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When justice is for sale

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Tennessee's Republican-dominated Legislature must decide this spring whether to renew or let expire the Missouri plan for selecting the state's appellate court judges, and there's talk of letting it expire. The plan should be renewed: It avoids election races that plunge candidates for the state Supreme Court into multi-million-dollar fund-raising campaigns, and the ethical and corruption issues that arise from such campaigns' reliance on rich supporters.

An apt example of that critical dilemma, which makes justice appear for sale to multimillionaires, is now before the U.S. Supreme Court in a case from West Virginia. It deserves close scrutiny.

The West Virginia case revolves around the influence of an aggressive \$3 million television advertising that a rich coal mining executive, Don L. Blankenship, financed in 2004 to defeat incumbent West Virginia Supreme Court Justice Warren R. McGraw, and help elect his challenger, Brent D. Benjamin.

After Mr. Benjamin was elected, he helped deliver a 3-2 majority opinion that threw out a lower court jury's \$50 million judgment against Mr. Blankenship's Massey Energy Co., the nation's fourth largest coal mining company.

The U.S. Supreme Court must decide soon whether Mr. Benjamin, who received just \$1,000 in direct donations from Mr. Blankenship but who benefited greatly from Mr. Blankenship's campaign against the incumbent justice, should have recused himself from the case involving Mr. Blankenship's coal company.

In the way of West Virginia politics, Mr. Blankenship, whose office is just over the state line in Kentucky, says it would have been foolish to try to buy Mr. Benjamin's loyalty because politicians "don't stay bought." In fact, he told a New York Times reporter, he didn't help get Mr. Benjamin elected just for one case. He said his company has frequently attracted "lawsuits over environmental, workplace safety and labor issues."

His statements certainly appear to explain why he would want a friendly face on West Virginia's Supreme Court, even if his \$3 million advertising campaign against a justice he didn't like is not prima facie evidence of a quid pro quo from Mr. Benjamin.

In any case, his own statements, cited in a the New York Times interview, show precisely how massive advertising can distort and influence issues in a judicial election. Mr. Blankenship said he deliberately set out to defeat Justice McGraw because he didn't like his rulings against corporate defendants. He said he told his aides to find a case against Justice McGraw that would turn the public against him.

When they found a case in which he had joined a majority opinion to allow parole for an 18-year-old who had been repeatedly sexually abused as a child by two adult family members and who then, at age 14, had abused a younger half-brother, Mr. Blankenship said he knew he had found a case he could turn against Justice McGraw in a television advertising campaign. "That killed him," he said.

Mr. McGraw said the advertising distorted the decision involving the young man. "They say our court set a child molester loose in our schools. It's absolutely untrue."

Still, that shows how campaign advertising in judicial races can be manipulative and misleading, and why Mr. Blankenship is now free of a \$50 million judgment against his oft-sued mining company.

Tennessee's voters should find the case illustrative. Tennessee presently is one of 11 states that now allows incumbent appellate judges who are not retiring to stand for re-election on a retention ballot. If they are defeated on a yes-no vote, a judicial nominating committee appointed by legislative leaders submits three names from a list of qualified attorney/applicants for an open appellate seat, and the governor chooses a successor.

The process avoids the inherently prejudicial circumstance of judicial candidates appealing for money from donors whose wealth and business interests too often create cases that come before appellate courts. The current plan, know as a modified Missouri plan for a system first used in Missouri, allows qualified attorneys to be selected without begging for campaign money and creating inherent conflicts of interests.

The Legislature should keep the present system, But there is again a quiet campaign to open the Supreme Court to expensive, competitive elections, mainly to get judges who will play to partisan passions to change the state's constitution to limit women's reproductive rights and advance a conservative agenda. That's grossly insufficient reason to open the Supreme Court to the very real possibility of outright corruption and big-money politics.

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