



Big-Money Courts Decide Fate of Local Fracking Rules

By Billy Corriher January 2017

Center for American Progress



Big-Money Courts Decide Fate of Local Fracking Rules

By Billy Corriher January 2017

Contents

- 1 Introduction and summary**

- 5 Pre-emption issues bubble up in fracked towns across America**

- 8 Energy companies influence elections of judges who hear pre-emption cases**

- 15 Public financing competes with campaign cash from special interests**

- 20 Conclusion**

- 21 About the author**

- 22 Endnotes**

Introduction and summary

In June 1969, the Cuyahoga River near Cleveland, Ohio, burst into flames. The river was a dumping ground for industrial waste and had previously caught fire several times.¹ *Time* magazine ran a picture on its cover of a 1952 fire that had caused even more damage.² The city of Cleveland “became a symbol of environmental degradation,” and the fire helped generate outrage at pollution and a desire to protect Ohio’s water.³

Nearly 50 years later, a community about an hour from Cleveland is also struggling with concerns about pollution from industrial waste and the safety of its drinking water. Rachel Hopkinson of Vienna, Ohio, has been concerned about her water since a 2015 spill at a nearby fracking wastewater injection well.⁴ The spill contaminated a pond by her house with unknown chemicals.⁵ “It’s still scary to think ... that you could be exposed to it and not know until after you’ve exposed your children,” Hopkinson said.⁶

Parts of northeast Ohio have become dumping grounds for the massive amounts of water left over from fracking, a process for obtaining oil and natural gas from underground rock formations. Fracking entails injecting millions of gallons of water and chemicals to crack rocks containing the oil or natural gas. The resulting wastewater contains an unknown mix of industrial chemicals that can harm human health.⁷ A recent report from the U.S. Environmental Protection Agency found that some fracking operations have contaminated groundwater.⁸ The report recommended that policy makers focus on, among other factors, “discharge of inadequately treated hydraulic fracturing wastewater to surface water resources; and disposal or storage of hydraulic fracturing wastewater in unlined pits.”⁹

Many Ohio wastewater injection wells now store fracking waste from neighboring Pennsylvania and West Virginia.¹⁰ Ohio Citizen Action, a grassroots environmental group, said that fracking waste, if disposed of improperly, is “dangerous

to clean drinking water,” and that in “every case it contains some elements that we don’t want in our water.”¹¹ The group warns of “more hazardous chemicals, like benzene which is sometimes used in fracking fluid, or radioactive material finding its way into groundwater.”¹²

In these northeast Ohio communities, citizens have demanded that their local governments address perceived risks to their health and quality of life. Environmentalists and citizens have also had referenda placed on ballots in several communities, some of which sought to ban fracking or the unsafe disposal of fracking waste.¹³

In 2015, however, the Ohio Supreme Court issued a broad 4-3 ruling that the state oil and gas law does not allow local regulation of oil and gas drilling operations. The court said that municipalities cannot require permits for activities that are already permitted by state law.¹⁴ The court struck down a Munroe Falls ordinance, citing a state regulation prohibiting local laws that “discriminate against, unfairly impede, or obstruct oil and gas activities.”¹⁵ This outcome disregarded a long history of broad local government authority under the Ohio Constitution.¹⁶

The author of the Ohio Supreme Court’s opinion, Justice Judith French, received tens of thousands of dollars in campaign contributions from fracking companies, electric utilities, and other fossil fuel interests when she was elected in 2014.¹⁷ The law firm that represented the fracking company challenging the Munroe Falls law also chipped in \$7,695.¹⁸ In a statement to the Center for American Progress, Justice French said that her record would show that she decides “cases based on the law, not the parties.”¹⁹

The three justices who joined the ruling—Justices Sharon Kennedy and Terrence O’Donnell and Chief Justice Maureen O’Connor—also received more than \$100,000 in total contributions from fossil fuel extraction companies and electric utilities in their most recent elections.²⁰ Justice O’Donnell has said, “The reality is that contributions follow the judicial philosophy of the candidate.”²¹ Chief Justice O’Connor has similarly denied that campaign contributions influenced her in any way.²² The Center for American Progress reached out to Justice Kennedy for a statement but did not receive a response. In fairness, one justice who dissented, Judith Lanzinger, also received tens of thousands of dollars in campaign contributions from the same industries, according to data from the National Institute on Money in State Politics.²³

In dissent, Justices Lanzinger and Paul Pfeifer, both Republicans, argued that the local permit requirement did not actually conflict with state law.²⁴ Another dissenter, Justice William O’Neill, criticized Ohio’s elected officials for pre-empting local laws regulating oil and gas:

*Let’s be clear here ... What the drilling industry has bought and paid for in campaign contributions it shall receive. The oil and gas industry has gotten its way, and local control of drilling-location decisions has been unceremoniously taken away from the citizens of Ohio.*²⁵

While there is no evidence proving that the campaign contributions influenced the Ohio Supreme Court, the appearance of bias can be just as damaging to the public’s perception of judicial independence as actual bias. As CAP stated in a previous report, “Scholars and others studying correlations between judicial rulings and campaign cash—or between rulings and elections—cannot read judges’ minds. ... These kinds of correlations—whether they reflect causation or not—raise doubts about the impartiality of judges.”²⁶ This can certainly be true for the citizens in communities that have seen their local authority limited by judges elected with the help of corporate interests.

Phil Pegg, a township trustee in Vienna, said that Hopkinson and other citizens have asked the local government to address the problems associated with fracking wastewater injection wells.²⁷ “Part of my job is to protect residents here,” Pegg said. “I can’t protect my community because the rights of the township have been taken away.”²⁸

Through campaign contributions and support for pre-emption laws, oil and gas interests are undermining communities’ right to limit or regulate industrial activities. Many local governments have responded to quick booms in fracking or the injection of fracking waste by enacting stricter regulations, bans, or moratoria. This report discusses how fracking companies and state governments have challenged many of these local bans, as well as how state supreme courts have upheld some of them. Other local bans, however, have been struck down by courts elected with money from fracking companies and other fossil fuel interests.

Most state constitutions outline the boundaries of local authority, and some give state legislators broad authority to restrict local authority. As the final interpreters of these constitutions, state supreme courts are responsible for determining what happens when state and local laws conflict. And the vast majority of state judges must survive re-election to stay on the bench.²⁹

This report argues that, in a growing number of states, the courts settling these state-local disputes are seeing more campaign cash from oil and gas companies, lawyers, or other special interests. Nonpartisan supreme court elections in states such as Wisconsin and North Carolina have seen more and more campaign spending in recent years. The Ohio Supreme Court has long been among the most expensive elected courts in America, and many of its justices were elected with large campaign contributions from oil and gas interests. Courts are hearing pre-emption disputes in Louisiana and West Virginia—two states where mining and drilling interests have wielded strong influence.

State legislatures have also acted to limit or end local authority over fracking. The American Legislative Exchange Council, or ALEC—a group that is funded by big business and whose members include state legislators—has offered several model bills that would pre-empt local laws addressing pollution or other issues.³⁰ Wisconsin Gov. Scott Walker (R) has been criticized for signing pre-emption bills into law while touting the merits of the level of government “closest to the people.”³¹

Some reformers are arguing for an expansion of local authority to address pollution and other issues. The State Innovation Exchange, the progressive response to ALEC, has pushed for stronger protections for workers and others at the local level.³²

Pre-emption issues bubble up in fracked towns across America

Over the past decade, oil and gas companies have ramped up drilling with hydraulic fracturing in several states. This activity is focused on a large formation in the Appalachian Basin, another in Texas and Oklahoma, and the Bakken formation around the Dakotas and Wyoming. Many communities have raised concerns about the effects of this drilling, with problems ranging from increased traffic to air and water pollution. Local bans on fracking have popped up along the Appalachian formation, from West Virginia to upstate New York.³³

Some states have responded by limiting the power of local governments to regulate oil and gas. These local fracking rules are testing the boundaries of local government authority. Most state constitutions give legislatures broad authority to pre-empt state law, but other constitutional provisions can limit this authority. Some constitutions have home rule provisions that give local governments broader authority.

The legal battles between state and local governments are occurring in state supreme courts around the country. Communities in Texas, Pennsylvania, New York, and elsewhere have passed stricter regulations or outright bans on fracking, according to FracTracker Alliance.³⁴ While these legal battles are occurring, the amount of money spent to elect the courts hearing the cases is increasing with every election. In Ohio, Louisiana, and other states, communities are going to court to assert their right to fight pollution at the local level, only to find that the judges deciding their case have been elected with money from fossil fuel companies.

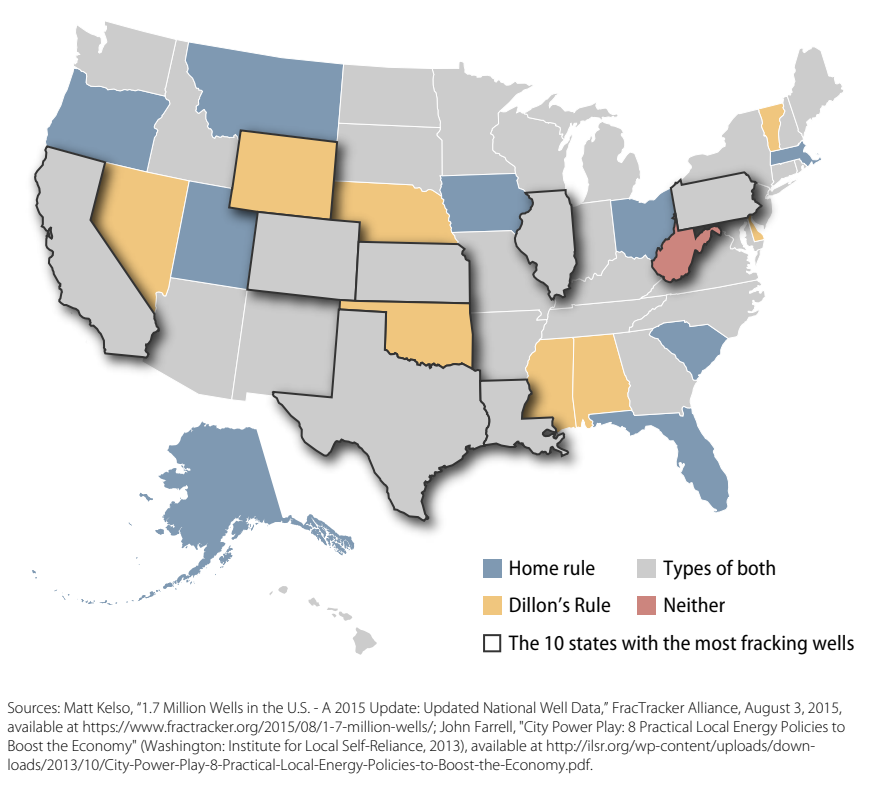
In November 2015, Pennsylvania broke the record for the most expensive judicial race in history, as six candidates spent more than \$15 million combined in a race for three seats.³⁵ Most of the campaign contributions came from labor unions, lawyers, and political action committees; only a fraction came from energy companies.³⁶ The Pennsylvania Supreme Court struck down a state law in 2013 that prohibited local regulation of fracking, citing a state constitutional right to clean air and water.³⁷

Communities in other states have not been as fortunate. The Colorado Supreme Court recently struck down local bans on fracking and disposal of fracking waste.³⁸ Legislatures in North Carolina and several Western states have recently passed state laws that explicitly pre-empt any local regulation of fracking.

FIGURE 1

Top 10 fracking states and degrees of local authority

In most states, cities and towns only have authority to regulate fracking if state law allows it



A 2015 article in *The New York Times* wrote that pre-empting local laws is “becoming a standard part of the legislative playbook in many states where Republicans who control statehouses are looking to block or overturn the actions of leaders, and even voters, in municipalities that are often more liberal.”³⁹ According to *The Great Suppression* by reporter Zachary Roth, this trend “deliberately undermines the power of local governments to determine the direction of their own communities and rides roughshod over the principles of local control that conservatives have traditionally espoused.”⁴⁰

These new pre-emption bills have also prohibited local efforts to regulate housing, build municipal broadband systems, and increase the minimum wage. The Alabama, Wisconsin, and Oklahoma legislatures recently banned cities from requiring paid sick leave.⁴¹ The North Carolina legislature passed a bill in 2016 overriding local civil rights and minimum wage laws.⁴² In 2015, the Texas legislature considered more than 25 bills to pre-empt local authority.⁴³

Mark Pertschuk of Grassroots Change noted that an industry pushing a pre-emption bill often “finds it easier to wield influence in 50 capitols than in thousands of city halls.”⁴⁴ The American Legislative Exchange Council counts conservative state legislators as its members and offers model state laws that pre-empt local authority.⁴⁵

Energy companies influence elections of judges who hear pre-emption cases

In many of the state supreme courts that are deciding pre-emption issues, energy companies and other special interests are spending more money with each election cycle. The Brennan Center for Justice recently reported that independent spending, which is legally not affiliated with candidates, reached a record high—more than \$19 million—in judicial races during the 2015–2016 election cycle.⁴⁶ The Brennan Center reports that the vast majority of these independent groups accept some money from undisclosed donors. Ten states saw more than \$1 million in spending.⁴⁷

Big money in elections—and no local fracking laws—in the home rule state

A century ago, Ohio became a pioneer in expanding the authority of local governments to regulate local affairs, such as land use.⁴⁸ According to the 2001 book *Home Rule in America*, one goal of those who drafted the state constitution’s home rule amendment in 1912 was to “liberate municipalities from the control of the state such that municipal ... powers would prevail over state laws in local affairs.”⁴⁹ The book notes that local authority was so broad that Ohio was called “the Home Rule state,” but the ambiguous language of the amendment gave state courts “a significant role” in defining the scope of local authority.⁵⁰ The book concludes that holding onto the historically broad view of home rule is necessary to prevent “politics from once again favoring ... private and state interests” over local needs.⁵¹

Such “private” interests might include the big business-funded groups that spend a lot of money in Ohio Supreme Court elections. These groups have succeeded in electing a majority of justices who regularly favor corporate litigants.⁵²

As mentioned earlier, Justice French both authored the recent fracking opinion and received large campaign contributions from the industry. She was elected with help from the same corporations that benefited from the court’s decision to limit local authority over fracking.⁵³

The dissenting judges argued that the local permit requirement did not actually conflict with state law. Justice Lanzinger, for instance, said that the state regulation merely declaring that local laws were pre-empted was not enough, as the two regulatory schemes could coexist.⁵⁴ She accepted the city’s argument that the local laws reflected traditional local concerns, such as land use, traffic control, and the welfare of the community.⁵⁵ Justice Lanzinger concluded, “There is no need for the state to act as the thousand-pound gorilla, gobbling up exclusive authority over the oil and gas industry, leaving not even a banana peel of home rule for municipalities.”⁵⁶

Furthermore, the remarks in Justice O’Neill’s dissent about the result being “bought and paid for in campaign contributions” raised questions about whether he was referring to legislators or his colleagues on the bench.⁵⁷ Ohio legislators have also received large contributions from fracking and other fossil fuel companies. Ohio Attorney General Mike DeWine, who supported the fracking companies’ challenge to the local ban, and Gov. John Kasich (R) have received big campaign contributions from oil and gas companies.⁵⁸

Of course, the court’s ruling may simply reflect the justices’ general pro-business slant. A recent CAP report showed that the Ohio Supreme Court rules much more often for corporate defendants and against individual plaintiffs. In cases since 2011 in which an individual sued a business, the court ruled in favor of the corporate defendants 79 percent of the time.⁵⁹

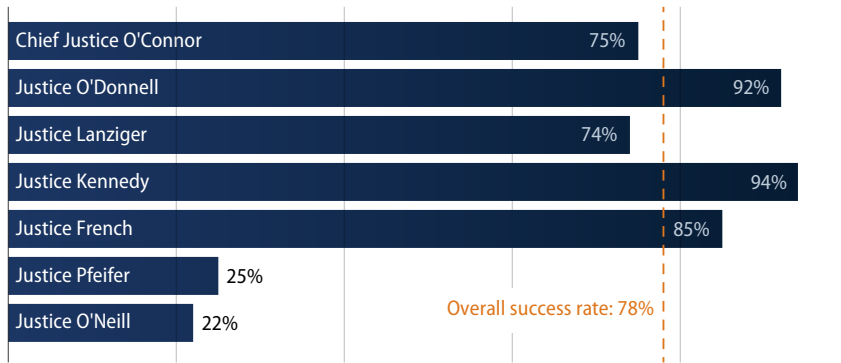
Justices Kennedy and O’Donnell voted for corporations in more than 90 percent of these cases, and Justice French did so in 84 percent of the cases.⁶⁰ In 2006, *The New York Times* found that Justice O’Donnell voted for his campaign contributors in more than 90 percent of cases.⁶¹ Justice O’Donnell, for his part, alleged that the newspaper cherry-picked cases and that its findings were misleading.⁶²

Chief Justice O’Connor and Justice Lanzinger voted for corporations around three-quarters of the time.⁶³ Justice Lanzinger said in 2008, “We never consult campaign reports before considering and deciding how to vote, for the identities of parties are irrelevant to the determination of the legal issues before us.”⁶⁴ Justices Pfeifer and O’Neill—who, unlike their colleagues, were elected without relying on large campaign contributions—voted in favor of injured plaintiffs in more than three-quarters of the cases.⁶⁵

FIGURE 2

Votes cast in favor of corporate defendants in divided cases by the Ohio Supreme Court, January 2012 to May 2016

The Ohio Supreme Court has ruled more often for corporations and against injured plaintiffs in cases in which at least one justice dissented



Source: Case information found in the Lexis-Nexis legal database. See Lexis Total Research System, "Welcome," available at www.lexis.com (last accessed June 2016).

Fossil fuel spends big on Louisiana Supreme Court justices

On June 17, 2016, the Louisiana Supreme Court declined to review a lower-court ruling against St. Tammany Parish's attempt to stop a fracking project by amending its zoning laws.⁶⁶ The parish lost its legal fight, even though the state constitution confers broad authority to local governments. *Home Rule in America* states that Louisiana was "among the leaders" in broadening local authority; state constitutional amendments "adopted in 1974 were intended to end a period of de facto legislative supremacy over local government."⁶⁷ A group advocating the St. Tammany ban said the court's decision "sweeps aside long-standing constitutional principles for citizens and instead gives new, special privilege to certain companies."⁶⁸

St. Tammany Parish also sued to try to stop fracking at a site 1.25 miles from a high school, and the lawsuit made its way to the Louisiana Supreme Court.⁶⁹ On the same day that briefs from the parties were due to the court, the company that operated the fracking well donated \$2,000 to a justice's campaign.⁷⁰ According to Fox 8 News in New Orleans, the donation was not disclosed in court, and the justices voted 4-3 to reject St. Tammany's lawsuit.⁷¹

The parishes just upstream from St. Tammany—along the Mississippi River—were once nicknamed “Cancer Alley” because of the impact of toxic pollution from nearby oil refineries and other industrial plants.⁷² Two decades ago, the Tulane Environmental Law Clinic launched with a mission to address the pollution in Cancer Alley.⁷³ The clinic helped residents stop construction of a new plant because of environmental concerns.⁷⁴ The Environmental Protection Agency ruled in 1997 that the proposed factory failed to meet air pollution standards.⁷⁵

A 1999 “Frontline” report noted that the Louisiana chapter of the Chamber of Commerce, along with other business groups, then asked the Louisiana Supreme Court to change the rules governing law clinics.⁷⁶ Chief Justice Pascal Calogero was facing re-election and battling attack ads funded by some of these same business groups, which accused him of an anti-business voting record in cases that they considered important.⁷⁷ At the time, the U.S. Chamber of Commerce and its state affiliates were becoming big players in judicial elections, spending millions of dollars and endorsing candidates.⁷⁸

According to Bill Moyers of “Frontline,” the Louisiana Supreme Court changed the rule governing law clinics to require them to “prove that 75 percent of its members are indigent and provide evidence that they are living below the poverty line.” Moyers added, “The effect was to sharply restrict the ability of the Tulane Law Clinic to help citizens take on environmental cases.”⁷⁹ Days after Chief Justice Calogero voted to change the rule, the state’s Chamber of Commerce endorsed him.⁸⁰ Moyers said, “Only [Chief] Justice Calogero knows if business pressure and campaign contributions influenced his decision ... But the reputation of his court has been tarnished by the public perception of a quid pro quo.”⁸¹

Chief Justice Calogero declined to comment to “Frontline.” But in 2008, he said, “My colleagues and I have taken a solemn oath to decide cases based on the law and the facts before us and we have remained faithful to that oath. Who did or did not contribute to a justice’s campaign committee is not a consideration in resolving cases.”⁸²

New state laws restrict local authority over fracking

Denton, Texas, a Dallas suburb, saw a boom in fracking over the past decade. New wells sprung up all over the city.⁸³ In 2014, a study of fracking in North Texas and Pennsylvania found evidence that oil and gas drilling activities had contaminated groundwater.⁸⁴ *The Dallas Morning News* reported, “gas found in water wells appeared to have leaked from defective casing and cementing in gas wells, meant to protect groundwater.”⁸⁵ Just a couple months later, Denton voted overwhelmingly in favor of a ban on fracking—the first, but not the last, Texas community to do so.

The oil and gas industry challenged Denton’s ban. While the lawsuit was pending, the Texas legislature passed a bill prohibiting local fracking regulations.⁸⁶ In the 2014 election, the oil and gas industry contributed more money to Texas legislative and judicial candidates than any other industry.⁸⁷ Denton was forced to revoke its ban on fracking because of the newly enacted state law. In 2015, another study found “elevated levels of cancer-causing chemicals in the drinking water” near fracking wells in North Texas, around Denton.⁸⁸

In 2015 the Oklahoma legislature passed a law prohibiting local bans on any oil and gas operations, including fracking and wastewater disposal.⁸⁹ Some Oklahoma communities had been considering local bans after a huge increase in the number of earthquakes throughout the state. A recent state report found that the rate of Oklahoma earthquakes is now approximately 600 times the historical average, and the Oklahoma Geological Survey considers this to be the result of wastewater wells associated with fracking and other drilling.⁹⁰ A report from the agency wrote, “The observed seismicity of greatest concentration, namely in central and north-central Oklahoma, can be observed to follow the oil and gas plays characterized by large amounts of produced water.”⁹¹ Because of the new state law prohibiting local bans on oil and gas operations, communities across Oklahoma were pre-empted from enacting local regulations to limit wastewater disposal.

In 2012, the city of Longmont, Colorado, voted to ban fracking and disposal of drilling-related wastes within city limits,⁹² but the Colorado Oil and Gas Association filed suit against Longmont to stop enforcement of the ban. The association argued that state law pre-empted the city’s ban on fracking, and the district court agreed.⁹³ The Colorado Supreme Court affirmed that decision, because the local ban “materially impede[d] the application of state law.”⁹⁴

While Colorado’s constitution creates broad home rule authority, the court considered the issue to be a matter of “statewide concern,” making it subject to pre-emption.⁹⁵ The state’s recent law governing oil and gas drilling did not expressly pre-empt local rules, but the court found that the local bans frustrated the intent of that law, which states its purpose as permitting oil and gas drilling “up to its maximum efficient rate of production, subject to the prevention of waste, consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources.”⁹⁶

Local bans upheld courts in New York and Pennsylvania

Pennsylvania has experienced a natural gas drilling boom in the Marcellus Shale formation, and many communities there—including Pittsburgh—banned or imposed moratoria on fracking. The Pennsylvania legislature, however, acted to revoke local authority over fracking. A 2012 bill prohibited “any local regulation of oil and gas operations, including via environmental legislation” and required statewide zoning with respect to fossil fuel extraction. Several cities argued that the bill violated the state constitution’s Environmental Rights Amendment, which states:

*The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.*⁹⁷

The Pennsylvania Supreme Court agreed, and in 2013, it struck down the bill that eliminated local authority over oil and gas wells.⁹⁸ The court allowed municipalities to erect bans on fracking and related drilling operations to protect the environment and local drinking water.⁹⁹

Pennsylvania has long seen some of the most expensive supreme court elections. But unlike other states with big-money courts, most of the money for the justices’ campaigns comes from labor unions and trial lawyers, not from big business or energy companies.¹⁰⁰

The judges on the highest court in New York are not chosen in expensive partisan elections but through a merit selection process that chooses candidates based on their qualifications.¹⁰¹ Under a 1977 amendment to the New York Constitution,

governors have established merit selection commissions that consider applications for judgeships.¹⁰² These judges serve 14-year terms and can be reappointed.¹⁰³ The American Judicature Society, which advocates for merit selection, has described the system as a model reform to ensure judicial independence.¹⁰⁴

In 2014, New York's high court upheld local bans on fracking.¹⁰⁵ The court heard cases from the towns of Cooperstown and Dryden involving zoning ordinances that prohibited activities related to oil and gas exploration, extraction, and storage.¹⁰⁶

The companies sued the towns, arguing that the state law on oil and gas mining pre-empted all local ordinances that prohibited fracking. But the court held that under the home rule provision of the New York Constitution, the local ordinances were not pre-empted by state law.¹⁰⁷ The New York Constitution grants local government broad authority, as long as local laws do not conflict with state laws.¹⁰⁸

The court ruled that state law pre-empted only those local laws purporting to regulate the actual operations of oil and gas activities, not those that prohibit fracking altogether.¹⁰⁹ Without a state law explicitly pre-empting local laws, municipalities could continue to restrict fracking activities "in furtherance of local interests."¹¹⁰

Public financing competes with campaign cash from special interests

Three states that have struggled with defining home rule in the context of mining or drilling—North Carolina, Wisconsin, and West Virginia—have had public financing for judicial campaigns at some point.¹¹¹ These programs gave judges a certain amount of money to run their campaigns, if they qualified by raising a minimum number of small donations.¹¹² The programs made judges less dependent on wealthy campaign donors, and in North Carolina, they led to much greater diversity on the bench.¹¹³ But in all three states, the programs have struggled to contend with the money spent by groups independent of the candidates, including some that do not disclose their donors.¹¹⁴ Legislators in Wisconsin and North Carolina repealed their states’ programs in recent years, but West Virginia recently created its program after a controversy involving a coal mining mogul who spent big to elect a judge hearing his case.¹¹⁵

Mining for silica sand and judges in Wisconsin

The recent fracking boom has increased the demand for silica sand, also referred to as frac sand, which is an element in the hydraulic fracturing process.¹¹⁶ Some communities in Montana, Minnesota, and western Wisconsin saw explosive growth in silica mining, and a few responded by enacting bans on further mining.¹¹⁷

In a 2012 decision, the Wisconsin Supreme Court upheld a local law requiring a permit for silica mining, interpreting the law as a valid exercise of local authority.¹¹⁸ The court’s opinion notes that the state constitution’s home rule amendment was “adopted in 1924 to allow cities and villages greater control over their local affairs.”¹¹⁹ State laws grant cities and towns wide latitude to regulate for a community’s general welfare, and the local law’s stated purpose was “to promote the health, safety, prosperity, aesthetics and general welfare of the people.”¹²⁰

The Wisconsin Realtors Association, or WRA, filed a brief urging the state supreme court to strike down the local law.¹²¹ As the lawsuit was pending, the WRA and another corporate-funded group—Wisconsin Manufacturers & Commerce, or WMC—spent nearly \$1 million to help re-elect conservative Justice David Prosser, who did not participate in the 2012 silica mining decision.¹²² On its website, WMC states, “Unlimited corporate donations are allowed under law, and are held strictly confidential — we have never disclosed our donors, and never will.”¹²³

In the years before this election, the same two groups literally wrote the Wisconsin Supreme Court’s rule on hearing cases involving campaign contributors.¹²⁴ Given the millions of dollars in spending by the WRA and WMC to elect the court’s conservative majority, it is perhaps not surprising that the rule says that campaign cash can never be the sole basis for a justice’s recusal.¹²⁵

The WRA donated \$18,000 directly to Justice Rebecca Bradley’s recent re-election campaign,¹²⁶ but the biggest spender was a group called the Wisconsin Alliance for Reform—a brand-new dark-money group that does not disclose its donors.¹²⁷ Groups such as the WMC and WRA have given big to groups that, like the Wisconsin Alliance for Reform, spend a significant amount of money to elect Wisconsin judges and legislators.¹²⁸

One of the dark-money groups, Wisconsin Club for Growth, was revealed to have received \$700,000 from the CEO of a mining company.¹²⁹ This mining company drafted a bill that was Gov. Walker’s “top legislative priority,” according to Brendan Fischer of the Campaign Legal Center.¹³⁰

In 2013, Gov. Walker signed a law that requires certain steps before a local moratorium or ban on silica mining can go into effect.¹³¹ The Republican-controlled Wisconsin legislature has considered bills that could limit or even eliminate local authority over silica mining.¹³² If the legislature does eliminate local power over silica mining, the bill would likely be challenged in court. The fate of local silica mining regulations could rest in the hands of a Wisconsin Supreme Court stacked with a majority of justices elected with campaign cash from big business.¹³³

West Virginia prohibits local fracking laws but tries to clean up judicial elections

In 2004, the West Virginia Supreme Court saw its most expensive election ever. Coal mogul Don Blankenship spent more than \$3 million to elect Justice Brent Benjamin to the West Virginia Supreme Court.¹³⁴ Justice Benjamin refused to recuse himself in a case involving Blankenship's company,¹³⁵ and in fact, he cast the deciding vote to overturn a \$50 million verdict against the company.¹³⁶ Justice Benjamin recently admitted that he was "tone deaf" in not recusing himself in the case, though he denied any bias toward Blankenship.¹³⁷

After the U.S. Supreme Court overturned the verdict due to the "serious risk of actual bias," West Virginia acted to reform its judicial elections.¹³⁸ This year, West Virginia held its first nonpartisan election for its supreme court.¹³⁹ All candidates had the option—for the first time—to receive public financing for their campaigns, if they qualified by raising small contributions.¹⁴⁰

With Blankenship in prison, awaiting an appeal of his conviction for creating deadly conditions for miners,¹⁴¹ Justice Benjamin opted for public financing in his May 2016 re-election bid.¹⁴² *Mother Jones* reported:

*As Benjamin runs for reelection for the first time on Tuesday, following a 12-year term, funds from Blankenship allies are again flooding the race. But this time, this outside money is working against Benjamin, whom Blankenship's allies deem insufficiently conservative. And Benjamin, without the financial backing of the business community, has been forced to turn to the very public financing system that was established as a response to his initial Blankenship-funded election.*¹⁴³

Justice Benjamin lost. The victorious candidate, Justice Beth Walker, was backed by hundreds of thousands of dollars' worth of ads from the West Virginia Chamber of Commerce and the Republican State Leadership Committee, or RSLC.¹⁴⁴

A West Virginia state court recently struck down a local fracking ban,¹⁴⁵ and the state supreme court declined to review the ruling.¹⁴⁶ Cities and towns in West Virginia have little authority to act independent of state law.¹⁴⁷ The town plans to address the issue through its local zoning authority, and if challenged, this exercise of local zoning authority could end up before the West Virginia Supreme Court.¹⁴⁸

An end to local fracking laws and clean elections in North Carolina

In North Carolina, local governments depend on the state legislature to grant them any authority not granted by the North Carolina Constitution.¹⁴⁹ This kind of system grants legislatures broad power to shape local authority.¹⁵⁰

In October 2015, the state legislature passed a law forbidding any city or county fracking regulations.¹⁵¹ A 2014 state law governs coal ash, a toxic byproduct of burning coal that is stored in leaky ponds around North Carolina. The law was intended “to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of coal [ash] by means of ordinances, property restrictions, zoning regulations, or otherwise.”¹⁵²

Earlier this year, the North Carolina legislature also passed a wide-ranging bill—H.B. 2—that pre-empted all local civil rights laws in addition to requiring transgender people to use bathrooms not matching their gender identity.¹⁵³ H.B. 2 overrode nondiscrimination laws that protected LGBT citizens in Charlotte and other cities.¹⁵⁴ The bill also overrode any local minimum wage laws, a response to one city raising the minimum wage there to \$15 per hour.¹⁵⁵

In addition to limiting local authority, the legislature is doing everything in its power to ensure that big money can influence who sits on the North Carolina Supreme Court. In the late 1990s, the amount of money spent in supreme court elections was sharply increasing, and North Carolina was no exception.¹⁵⁶ The legislature responded by passing a public financing program for judicial candidates and switching to nonpartisan elections—much like West Virginia recently did—after the 2000 election.¹⁵⁷

In 2013, however, the state legislature repealed the public financing program. According to The Institute for Southern Studies, millionaire campaign donor Art Pope played a key role in killing the program through his role as the governor’s budget director.¹⁵⁸ The legislature also passed a bill weakening the process for enforcing the ethics rules that govern judges.¹⁵⁹

And the legislature just passed a bill to bring partisanship back to supreme court elections.¹⁶⁰ North Carolina is the first state in nearly a century to switch from nonpartisan to partisan supreme court races.¹⁶¹ Only a handful of states still choose their justices through partisan contests, and all of these states are consistently among the top 10 most expensive judicial elections.¹⁶²

The RSLC has been—by far—the biggest spender in recent North Carolina Supreme Court elections.¹⁶³ The RSLC is mostly funded by contributions from big business.¹⁶⁴ Several North Carolina companies are among its biggest donors, including tobacco companies, banks, and Duke Energy—the largest power company in America.¹⁶⁵ A 2015 CAP report noted that, while it was giving big to the RSLC, Duke Energy faced tens of billions of dollars in liability in lawsuits in North Carolina courts.¹⁶⁶ The state courts have heard lawsuits seeking to force Duke Energy to spend billions of dollars to clean up its toxic coal ash.¹⁶⁷

Even if North Carolina’s cities and towns could challenge the loss of local authority to address pollution, they would face a state supreme court in which several justices were elected with millions of dollars from big business, polluters, and corporate lawyers.

Conclusion

American communities need home rule. Across the country, progressive activists are succeeding at pushing reforms at the local level. Cities and towns can serve as miniature laboratories of democracy. The fight for a \$15 minimum wage is being waged in city councils across the country, and many cities are passing robust employment laws that require paid sick leave or family leave.¹⁶⁸

To increase the voice of ordinary citizens in elections, many big cities have also created public financing programs that amplify the impact of small donors. In November 2015, Seattle voters established an innovative “democracy vouchers” program that gives city residents vouchers that they can choose to contribute to candidates. Participating candidates have to agree to limits on private donations and spending.¹⁶⁹

In addition to clean elections, American cities have also led the way toward a clean energy future. In 2009, a conference of big-city mayors agreed to strict standards for addressing climate change.¹⁷⁰ Home rule is critical to addressing pollution, which can be a particularly local concern. Communities that lack political power may find it difficult to persuade the state to act to their benefit, although some states have done a better job than others of regulating fracking and the disposal of fracking waste.

If citizens want their communities to have the authority to push more decisively toward a cleaner planet, they must also push for reforms to get big money out of judicial elections. When judges have to rely on wealthy campaign donors, polluters can have too much influence over who sits on courts—those who determine the scope of local authority under state constitutions. Reforms such as public financing can make judges responsive to voters instead of to the polluters who give them campaign cash.

About the author

Billy Corriher is the Director of Research for Legal Progress at the Center for American Progress, where his work focuses on state courts and the influence of judicial elections and campaign contributions on judges. Corriher has written about these issues in op-eds for *USA Today*, *The Los Angeles Times*, *Newsweek*, and *The News & Observer* in Raleigh, North Carolina. He has also published blog posts on these topics for ThinkProgress, RealClearPolitics, *The Advocate*, The Huffington Post, and others. Corriher has been interviewed about the influence of money in judicial elections by NPR’s “Fresh Air,” *Mother Jones*, “Ali Velshi On Target” at Al Jazeera America, Bloomberg, and several local media outlets. Corriher received his bachelor’s degree in political science from the University of North Carolina, Chapel Hill. He received a law degree and master’s in business administration from Georgia State University, graduating with honors in 2009.

Acknowledgments

This report would not have been possible without several members of the Center for American Progress team. The author would like to thank the Art and Editorial staff at the Center for American Progress for their invaluable help. The author would also like to thank Catherine Turcer at Common Cause Ohio, Rachel and John Hopkinson, Trustee Phil Pegg, Professor Heidi Gorovitz Robertson of Cleveland State University, and others for their help with this project.

Endnotes

- 1 Michael Rotman, "Cuyahoga River Fire" Cleveland Historical, available at <http://clevelandhistorical.org/items/show/63> (last accessed June 2016).
- 2 Ibid.
- 3 Ibid.
- 4 John and Rachel Hopkinson, interview with author, Vienna, Ohio, September 23, 2016, transcript on file with author.
- 5 Ibid.
- 6 Ibid.
- 7 Lorraine Chow, "Rise of Fracking Wastewater Injections in Ohio Sparks Fear of Earthquakes, Water Contamination," *EcoWatch*, March 7, 2016, available at <http://ecowatch.com/2016/03/07/fracking-wastewater-ohio/>.
- 8 Environmental Protection Agency, *Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States* (2016), available at https://www.epa.gov/sites/production/files/2016-12/documents/hfdwa_executive_summary.pdf.
- 9 Ibid.
- 10 Chow, "Rise of Fracking Wastewater Injections in Ohio Sparks Fear of Earthquakes, Water Contamination."
- 11 Ohio Citizen Action, "Injection wells – What's the problem?," August 1, 2014, available at <http://ohiocitizen.org/ohio-is-not-the-oil-and-gas-industrys-toxic-waste-dump/>.
- 12 Ibid.
- 13 Timothy Cama, "Ohio court strikes down local fracking bans," *The Hill*, February 17, 2015, available at <http://thehill.com/policy/energy-environment/232945-ohio-court-strikes-down-local-fracking-bans>.
- 14 *State ex rel. Morrison v. Beck Energy*, 37 N.E.3d 128 (Ohio 2015), available at <http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2015/2015-Ohio-485.pdf>.
- 15 Ibid.
- 16 Jack L. Dustin, "Ohio." In Dale Krane, Platon N. Rigos, and Melvin B. Hill, eds., *Home Rule in America: A Fifty-State Handbook* (Washington: CQ Press, 2001).
- 17 National Institute on Money in State Politics, "French, Judith L: Top Industries," available at <http://www.followthemoney.org/entity-details?eid=13010054&default=candidate> (last accessed November 2016).
- 18 Ibid.
- 19 Personal communication with Justice Judith French, Ohio Supreme Court, August 12, 2016.
- 20 National Institute on Money in State Politics, "Kennedy, Sharon: Top Industries," available at <http://www.followthemoney.org/entity-details?eid=13736161&default=candidate> (last accessed November 2016); National Institute on Money in State Politics, "O'Donnell, Terrence: Top Industries," available at <http://www.followthemoney.org/entity-details?eid=2817585&default=candidate> (last accessed November 2016); National Institute on Money in State Politics, "O'Connor, Maureen: Top Industries," available at <http://www.followthemoney.org/entity-details?eid=6558534&default=candidate> (last accessed November 2016).
- 21 Adam Liptak and Janet Roberts, "Campaign Cash Mirrors a High Court's Rulings," *The New York Times*, October 1, 2006, available at <http://www.nytimes.com/2006/10/01/us/01judges.html>.
- 22 Denise Grollmus, "Justice Maureen O'Connor says campaign money doesn't affect her," *Cleveland Scene*, March 19, 2008, available at <http://www.clevescene.com/cleveland/justice-maureen-oconnor-says-campaign-money-doesnt-affect-her/Content?oid=1504949#>.
- 23 National Institute on Money in State Politics, "Lanzinger, Judith: Top Industries," available at <http://www.followthemoney.org/entity-details?eid=4423986&default=candidate> (last accessed November 2016).
- 24 *Beck Energy*, 37 N.E.3d 128 (Ohio 2015).
- 25 Ibid.
- 26 Billy Corriher and Sean Wright, "Dirty Money, Dirty Water" (Washington: Center for American Progress, 2015), available at <https://cdn.americanprogress.org/wp-content/uploads/2014/11/DirtyMoneyDirtyWater-report.pdf>.
- 27 Interview with Phil Pegg, township trustee, Vienna, Ohio, September 21, 2016, transcript on file with author.
- 28 Ibid.
- 29 Jed Handelsman Shugerman, *The People's Courts: Pursuing Judicial Independence in America* (Cambridge, MA: Harvard University Press, 2012).
- 30 American Legislative Exchange Council, "Living Wage Mandate Preemption Act," available at <https://www.alec.org/model-policy/living-wage-mandate-preemption-act/> (last accessed June 2016).
- 31 Jason Stein, "Scott Walker touts local power, but doesn't always defer to local government," *The Milwaukee Journal Sentinel*, August 2, 2015, available at <http://archive.jsonline.com/news/statepolitics/scott-walker-touts-local-power-but-doesnt-always-defer-to-local-government-b99548286z1-320447482.html>.
- 32 Lydia DePillis, "Legislators organize blitz of equal-pay legislation in nearly half the states," *The Washington Post* Wonkblog, January 28, 2016, available at <https://www.washingtonpost.com/news/wonk/wp/2016/01/28/legislators-organize-blitz-of-equal-pay-legislation-in-nearly-half-the-states/>.
- 33 FracTracker Alliance, "Resistance to Fracking Around the World," available at <https://www.fractracker.org/map/international/worldwide-fracking-bans/> (last accessed June 2016).
- 34 Ibid.
- 35 Tyler Bishop, "The Most Expensive Judicial Election in U.S. History," *The Atlantic*, November 10, 2015, available at <http://www.theatlantic.com/politics/archive/2015/11/the-most-expensive-judicial-election-in-us-history/415140/>.

- 36 National Institute on Money in State Politics, "Election Overview: Pennsylvania 2015," July 7, 2016, available at <http://www.followthemoney.org/election-overview?s=PA&y=2015>.
- 37 *Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013).
- 38 *Longmont v. Colorado Oil & Gas Association*, No. 15SC667 (Co. 2016), available at https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2015/15SC667.pdf; *Fort Collins v. Colorado Oil & Gas Association*, No. 15SC668 (Co. 2016), available at https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2015/15SC668.pdf.
- 39 Shaila Dewan, "States Are Blocking Local Regulations, Often at Industry's Behest," *The New York Times*, February 23, 2015, available at http://www.nytimes.com/2015/02/24/us/govern-yourselves-state-lawmakers-tell-cities-but-not-too-much.html?_r=1.
- 40 Zackary Roth, *The Great Suppression: Voting Rights, Corporate Cash, and the Conservative Assault on Democracy* (New York: Crown Publishing Group, 2016), p. 73-74.
- 41 Dewan, "States Are Blocking Local Regulations, Often at Industry's Behest."
- 42 Vann R. Newkirk II, "North Carolina's New Rainbow Coalition," *The Atlantic*, November 30, 2016, available at <http://www.theatlantic.com/politics/archive/2016/11/identity-politics-north-carolina-governor/509153/>.
- 43 Roth, *The Great Suppression*, p. 78.
- 44 Dewan, "States Are Blocking Local Regulations, Often at Industry's Behest."
- 45 Brendan Fischer, Kim Haddow, and Mary Bottari, "Corporate Interests Take Aim at Local Democracy," PRWatch, February 3, 2016, available at <http://www.prwatch.org/news/2016/02/13029/2016-ALEC-local-control>.
- 46 Brennan Center for Justice, "Spending By Outside Groups in Judicial Races Hits Record High, Secret Money Dominates," Press release, November 15, 2016, available at <https://www.brennancenter.org/press-release/spending-outside-groups-judicial-races-hits-record-high-secret-money-dominates>.
- 47 Ibid.
- 48 Dustin, "Ohio."
- 49 Ibid., p. 331.
- 50 Ibid.
- 51 Ibid., p. 339.
- 52 See Appendix of Billy Corriher, "Big Business Taking over State Supreme Courts" (Washington: Center for American Progress, 2012), available at <https://www.americanprogress.org/issues/civil-liberties/report/2012/08/13/11974/big-business-taking-over-state-supreme-courts/>.
- 53 Billy Corriher and Sean Wright, "Ohio Supreme Court Says Towns Aren't Allowed to Ban Fracking," ThinkProgress, February 19, 2015 available at <http://thinkprogress.org/climate/2015/02/19/3624553/ohio-supreme-court-fracking-ban-ruling/>.
- 54 *Beck Energy*, 37 N.E.3d 128 (Ohio 2015).
- 55 Ibid.
- 56 Ibid.
- 57 Darrel Rowland and Jim Siegel, "Ohio's oil-and-gas industry donations, ruling tied?" *Columbus Dispatch*, February 22, 2015, available at <http://www.dispatch.com/content/stories/local/2015/02/22/industry-donations-ruling-tied.html#>.
- 58 Kristen Ellingboe and Ryan Koronowski, "Is your governor or attorney general a climate denier? This map will tell you," ThinkProgress, May 4, 2016, available at <http://thinkprogress.org/climate/2016/05/04/3774746/governors-ags-climate-research/>.
- 59 Billy Corriher, "Big Business is Still Dominating State Supreme Courts," (Washington: Center for American Progress, 2016), available at <https://cdn.americanprogress.org/wp-content/uploads/2016/09/01095715/BigBusinessStateSupremeCourts-report.pdf>.
- 60 Ibid.
- 61 Liptak and Roberts, "Campaign Cash Mirrors a High Court's Rulings."
- 62 Justice Terrence O'Donnell, Ohio Supreme Court, response to *New York Times* article, available at <http://graphics8.nytimes.com/packages/pdf/national/ODonnell.pdf> (last accessed July 2016).
- 63 Corriher, "Big Business is Still Dominating State Supreme Courts."
- 64 Judith Ann Lanzinger, "What Have You Done for Me Lately? Lessons Learned From Judicial Campaigns," *University of Baltimore Law Review* 38 (1) (2008): 11-28, available at <http://scholarworks.law.ubalt.edu/cgi/view-content.cgi?article=1837&context=ublr>.
- 65 Ibid.
- 66 Faimon A. Roberts III, "Louisiana Supreme Court refuses to hear St. Tammany fracking appeal, likely ending 2-year challenge vs. Helis," *The New Orleans Advocate*, June 18, 2016, available at <http://www.theneworleansadvocate.com/news/16145730-125/louisiana-supreme-court-refuses-to-hear-tammany-fracking-appeal-likely-ending-2-year-challenge-vs-h>.
- 67 Richard Engstrom and Robert Whelan, "Louisiana." In Krane, Rigos, and Hill, *Home Rule in America*.
- 68 Roberts, "Louisiana Supreme Court refuses to hear St. Tammany fracking appeal, likely ending 2-year challenge vs. Helis."
- 69 Lee Zurik and Tom Wright, "Zurik: La. Supreme Court justice took campaign cash from Helis," Fox 8, September 21, 2016, available at <http://www.fox8live.com/story/33153062/zurik-la-supreme-court-justice-took-campaign-cash-from-helis>.
- 70 Ibid.
- 71 Ibid.
- 72 Frontline, "Justice for Sale," Public Broadcasting Service, November 23, 1999, transcript available at <http://www.pbs.org/wgbh/pages/frontline/shows/justice/etc/script.html>.
- 73 Ibid.
- 74 Ibid.

- 75 Ibid.
- 76 Ibid.
- 77 Ibid.
- 78 John D. Echeverria, "Changing the Rules by Changing the Players: The Environmental Issue in State Judicial Elections," *N.Y.U. Environmental Law Journal* 217 (9) (2001).
- 79 Frontline, "Justice for Sale."
- 80 Ibid.
- 81 Ibid.
- 82 Statement of Chief Justice Pascal F. Calogero, Jr., Louisiana Supreme Court, June 12, 2008, available at http://www.tulanelink.com/pdf/Calogero_Statement.pdf.
- 83 Suzanne Goldenberg, "Texas oil town makes history as residents say no to fracking," *The Guardian*, November 5, 2014, available at <https://www.theguardian.com/environment/2014/nov/05/birthplace-fracking-boom-votes-ban-denton-texas>.
- 84 Randy Lee Loftis, "Texas drinking water tainted by natural gas operations, scientists find," *DallasNews*, September 15, 2014, available at <http://www.dallasnews.com/business/energy/20140915-texas-drinking-water-tainted-by-natural-gas-operations-scientists-find.ece>.
- 85 Ibid.
- 86 Ari Phillips, "Texas Governor Signs Bill That Makes Local Fracking Bans Illegal," *ThinkProgress*, May 19, 2015, available at <http://thinkprogress.org/climate/2015/05/19/3660369/texas-prohibits-local-fracking-bans/>.
- 87 National Institute on Money in State Politics, "Election Overview: Texas 2014," November 18, 2016, available at <http://www.followthemoney.org/election-overview?s=TX&y=2014>.
- 88 Samantha Page, "Cancer-Causing Chemicals Found in Drinking Water Near Texas Fracking Sites," *ThinkProgress*, June 19, 2015, available at <http://thinkprogress.org/climate/2015/06/19/3671819/fracking-contaminants-in-texas-drinking-water/>.
- 89 Joe Wertz, "Gov. Fallin Signs Bill to Prevent Towns, Cities, and Counties from Banning Fracking," *StateImpact*, June 1, 2015, available at <https://stateimpact.npr.org/oklahoma/2015/06/01/gov-fallin-signs-bill-to-prevent-towns-cities-and-counties-from-banning-fracking/>.
- 90 Richard D. Andrews and Austin Holland, "Statement on Oklahoma Seismicity," *Oklahoma Geological Survey*, April 21, 2015, available at http://wchita.ogs.ou.edu/documents/OGS_Statement-Earthquakes-4-21-15.pdf.
- 91 Ibid.
- 92 *Longmont v. Colorado Oil & Gas Association; Fort Collins v. Colorado Oil & Gas Association*.
- 93 Ibid.
- 94 Ibid.
- 95 Ibid.
- 96 Ibid.
- 97 Pa. Const. art. I, § 27.
- 98 *Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013).
- 99 Ibid.
- 100 In the 2009 Pennsylvania Supreme Court election, the last contested race before the 2013 fracking decision, most of the campaign cash came from political parties, lawyers, and trade unions. See National Institute on Money in State Politics, "Election Overview: Pennsylvania 2009: Top industries," available at <http://www.followthemoney.org/election-overview?s=PA&y=2009> (last accessed November 2016).
- 101 American Judicature Society, "Methods of Judicial Selection: New York," available at http://www.judicalselection.us/judicial_selection/methods/selection_of_judges.cfm?state=NY (last accessed November 2016).
- 102 Ibid.
- 103 Ibid.
- 104 Daniel Becker and Malia Reddick, "Judicial Selection Reform: Examples from Six States" (Des Moines, IA: American Judicature Society, 2003), available at http://www.judicalselection.us/uploads/Documents/jsreform_1185395742450.pdf.
- 105 *Wallach v. Town of Dryden*, 16 N.E.3d 1188 (N.Y. 2014).
- 106 Ibid.
- 107 Ibid.
- 108 Jeffrey Stonecash, "New York." In Krane, Rigos, and Hill, *Home Rule in America*.
- 109 *Wallach v. Town of Dryden*.
- 110 Ibid.
- 111 Justice at Stake, "Public Financing," available at http://www.justiceatstake.org/issues/state_court_issues/public-financing/ (last accessed November 2016).
- 112 Ibid.
- 113 North Carolina Voters for Clean Elections, "NC Judicial Public Financing: A Success Story," available at <http://ncvce.org/content/nc-judicial-public-financing-success-story> (last accessed November 2016).
- 114 Alex Kotch, "Outside money wins big in West Virginia Supreme Court election," *Facing South*, May 13, 2016, available at <https://www.facingsouth.org/2016/05/outside-money-wins-big-in-west-virginia-supreme-co>; Billy Corriher, "Public Financing of Judicial Races Can Give Small Donors a Decisive Role" (Washington: Center for American Progress, 2012), available at <https://www.americanprogress.org/issues/courts/reports/2012/12/12/47657/public-financing-of-judicial-races-can-give-small-donors-a-decisive-role/>.
- 115 Pema Levy, "Don Blankenship Is Heading to Prison. But His Allies Still Bought a Judicial Election in West Virginia," *Mother Jones*, May 11, 2016, available at <http://www.motherjones.com/politics/2016/05/don-blankenship-heading-prison-his-allies-still-buy-judicial-elections-west-virgini>.

- 116 William Miley, "Assessing the Silica (Frac) Sand Mining Environmental Regulatory Frameworks in Minnesota and Wisconsin: Who Has a Better Plan for Digging, the Gophers or Badgers?" *Hamline Journal of Public Law & Policy* 35 (2) (2014): 330–366.
- 117 Ibid.
- 118 *Zwiefelhofer v. Town of Cooks Valley*, 809 N.W.2d 362 (Wis. 2012).
- 119 Ibid.
- 120 Ibid.
- 121 Ibid.
- 122 Brennan Center for Justice, "Buying Time 2011: Judicial Public Financing in Wisconsin," April 5, 2011, available at <http://www.brennancenter.org/analysis/judicial-public-financing-wisconsin-%E2%80%942011>.
- 123 Wisconsin Manufacturers and Commerce, "WMC IMC Ads Fight Back," available at <https://www.wmc.org/issues/advocacy/wmc-issues-mobilization-council-inc/> (last accessed June 2016).
- 124 *In the matter of amendment of the Code of Judicial Conduct's rules on recusal*, Nos. 08-16, 08-25, 09-10, and 09-11, July 7, 2010, available at <https://wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=51874>.
- 125 Ibid.; Brendan Fischer, "Prosecutor in Scott Walker Probe Asks Justices to Recuse," PRWatch, February 13, 2015, available at <http://www.prwatch.org/news/2015/02/12734/walker-wisconsin-supreme-court-recuse>.
- 126 National Institute on Money in State Politics, "Grassl Bradley, Rebecca," available at <http://www.followthe-money.org/entity-details?eid=2939197&default=candidate> (last accessed June 2016).
- 127 Brennan Center for Justice, "Buying Time 2016 - Wisconsin," April 19, 2016, available at <https://www.brennancenter.org/analysis/buying-time-2016-wisconsin>.
- 128 Billy Corriher, "Fixing Wisconsin's Dysfunctional Supreme Court Elections" (Washington: Center for American Progress, 2013), available at <https://www.americanprogress.org/wp-content/uploads/2013/07/CorriherWisconsinSupremeCourt-2.pdf>.
- 129 Brendan Fischer, "Will SCOTUS Confront the Results of *Citizens United*?" Moyers & Company, May 19, 2016, available at <http://billmoyers.com/story/confronting-citizens-united/>.
- 130 Ibid.
- 131 Todd Richmond, "Scott Walker signs mining bill into law; opponents prepare for legal battle," *Wisconsin State Journal*, March 12, 2013, available at http://host.madison.com/wsj/news/local/govt-and-politics/scott-walker-signs-mining-bill-into-law-opponents-prepare-for/article_880e57c2-8a81-11e2-a70f-001a4bcf887a.html.
- 132 Patrick Marley and Lee Bergquist, "GOP bill would limit local governments in regulating sand mines," *The Milwaukee Journal Sentinel*, October 17, 2013, available at <http://www.jsonline.com/news/statepolitics/gop-backed-bill-would-limit-local-government-in-regulating-sand-mines-b99122712z1-228260361.html>.
- 133 A 2013 report from the Center for American Progress found a sharp increase in the percentage of personal injury cases won by corporate defendants after the conservative majority emerged. See Billy Corriher, "Fixing Wisconsin's Dysfunctional Supreme Court Elections."
- 134 *Caperton v. Massey Coal*, 556 U.S. 868 (2009).
- 135 Ibid., p. 874
- 136 Ibid.
- 137 Peter Hardin, "Scholar Spotlights 'Revelations' Years After 'Caperton,'" GavelGrab, November 2, 2015, available at <http://gavelgrab.org/?p=99874>.
- 138 Julie Archer, "Judicial Public Financing: Moving Away from Corruption in the Courtroom," West Virginia Citizens for Clean Elections, April 22, 2016, available at <http://wvoter-owned.org/judicial-public-financing/>.
- 139 Ibid.
- 140 Ibid.
- 141 Pema Levy, "This Election Inspired a John Grisham Novel. Now It Just Got Even Weirder," *Mother Jones*, May 9, 2016, available at <http://www.motherjones.com/politics/2016/05/west-virginia-supreme-court-blankenship-benjamin>.
- 142 Ibid.
- 143 Ibid.
- 144 Brennan Center for Justice, "Buying Time 2016 - West Virginia," September 14, 2016, available at <https://www.brennancenter.org/analysis/buying-time-2016-west-virginia>.
- 145 *Re. Natural Energy, LLC v. City of Morgantown*, No. 11-C-411, 2011 WL 3584376 (W. Va. Cir. Ct. Aug. 12, 2011).
- 146 The State Journal, "Fracking ban overturned, Morgantown considers zoning instead," February 22, 2012, available at <http://www.statejournal.com/story/16580946/fracking-ban-overturned-morgantown-considers-zoning-instead>.
- 147 Kenneth Klase, "West Virginia." In Krane, Rigos, and Hill, *Home Rule in America*.
- 148 Ibid.
- 149 James H. Svara, "North Carolina." In Krane, Rigos, and Hill, *Home Rule in America*.
- 150 Ibid.
- 151 Andrew Barksdale, "Law bars local fracking regulations," *The Fayetteville Observer*, October 4, 2015, available at http://www.fayobserver.com/news/local/law-bars-local-fracking-regulations/article_c4c5096d-4f48-5ea3-87c5-d8224d9fb48f.html.
- 152 Coal Ash Management Act, S.B. 729 (2014), available at http://www.wral.com/asset/news/state/nccapitol/2014/06/15/13735977/coal_ash_bill.pdf.
- 153 Nina Martin, "North Carolina's Terrible Anti-LGBT Law Is Even Worse Than We Thought," *Mother Jones*, April 5, 2016, available at <http://www.motherjones.com/politics/2016/04/north-carolina%E2%80%99s-terrible-anti-lgbt-law-even-worse-we-thought>.

- 154 Ibid.
- 155 Ibid.
- 156 Deborah Goldberg, Craig Holman, and Samantha Sanchez, "The New Politics of Judicial Elections," (New York, Washington, and Helena, Montana: Brennan Center for Justice, Justice at Stake Campaign, and National Institute on Money in State Politics, 2002), available at <http://www.brennancenter.org/sites/default/files/legacy/Democracy/JASMoneReport.pdf>.
- 157 North Carolina Voters for Clean Elections, "NC Judicial Public Financing: A Success Story," available at <http://www.ncvce.org/content/nc-judicial-public-financing-success-story>.
- 158 Chris Kromm, "How Art Pope killed clean elections for judges in North Carolina," Facing South, June 13, 2013, available at <http://www.southernstudies.org/2013/06/how-art-pope-killed-clean-elections-for-judges-in-.html>.
- 159 Billy Corriher, "Judging the High Court Justices," Center for American Progress, available at <https://www.americanprogress.org/issues/civil-liberties/news/2013/08/20/72443/judging-the-high-court-justices/>.
- 160 Mark Joseph Stern, "North Carolina Republicans' Legislative Coup Is an Attack on Democracy," *Slate*, December 15, 2016, available at http://www.slate.com/blogs/outward/2016/12/15/north_carolina_legislative_coup_an_attack_on_democracy.html.
- 161 Billy Corriher, "NC must say no to partisan court races," *The News & Observer*, February 24, 2015, available at <http://www.newsobserver.com/opinion/op-ed/article11309846.html>.
- 162 Ibid.
- 163 Billy Corriher, "Koch Brothers and D.C. Conservatives Spending Big on Nonpartisan State Supreme Court Races" (Washington: Center for American Progress, 2014), available at <https://www.americanprogress.org/issues/civil-liberties/report/2014/08/11/95426/koch-brothers-and-d-c-conservatives-spending-big-on-nonpartisan-state-supreme-court-races/>.
- 164 Center for Responsive Politics, "Republican State Leadership Cmte," available at https://www.opensecrets.org/527s/527cmtdetail_contribs.php?cycle=2016&in=050532524 (last accessed November 2016).
- 165 Chris Kromm, "5 players behind the Big Money attacks in NC Supreme Court elections," Facing South, May 2, 2014, available at <http://www.southernstudies.org/2014/05/5-players-behind-the-big-money-attacks-in-nc-supre.html>.
- 166 Billy Corriher and Sean Wright, "Dirty Money, Dirty Water" (Washington: Center for American Progress 2015), available at <https://cdn.americanprogress.org/wp-content/uploads/2014/11/DirtyMoneyDirtyWater-report.pdf>.
- 167 Ibid.
- 168 National Partnership for Women and Families, "Paid Sick Days – City Laws" (2016), available at <http://www.nationalpartnership.org/research-library/work-family/psd/paid-sick-days-statutes.pdf> (last accessed November 2016).
- 169 Russell Berman, "Seattle's Experiment With Campaign Funding," *The Atlantic*, November 10, 2015, available at <http://www.theatlantic.com/politics/archive/2015/11/seattle-experiments-with-campaign-funding/415026/>.
- 170 Mayors Climate Protection Center, "U.S. Conference of Mayors Climate Protection Agreement," available at <http://www.usmayors.org/climateprotection/agreement.htm> (last accessed December 2016).

Our Mission

The Center for American Progress is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action. Our aim is not just to change the conversation, but to change the country.

Our Values

As progressives, we believe America should be a land of boundless opportunity, where people can climb the ladder of economic mobility. We believe we owe it to future generations to protect the planet and promote peace and shared global prosperity.

And we believe an effective government can earn the trust of the American people, champion the common good over narrow self-interest, and harness the strength of our diversity.

Our Approach

We develop new policy ideas, challenge the media to cover the issues that truly matter, and shape the national debate. With policy teams in major issue areas, American Progress can think creatively at the cross-section of traditional boundaries to develop ideas for policymakers that lead to real change. By employing an extensive communications and outreach effort that we adapt to a rapidly changing media landscape, we move our ideas aggressively in the national policy debate.

