state law was not such so as to disqualify them.[735] Sometimes, to ensure an impartial tribunal, the Due Process Clause requires a judge to recuse himself from a case. In *Caperton v. A. T. Massey Coal Co., Inc.*, the Court noted that "most matters relating to judicial disqualification [do] not rise to a constitutional level," and that "matters of kinship, personal bias, state policy, [and] remoteness of interest, would seem generally to be matters merely of legislative discretion."[736] The Court added, however, that "[t]he early and leading case on the subject" had "concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has 'a direct, personal, substantial, pecuniary interest' in a case."[737] In addition, although "[p]ersonal bias or prejudice 'alone would not be sufficient basis for imposing a constitutional requirement under the Due Process Clause,'" there "are circumstances 'in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'"[738] These circumstances include "where a judge had a financial interest in the outcome of a case" or "a conflict arising from his participation in an earlier proceeding."[739] In such cases, "[t]he inquiry is an objective one. The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'"[740] In *Caperton*, a company appealed a jury verdict of $50 million, and its chairman spent $3 million to elect a justice to the Supreme Court of Appeals of West Virginia at a time when "[i]t was reasonably foreseeable . . . that the pending case would be before the newly elected justice."[741] This $3 million was more than the total amount spent by all other supporters of the justice and three times the amount spent by the justice's own committee. The justice was elected, declined to recuse himself, and joined a 3-to-2 decision overturning the jury verdict. The Supreme Court, in a 5-to-4 opinion written by Justice Kennedy, "conclude[d] that there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportion-

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[735] Hortonville Joint School Dist. v. Hortonville Educ. Ass'n, 426 U.S. 482 (1976). *Compare* Arnett v. Kennedy, 416 U.S. 134, 170 n.5 (1974) (Justice Powell), *with* id. at 196–99 (Justice White), and 216 (Justice Marshall).

[736] 556 U.S. ___, No. 08–22, slip op. at 6 (2009) (citations omitted).

[737] 556 U.S. ___, No. 08–22, slip op. at 6, quoting Tumey v. Ohio, 273 U.S. 510, 523 (1927).

[738] 556 U.S. ___, No. 08–22, slip op. at 6 (citations omitted).

[739] 556 U.S. ___, No. 08–22, slip op. at 7, 9.

[740] 556 U.S. ___, No. 08–22, slip op. at 11 (citations omitted).

[741] 556 U.S. ___, No. 08–22, slip op. at 15.