

Let Justice Be Bought?: Addressing the Problems of Spending in Pennsylvania Judicial Elections

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INTRODUCTION

In January 2026, the Supreme Court of Pennsylvania issued an 4-3 opinion in *Gustafson v. Am. Fed'n of State*.¹ In *Gustafson*, Gustafson asserted a claim against her union for breach of its duty of fair representation when it allegedly mishandled a grievance she had with the Commonwealth.² The Court held that “under [the Public Employee Relations Act (“PERA”)], [Gustafson’s] remedy is limited to an order from the court compelling AFSCME and the Commonwealth to arbitrate her grievance *nunc pro tunc*.”³ Procedurally, the trial court sustained AFSCME’s demurrer preliminary objections.⁴ An en banc panel of the Commonwealth Court of Pennsylvania unanimously reversed the trial court’s sustaining of AFSCME’s preliminary objections, finding because it was not “free and clear from doubt” that Gustafson could not proceed on a claim for damages on her duty of fair representation claim against a union where she was clearly seeking damages for the union’s breach because she was not a union member and because such a claim was not an unfair labor practice under the PERA, the trial court erred in sustaining preliminary objections.⁵ Ultimately, as noted, the Supreme Court of Pennsylvania reversed the Commonwealth Court and found Gustafson’s remedy is limited to arbitration.⁶

Setting aside the legal reasoning of the opinion, the problem of spending on judicial elections is visible in this case. At least \$18.7 million was spent on the Supreme Court of

¹ No. 24 WAP 2024, 2026 Pa. LEXIS 85, at *1 (Pa. Jan. 21, 2026).

² *See id.* at *34.

³ *See id.*

⁴ *See id.* at *6.

⁵ *See Gustafson v. Am. Fed’n of State, Cty., and Mun. Emp., Council 13*, 310 A.3d 1267, 1274 (Pa. Cmwlth. Ct. 2024).

⁶ *See Gustafson v. Am. Fed’n of State*, No. 24 WAP 2024, 2026 Pa. LEXIS 85, at *1, *34 (Pa. Jan. 21, 2026).

Pennsylvania retention elections last year⁷. Narrowing on the issues in this case, Justices Donohue, Dougherty, and Wecht from a Pennsylvania Committee called “Vote Yes for Fair and Independent Courts.”⁸ Each received over \$1,000,000 from this Pennsylvania committee.⁹ One of the largest donors to this committee was AFSCME, which contributed \$250,000 to this campaign.¹⁰ AFSCME and its affiliates are a named parties in *Gustafson*.¹¹ Moreover, the name partner of the law firm representing AFSCME, Deborah Willig, spent \$20,000 split between the 2025 retention campaigns of Justices Donohue and Dougherty.¹² This only accounts for what was spent on this past retention election; potentially, AFSCME, its state and local affiliates, and the law firm may be regular contributors to judicial elections and to some of these judicial candidates overseeing their case or their respective election committees.¹³

It is true that, in Pennsylvania, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.”¹⁴ One reason for disqualification includes if:

The judge knows or learns that a party, a party’s lawyer, or the law firm of a party’s lawyer has made a direct or indirect contribution(s) to the judge’s campaign in an amount that would raise a reasonable concern about the fairness or impartiality of

⁷ See Stephen Caruso, *At least \$18.7M poured into this year’s critical Pa. Supreme Court retention races*, SPOTLIGHT PA (Dec. 24, 2025), <https://www.spotlightpa.org/news/2025/12/pennsylvania-supreme-court-spending-money-retention-elections-elections/>.

⁸ See generally *Pennsylvania Finance Summary*, TRANSPARENCY USA, <https://www.transparencyusa.org/pa>.

⁹ See *Christine Donohue*, TRANSPARENCY USA, <https://www.transparencyusa.org/pa/candidate/christine-donohue>; *Kevin Dougherty*, TRANSPARENCY USA, <https://www.transparencyusa.org/pa/candidate/kevin-m-dougherty>; *David Wecht*, TRANSPARENCY USA, <https://www.transparencyusa.org/pa/candidate/david-wecht>.

¹⁰ See *Vote Yes for Fair and Independent Courts*, TRANSPARENCY USA, <https://www.transparencyusa.org/pa/committee/vote-yes-for-fair-and-independent-courts-20250108-pac>.

¹¹ See *Gustafson v. Am. Fed’n of State*, No. 24 WAP 2024, 2026 Pa. LEXIS 85, at *1, *1 (Pa. Jan. 21, 2026).

¹² See Gillian McGoldrick & Joe Yarardi, *More than \$7 million has poured into the Pa. Supreme Court judicial retention election so far*, PHILA. INQUIRER (Sept. 26, 2025), <https://www.inquirer.com/politics/pennsylvania/pennsylvania-supreme-court-retention-campaign-spending-20250926.html>; *Gustafson v. Am. Fed’n of State*, No. 24 WAP 2024, 2026 Pa. LEXIS 85, at *1, *1 (Pa. Jan. 21, 2026).

¹³ Such information could be located, but it is beyond the scope of this article. See *Campaign Finance Online Reporting*, PA. DEP’T. OF STATE, <https://www.campaignfinanceonline.pa.gov/pages/CFReportSearch.aspx>. It is worth noting that the Court denied an “Application for Disqualification or Recusal,” and that only Justice Brobson did not take part in the opinion. See *Order Denying Application for Disqualification or Recusal*, *Gustafson v. Am. Fed’n of State*, No. 24 WAP 2024, 2026 Pa. LEXIS 85, at *1 (Pa. Jan. 21, 2026).

¹⁴ 207 PA. CODE RULE 2.11.

the judge's consideration of a case involving the party, the party's lawyer, or the law firm of the party's lawyer. In doing so, the judge should consider the public perception regarding such contributions and their effect on the judge's ability to be fair and impartial. There shall be a rebuttable presumption that recusal or disqualification is not warranted when a contribution or reimbursement for transportation, lodging, hospitality or other expenses is equal to or less than the amount required to be reported as a gift on a judge's Statement of Financial Interest.¹⁵

However, recusal motions and applications are reviewed only for an abuse of discretion in Pennsylvania.¹⁶ And to whom do parties appeal a recusal motion denial by the Commonwealth's highest jurists on the Supreme Court?

I. THE PROBLEM OF SPENDING IN PENNSYLVANIA JUDICIAL ELECTIONS.

Thus, there is the problem of spending in electing and retaining nonpartisan justices. The ultimate problem is the integrity of the jurists' decisions: were they fair and impartial in applying the law, or were they unduly influenced by the campaign contributions of donors to their election and retention campaigns? It is a problem enough that Pennsylvania has a mechanism in its Code for jurists to disqualify themselves when campaign contributions could raise reasonable concerns about their fairness or impartiality.¹⁷

Of course, the problem goes not just to the money itself, but to the amounts of money and where it came from. It is true that almost three-fourths of the spending and support—more than \$13 million—favored the three Democratic justices up for retention.¹⁸ But much of the narrative in Pennsylvania's retention elections this past year focused on the other side—spending against judicial retention. Spending on this side came from nonprofits tied to a network of political groups historically funded by Jeff Yass, and such spending can be difficult to track.¹⁹ His funding “forced

¹⁵ 207 PA. CODE RULE 2.11(A)(4).

¹⁶ In re Adoption of L.J.B., 18 A.3d 1098, 1112 (Pa. 2011).

¹⁷ See 207 PA. CODE RULE 2.11.

¹⁸ See Caruso, *supra* note 7.

¹⁹ See *id.*

national Democrats to spend resources where they normally wouldn't have to" (i.e. on state judicial retention races).²⁰ This poses a problem that the Pennsylvania Code does not address. Although the judicial disqualification section of the Pennsylvania Code does not limit circumstances of disqualification, it does not mention the inverse of campaign contributions favoritism. Should and when should judges disqualify themselves in cases where one of the parties was a major donor for an opposing candidate or for voting against the jurists retention? Of course this question only comes if the jurist is elected or retained, which Justices Donohue, Dougherty, and Wecht were in 2025.²¹ Because of the retention, what will Jeff Yass, or any of major donor of the opposition of against retention, be able to do if faced with the jurists whom he spent against in elections?

Moreover, judicial election spending is not limited to one election cycle. Money can and has been contributed to judicial candidates from previous elections, including elections to lower courts such as the Superior Court and Commonwealth Court—Pennsylvania's two intermediate appellate courts—as well as the Court of Common Pleas races. For example, Judges Jill Beck and Timika Lane of the Superior Court of Pennsylvania raised about \$1,000,000 and \$580,000 respectively for their 2023 Superior Court races.²² Jeff Yass's spending was prevalent in that election cycle as well, with a leftist Philadelphia political operative stating, "The fact that [Yass] is one of the biggest, almost sole, investor in the Supreme Court should raise red flags to anybody who cares about the integrity of government."²³ The fact that money can come into elections from

²⁰ See Avani Kalra, *This Republican Mega-Donor Is Changing Local Elections In Pennsylvania*, NOTUS (Nov. 3, 2025), <https://www.notus.org/pennsylvania/jeffrey-yass-elections-supreme-court>.

²¹ See Kate Huangpu, *Pa. election results: All 3 Democratic Supreme Court justices win retention races*, SPOTLIGHT PA (Nov. 4, 2025), <https://www.spotlightpa.org/news/2025/11/pa-election-results-supreme-court-retention-donohue-dougherty-wecht/>.

²² See Stephen Caruso, *One man's spending is dominating Pa. judicial races. Who is he, and why is this election important?*, SPOTLIGHT PA (Oct. 4, 2023), <https://www.spotlightpa.org/news/2023/10/pennsylvania-judicial-court-elections-jeff-yass-campaign-finance/>.

²³ *Id.*

the beginning of a jurist’s judicial career can only serve to compound the bias or appearance of bias toward regular donors or against regular donors of the opposition.

II. FREE SPEECH AND EXPRESSION JUSTIFICATIONS FOR ELECTION SPENDING.

The Supreme Court of the United States has historically struck down expenditure limits in elections under the First Amendment.²⁴ The Court has held that expenditure regulations burdened core “political speech”²⁵—the speech most essential to “our electoral process,” which receives heightened scrutiny protection.²⁶ “In conducting its strict scrutiny analysis, the Court also implied that most campaign finance regulations could be justified only where they were narrowly tailored to a specific set of compelling interests related to so-called ‘*quid pro quo* corruption.’”²⁷ Thus, little room seems to exist for campaign finance regulations not narrowly tailored.

III. ADDRESSING JUDICIAL SPENDING IN LIGHT FIRST AMENDMENT CONCERNS.

The broad application of the First Amendment seemingly leaves little room for regulations of campaign finance. Although the options seem narrow, a few solutions exist to curb the financial influence on nonpartisan jurists elected and retained to serve the best interests of the Commonwealth and its residents without infringing on the right to free speech and expression.

A. *Amending the Code: Setting Clearer Requirements for Judicial Recusal or Disqualifications.*

The first step that could be taken is setting more clear instructions for jurists in considering disqualification or recusal. The root of the problem is not the money itself, although the love of it may be “a root of all kinds of evil.”²⁸ The problem is its effect on the judge’s ability or perceptions

²⁴ See *Citizens United v. FEC*, 558 U.S. 310, 365–66 (2010).

²⁵ *Id.* at 329, 339–41; see also Note, *Drowning Out Democracy*, 137 HARV. L. REV. 2386, 2389 (2024).

²⁶ *Meyer v. Grant*, 486 U.S. 414, 425 (1988) (quoting *Grant v. Meyer*, 828 F.2d 1446, 1456 (10th Cir. 1987), *aff’d*, 486 U.S. 414 (1988) (quoting *Buckley v. Valeo*, 424 U.S. 1, 39 (1976))); see also Note, *Drowning Out Democracy*, 137 HARV. L. REV. at 2389.

²⁷ Note, *Drowning Out Democracy*, 137 HARV. L. REV. at 2389 (citing *Citizens United*, 558 U.S. at 359).

²⁸ 1 Timothy 6:10.

of the judge's ability to be fair and impartial. The mechanism needs more clarification. The language of Pennsylvania's rule leaves it in the hands of the judge to disqualify himself or herself, and requires it only when a party, its lawyers, or its law firm has given "in an amount that would raise a reasonable concern about the fairness or impartiality of the judge's consideration of a case" ²⁹ Providing a more articulated instances and examples for when and how the judge should consider campaign contributions is important.

The Disqualification Rule could be amended to articulate an exact dollar amount that would raise a presumption of reasonable concern such to require disqualification. This would give a bright line rule for jurists to follow to recuse or disqualify themselves if a party or its attorneys donated to their election or retention. However, given the potential variability across the amounts given at different levels of judicial elections, a rule like this may not be workable, as reasonable concern in lower courts like the Court of Common Pleas could be raised in much smaller dollar amounts than those at higher appellate courts. A tiered system could work around this potential issue, with lower threshold limits for lower court jurists and higher threshold limits for higher court jurists when considering a presumption of reasonable concern. Such limitations would not run afoul of the First Amendment, as it does not limit the contributions or spending itself, just on when the jurist can preside over a case without reasonable concern for bias.

The Rule could be amended to articulate an exact percentage of contributions or an exact ranking of contributors that would raise a presumption of reasonable concern. If a party contributed X% to a jurist's election or retention campaign, or gave X% to a committee that gave X% to a jurist's election or retention campaign, a presumption of reasonable concern could exist such to require disqualification. Likewise, if a party was a top-ten contributor to a candidate, or a top-ten

²⁹ 207 PA. CODE RULE 2.11(A)(4).

contributor to a top-ten contributor to a jurist's election or retention campaign, a presumption of reasonable concern could exist such to require disqualification. However, given the difficulties in tracking political "dark money," this may require too much of a burden on litigants to raise these issues and on jurists to hunt down from where all of the contributions came. However, litigants can already raise these issues on disqualification motions, the Rule already requires jurist to consider amounts, and an additional burden may be necessary to maintain the integrity of judicial decisions.³⁰ Such limitations would not run afoul of the First Amendment, as it does not limit the contributions or spending itself, just on when the jurist can preside over a case without reasonable concern for bias.

Perhaps the Rule could articulate an inquiry into the political spending differences between the parties or their attorneys. If opposing parties donated similar amounts to the election or retention campaigns of the same jurists, this would lend itself to jurists being impartial, or at least similarly partial, to either party since both donated to the campaigns. The problem exists more so when one party has positioned itself as a donor to jurists deciding its case, whereas another party seemingly did not donate any money to jurists. Such appears to be the case in *Gustafson*, where a search does not indicate Ms. Gustafson donated to any jurists on the Supreme Court of Pennsylvania overseeing her case.³¹

Regardless of these or any other proposed amendments, considerations should be made to the entirety of the jurists campaign contributions, rather than on single year. Moreover, they should include judicial consideration of spending against the jurist as well, to prevent bias against a party

³⁰ See 207 PA. CODE RULE 2.11(A)(4).

³¹ See generally *Campaign Finance Online Reporting*, PA. DEP'T. OF STATE, <https://www.campaignfinanceonline.pa.gov/pages/CFReportSearch.aspx>.

or their attorneys. Any of these clarifications have the potential to help guide jurists in assessing their ability to preside over a case and protect the integrity of the judicial process.

B. Appellate Procedures for Disqualifications: Appeals to an Independent Panel for the Supreme Court of Pennsylvania.

Appellate procedures already exist for disqualifications motions for jurists, and these decisions are reviewed for an abuse of discretion.³² It could be worthwhile to put into place a mechanism for appealing recusal denial motions by the Supreme Court of Pennsylvania. A mechanism already exists in the two-tiered Judicial Discipline System, which is comprised of the Judicial Conduct Board and the Court of Judicial Discipline.³³ However, appeals from the Court of Judicial Discipline go to the Supreme Court of Pennsylvania.³⁴ Another appellate mechanism could be instituted for appealing denials of recusals by the Supreme Court of Pennsylvania to an independent panel.

CONCLUSION

The influence of money in judicial elections is undeniable. Proposed solutions to election spending include suggesting limitations of contributions from PACS or limitations when money has a “drowning out” effect.³⁵ Proposed solutions also include banning fundraisers on session days or having increased transparency for dark money spent on elections.³⁶ Some request spending public money on elections.³⁷ However, these solutions present problems that come up against “a

³² In re Adoption of L.J.B., 18 A.3d 1098, 1112 (Pa. 2011).

³³ See *Judicial Discipline System*, PA. MODERN COURTS, <https://www.pmconline.org/judicial-advocacy-reform/judicial-ethical-standards>.

³⁴ *Id.*

³⁵ See Note, *Drowning Out Democracy*, 137 HARV. L. REV. 2386, 2389 (2024); Stephen Caruso, *Four ways Pa. could fix its campaign finance laws to reduce the power of money in politics*, SPOTLIGHT PA (Mar. 27, 2025), <https://www.spotlightpa.org/news/2025/03/campaign-finance-laws-lax-pennsylvania-money-politics-reform-solutions/>.

³⁶ See Stephen Caruso, *Four ways Pa. could fix its campaign finance laws to reduce the power of money in politics*, SPOTLIGHT PA (Mar. 27, 2025), <https://www.spotlightpa.org/news/2025/03/campaign-finance-laws-lax-pennsylvania-money-politics-reform-solutions/>.

³⁷ *Id.*

First Amendment theory that equates spending with speech”³⁸ *Stare decisis* is not an “inexorable command.”³⁹ But any attempts to limit contributions run against *stare decisis*, and Supreme Court jurisprudence that requires such limitations to pass strict scrutiny.⁴⁰

Regardless, none of these solutions addresses the core of the problem—the effects of spending on the integrity of the judicial process. The proposals outlined in this article address the core of the problem—the effect of the spending on particular jurists. By clarifying the rules of judicial disqualification based on campaign contributions, such as imposing presumptions of reasonable concern that necessitate recusal based on dollar amounts, percentage of contributions, or comparisons of contributions between litigants or their attorneys, jurists will receive more guidance in when they should disqualify or recuse themselves to preserve the integrity of the judicial process. By adding additional appellate procedures for disqualification denials by justices of the Supreme Court of Pennsylvania, parties can have means to review denials that are more separated from bias. These solutions attack the core of the problem by providing guidelines when specific jurists should recuse themselves because of specific amounts or percentages of contributions by litigants or their attorneys, as well as providing additional appellate relief for disqualification denials. With these proposed amendments, Pennsylvanians will gain confidence in the election and retention of nonpartisan justices who will serve the best interests of the Commonwealth and its residents. Pennsylvanian jurists will have clearer guidelines for when to disqualify themselves based on concerns for bias from campaign financing that will not infringe on the rights of free speech and expression.

³⁸ John G. Martin, *Newer Problems in an Old, Broken Campaign Finance Regime—a Post-2024 Reflection*, 86 U. PITT. L. REV. 935, 935 (2025).

³⁹ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 407 (2024) (quoting *Payne v. Tennessee*, 501 U. S. 808, 828 (1991)).

⁴⁰ Note, *Drowning Out Democracy*, 137 HARV. L. REV. at 2389 (citing *Citizens United*, 558 U.S. at 359).