

ARKANSAS TIMES

Darkly paid judges

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This is the third Arkansas election cycle in a row where corporate interests have used the cover of dark money and semisecret political action committees to try to install cozy appellate judges.

We will have to wait until November to see how successful they are. Thanks to some \$2 million of dark money for TV and mail ads in the final days of the race, their candidate, David Sterling, reached a runoff last week with Justice Courtney Goodson, who is ending her first term on the Supreme Court. Goodson had once been their favorite, before she cast a couple of votes to void a Republican act that had undermined people's right to damages when they or their family members are killed, injured or damaged financially. Instead of a beneficiary, she is now the prey. More about that in a minute.

First, let's review how we got here. It started with the famous Powell Memo in 1971. Powell, a rich Virginia lawyer who was on 11 corporate boards, wrote a lengthy manifesto to the head of the U.S. Chamber of Commerce recommending that the Chamber, corporations and rich businessmen set up an elaborate propaganda system to increase their power and protection in all three branches of government, through lobbying, conservative think tanks and money directed to candidates who would favor them in the three branches. Installing the right judges was particularly important to taxation and aggressive regulation of business.

"Under our constitutional system, especially with an activist-minded Supreme Court, the judiciary may be the most important instrument for social, economic and political change," he wrote. Two months later, President Nixon put Powell on the U.S. Supreme Court. His memo went viral.

Soon, the Heritage Foundation was formed to pump out probusiness and antigovernment solutions. The Koch brothers started the Cato Institute and the Bradley Foundation. Scores of other organizations followed. When Powell penned his memo, 175 corporations had registered lobbyists. Now, 12,000 are registered in the District of Columbia alone — Donald Trump's swamp.

Owing to Nixon's four appointees to the Supreme Court, the fruits of Powell's memo were swift. The court said corporations had the same fundamental human rights as, well, humans. In 1976, in *Buckley v. Valeo*, the court ruled that money was speech and laws that limited how much businesses and the rich could spend to elect people who would favor them limited their right to express themselves. People with more money have a right to more speech. Weeks later, the court held that the constitution's double-jeopardy ban did not apply only to men charged with crimes but to corporations like gun makers and suppliers in civil matters. In 1977, the court barred

government limits on corporate political spending, which would be a bonanza for hugely funded groups like the National Rifle Association.

"The special status of corporations," wrote the dissenting Justice Byron White, "has placed them in a position to control vast amounts of economic power which may, if not regulated, dominate not only our economy but the very heart of our democracy, the electoral process."

More such decisions followed, down to Citizens United in 2010, which encouraged corporations to set up nonprofit entities that could spend directly out of their general treasuries to affect elections and keep the identities of the real donors secret.

Arkansas is always behind big social and economic movements, so it was not until 10 years ago, after the Republican Party became dominant, that its courts came under sway and shadowy groups like the Law Enforcement Assistance Alliance of America and the Judicial Crisis Network spent millions from secret sources to defeat or elect judges on the Court of Appeals and the Supreme Court. The JCN was set up first to get President George W. Bush's right-wing justices confirmed by the Senate but has since expanded to elect or appoint corporate-friendly lawyers to state courts. Arkansas first encountered the JCN in 2005-06, when it filled the airwaves with commercials featuring a black minister that pressured Arkansas's two senators, Democrats Mark Pryor and Blanche Lincoln, to confirm Samuel Alito and John Roberts to the U.S. Supreme Court. (They voted for Roberts but not Alito.)

Although political parties are bound by law to stay out of judicial elections, Courtney Goodson, a Republican lawyer from Fayetteville, was favored by the GOP, the state chamber and business groups when she ran for the Supreme Court in 2010. Only months after taking office, however, she wrote the unanimous opinion of the court striking down part of a 2003 law that limited damages people could get in civil suits against businesses for injury, neglect or financial losses. The next year, she joined all the other justices in striking down the rest of the law. The state Constitution, in the strongest language anywhere in the document, bars the legislature from restricting people's right to full remedies when they were wronged.

It made Goodson forever a pariah to her old allies, but it should make her, for once in her career, everybody else's friend.

Two afterthoughts:

- Gilbert Baker, the former Republican Senate leader, state party chairman and the force behind the tort law that the court struck down, denounced the justices for legislating. You may recall that, soon afterward, Baker escaped indictment for arranging secret campaign gifts to a circuit judge, Mike Maggio, from a nursing home owner for whom he had slashed a jury verdict by \$3.2 million. Maggio is serving 10 years.
- The Republican legislature put a constitutional amendment on this November's ballot to forever limit people's recoveries for civil wrongs, discourage lawyers from representing people with such claims and give the legislature permanent regulatory control over court proceedings.