

NEW YORK TIMES

Editorial

June 15, 2011

Can Justice Be Bought?

Two years ago, the Supreme Court tried to bolster public trust in the nation's justice system by disqualifying a state judge in West Virginia from a case that involved a coal company executive who had spent more than \$3 million to help get the judge elected.

At a time when torrents of special interest campaign spending is threatening the appearance and reality of judicial impartiality, the ruling in *Caperton v. Massey* drove home the need for states to adopt more rigorous rules for recusal. The message has largely gone unheeded.

For the most part, state courts set their own recusal rules. According to New York University's [Brennan Center for Justice and Justice at Stake Campaign](#), so far, courts in nine states — Arizona, California, Iowa, Michigan, Missouri, New York, Oklahoma, Utah and Washington State — have made recusal mandatory when contributions by a party or attorney exceed a certain threshold amount or create a question about the judge's impartiality.

Courts in two other states are considering similar proposals. But several other states have rejected stronger rules — or have actually weakened them.

In 2009, Nevada's top court rejected a reform commission's modest proposal to make recusal mandatory when a judge received contributions totaling \$50,000 or more from a party or lawyer over the previous six years.

Last year, in Wisconsin — home to some of the nastiest big-money judicial races — the State Supreme Court rejected proposals to trigger recusal at \$1,000 or \$10,000 contribution levels. Then the court weakened the recusal standard, adopting a new rule that campaign donations or expenditures can never be the sole basis for a judge's disqualification.

The remaining states, including epicenters of special-interest-dominated contests like Illinois and Pennsylvania, have done nothing to keep campaign cash from tainting the courtroom. The Supreme Court has ensured the money problem will get worse with its 2010 ruling allowing unlimited special interest spending in all campaigns.

Many judges wrongly view mandatory disqualification rules involving election money as a personal insult and a threat to judicial independence. The real threat to independence lies in doing nothing to protect judicial integrity in the face of obvious conflicts.

The American Bar Association should be leading the way here. In an encouraging step, the group's president, Stephen Zack, has seen to it that the issue will be taken up at the August meeting of the association's House of Delegates. By adding a strong recusal provision to its influential model code of judicial conduct, the bar association would provide needed guidance to state judiciaries and help goad them to do the right thing.

A good rule would have four basic elements. It should explicitly recognize that recusal may be necessary because of campaign spending by litigants or their lawyers. It should specify that the final decision about whether a judge's impartiality can reasonably be questioned not be left to the challenged judge. It should require that decisions on recusal requests be in writing. Finally, litigants and attorneys must be required to disclose any campaign spending relating to a judge or judges hearing their case.