2004 had the most expensive contested state judicial campaigns on record. In Illinois, Justice Lloyd Karmeier and his challenger, Judge Gordon Maag, together collected more than \$9.3 million, with Karmeier alone raising about \$4.8 million. Total candidate fundraising in Ohio exceeded \$6.3 million, with three candidates each surpassing \$1 million. In West Virginia, Justice Warren McGraw raised over \$1.1 million for his ultimately unsuccessful re-election campaign.⁵¹ The common thread running through the elections in these states is the role played by conduits in funneling and concealing corporate support. Trade associations and allied organizations secretly used corporate money to finance multi-million dollar advertising campaigns to support and oppose judicial candidates. The result was that shareholders were unable to evaluate, let alone approve, corporate involvement in these elections.

ILLINOIS

An unprecedented amount of corporate funds were poured into the Illinois election with much of this money coming through trade associations. What is largely unknown is the degree to which member corporations approved of this use and, for those who did, what internal controls were employed to assure that approval was in the company's interest and was consistent with corporate policies and practices.

One candidate, Justice Lloyd Karmeier, received roughly \$3 million of trade association funding. It is believed that the U.S. Chamber of Commerce alone steered more than \$2.3

⁵¹ see page 80

million into the race through conduit groups and funded a local newspaper in Madison County, a part of the judicial district that supported Karmeier.⁵² The majority of the chamber's contributions—\$2.05 million—was sent through the Illinois Republican Party, which ultimately became Karmeier's top contributor.⁵³

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The chamber also gave \$200,000 to JUSTPAC, the Illinois Civil Justice League's political action committee. JUSTPAC, Karmeier's second largest contributor, also received contributions from other trade associations including \$415,000 from ATRA, \$91,000 from the Illinois Chamber of Commerce, and \$50,000 from the American Insurance Association.⁵⁴ Although JUSTPAC is required to file disclosure reports with the Illinois State Board of Elections, none of these trade groups that financed it are required to disclose their funders or membership lists.

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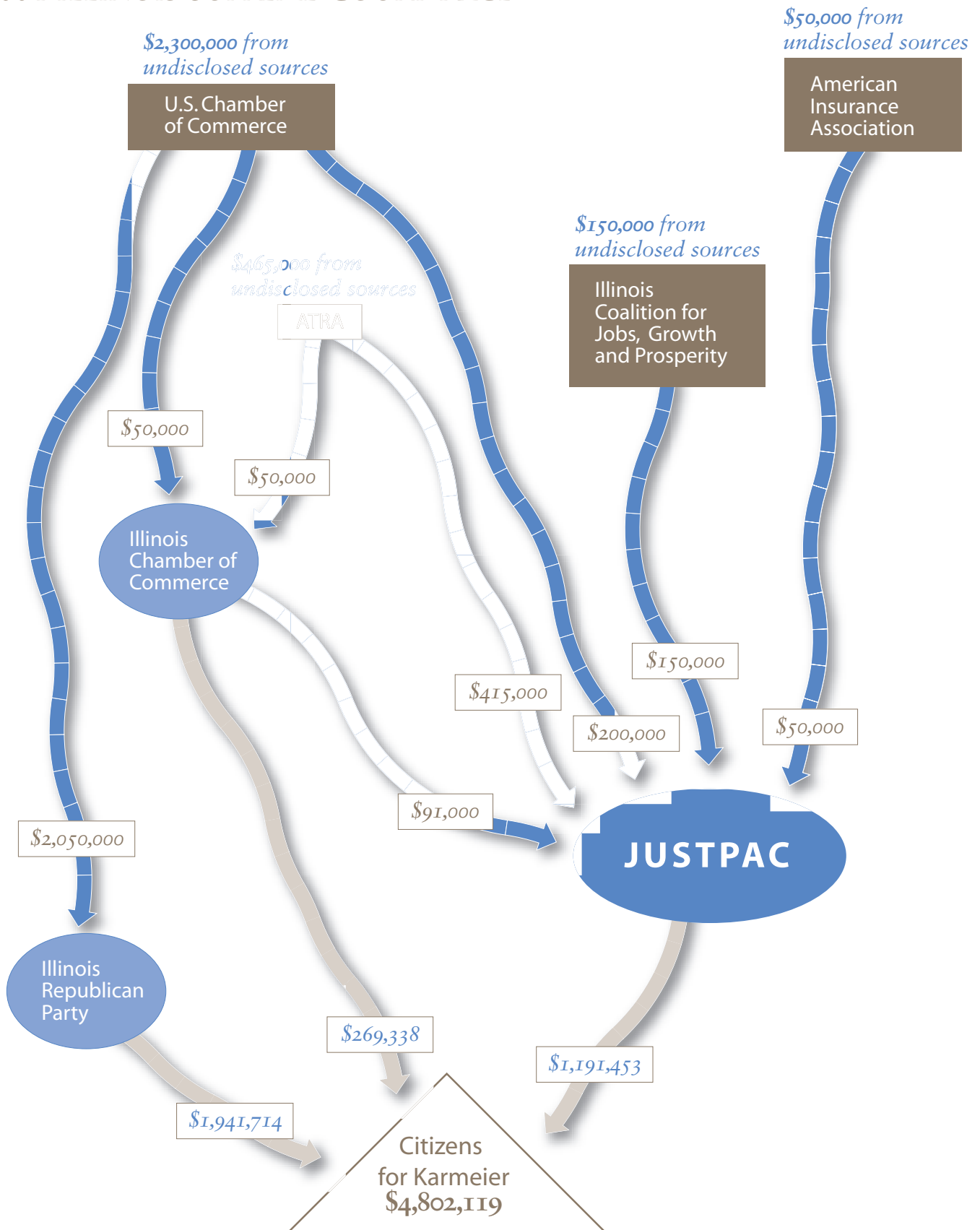
The picture becomes even more complex when trying to trace back even further the original sources of some of the funding. For example, the Illinois Chamber of Commerce—Karmeier's third largest contributor—also received substantial donations from the national chamber. The Illinois Chamber then routed much of its political activity through its state PAC, which is required to file disclosure reports.⁵⁵ Those reports reveal that the PAC received \$50,000 from the national chamber, \$50,000 from ATRA, and \$80,000 from the Illinois Chamber of Commerce.⁵⁶ This layering of funding makes it difficult, if not impossible, to identify the true source of political spending in a particular race. The problem becomes compounded when additional organizations are created and layered into the political giving. In Illinois, the Illinois Coalition for Jobs Growth and Prosperity was one such organization.

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The coalition was formed two months before the 2004 primary election by the Illinois Business Roundtable, the Illinois State Chamber of Commerce, the Illinois Manufacturers' Association, the Illinois Civil Justice League and the Chicagoland Chamber of Commerce.

SECRET CORPORATE MONEY TO KARMAIER CAMPAIGN, 2004 ILLINOIS SUPREME COURT RACE



SOURCE: Institute on Money in State Politics and Illinois State Board of Elections. *The CPA notes that money given to conduits may have been spent on purposes other than the Karmeier campaign.*

These groups gave \$445,000 to the Illinois Coalition for Jobs' Growth and Prosperity PAC which, in turn, gave \$150,000 to JUSTPAC. The coalition was the sole contributor to its PAC. According to news accounts, the coalition also spent more than \$284,000 on election-related activities, but failed to disclose the candidates it supported.⁵⁷ None of the corporate underwriters of the coalition was revealed.

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Recognizing this “hidden financing scheme,” the Illinois Campaign for Political Reform and the Sunshine Project filed complaints with the Illinois State Board of Elections, alleging that the coalition had violated state requirements for campaign contribution disclosure. As the Sunshine Project put it, “There’s no question they wanted to obscure the sources of money.”⁵⁸ The complaint was pending as of March 2006.

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OHIO

Ohio law prohibits corporate campaign contributions. To circumvent the ban, companies direct their money through trade association conduits. What happened in the state’s judicial races in 2004 illustrates the major role played by the U.S. Chamber of Commerce, its Ohio state affiliate and Citizens for a Strong Ohio (CSO).

CSO’s activities first attracted attention in the 2000 when the Ohio Chamber funneled hidden corporate money into the campaign against Justice Alice Robie Resnick. Without disclosing its donors or membership, the state chamber gave \$200,000 to CSO, which conducted a media campaign against Resnick. As discussed in the previous chapter, the chamber’s anti-Resnick effort in 2000 failed. The justice was reelected, and the Ohio Elections Commission ultimately determined that the Ohio chamber had improperly used corporate money to pay for political advertisements.

CSO was active once again in the 2004 elections, spending more than \$1million on ads supporting Justice Terrence O’Donnell and Judge Judith Lanzinger.⁵⁹ The group voluntarily disclosed its donors for the 2004 cycle, a practice it began following the 2000 election. However, as was the case with the donors in 2000, a large part of the 2004 cam-

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campaign funding remains hidden behind the cloak of trade associations.

CSO reports in 2004 that it received \$1 million from the U.S. Chamber of Commerce Institute for Legal Reform, \$375,000 from the American Insurance Association, and \$105,000 from the Ohio Chamber of Commerce. None of those groups disclose their funders or membership. Given that CSO raised a total of \$3,050,500 in 2004, this means that approximately half of the group's funding came from undisclosed corporate donors.⁶⁰

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Disclosure notwithstanding, the result is that Ohio's river of money in judicial races disappears underground through major business groups. Even with victories for conduit disclosure, such as the court order forcing CSO to disclose its 2000 donors, corporate money in the state remains hidden.

WEST VIRGINIA

As with Ohio, West Virginia's ban on corporate contributions to candidates did little to stop companies from pouring undisclosed money into the campaign against incumbent Justice McGraw. In fact, West Virginia's 2004 judicial race spotlights the maneuvering companies engage in to hide the money river.

Incumbent Justice Warren McGraw was targeted by the U.S. Chamber of Commerce as early as July 2003. According to Forbes magazine, the chamber said it would campaign against him because of his rulings on workers' compensation claims.⁶¹ Since the national chamber avoided open involvement in the campaign, its role in the 2004 campaign remains anecdotal. Nevertheless, observers state that the chamber and other corporate interests spent millions of dollars on ads attacking McGraw.⁶²

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The West Virginia Chamber spent an estimated \$648,840 on television advertising alone in the anti-McGraw campaign.⁶³ The corporations sponsoring the state chamber's campaign against McGraw weren't disclosed.

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It should be noted that all cost estimates for television

Trade associations...secretly used corporate money to [indirectly] finance...judicial candidates.

The result was that shareholders were unable to evaluate...corporate

involvement in these elections.

advertisements in this report are understatements of what these groups actually spent on their campaigns. These estimates were provided by the Brennan Center for Justice at New York University School of Law, which did an analysis of television advertisements in the 2004 state judicial races. The Brennan Center states that it obtained these cost estimates from the Campaign Media Analysis Group (CMAG). According to the Brennan Center, CMAG's cost estimates are based on the average costs for the air time and station, and do not include premium costs that are typically associated with ad buys or production costs.⁶⁴

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Another group, West Virginia Citizens Against Lawsuit Abuse, spent an estimated \$43,862 on a television advertisement attacking McGraw.⁶⁵ The group is a 501(c)(6) and is not required to file campaign finance reports with the secretary of state. It is part of a national Citizens Against Lawsuit Abuse campaign. Its supporters, however, remain hidden.⁶⁶

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A third entity, West Virginia Citizens for Quality Health Care, spent an estimated \$34,899 on an anti-McGraw television ad that deemed McGraw “too dangerous for our health,” claiming that he took “thousands from trial lawyers” and then “voted repeatedly in their favor,” driving up the costs for doctors and putting healthcare jobs at risk.⁶⁷ As a registered “527” committee, Citizens for Quality Health Care was required to disclose its donors. This disclosure revealed substantial backing from trade groups funded by unnamed companies. The West Virginia Chamber of Commerce contributed \$85,000 to the effort and the West Virginia Health Care Association gave \$160,000.⁶⁸ A third contributor to the group—Don Blankenship, CEO of Massey Energy and a vocal opponent of McGraw—gave \$100,000, which was only a small part of the anti-McGraw campaign he personally financed.⁶⁹

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II. Alabama, Mississippi, Louisiana and Texas:

While judicial elections in Illinois, Ohio and West Virginia show the amount of corporate money that flows through trade associations and how the corporate sources are obscured, judicial races in Alabama, Mississippi, Louisiana and Texas illustrate how direct and indirect political spending can entangle companies in contentious social issues that can create serious reputational problems.

This section focuses on six campaigns in the four southern states where the funds of major companies ended up at candidates who took strong public positions on contentious issues such as gay rights, abortion, and religion in public life. For one candidate, playing the race card was an important element of his campaign strategy. These contests bear close examination because the publicly disclosed positions of the candidates receiving company money were at odds with the policies and practices of the corporate donors. This was the case regarding gay employees and diversity, two areas where companies have extensive policies. Abortion and religion in public life are issues that companies traditionally have avoided.

Social issues are particularly troublesome for companies following the U.S. Supreme Court's *White* decision.⁷⁰ Issued in 2002, it overturned state prohibitions on judicial candidates stating their views on "disputed legal or political issues." State judicial codes placing those issues off limits in elections had helped to shield judicial campaigns from social battles.⁷¹

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In the aftermath of the *White* decision, judicial races have become increasingly politicized as special interest groups push candidates to declare their views on social issues in questionnaires.⁷² Even candidates who want to refrain from dealing with these issues are under pressure to respond.

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According to the Justice at Stake Campaign, a non-partisan group that monitors judicial elections, "Candidates dismayed by the assault on fair and impartial courts could not help but feel pressure to identify themselves with powerful interest groups, which could help to finance their campaigns and get out the vote."⁷³

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These developments create risks for companies that contribute to judicial elections. Companies might give a variety of reasons for their spending. But when the races become enmeshed in social issues, company involvement links them to positions that could embarrass them and threaten their relationship with stakeholders.

ALABAMA

The 2004 Alabama judicial races involved big money and the active involvement of social conservatives. Several candidates raised over \$1 million, and eleven candidates raised a combined total of \$7.4 million.⁷⁴ Although it appeared that companies would be able to keep their distance from controversial social issues, in the end, trade associations and other groups were used to move corporate money to candidates who took anti-abortion and anti-gay rights positions and favored school prayer and the public display of the Ten Commandments.

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Religious conservatives set the tone of the campaign following Chief Justice Roy Moore's removal from office in 2003 for defying a federal court order to remove a Ten Commandments monument from the state's Supreme Court building. Dubbed the "Ten Commandments Judge," Moore became a hero of the Christian conservative movement, and a leading newspaper has called his case "a magnet for religious conservatives around the country."⁷⁵

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A judicial slate backing Moore's positions ran in the primary and was supported by the League of Christian Voters of Alabama.⁷⁶ Surveys played a key role in the campaign. As Jim Zeigler, the head of the League said, "You've got ten commandments, you've got ten questions." Among the questions posed to candidates in the Republican primary were "Are you a born again Christian? Please give your testimony," and "What actions have you taken personally on the issue of pro-life?"⁷⁷

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Among those the group endorsed was Tom Parker, an advisor to the former chief justice. In the end, judicial candidates supported by the business community in the general election were outspoken on the religious issues that the Moore affair brought to the forefront.

The Smith, Bolin campaigns

Judge Patti Smith and Judge Michael Bolin—two candidates who received heavy corporate backing in the 2004 races—said in questionnaires that they opposed abortion and gay rights and endorsed school prayer and the public display of the Ten Commandments. The questionnaires were produced by the Christian Coalition and the Alabama Policy Institute, a conservative think tank, for voter guides to be used in the campaigns.

In the Alabama Policy Institute’s guide, Smith and Bolin not only said that they supported the courtroom display of the Ten Commandments and opposed including the protection of people on the basis of sexual orientation in the code of judicial conduct but also said they agreed with the following statements: “I believe that the Alabama Constitution does not recognize a right to homosexual sexual relationships;” “I believe that the Alabama Constitution does not recognize a right to abortion;” and “I believe Santa Fe Independent School District v. Doe was incorrectly decided and that prayers before school athletic events violate neither the U.S. nor Alabama Constitutions.”⁷⁸

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The Christian Coalition voter guide reported that the two judges agreed with the group’s positions that an unborn child is a fellow human being and the state can acknowledge God and opposed same sex marriage.⁷⁹

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The candidates received strong corporate financial support from trade associations and political groups. Smith, who raised approximately \$1.4 million in the campaign, and Bolin, who raised approximately \$1.7 million, were endorsed by the Alabama Civil Justice Reform Committee, the American Taxpayers Alliance, the American Insurance Association, and various other business groups.⁸⁰ None of the organizations disclosed the companies that donated to them or the amounts of the donations.

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The Alabama Civil Justice Reform Committee (ACJRC) is a statewide trade association representing more than 100 trade associations, including the Business Council of Alabama.⁸¹ It is listed as a member of ATRA’s Lawsuit

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Abuse Reform Coalition.⁸² Neither ATRA nor the coalition group discloses its membership.

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ACJRC underwrote media campaigns supporting Smith and Bolin, spending an estimated \$28,734 on television ads.⁸³ It also loaned \$50,000 to its PAC, the Alabama Civil Justice Reform Committee PAC (ACJRC PAC), which was paid back later in the election cycle.⁸⁴ The ACJRC PAC made contributions of \$72,000 and \$135,500 to the Smith and Bolin campaigns respectively.⁸⁵

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The American Taxpayers Alliance (ATA) spent \$344,164 on television ads that supported Smith and Bolin.⁸⁶ The group did not register with the state or provide information about itself in the ads. According to Public Citizen, ATA is a 501(c)(4) that has “made a practice of stirring controversy by broadcasting attack ads while refusing to disclose its funding sources.”⁸⁷

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Despite ATA’s secrecy, media accounts and tax documents show that at least some of the group’s funding has historically come from electric utility firms and the U.S. Chamber of Commerce. Specifically, Public Citizen reported that ATA included the names of its major contributors in the 2002 tax form provided to the group. Its top contributor that year was the U.S. Chamber of Commerce, which gave \$2.6 million. The ATA received about \$2.3 million of that donation in the month preceding Election Day.⁸⁸

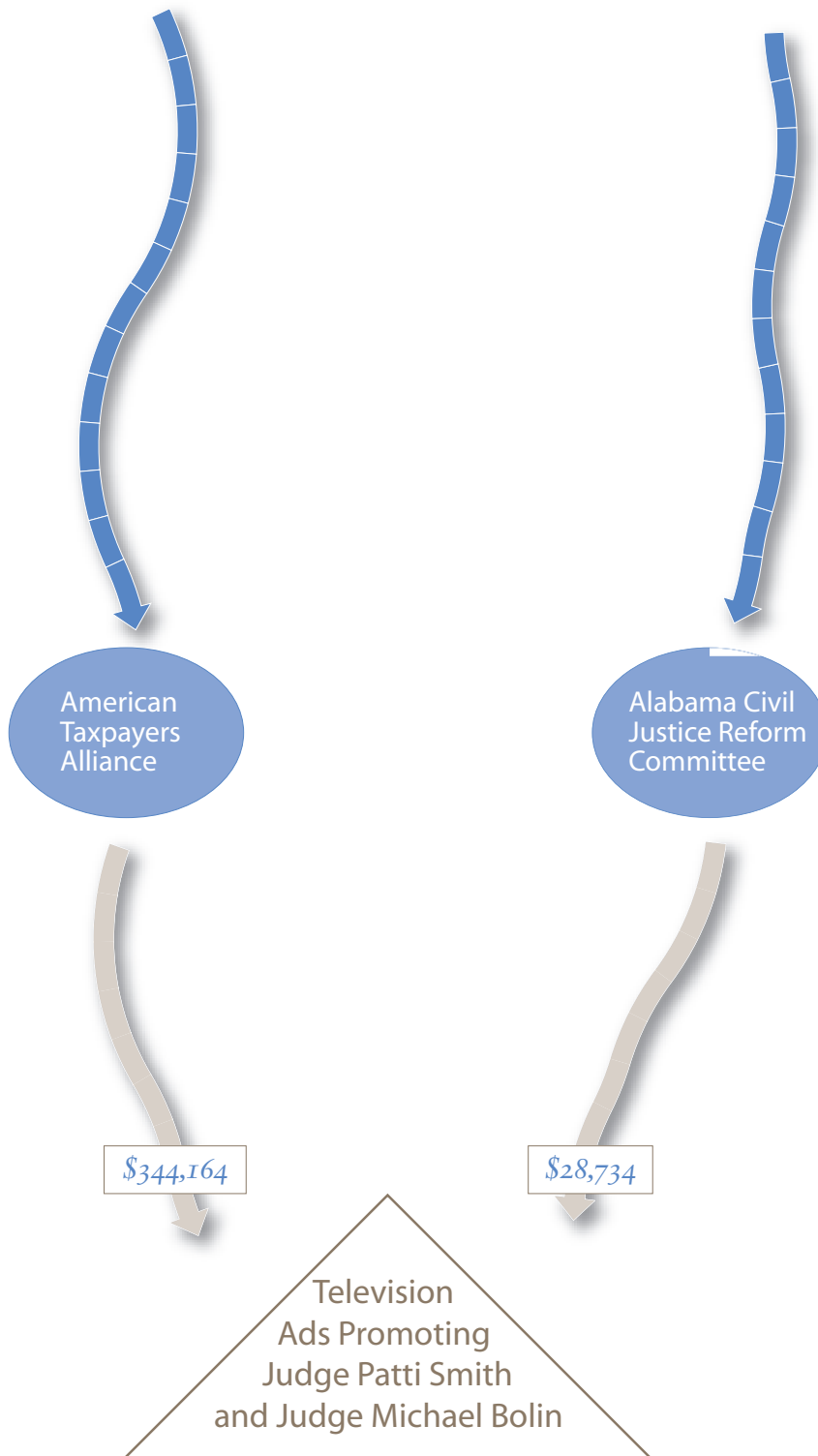
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Although corporate funding of ATA and the Alabama Civil Justice Reform Committee is secret, it is possible to identify some of the companies that contributed directly to the candidates and others that funneled money through state-level political committees, which are required to file campaign finance reports with the state of Alabama. These also provide an indication of companies that were likely giving money via conduits.

INDIRECT FLOW OF CORPORATE MONEY THAT AIDED THE BOLIN & SMITH CANDIDACIES

undisclosed sources

undisclosed sources



hidden rivers 2006

SOURCE: Brennan Center for Justice at NYU School of Law. The Brennan Center obtained these cost estimates from the Campaign Media Analysis Group. According to the Brennan Center, the estimates are based on the average costs for the air time and station, and do not include premium costs that are typically associated with ad buys or production costs.

Following are companies that the CPA has been able to identify as contributing directly and indirectly to the Bolin and Smith campaigns:⁸⁹

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MeadWestVaco made direct contributions to the Bolin (\$1,000)⁹⁰ and Smith (\$1,000)⁹¹ campaigns.

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Georgia-Pacific made direct contributions to the Bolin (\$500)⁹² and Smith (\$500)⁹³ campaigns.

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GlaxoSmithKline made direct contributions to the Bolin (\$1,000)⁹⁴ and Smith (\$500)⁹⁵ campaigns.

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Pfizer made direct contributions to the Bolin (\$500)⁹⁶ and Smith (\$500)⁹⁷ campaigns.

AmSouth made indirect contributions to Bolin and Smith by giving to the following committees: Alabama Civil Justice Reform Committee PAC (\$6,000)⁹⁸; Good Government PAC (\$4,500)⁹⁹; Alabama Bankers PAC (\$4,000)¹⁰⁰; Comp PAC (\$5,000)¹⁰¹; Pro Business PAC (\$4,500)¹⁰²; Lawsuit Reform PAC (\$10,500)¹⁰³.

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These committees, in turn, gave to the candidates:

Alabama Civil Justice Reform Committee PAC (\$13,500 to Bolin; \$72,000 to Smith); Good Government PAC (\$9,000 to Bolin; \$11,000 to Smith); Alabama Bankers PAC (\$8,750 to Bolin; \$8,750 to Smith); Comp PAC (\$13,500 to Bolin; \$5,000 to Smith); Pro Business PAC (\$182,000 to Bolin; \$45,000 to Smith); Lawsuit Reform PAC (\$86,500 to Bolin; \$20,000 to Smith).¹⁰⁴

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Protective Life made indirect contributions to Bolin and Smith by giving to the following committees: Alabama Civil Justice Reform Committee PAC (\$4,500)¹⁰⁵; BIZ PAC (\$5,000)¹⁰⁶; ABC Merit PAC (\$5,000)¹⁰⁷; CRA PAC (\$5,000)¹⁰⁸; Fair PAC (\$5,000)¹⁰⁹; the Red Mountain PAC (\$5,000)¹¹⁰; Free Enterprise PAC (\$5,000)¹¹¹; Mainstream PAC (\$5,000)¹¹²; Pro Business PAC (\$9,500)¹¹³; Lawsuit Reform PAC (\$5,000)¹¹⁴; BES PAC (\$5,000)¹¹⁵; Horizon PAC (\$5,000)¹¹⁶; and Good Government PAC (\$5,000).¹¹⁷

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These committees, in turn, gave to the candidates:

Alabama Civil Justice Reform Committee PAC (\$135,500 to Bolin, \$72,000 to Smith), BIZ PAC (\$28,500 to Bolin, \$64,000 to Smith), ABC Merit PAC (\$18,250 to Bolin; \$9,750 to Smith), CRA PAC (\$15,000 to Bolin), Fair PAC (\$5,000 to Bolin, \$5,000 to Smith), the Red Mountain PAC (\$10,750 to Bolin, \$6,750 to Smith), Free Enterprise PAC (\$5,000 to Smith), Mainstream PAC (\$5,000 to Smith), Pro Business PAC (\$182,500 to Bolin, \$45,000 to Smith), Lawsuit Reform PAC (\$86,500 to Bolin, \$20,000 to Smith), BES PAC (\$10,500 to Bolin), Horizon PAC (\$17,500 to Bolin, \$10,500 to Smith), and Good Government PAC (\$9,000 to Bolin, \$11,000 to Smith).¹¹⁸

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MetLife made indirect contributions to Bolin and Smith by giving to the following committees:

Alabama Civil Justice Reform Committee PAC (\$4,000)¹¹⁹; BIZ PAC (\$4,000)¹²⁰; Good Government PAC (\$4,000)¹²¹; Pro Business PAC (\$4,000)¹²²; and Lawsuit Reform PAC (\$4,000).¹²³

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These committees, in turn, gave to the candidates:

Alabama Civil Justice Reform Committee PAC (\$135,500 to Bolin; \$72,000 to Smith); BIZ PAC (\$28,500 to Bolin; \$64,000 to Smith); Good Government PAC (\$9,000 to Bolin; \$11,000 to Smith); Pro Business PAC (\$182,000 to Bolin and \$45,000 to Smith); and Lawsuit Reform PAC (\$86,500 to Bolin and \$20,000 to Smith).¹²⁴

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ALFA made indirect contributions to Bolin and Smith by giving to the following committees: ABC Merit PAC (\$12,000)¹²⁵; Mid-Alabama Conservative PAC (\$15,500)¹²⁶; Comp PAC (\$5,000)¹²⁷; Lawsuit Reform PAC (\$5,000).¹²⁸

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These committees, in turn, gave to the candidates:

ABC Merit PAC ((\$18,250 to Bolin; \$9,750 to Smith); Mid-Alabama Conservative PAC (\$8,500 to Bolin; \$7,000 to Smith); Comp PAC (\$13,500 to Bolin; \$5,000 to Smith); Lawsuit Reform PAC (\$86,500 to Bolin; \$20,000 to Smith).¹²⁹

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TOM PARKER

Tom Parker, a member of the Moore judicial slate, expressed publicly his opposition to abortion and gay rights and support for school prayer and the public display of the Ten Commandments. In his response to the Alabama Policy Institute questionnaire, Parker wrote that he had run the Alabama Pro-Life Coalition and believed that the U.S. Constitution does not recognize a right to homosexual sexual relationships.¹³⁰

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Making his outspokenness a key part of his campaign, Parker was quoted by the Associated Press as saying, “The public is tired of politicians professing certain beliefs and not acting on those beliefs....They want elected officials who have the moral courage to do what they will say they will do when they’re running for election.”¹³¹

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Unlike Smith and Bolin, Parker didn’t receive corporate support at the outset. The reason: he had accepted \$150,000 from political action committees funded by trial lawyers, arch enemies of the business community.¹³² Nevertheless, corporate funds eventually went to Parker, with AmSouth, Protective Life, ALFA and MetLife giving to his campaign through two state-level political action committees. ALFA and Protective Life gave \$12,000¹³³ and \$5,000¹³⁴ respectively to the ABC Merit PAC. AmSouth gave \$4,500¹³⁵, MetLife gave \$4,000¹³⁶, and Protective Life gave \$5,000¹³⁷ to the Good Government PAC. The ABC Merit PAC gave Parker \$2,000¹³⁸ and the Good Government PAC gave Parker \$1,000.¹³⁹

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MISSISSIPPI

Corporate funding of Samac Richardson's Mississippi Supreme Court race in 2004 illustrates the risks companies face when they don't pay heed to their political spending. Soft money from a number of high profile companies, possibly without their full knowledge or consent, was funneled to Richardson who was criticized by a syndicated columnist in the Jackson Clarion-Ledger, the state's leading paper, for running TV spots that showed him speaking to white audiences and using the campaign slogan, “one of us.” The columnist called the phrase “old-line racial code words.”¹⁴⁰

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A staff columnist for the paper also called Richardson to account for his use of the “one of us” phrase. “Richardson’s message leaves little open to interpretation,” Eric Stringfellow wrote. “Many people will take one look at his push card and conclude that it is the race card, coded in a manner in which everyone can easily understand.”¹⁴¹ In his campaign, Richardson strongly supported the social conservative positions on gay marriage, abortion and religion in public life.

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The candidate’s opposition to gay marriage—a hot-button issue companies generally shy away from—was highlighted in one television advertisement sponsored by Improve Mississippi PAC, a group funded by companies. The ad said: “Samac Richardson will protect the sanctity of marriage between man and woman.” It added that Richardson was “a man of integrity who believes the words ‘In God We Trust’ belong on the walls in every classroom.”¹⁴²

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The Improve Mississippi PAC is almost entirely funded by undisclosed corporate donors. An affiliate of the Business and Industry Political Education Committee (BIPEC), the PAC raised \$357,800 in 2004, \$300,000 of which came from ATRA¹⁴³. Tyson Foods and Weyerhaeuser gave \$400 and \$5,000 respectively to the PAC.¹⁴⁴

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Although ATRA does not disclose its full membership, it does provide what it calls a sample list of members which includes 3M Company, Altria Group, Anheuser Busch, Boeing, DaimlerChrysler, Johnson & Johnson, New York Life Insurance, Pfizer, TRW Automotive and Wyeth.¹⁴⁵ Thus, funds from those companies may very well have ended up paying for the TV ad on behalf of Richardson.

145 see page 89

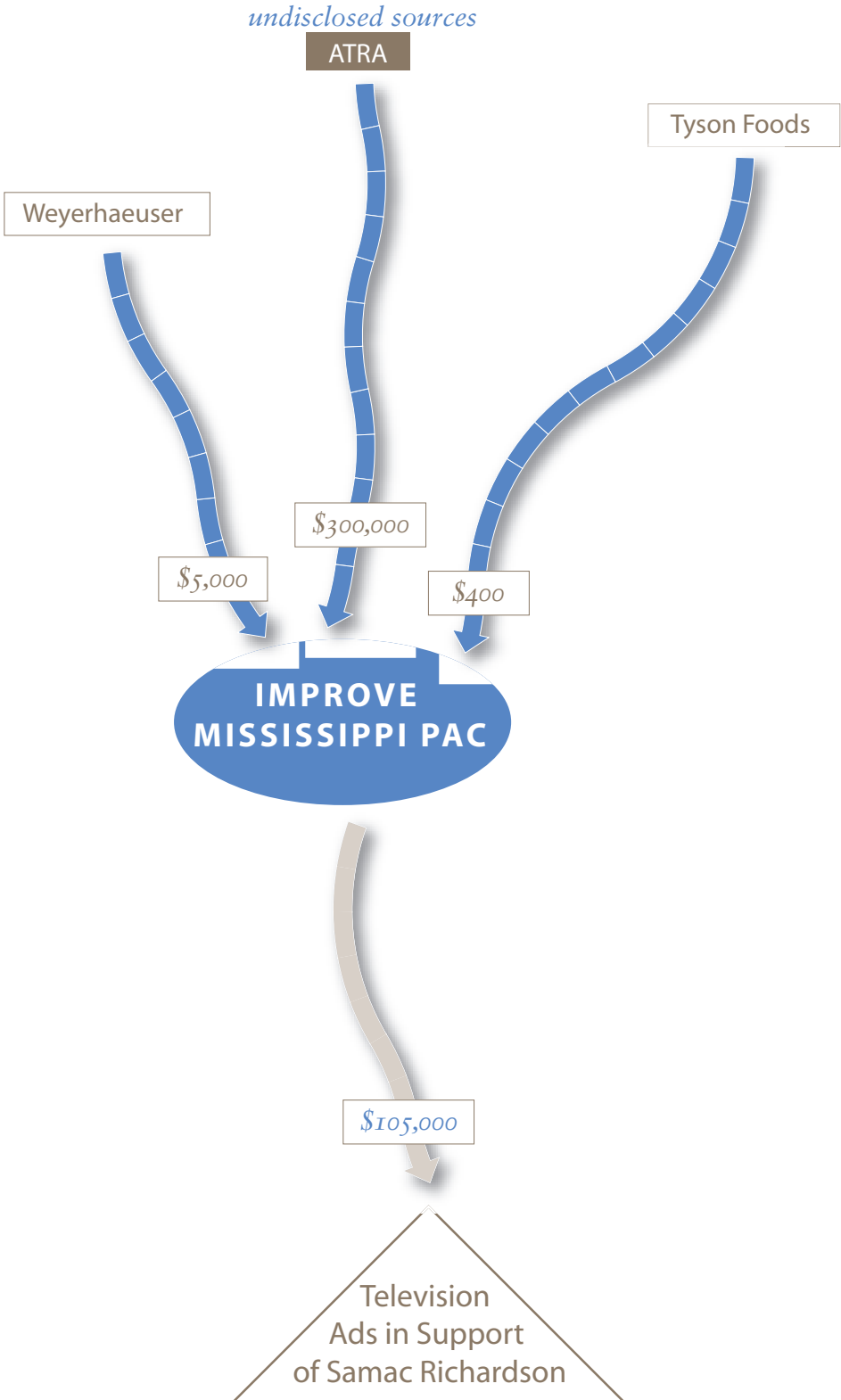
Richardson also received direct contributions from Merck (\$1,000), MetLife (\$1,000), Georgia-Pacific (\$1,000), GlaxoSmithKline (\$1,000), R.J. Reynolds (\$1,000), and Plum Creek (\$500).¹⁴⁶

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Moreover, several companies gave to Richardson’s campaign indirectly, using state-level trade association PACs as conduits. The Mississippi Manufacturers Association PAC donated \$5,000 to Richardson.¹⁴⁷ Campaign finance reports

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INDIRECT FLOW OF CORPORATE MONEY THAT AIDED THE RICHARDSON CANDIDACY



SOURCE: Brennan Center for Justice at NYU School of Law. The Brennan Center obtained these cost estimates from the Campaign Media Analysis Group. According to the Brennan Center, the estimates are based on the average costs for the air time and station, and do not include premium costs that are typically associated with ad buys or production costs.

reveal that the PAC received money from Waste Management (\$320), Weyerhaeuser (\$600), Sanderson Farms (\$2,500), Illinois Tool Works (\$2,500), ATMOS Energy (\$680), Caterpillar (\$1,500) and Georgia-Pacific (\$600).¹⁴⁸ 148 see page 89

According to the Clarion Ledger, Mississippians for Economic Progress (MFEP), a state business group, mailed cards to voters in support of Richardson’s election.¹⁴⁹ 149 see page 89

MFEP is a non-profit organization and is not required to reveal its donors. The group, however, discloses its membership which includes about 50 major business associations, including the American Insurance Association, the U.S. Oil & Gas Association, and the Business and Industry Political Education Committee (BIPEC).¹⁵⁰ 150 see page 89

LOUISIANA

A Louisiana Supreme Court candidate who made opposition to same-sex marriage a key plank in his campaign—and whose campaign tactics became a cause célèbre for gay rights advocates—received substantial funding from major corporations. Jeffrey Victory’s position on this hot button issue was highlighted at a luncheon held on August 5, 2004 in his district that was hosted by Higher Ground Ministries Inc.¹⁵¹ Distributed at the event was a pamphlet that had 151 see page 89

“Victory” printed on the cover accompanied by the text, “Marriage: One Man-One. Woman,” and a bible verse from Genesis stating “So God created man in His own image, in the image of God He created him; male and female he created them.” The page also said, “There is Victory in the camp!”¹⁵² 152 see page 89

Victory received contributions directly from companies. They included Tidewater (\$5,000)¹⁵³, Hibernia (\$5,000)¹⁵⁴, Conocophillips (\$1,500)¹⁵⁵, ChevronTexaco (\$1,000)¹⁵⁶, Weyerhaeuser (\$1,000)¹⁵⁷, Burlington Resources (\$250)¹⁵⁸, Burlington Northern & Santa Fe Railroad (\$500)¹⁵⁹, and Georgia-Pacific (\$5,000).¹⁶⁰ 153 see page 90 154 see page 90 155 see page 90 156 see page 90 157 see page 90 158 see page 90 159 see page 90 160 see page 90

In addition, he received indirect corporate backing through the Louisiana Manufacturers PAC, which donated \$5,000.¹⁶¹ 161 see page 90

The PAC received company funds from Dow Chemical (\$1,000)¹⁶², Air Products & Chemicals (\$1,075)¹⁶³, 162 see page 90 163 see page 90

VICTORY



MARRIAGE: One Man – One Woman

*So God created man in His own image, in the image of God He created him; male and female he created them.
Genesis 1:26-28*

*Friday, August 5, 2004
At Noon*

*HIGHER GROUND MINISTRIES, INC.
6480 Highway 509
Mansfield, Louisiana 71052*

*Pastor/Teacher – Ronnie L. Morris Sr.
Office: (318) 871-8079
Cellular: (318) 481-9200*

THERE IS VICTORY IN THE CAMP!

ChevronTexaco (\$1,000)¹⁶⁴, Hughes Supply (\$125)¹⁶⁵,
 Lyondell Chemical (\$500)¹⁶⁶, Flowserve Corp (\$1,165)¹⁶⁷,
 and Ingersoll-Rand (\$1,250).¹⁶⁸

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when ... races become enmeshed in social issues, company involvement links them to positions that could embarrass them and threaten their relationships with stakeholders.

TEXAS

Companies are prohibited under Texas law from giving directly to candidates. However, they are allowed to contribute to political action committees to defray their administrative costs. The committees, in turn, donate to candidates, a fact which links donor companies to those who the PAC supports.

Such was the case with Scott Brister, a candidate for the Texas Supreme Court who was well-known for his vocal positions on controversial social issues. Brister received a \$5,000 contribution from the Texas Oil and Gas Association PAC.¹⁶⁹ Sixteen major companies contributed \$85,000 to the PAC for administrative purposes. They included Lyondell (\$10,000)¹⁷⁰, Petro Source Carbon (\$5,000)¹⁷¹ Sunoco (\$5,000)¹⁷², Dynegy (\$5,000)¹⁷³, Alon USA (\$5,000)¹⁷⁴, Anadarko Petroleum (\$5,000)¹⁷⁵, Chesapeake Operating (\$5,000)¹⁷⁶, ChevronTexaco (\$5,000)¹⁷⁷, ConocoPhillips (\$10,000)¹⁷⁸, Devon Energy (\$5,000)¹⁷⁹, EOG Resources (\$5,000)¹⁸⁰, McMoran Oil and Gas (\$5,000)¹⁸¹, BP (\$3,000)¹⁸², El Paso (\$5,000)¹⁸³, Clayton Williams Energy (\$5,000)¹⁸⁴ and Duke Energy (\$5,000).¹⁸⁵

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Prior to becoming a Harris County District judge, Brister had taken strong anti-gay positions as a private attorney. In 1985, for example, he represented eight anti-homosexual City Council candidates in Houston who won the right to place the designation 'Straight Slate' beside their names on the ballot.¹⁸⁶ According to the Houston Chronicle, in 1987 he represented Right to Life Advocacy Inc., which sought to dis-

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tribute anti-abortion pamphlets at middle and high schools.¹⁸⁷

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As a district judge, Brister was sued in 1998 for displaying the Ten Commandments on his Houston courtroom wall.¹⁸⁸

A year later, he joined with religious conservatives to warn that name-changes for transsexuals could lead to same-sex marriages. The Dallas Morning News said that Brister warned that transsexuals could use a new name to mask gender and marry a same-sex partner.¹⁸⁹

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Brister stirred controversy in 2004 with his comments on church-state relations. Appearing before the Texas Senate Nominations Committee for his confirmation as a state supreme court justice, Sen. Gonzalo Barrientos (D-Austin) asked him whether he believed in the separation of church and state. Brister replied, "It depends on the circumstances." That prompted Barrientos to say later, "Never in my entire time in the Senate have I faced the kind of answers that were given by this nominee."¹⁹⁰

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The Obstacles
to Tracing
State-Level
Money

State-level political committees serve as conduits for corporate money in many state judicial races. These committees are required to file campaign finance reports that give shareholders a glimpse of some of the corporate giving moving through these conduits. Indeed, it is barely a glimpse. Shareholders cannot get the full picture of the flow of corporate money through these groups because state-level campaign finance reporting is often unreliable, incomplete and sloppy. It is also confused in states such as Alabama by the widespread practice of transferring money between PACs to obscure the source of contributions.¹⁹¹

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The campaign finance reports of many committees are not filed electronically. Instead, they are paper documents scanned onto the states' secretary of state websites. In its review of these reports, the center found that many are handwritten and difficult to decipher. Some appear to be incorrect and incomplete.

For example, the CPA reviewed the campaign finance reports filed in Alabama, which are disclosed publicly on the state's secretary of state website. Most of the political committees use the same report form, which has a space for the name of the contributor and another section titled "source of contribution." Under "source of contribution," there are five columns listing business or corporation, individual, PAC, other, and returned. Whoever fills out the report is instructed to check the column that applies.

The Alabama Civil Justice Reform Committee PAC's reports, which are handwritten, state that "AmSouth" gave \$6,000 to the PAC on December 11, 2003. The source of the contribution is marked "business or corporation."¹⁹² The PAC also reports that the "AmSouth Bank Employees for Better Government-Alabama" contributed \$4,000 on May 26, 2004. The source of that contribution is marked "PAC" and the address is different than that given in the aforementioned contribution listing.¹⁹³

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The Good Government PAC, rather than filing the form used by the Alabama Civil Justice Reform Committee PAC, reports its contributions by listing the contributor, address, date and amount, but does not specify the "source of contribution." The Good Government PAC reports that "AmSouth" made a contri-

¹⁹⁴ see page 92

bution of \$4,500 on May 18, 2004.¹⁹⁴ Since there is no distinction made about the source of the contribution, the reader is left to guess whether the contribution was made with corporate funds or with PAC money. The Good Government PAC report provides the same mailing address as that of the AmSouth contribution marked as “business or corporation” by the Alabama Civil Justice Reform Committee PAC, and uses “AmSouth” as the name of the contributor and not “AmSouth Bank Employees for Better Government- Alabama.” This leads the Center to assume that the Good Government PAC contribution was also made with corporate funds, and not with PAC money. However, the report is not clear.

¹⁹⁵ see page 92


Many other state campaign finance reports require similar deductions by the reviewer. For example, in Mississippi, judicial candidate Samac Richardson’s election committee reports that “Ford Motor Company Civic Action” contributed \$750 to the campaign. The handwritten report marks the source of the contribution as “corporation.”¹⁹⁵ However, the Ford Motor Company Civic Action Fund is the name of the company’s political action committee, which leads the Center to believe that the contribution came from the company’s PAC and was not made with corporate funds.

¹⁹⁶ see page 92

Similarly, Richardson’s election committee reports that “R.J. Reynolds” gave \$1,000 on November 12, 2004. Although the report states that the contributor’s occupation is “Tobacco Company” and provides the corporate address, the contribution’s source is marked as “individual” rather than corporation.¹⁹⁶ Again, given the surrounding facts, the Center concludes that the contribution is in fact a corporate contribution.

These reporting mistakes and clarity problems are widespread at the state level. The nonpartisan, nonprofit Institute on Money in State Politics, the nation’s most complete resource on money in state politics, does not distinguish between PAC contributions and corporate contributions in its public database.

Incomplete reporting, possible mistakes, numerous amendments and illegible handwriting are not the only obstacles researchers



encounter when tracing the flow of corporate funds through conduits. Many of these committees make contributions to each other, creating an endless shuffle of money. For example, the Alabama Civil Justice Reform Committee PAC reports receiving contributions from CarePAC, Forest PAC, BizPAC, Lawsuit Reform PAC, Vend PAC, Pro Business PAC, ALABA PAC, Retailers of Alabama PAC, MPAC, Victory PAC and Common Sense PAC, to name just a few. All of these PACs receive corporate funds. This inter-committee giving makes it all but impossible to track the flow of corporate money through conduits to its final destination.

In addition, the Institute on Money in State Politics has done only limited compilation of contributions to state-level political action committees because of the expense and time involved. As made evident by this report, state-level PACs play a significant role in the judicial races, and receive a sizeable amount of corporate money. Given the difficulty in compiling this data, it is unreasonable to expect shareholders to attempt this research.

As a result of all these factors, it is impossible for shareholders and the public to find out with certainty where corporate money ends up or the courses that it follows to get there. Shareholders who want to learn how their funds are being used must scour hundreds of filings to try to piece together a trail of funds. Even then, they are left with many blank spaces in disclosure. The corporate contributions that can be traced are merely islands dotting an ocean, with mountains of funds hidden below the surface.

The CPA relied on the state campaign finance reports in its research. They are the only publicly available primary sources for such information. All corporate contributions cited in this report are based on these state-level filings. The CPA has made best efforts to ensure that all corporate contributions cited in this report were made with corporate funds. However, given the quality of the campaign finance reports, some of the figures may include contributions made by the companies' political action committees.

Playing Politics by Proxy: The Reputation Risks to Companies

In 2005, Pfizer found itself on the horns of a dilemma. The Business Roundtable, which its CEO chaired, was leading the effort to revamp Social Security. The association had pledged \$20 million to the effort, an amount that was to be underwritten by its membership, which includes 160 of the largest U.S. public companies.¹⁹⁷ The issue was highly controversial and Pfizer was criticized roundly for its involvement.

¹⁹⁷ see page 92

Pfizer had little, if anything, at stake in the Social Security debate. On the other hand, the unpopularity of the Administration's proposal and Pfizer's support for it stood to damage the company's public reputation. So Pfizer tried to distance itself but it couldn't.¹⁹⁸ It had assumed a leadership role in an organization the politics of which were outside its control. It had chosen to play politics by proxy and would have to accept the consequences. The company was underwriting a cause that promised no clear benefits to it or its shareholders. Fortunately for the company, the effort collapsed before the public at large became widely aware of who was financing it.

¹⁹⁸ see page 92-93

The pharmaceutical giant's experience is common. Trade associations financed by corporate payments are becoming increasingly active in controversial political campaigns in which member corporations have little at stake. Most of this activity takes place in the political shadows outside of public view. The corporate financiers of these efforts go largely unknown. Pfizer's role was known because the BRT is one of the few associations to make public its members' names. Most major trade associations and entities that they create and finance operate like secret societies. This makes it difficult, if not impossible, for the public and sharehold-

ers to discover the nature and degree of company political involvement. Secrecy deprives the public and shareholders of the means to assess whether a company's political involvement is good for the company, its shareholders and the nation.

Confidence Loss

As surveys continue to document the public's loss of confidence in corporate America, the hidden rivers of dollars flowing through trade associations stand to accelerate this downtrend. A recent survey by Harris Interactive and the Reputation Institute, conducted in the spring and summer of 2005, found that 71 percent of respondents rated the reputation of American companies as 'not good' or 'terrible' in 2005, compared with 68 percent in 2004.¹⁹⁹

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For a well known company, the consequences of a diminished reputation may be felt on the bottom line.

"Customers today vote with their dollars and will spend more money at companies with values they admire," warned Nancy Koehn, a business historian at Harvard Business School. According to Jonathan Dewitt, a senior vice president in Harris Interactive's Wirthlin Brand & Strategy Consulting group, companies are remiss if "they aren't getting a handle on what's being said about them and trying to manage it."²⁰⁰

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Following the corporate scandals of 2000-2001 and enactment of the Sarbanes-Oxley corporate governance law, companies are being pressed to increase their accountability and transparency; more companies are paying greater attention to ethical and environmental concerns; and a growing number are disclosing and requiring board oversight of their soft money political contributions.

Notwithstanding these positive developments, the CPA has been unable to identify companies that are directing and tracking their political spending via trade associations and other tax-exempt organizations. It may be that some corporations are finding it convenient to remain ignorant, while others may simply prefer to hide their political activity by routing it through proxy organizations. In either case,

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the risk to the company remains. When a company forfeits its right to control the spending, the risks may actually increase. Public opinion may in the end treat more harshly companies that try to evade responsibility through purposeful or feigned ignorance and consumers may react with their wallets.

The Problems of Proxy Spending

This trend towards employing political proxies is apparent in judicial elections. Historically, corporations have invested few dollars in these contests. This has changed. Using trade associations as conduits, corporations are pouring millions of dollars into judicial elections that increasingly are focused on controversial social issues in which corporations have scrupulously avoided becoming entangled.

Recent activism in these elections highlights the type of risk corporations are courting. As discussed in the previous chapter, four states in 2004 provide good examples of where company money ran through trade associations and allied groups to support candidates whose positions contradicted the publicly stated policies, practices and values of the corporate donors.

Deciding what judicial candidate will best serve a particular company's interest is often very difficult. For example, a start-up company in the software business may support a candidate who is known to be a strong supporter of antitrust law. Another more mature company may be more concerned with copyright and patent protection. A unionized company's interest in worker benefits may be different than a non-unionized company. Any of these issues may be more vital to the company's future than whether a candidate is considered pro-plaintiff in tort liability cases. Recent experience in judicial elections suggests that corporations are not making decisions based on candidate-specific analysis. Rather, they are deferring to the trade associations to make the decision on which candidates to support. This is very much like companies handing trade associations the car keys and then going to sleep.

In giving their financial support to judicial candidates, trade associations tend to be one-issue givers. The companies that provided the money apparently have shown little or no interest in a judicial candidate's views on other issues, even when the candidate's positions were at odds with the companies' publicly stated policies, practices and values. This disregard for the company's broader interest is fostered by the cloak of secrecy that covers the proxy's spending.

18 Companies: Conflicts and Contradictions

The center identified 18 companies, including leaders in the pharmaceutical, life insurance, beverage and automotive sectors, with personnel policies regarding gay employees that were in direct conflict with the positions of judicial candidates whom the companies directly or indirectly supported or provided help to in 2004. Opposition to gay rights was a key part of their campaigns. The center chose to use this issue because the positions of both the candidates and the various companies were public. Unlike many issues which require a company specific analysis to determine whether a judicial candidate's views are in accord with the company's interests, this issue is more general and makes the analysis easier.

The personnel policies of the companies included in Table II provide benefits to same sex partners and prohibit discrimination based on sexual orientation or gender identity. Many of the companies also have support groups for gay employees, engage in gay/lesbian/ bisexual/transsexual philanthropy, and offer—even require—diversity training that covers sexual orientation and gender identity. These same companies see diversity as important for strengthening their relationship with stakeholders, enhancing their reputation, and reaching key consumer groups.

Table II compares the personnel policies of companies with the positions of judicial candidates on gay rights and diversity that received corporate money or help directly or indirectly in 2004 races in Alabama, Mississippi, Louisiana and Texas.

[corporations] are deferring to...trade associations to make the decision
on which candidate to support. This...is like companies
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and then going to sleep.

	HRC Corporate Equality Index Score	Has a written non-discrimination policy covering sexual orientation in employee handbook or manual	Offers health insurance to employees' domestic partners (year enacted)	Diversity training that covers sexual orientation	GLBT employee groups
3M	86	Yes	Yes (2006)	Yes (offered)	Yes
Altria	71	Yes	Yes (2001)	Yes (offered)	n/a
Anheuser Busch	86	Yes	Yes (2003)	Yes (offered)	n/a
<p>“ At Anheuser-Busch, we believe in promoting diversity in all of our relationships. ”</p>					
Boeing	86	Yes	Yes (2001)	Yes (managers/supervisors required to attend)	Yes
Daimler Chrysler	100	Yes	Yes (2000)	Yes (all employees required to attend)	Yes
Dow Chemical	100	Yes	Yes (2002)	Yes (all employees required to attend)	Yes

GLBT advertising, sponsorship or philanthropy	Candidates receiving financial support	Amount of funds	Direct or indirect support* (conduit)	Positions indicated in campaign
Yes	Samac Richardson (MS)	?	Indirect ATRA member (ATRA gave to Improve Mississippi PAC)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
<p>“ Diversity aligns with 3M values. We are a company of integrity that is committed to its promises. ”</p>				
Yes	Samac Richardson (MS)	?	Indirect ATRA member (ATRA gave to Improve Mississippi PAC)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
Yes	Samac Richardson (MS)	?	Indirect ATRA member (ATRA gave to Improve Mississippi PAC)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
Yes	Samac Richardson (MS)	?	Indirect ATRA member (ATRA gave to Improve Mississippi PAC)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
Yes	Samac Richardson (MS)	?	Indirect ATRA member (ATRA gave to Improve Mississippi PAC)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
<p>“ Our commitment to diversity reaches far and wide. Diversity is integrated into all aspects of our business....Diversity is a key guiding principle at DaimlerChrysler. ”</p>				
Yes	Jeff Victory (LA)	?	Indirect (Louisiana Manufacturers PAC)-\$1,000	Against gay marriage

	HRC Corporate Equality Index Score	Has a written non-discrimination policy covering sexual orientation in employee handbook or manual	Offers health insurance to employees' domestic partners (year enacted)	Diversity training that covers sexual orientation	GLBT employee groups
Georgia-Pacific	86	Yes	Yes (2006)	Yes (some employees required to attend)	n/a

Glaxo SmithKline	100	Yes	Yes (1999)	Yes (all employees required to attend)	Yes
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“ In its 2005 Corporate Equality Index, the [Human Rights Campaign] foundation measures corporate America’s treatment of gay, lesbian, bisexual and transgender employees, consumers and investors. GSK is listed with 100 other companies that have attained perfect scores. In addition, the foundation has issued a new online resource in which GSK is listed with other companies as the ‘Best Places to Work for GLBT Equality.’ ”

Johnson & Johnson	100	Yes	Yes (2003)	Yes (managers/supervisors required to attend)	Yes
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GLBT advertising, sponsorship or philanthropy	Candidates receiving financial support	Amount of funds	Direct or indirect support* (conduit)	Positions indicated in campaign
<p>“ Georgia-Pacific developed the Diversity Scorecard to measure and track key diversity focus areas and to put accountability into the process to drive change ”</p>	Mike Bolin (AL)	\$500	Direct	Against gay marriage, for religion in public life, against abortion
	Patti Smith (AL)	\$500	Direct	Against gay marriage, for religion in public life, against abortion
	Samac Richardson (MS)	\$1,000 +?	Direct (\$1,000) indirect (Mississippi Manufacturers PAC-\$600)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
	Jeff Victory (LA)	\$5,000	Direct	Against gay marriage
Yes	Mike Bolin (AL)	\$1,000	Direct	Against gay marriage, for religion in public life, against abortion
	Patti Smith (AL)	\$500	Direct	Against gay marriage, for religion in public life, against abortion
	Samac Richardson (MS)	\$1,000	Direct	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
Yes	Samac Richardson (MS)	?	Indirect ATRA member (ATRA gave to Improve Mississippi PAC)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign

Diversity is part of the culture of Johnson & Johnson, where we recognize the value that differences in age, race, gender, nationality, sexual orientation, physical ability, thinking style and background bring a richness to the working environment.

HRC Corporate Equality Index Score	Has a written non-discrimination policy covering sexual orientation in employee handbook or manual	Offers health insurance to employees' domestic partners (year enacted)	Diversity training that covers sexual orientation	GLBT employee groups
Mead Westvaco 57	Yes	Yes (2005)	Yes (some employees required to attend)	n/a
Merck 86	Yes	Yes (2003)	Yes (some employees required to attend)	Yes
MetLife 100	Yes	Yes (2001)	Yes (some employees required to attend)	Yes

“ We believe that MetLife people are the engine that drives our company to succeed. And key to that success is the diversity reflected in our workforce, through age, gender, ethnicity, religion, marital status, sexual orientation, disability or the many other ways in which we define ourselves. To employees it means the opportunity and the freedom to share their unique perspectives. To MetLife, it means we benefit from the competitive advantage and innovation that diversity bring.

”

GLBT advertising, sponsorship or philanthropy	Candidates receiving financial support	Amount of funds	Direct or indirect support* (conduit)	Positions indicated in campaign
n/a	Mike Bolin (AL)	\$1,000	Direct	Against gay marriage, for religion in public life, against abortion
	Patti Smith (AL)	\$1,000	Direct	Against gay marriage, for religion in public life, against abortion
Yes	Samac Richardson (MS)	\$1,000	Direct	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
<p>“ We value this diversity—and seek to foster it—because it sparks innovation when employees with different perspectives work together to offer solutions to the many challenges our business and times present. ”</p>				
Yes	Mike Bolin (AL)	?	Indirect (Alabama Civil Justice Reform Committee PAC-\$4,000; BIZ PAC-\$4,000; Good Government PAC-\$4,000; Pro Business PAC-\$4,000; Lawsuit Reform PAC-\$4,000)	Against gay marriage, for religion in public life, against abortion
	Patti Smith (AL)	?	Indirect (Alabama Civil Justice Reform Committee PAC-\$4,000; BIZ PAC-\$4,000; Good Government PAC-\$4,000; Pro Business PAC-\$4,000; Lawsuit Reform PAC-\$4,000)	Against gay marriage, for religion in public life, against abortion
	Tom Parker (AL)	?	Indirect (Good Government PAC-\$4,000)	Against gay marriage, for religion in public life, against abortion
	Samac Richardson (MS)	\$1,000	Direct	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign

HRC Corporate Equality Index Score	Has a written non-discrimination policy covering sexual orientation in employee handbook or manual	Offers health insurance to employees' domestic partners (year enacted)	Diversity training that covers sexual orientation	GLBT employee groups
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New York Life Insurance

64	Yes	Yes (2005)	Yes (all employees required to attend)	n/a
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Pfizer

100	Yes	Yes (2002)	Yes (all employees required to attend)	Yes
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“

At Pfizer, we believe that a strong commitment to diversity is key to achieving our corporate mission—becoming the world’s most valued company. Having a diverse workforce allows us to benefit from the different backgrounds and perspectives of our colleagues, and fosters more creative and innovative thinking throughout our organization. Creating a culture of inclusion where everyone is respected and valued enables us to leverage our diversity as a business driver and strengthens our global leadership position.

”

R.J. Reynolds (subsidiary of Reynolds American)

86	Yes	Yes (2001)	Yes (all employees required to attend)	n/a
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TRW Automotive

n/a	Yes	Yes (2001)	n/a	Yes
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GLBT advertising, sponsorship or philanthropy	Candidates receiving financial support	Amount of funds	Direct or indirect support* (conduit)	Positions indicated in campaign
No	Samac Richardson (MS)	?	Indirect ATRA member (ATRA gave to Improve Mississippi PAC)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
<p>“ New York Life is proud to be an Equal Opportunity Employer and fully recognizes and supports the concepts of Affirmative Action. ”</p>				
Yes	Patti Smith (AL)	\$500	Direct	Against gay marriage, for religion in public life, against abortion
	Mike Bolin (AL)	\$500	Direct	Against gay marriage, for religion in public life, against abortion
	Samac Richardson (MS)	?	Indirect ATRA member (ATRA gave to Improve Mississippi PAC)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
Yes	Samac Richardson (MS)	\$1,000	Direct	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
<p>“ We do the right thing. We treat every person with respect, fairness and integrity, and we embrace diversity. ”</p>				
n/a	Samac Richardson (MS)	?	Indirect ATRA member (ATRA gave to Improve Mississippi PAC)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign

Weyerhaeuser

HRC Corporate Equality Index Score	Has a written non-discrimination policy covering sexual orientation in employee handbook or manual	Offers health insurance to employees' domestic partners (year enacted)	Diversity training that covers sexual orientation	GLBT employee groups
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89	Yes	Yes (2001)	n/a	Yes
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“Valuing diversity means drawing upon and respecting the unique characteristics, skills and experiences of all our employees. Diversity includes differences in race, gender, age, lifestyle and ethnic background, as well as differences in experiences and ideas.”

Wyeth

64	Yes	Yes (2004)	Yes (all employees required to attend)	n/a
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GLBT advertising, sponsorship or philanthropy	Candidates receiving financial support	Amount of funds	Direct or indirect support* (conduit)	Positions indicated in campaign
n/a	Jeff Victory (LA)	\$1,000	Direct	Against gay marriage
	Samac Richardson (MS)	?	Indirect Improve (Mississippi PAC-\$5,000; Mississippi Manufacturers Association PAC-\$600)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign
n/a	Samac Richardson (MS)	?	Indirect ATRA member (ATRA gave to Improve Mississippi PAC)	Against gay marriage, for religion in public life, used allegedly racist appeals in campaign

* In this table “support” means that either (i) company money ended up going to the candidate or (ii) the company is a paying member of a trade association or allied group that ran issue ads in support of the candidate. The dollar figures listed are the amount that the company gave to the respective committee. See Chapter 2 for information regarding the amount these committees gave to the respective candidates.

Source: Information regarding the companies’ personnel policies and diversity statements is reported on the Human Rights Campaign website (<http://www.hrc.org/>) and the companies’ websites. Information regarding the contributions is reported on the Institute for Money in State Politics website (<http://www.followthemoney.org/>) and in the campaign finance reports filed at the state level. See Chapter 2 for further information regarding the contributions.

*In this table “support” means that either (i) company money ended up going to the candidate or (ii) the company is a paying member of a trade association or allied group that ran issue ads in support of the candidate. The dollar figures listed are the amount that the company gave to the respective committee. See Chapter 2 for information regarding the amount these committees gave to the respective candidates.

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Risks to Companies and Shareholders

It would behoove companies to heed the admonition of former Federal Reserve Chairman Alan Greenspan. Shortly after the corporate collapses at the beginning of the decade, he warned that “trust and reputation [of companies] can vanish overnight.” The center’s Green Canary report demonstrated how apt the warning is for corporate soft money contributions. As the report pointed out, the reaction of Westar Energy, a Kansas-based public utility, epitomized the prevailing attitude of corporate management. Responding to the company’s indictment in September 2004 for contributing to a controversial group in apparent violation of Texas law, a company spokesman said that there was “no basis for Westar to be held accountable for how others spent its money once we gave it.”²⁰¹

²⁰¹ see page 93

With the public already deeply suspicious of company behavior and CEO conduct, the political activity of trade associations and allied conduits laid out in this report only aggravates the risks to companies and shareholder value. The next chapter presents an agenda for shareholders to address—and allay—these risks.



Protecting Shareholders: The Need to End Hidden Rivers

Disclosure and accountability must apply to all corporate political spending. As this report lays out, that is the only way for shareholders to be able to see the hidden rivers of corporate funds running through trade associations and to assess the real risks they pose to companies and shareholder value.

Over the past year, the principle of transparency and accountability for corporate soft money contributions has gained acceptance. That's seen in:

The growing number of highly regarded, well-known companies agreeing to disclose and require board oversight of their soft money contributions.²⁰²

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The decision by Institutional Shareholder Services (ISS), a leading proxy voting and corporate governance services provider, to make recommendations on the center's political disclosure resolution on a company-by-company basis. Previously, it recommended against the resolution as unnecessary. The ISS change followed a survey of 200 of its clients in 2005 that found that 65% considered company disclosure of and accountability for political spending, including soft money donations, to be either "very important" or "important."²⁰³

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The announcement by KLD Research and Analytics, Inc., an independent investment research firm, that it is expanding its corporate governance and community screens to include political accountability and transparency. KLD president Peter Kinder, explained that "the behavior of companies such as Enron and WorldCom and lobbyists such as Jack Abramoff has demonstrated the immense power of corporate money

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and its role in American politics. For corporations to be good citizens they must be accountable to shareholders and to the communities they operate in.”²⁰⁴

The Dangers of Darkness

The darkness that shrouds corporate political spending via trade associations aggravates problems companies already face from direct political spending. Among those problems:

It sanctions secret corporate activity and all the risks associated with secrecy. As the report points out, associations and front groups are being used as proxies to hide company political giving.

It denies shareholders full and accurate picture of a company’s political expenditures, including the source of the money, its routing, and its ultimate destinations. Tracing trade association and conduit spending is made even more difficult by weak state disclosure laws and haphazard campaign finance reporting.

It prevents shareholders from evaluating the risks to companies from proxy political spending. It creates a system where no one in a company is accountable for its political spending.

It reinforces lackadaisical corporate behavior. The center’s research shows that companies, for the most part, are not doing the due diligence on trade association political spending necessary to protect themselves from reputational risks, conflicts of interest and other legal liability.

It denies directors information critical to fulfilling their fiduciary responsibility to oversee all of a company’s activities. This was highlighted by a CPA survey of directors of companies that are members of the National Association of Manufacturers’ board of directors. They were asked what they knew about the association’s use of their company’s resources to support the confirmation of controversial Bush administration judicial nominations. The survey found that many directors were not informed and did not feel responsible for such activities.²⁰⁵

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It creates conflicts of interest. This is a particularly acute

problem with trade associations. Companies pay dues to these groups to protect and promote their interests. Association members are often competitors and have diverse interests. Trade association political activity should advance the interests of all of their members. Unfortunately, some trade associations appear to have pursued the political agendas of individual companies without much consideration of what the industry's interest is.

It exposes companies to collateral risk. Since associations are funded by and take direction from member companies, they are acting as agents of those companies when they make political expenditures. This puts companies at risk from association political spending that conflicts with their publicly stated policies, practices and values. In the end, companies bear responsibility for how associations spend their money politically.

The cumulative effect is to raise the risk level of company political spending at a time when the media is focusing on excessive corporate influence and political money and the public is increasingly concerned about political corruption.

Action Agenda

Companies should not wait for problems to occur. Instead, they can respond positively and protect shareholders by taking the following actions:

Adopt principles for political spending to guide the conduct of management and the board. The center has developed principles that could provide guidance to companies.²⁰⁶

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Report annually to shareholders on payments they make to trade associations and other tax-exempt organizations that are used for political purposes.

Inform their boards of directors of the specific political spending and political activities of trade associations the company is a member of.

Require that their boards of directors oversee and approve this spending.

Insist that trade associations of which they are members inform and consult them of the group's political activities and spending. Companies should drop their memberships in associations that refuse to comply.

Demand that the political spending and activities of trade associations be consistent with the interests of member companies and not pose potential or actual conflicts.

Require trade associations in which they participate to adopt procedures for approval, disclosure, and accounting of their political expenditures. Those procedures should allow a company to know and to withhold support for specific political activity.

Only by bringing to the surface the hidden rivers of corporate political money...can corporations assure that (they) are being used... to promote the interest of the company and its shareholders.

These straightforward steps would bring transparency and accountability to “new” as well as “old” soft money and to political spending by proxy. Comments by two leading legal and business academics emphasize the critical importance of these reforms.

Only by bringing to the surface the hidden rivers of corporate political money now running through trade associations and other political proxies can corporations assure that company funds are truly being used to promote the interest of the company and its shareholders.

FOOTNOTES

- 1 See Center for Political Accountability website, www.politicalaccountability.net, for the names of companies agreeing to political disclosure and accountability and the results of shareholder votes.
- 2 Trade associations are required to disclose on their IRS 990 forms the gross amount of money used for political spending but are not required to disclose their donors or recipients of the funds. The groups are allowed to raise and spend unlimited amounts of resources on political purposes.
- 3 Form 990s filed with the Internal Revenue Service by the Pharmaceutical Research and Manufacturers of America, the Business Roundtable, the U.S. Chamber of Commerce, Americans for Job Security, the American Tort Reform Association, and the National Association of Manufacturers disclosed that the six associations reported spending a combined total of \$107.3 million on lobbying and political activities in 2004. See *The New Stealth PACs*, a report issued by Public Citizen in 2004, for a detailed analysis of trade association political spending and reporting problems. (The New Stealth PACs, www.stealthpacs.org.)
- 4 *The Green Canary: Alerting Shareholders and Protecting Their Investments*, Center for Political Accountability, 2005. (www.politicalaccountability.net/gcreport/indexgc.htm)
- 5 Data compiled by PoliticalMoneyLine for this report. (PoliticalMoneyLine, www.fecinfo.com.)
- 6 “527s” are political organizations that received their moniker from the section of the Internal Revenue code under which they operate and report. “527s” include all candidate committees, party committees and independent political committees. Whether a particular organization can accept corporate money depends on the nature of the committee and the states in which it operates. For example no national party committee can accept corporate funds but many state party committees and the Democratic and Republican Governors Associations may.

- 7 The leadership 527s that received corporate funds in the 2004 cycle include committees run by politicians no longer in office. Specifically, these committees are: GOPAC, headed by former Rep. J.C. Watts (R-OK); Fund for American Opportunity, headed by former Sen. Spencer Abraham (R-MI); the Republican Leadership Council, headed by former Gov. and EPA Administrator Christie Todd Whitman (R-NJ); and the New Century Project, headed by former Rep. John Kasich (R-OH).
- 8 Letter from Tom Donohue, president and CEO of the U.S. Chamber of Commerce, to the chamber's board of directors, "President's Update—November 2004," December 6, 2004 (www.smartbrief.com/hosted/c100/c100-president-letter.pdf). According to the Chamber, these investments resulted in marked successes—of the 269 candidates that the chamber endorsed in House and Senate races, 249 of them won.
- 9 The same problem applies to company giving to organizations that operate under Section 501(c)(4) of the Internal Revenue Code. These groups use their status to hide their contributors and expenditures.
- 10 Tom Hamburger, "Trade Groups Join Bush on Social Security: Though Individual Firms Are Wary, Nearly 100 Associations Answer a White House Battle Cry." *Los Angeles Times*, April 11, 2005.
- 11 InvestorWords.com, www.investorwords.com/5015/trade_association.htm. Bruce Freed, "Do Associations Shortchange Their Members," *The Hill*, November 13, 2002.
- 12 Lawrence M. Lesser, *Business, Public Policy, and Society*, Harcourt College Publishers, 2000.
- 13 Trade associations operate under Section 501(c)(6) of the Internal Revenue Code that requires only very limited disclosure of their finances and spending. The groups are required to disclose on their IRS 990 forms the gross amount of money used for political spending. However, they are not required to disclose their donors or the recipients of the funds. In other words, they are allowed to raise and spend unlimited amounts of money on political purposes without disclosing the contributors or recipients of the specific expenditures.
- 14 Nicholas Confessore, "Welcome to the Machine: How the GOP Disciplined K Street and Made Bush Supreme," *Washington Monthly*, July/August 2003.
- 15 Bruce Freed, "K St. Project Threatens Business," *The Hill*, December 11, 2002; Confessore, "Welcome to the machine."
- 16 Clay Risen, "Business Weak," *The New Republic*, August 16, 2004. (<https://ssl.tnr.com/p/docsub.mhtml?i=business&s=risen081604>)

- 17 Center for Media & Democracy, www.sourcewatch.org/index.php?title=Coalition_for_Health_Insurance_Choices.
- 18 Jim VandeHei, “Political Cover: Major Business Lobby Wins Back Its Clout by Dispensing Favors,” Wall Street Journal, September 11, 2001.
- 19 Annenberg Public Policy Center of the University of Pennsylvania, www.annenbergpublicpolicycenter.org/issueadso5/2003-2004/Org%20Bios/americans_for_job_security.htm, and The Campaign Finance Institute report on Americans for Job Security, www.cfinst.org/disclosure/report1/appSecurity.htm.
- 20 Campaign Finance Institute report on Americans for Job Security; Jake Bernstein, “Meet the Attack Dogs,” Texas Observer, March 12, 2004; and Annenberg Public Policy Center, www.annenbergpublicpolicycenter.org/issueadso5/2003-2004/Org%20Bios/americans_for_job_security.htm.
- 21 John R. Wilke, “Microsoft Is Source of ‘Soft Money’ Funds Behind Ads in Michigan’s Senate Race,” Wall Street Journal, October 16, 2000.
- 22 Jim VandeHei and Tom Hamburger, “Drug Firms Underwrite U.S. Chamber’s TV Ads,” Wall Street Journal, October 6, 2000; Tom Hamburger and Laurie McGinley, “Drug Lobby Wins Big with Massive Spending Against Medicare Plan,” Wall Street Journal, November 9, 2000; Public Citizen, The New Stealth PACs: Tracking 501(c) Non-Profit Groups Active in Elections, September 2004, www.stealthpacs.org.
See the section on the U.S. Chamber of Commerce. According to a Los Angeles Times article of April 16, 2006, “An official with the New Majority, a Southern California Republican group at the core of [Gov. Arnold] Schwarzenegger’s fundraising apparatus, said that its members have given about \$1 million to the Washington, D.C., business group that is the public face of the ads: the U.S. Chamber of Commerce. By pumping the ad money through the chamber, well-heeled New Majority members have bypassed requirements that their donations be publicly disclosed. And they skirted the strict contribution limits...that would apply if they had donated directly to Schwarzenegger. The chamber, which has put out commercials in what it calls an ‘independent issue advocacy program,’ is not required to report where the funding comes from or adhere to donation limits.” The article reported further the chamber spent \$1.5 million in 2004 on ads in the Washington state attorney general’s race “criticizing one of the candidates, routing the money through a Seattle group that declined to reveal the source of the funds.” A county judge held that the spending should have been reported. The case is on appeal. Peter Nicholas, “Backers of Ads Skirt Rules on Disclosure,” Los Angeles Times, April 16, 2006.

- 23 Campaign Finance Institute report on Americans for Job Security.
- 24 VandeHei, “Political Cover.”
- 25 U.S. Chamber of Commerce, “Chamber Highlights Successful Pro Business Election Effort,” press release, November 3, 2004 (www.uschamber.com/press/releases/2004/november/04-142.htm); Jeffrey H. Birnbaum, “Advocacy Groups Blur Media Lines,” *Washington Post*, December 6, 2004.
- 26 Seth Stern, “‘Judicial Hellholes’ in the Cross Hairs,” *CQ Weekly*, January 31, 2005; Jim VandeHei, “Political Cover.”
- 27 American Tort Reform Association, www.atra.org/about.
- 28 Institute for Legal Reform, Report Bolsters Harris Poll Findings on Abusive Legal Climates, press release, December 15, 2004. (www.instituteforlegalreform.com/newsroom/display_release12152004b.html)
- 29 Emily Gottlieb, “Chamber of Horrors: The Hijacking of the 2004 Elections by the U.S. Chamber of Commerce,” Center for Justice and Democracy, www.centerjd.org, February 2005. In the report, Samantha Sanchez of the Institute for Money in State Politics states: “Without state donor disclosure laws...it’s hard to pin this [Chamber spending] down to anything you can prove. It’s all anecdotal evidence. The Chamber can operate below the radar.”
- 30 Jim Provance, “Ohio Chamber Reveals Contributors,” *Toledo Blade*, January 29, 2005.
- 31 VandeHei, “Political Cover.”
- 32 VandeHei, “Political Cover.”
- 33 Gretchen Morgenson and Glen Justice, “Taking Care of Business, His Way,” *New York Times*, February 20, 2005.
- 34 VandeHei, “Political Cover.”
- 35 Jeffrey H. Birnbaum, “A Quiet Revolution in Business Lobbying,” *Washington Post*, February 5, 2005. An article published by Bloomberg News Service detailed the extent and depth of trade association political involvement during the Bush administration: “Bush Relies on Corporate Lobbyists to Help Him Push U.S. Agenda,” September 23, 2005.
- 36 Jackie Calmes, “Lost Appeal: How a Victorious Bush Fumbled Plan to Revamp Social Security,” *Wall Street Journal*, October 20, 2005.
- 37 In 2003, the American Council of Life Insurers, the American Trucking Association and FedEx contributed an unspecified amount of money to the Committee for Justice, a 501(c)(4) organization that was headed by lobbyist and former White House counsel C. Boyden Gray and was underwriting attack ads promoting controversial Bush administration appellate nominees. Franklin Foer, “How C. Boyden Gray Survives in Karl Rove’s GOP,” *The New Republic*, October 13, 2003.

- 38 Tory Newmyer, “Missing in Action?” Roll Call, June 15, 2005; Tom Hamburger and Peter Wallsten, “Business Lobby to Get Behind Judicial Bids,” Los Angeles Times, January 6, 2005.
- 39 American Justice Partnership, www.legalreforminthenews.com.
- 40 See CPA’s *The Green Canary* for a thorough discussion of the consequences of corporate political giving. See Chapter 3 for examples of reputation risks to companies of trade association political spending.
- 41 At least one trade group recognized the risks involved in the social security campaign. The Financial Services Forum, which was one of the co-founders of Compass, announced in March 2005 that it would not renew its membership in the coalition. Ken Trepeta, the forum’s vice president, told the Los Angeles Times that the forum was not prepared to get involved in what the article characterized as “a highly partisan war over private investment accounts.” The article said the move “is the latest indication of the conflicting pressures facing corporate executives—on one side, a White House eager for their backing on Bush’s top domestic priority and on the other, corporate shareholders wary of endangering profits by entering a politically charged battle that could alienate customers and some investors.” Peter Wallsten, “Group Leaves Social Security Overhaul Bloc,” Los Angeles Times, March 15, 2005.
- 42 Committee for Economic Development, www.ced.org/docs/report/report_cfr2005_poll.pdf.
- 43 Center for Political Accountability press release, May 31, 2005, www.politicalaccountability.net/pr5-31-05.htm.
- 44 April 13, 2005, letter from John B. Keane, senior vice president, general counsel and secretary, American Electric Power, to the Center for Political Accountability.
- 45 May 2, 2005, letter from Timothy J. Regan, senior vice president, government affairs, Corning Incorporated, to the Center for Political Accountability.
- 46 April 8, 2005, letter from Denise A. Hauselt, secretary and assistant general counsel, Corning Incorporated, to the Center for Political Accountability. NAM and other trade associations do not disclose their dues structure.
- 47 June 1, 2005, letter from Elaine R. Leavenworth, vice president, government affairs, Abbott Laboratories, to the Center for Political Accountability.
- 48 April 20, 2005, letter from Tommy Chisholm, vice president, associate general counsel and secretary, Southern Company, to the Center for Political Accountability. April 21, 2005, letter from Nancy P. Dorn, vice president, corporate government relations, General Electric Company, to the Center for Political Accountability.

- 49 NAM April 26, 2005, memo from Patrick J. Cleary, senior vice president, communications, National Association of Manufacturers, to select board members, National Public Affairs Steering Committee, board liaisons and Wash Rep Board Liaisons, Re: Letters Being Sent to NAM Member Companies by Outside Group. The NAM retreat is detailed in Tory Newmyer, “Missing in Action?” Roll Call, June 15, 2005. Hamburger and Wallsten, “Business Lobby to Get Behind Judicial Bids.”
- 50 For complete results of judicial races, see The New Politics of Judicial Elections 2004, Brennan Center for Justice at NYU School of Law, Institute on Money in State Politics, Justice at Stake Campaign, June 2005. (www.justiceatstake.org/files/NewPoliticsReport2004.pdf)
- 51 The New Politics of Judicial Elections 2004.
- 52 The New Politics of Judicial Elections 2004 and “Justice for Sale?” Transcript of story that appeared on public radio’s Marketplace on January 17, 2005.
- 53 Illinois State Board of Elections (IL SBOE), www.elections.state.il.us/CampaignDisclosure/D2Semi.aspx?id=300792.
- 54 Institute on Money in State Politics (“Institute”), www.followthemoney.org/database/StateGlance/candidate.phtml?si=200414&c=395909; IL SBOE, www.elections.state.il.us/CampaignDisclosure/D2Semi.aspx?id=289924 and www.elections.state.il.us/CampaignDisclosure/D2Semi.aspx?id=277633.
- 55 IL SBOE, www.elections.state.il.us/CampaignDisclosure/D2Semi.aspx?id=290593.
- 56 Institute, www.followthemoney.org/database/StateGlance/candidate.phtml?si=200414&c=395909; IL SBOE, www.elections.state.il.us/CampaignDisclosure/D2Semi.aspx?id=290593.
- 57 Brennan Center for Justice at NYU School of Law, www.brennancenter.org/presscenter/releases_2005/pressrelease_2005_0210.html.
- 58 Terry Carter, “Mud and Money: Judicial Elections Turn to Big Bucks and Nasty Tactics,” ABAJournal.com, January 28, 2005. The Illinois Campaign for Political Reform and the Sunshine Project also filed a similar complaint against the Justice for All foundation—a labor-based group that supported Gordon Maag. At the time of this report, there has been no

resolution to the complaint against the Illinois Coalition for Jobs' Growth and Prosperity. However, the Justice for All foundation settled a complaint filed by the Illinois Campaign for Political Reform with the state's election board. As part of the agreement, Justice for All has voluntarily disclosed the sources of \$561,000 in funds later spent in the 2004 Supreme Court race. (Illinois Campaign for Political Reform, www.ilcampaign.org/press/releases/2005/2005-12-2.html.)

- 59 Brennan Center,
[www.brennancenter.org/programs/downloads/buyingtime_2004/Ohio%20Final%20\(05_03_05\).pdf](http://www.brennancenter.org/programs/downloads/buyingtime_2004/Ohio%20Final%20(05_03_05).pdf).
According to the Brennan Center, CSO spent approximately \$1,013,149 on television advertising in support of O'Donnell and Lanzinger.
- 60 Citizens for a Strong Ohio,
www.ohiochamber.com/Citizens/donors.asp.
The website discloses contributors for the current election year only.
- 61 Robert Lenzner and Matthew Miller, "Buying Justice," *Forbes*, July 21, 2003. Gottlieb, "Chamber of Horrors."
- 62 Gottlieb, "Chamber of Horrors."
- 63 Brennan Center,
[www.brennancenter.org/programs/downloads/buyingtime_2004/West%20Virginia%20Final%20\(05_03_05\).pdf](http://www.brennancenter.org/programs/downloads/buyingtime_2004/West%20Virginia%20Final%20(05_03_05).pdf).
The group spent approximately \$324,087 on ads in the general election, and approximately \$324,753 in the primary election.
- 64 Brennan Center,
www.brennancenter.org/programs/buyingtime_2004/finaldata_2004.html.
- 65 Brennan Center,
[www.brennancenter.org/programs/downloads/buyingtime_2004/West%20Virginia%20Final%20\(05_03_05\).pdf](http://www.brennancenter.org/programs/downloads/buyingtime_2004/West%20Virginia%20Final%20(05_03_05).pdf).
- 66 GuideStar,
www.guidestar.org;
Citizens Against Lawsuit Abuse,
www.sickoflawsuits.org/content/mission/whoweare.cfm;
and West Virginia Justice Watch,
www.wvjusticewatch.org/index.html.
- 67 Brennan Center,
[www.brennancenter.org/programs/downloads/buyingtime_2004/West%20Virginia%20Final%20\(05_03_05\).pdf](http://www.brennancenter.org/programs/downloads/buyingtime_2004/West%20Virginia%20Final%20(05_03_05).pdf)
and
www.brennancenter.org/programs/downloads/buyingtime_2004/STSUPCT_WV_CQH_MCGRAW_MEDICAL_LIABILITY.pdf.

- 68 Internal Revenue Service, <http://forms.irs.gov/politicalOrgsSearch/search/generatePDF.action?formId='201763352-8872-0001'&formType=P72>, and Paul Nyden, “Coal, doctors’ groups donated to anti-McGraw effort,” *The Charleston Gazette*, January 7, 2005. The West Virginia Health Care Association has an associate membership category for suppliers of goods and services to members. The associate members are listed on the group’s website and include Healthcare Services Group and Pfizer (www.wvhca.org/about/associate.php).
- 69 Blankenship became a leading underwriter of the campaign against McGraw, giving at least \$2.46 million to the effort, and privately paying for mechanized calls to West Virginia homes a week before the election. One high-profile group, And for the Sake of the Kids, raised \$3.6 million, of which \$2.46 million was given directly by Blankenship. The group, which the *Charleston Daily Mail* called “West Virginia’s version of Swiftboat Veterans for Truth,” ran more than \$1 million worth of ads accusing McGraw of being soft on crime. It is important to note that Blankenship became heavily involved in the state supreme court election when his company had several cases on appeal, including one appeal involving a verdict estimated at \$60 million. Many of the companies indirectly funding the campaign also had matters before the state’s courts. (Internal Revenue Service, <http://forms.irs.gov/politicalOrgsSearch/search/Print.action?formId=15160&formType=E72> and <http://forms.irs.gov/politicalOrgsSearch/search/Print.action?formId=14282&formType=E72>; Carol Morello, “W. Va. Supreme Court Justice Defeated in Rancorous Contest,” *Washington Post*, November 4, 2004; Justice at Stake, www.justiceatstake.org/contentViewer.asp?breadcrumb=4,126,115,464,487; and Paul J. Nyden, “Brent Benjamin Raking in Heaviest Contributions,” *The Charleston Gazette*, October 15, 2004.)
- 70 Republican Party of Minnesota v. White. Decision issued on June 27, 2002. Legal Information Institute, <http://supct.law.cornell.edu/supct/html/01-521.ZS.html>.
- 71 Brennan Center press release, Top Legal Organizations Express Concern About Impact of Supreme Court’s White Decision on Fair and Impartial Courts, June 27, 2002. (http://brennancenter.org/presscenter/releases_2002/pressrelease_2002_0525.html)
- 72 Carter, “Mud and Money.” Carter writer that after the White decision interest groups “rushed through that open door with questionnaires. They tried to pin candidates down on issues ranging from limiting jury awards to displaying the Ten Commandments in public buildings.”

- 73 The New Politics of Judicial Elections 2004.
- 74 The New Politics of Judicial Elections 2004. Judge Michael Bolin, Judge Patti Smith and Justice Jean Brown were the candidates to raise more than \$1 million.
- 75 “Ten Commandments Judge Removed from Office,” CNN, November 14, 2003 (www.cnn.com/2003/LAW/11/13/moore.tencommandments).
- 76 The New Politics of Judicial Elections 2004.
- 77 Quoted in Bert Brandenburg, “Promissory Notes: How Election-by-Questionnaire Is Threatening Independent Judges,” Slate, October 19, 2005.
- 78 Alabama Policy Institute, www.alabamapolicy.org/voterguide.pdf. Smith’s opponent, Roger Monroe (D), did not participate in the survey.
- 79 Christian Coalition of Alabama, www.ccbama.org/VoterGuides/2004VoterGuideV3.pdf.
- 80 Institute, www.followthemoney.org/database/StateGlance/state_judicial_elections.phtml?si=20042.
- 81 Business Council of Alabama, www.bcatoday.org/news_statements_results.cfm?id=292.
- 82 Lawsuit Abuse Reform Coalition, www.lawsuitabusereform.org/members.
- 83 Brennan Center, [www.brennancenter.org/programs/downloads/buyingtime_2004/Alabama%20Final%20\(05_03_05\).pdf](http://www.brennancenter.org/programs/downloads/buyingtime_2004/Alabama%20Final%20(05_03_05).pdf).
- 84 Rachel Weiss, “Fringe Tactics: Special Interest Groups Target Judicial Races,” Institute on Money in State Politics, August 25, 2005.
- 85 Institute, www.followthemoney.org/database/StateGlance/candidate.phtml?si=20042&c=396067 and www.followthemoney.org/database/StateGlance/candidate.phtml?si=20042&c=396050.
- 86 Brennan Center, [www.brennancenter.org/programs/downloads/buyingtime_2004/Alabama%20Final%20\(05_03_05\).pdf](http://www.brennancenter.org/programs/downloads/buyingtime_2004/Alabama%20Final%20(05_03_05).pdf).
- 87 The New Stealth PACs, www.stealthpacs.org/profile.cfm?Org_ID=106.
- 88 The New Stealth PACs, www.stealthpacs.org/profile.cfm?Org_ID=106.

89 Campaign finance reports filed with the state of Alabama and the Institute on Money in State Politics were used as the sources for the following contribution figures. As discussed elsewhere in the report, campaign finance reporting at the state level is often unreliable and incomplete. CPA made its best efforts to ensure that these figures are contributions made with corporate funds and not with PAC funds. However, given the quality of the reports—which are the only primary sources of information made publicly available—these figures may include contributions made by the company’s PAC.

The CPA also notes that a major contributor to both the Bolin and Smith campaigns was Progress PAC, which is the political action committee of the Business Council of Alabama.

(www.bcatoday.org/gov_progresspac.cfm?id=91)

According to the Institute on Money in State Politics, the Progress PAC contributed \$540,000 to Bolin’s campaign and \$490,000 to Smith’s campaign.

(Institute on Money in State Politics,

www.followthemoney.org/database/StateGlance/state_judicial_elections.phtml?si=20042.)

Progress PAC is funded by contributions from the Business Council of Alabama members. The group, which claims a membership of approximately 5,000, does not list its members on its website. Progress PAC filed campaign finance reports with the secretary of state. The PAC uses many different labels for its contributions, including the label “PAC Corporate Contribution.” After many attempts, the CPA was unable to get clarification from the PAC on whether contributions with this label came from corporate funds or company PAC funds. Though the CPA refrains from listing these contributions in this report, it is highly likely that many publicly-held companies gave indirectly to the Bolin and Smith campaigns through Progress PAC.

90 Alabama Secretary of State (AL SOS),
<http://arc-sos.state.al.us/CGI/SOSELCT2.mbr/output?PoI=003562520041102B>.

91 AL SOS,
<http://arc-sos.state.al.us/CGI/SOSELCT2.mbr/output?PoI=001557220041102B>.

92 AL SOS,
<http://arc-sos.state.al.us/CGI/SOSELCT2.mbr/output?PoI=003562520041102B>.

93 AL SOS,
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94 AL SOS,
<http://arc-sos.state.al.us/CGI/SOSELCT2.mbr/output?PoI=003562520050131C>.

- 95 AL SOS,
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- 96 AL SOS,
<http://arc-sos.state.al.us/CGI/BOSELCT2.mbr/output?PoI=003562520041102A>.
- 97 AL SOS,
<http://arc-sos.state.al.us/CGI/BOSELCT2.mbr/output?PoI=00155720041102A>.
- 98 AL SOS,
<http://arc-sos.state.al.us/CGI/BOSELCT2.mbr/output?PoI=003307320040131C>.
- 99 AL SOS,
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- 101 AL SOS,
<http://arc-sos.state.al.us/CGI/BOSELCT2.mbr/output?PoI=003311020041102A>.
- 102 AL SOS,
<http://arc-sos.state.al.us/CGI/BOSELCT2.mbr/output?PoI=003314720040601B>.
- 103 AL SOS,
<http://arc-sos.state.al.us/CGI/BOSELCT2.mbr/output?PoI=003144320040131C>
and
<http://arc-sos.state.al.us/CGI/BOSELCT2.mbr/output?PoI=003144320040601B>.
- 104 Institute,
www.followthemoney.org/database/StateGlance/candidate.phtml?si=20042&c=396067
and
www.followthemoney.org/database/StateGlance/candidate.phtml?si=20042&c=396050.
- 105 AL SOS,
<http://arc-sos.state.al.us/CGI/BOSELCT2.mbr/output?PoI=003307320041102B>.
- 106 AL SOS,
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