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## Our Opinion: Change way judicial races are financed

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**THE U.S. SUPREME COURT's** ruling Monday that judges must disqualify themselves from ruling on cases involving major contributors should be the push Illinois needs to resurrect a recent reform proposal calling for a pilot public financing program for judicial elections.

That proposal, crafted by the Illinois Reform Commission, died during the recent General Assembly session, replaced with a weak bill calling for a study of the issue and a report due in 2012.

The court, in a 5-4 decision, ruled on a case involving Massey Energy, a Virginia-based coal company, and West Virginia Supreme Court Justice Brent Benjamin. Massey's chief executive, Don Blankenship, spent \$3 million on his own trying to get Benjamin, a Republican, elected to West Virginia's highest court in 2004, mostly via attacks on his opponent, incumbent Justice Warren McGraw.

Subsequently, Benjamin refused to recuse himself from a case in which a jury had awarded a Massey competitor \$50 million.

**THE CIRCUMSTANCES** probably sound familiar to those who follow judicial elections in Illinois. In the same year Benjamin was elected, Illinois had a nasty Supreme Court race in southern Illinois between Democrat Gordon Maag and Republican Lloyd Karmeier, each of whom collected more than \$4 million in contributions for the race.

Karmeier, whose campaign received sizable donations from those associated with State Farm and Philip Morris, subsequently ruled on large class-action judgments against each when he joined the court. Both judgments were reversed.

Think about if you had been a plaintiff in any of the cases mentioned. Would you have trusted Karmeier or Benjamin to render impartial justice?

Of course not. That's not to say there is proof that either actually was biased in judging the cases. But the size of the contributions is enough to cast doubt on the judges' objectivity. It's common sense.

Yet, judges rarely seem to recuse themselves. A 2006 New York Times examination of the Ohio Supreme Court found in 215 cases "with the most direct potential conflicts of interest," the justices stepped aside nine times. In 70 percent of cases over a 12-year period, the justices voted with their contributors, the Times found.

**THIS PAGE SEES** two potential solutions. Either stop electing judges and have the governor select them based on merit or have the public finance most of their campaigns.

The first solution, depending on how it is accomplished, would remove the judiciary from being subject to the whims of the public and the kind of misleading negative advertisements too often seen in judicial races lately. By having legal experts put together a group of judges from whom the governor could choose, a more independent judiciary could emerge.

The second could accomplish the same thing by allowing judges to avoid having to ask for contributions from litigants who are sure to be before them in the future. One Ohio judge pointedly addressed this problem in the Times' report.

"I never felt so much like a hooker down by the bus station in any race I've ever been in as I did in a judicial race," said Justice Paul E. Pfeifer, a Republican member of the Ohio Supreme Court. "Everyone interested in contributing has very specific interests."

Both choices will vex voters. One means less democracy; the other means having to use public money (but not tax money — the commission proposed using lawyer registration and court filing fees) for judicial campaigns. But either is better than the current system.

Given that going to merit-based selection of judges would mean undergoing the difficult process of changing the state constitution, a pilot public finance program for the state Supreme Court is the most prudent way to address the problem today.

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