

Looming high court ruling could taint justice, legal expert says

January 13 2010

A pending U.S. Supreme Court ruling could aggravate the influence of corporate campaign spending that already has skewed justice in some of the nation's courts, a University of Illinois labor law expert warns.

Michael LeRoy says he found evidence that judges' rulings are being swayed by campaign contributions from businesses, based on a new study of more than 200 state court cases. The study will appear in the *Iowa Law Review*.

He predicts justice would tip even more out of balance if the Supreme Court strikes down limits on election spending in a high-stakes challenge to the Bipartisan Campaign Finance Reforms Act of 2002, commonly known as the McCain-Feingold bill.

The high court's ruling, expected as early as this week, could give corporations, unions and activist groups virtual free rein to run election-time ads for and against candidates, legal analysts say, and lay the groundwork for direct donations to political campaigns.

"It would open up the spigot for judicial contributions and greatly aggravate the problem, further politicizing and polarizing some of these state courts," said LeRoy, a professor of labor and of law.

Debate over the looming court ruling in the case - Citizens United v. the Federal Election Commission - has centered largely on how the flood of money would affect presidential and congressional elections. LeRoy says

the impact on judicial campaigns is just as worrisome.

"The influence of judges is extraordinary because they are the final word in the process and there is immediately a winner and a loser as a result," he said. "And both the winner and the loser have many other people in society who are equally affected because they are in the same position."

LeRoy says a torrent of corporate money already is flowing into judicial races, allowed by law in some states and contributed through faceless subsidiary organizations in others. He says his new research suggests the election-time backing from business is yielding unequal justice.

The study examined 223 state court rulings on arbitrator awards in employment disputes from 1975 through 2008. Employees won only 32.1 percent of cases reviewed by party-affiliated judges, the study found, compared with 52.7 percent in cases decided by judges who were appointed or elected in non-partisan elections.

LeRoy says the findings are limited because the study did not examine whether any of the judges received campaign donations from corporate employers.

"But it's hard to think of an alternative explanation," he said. "The inference I arrive at is that there's something about the election process that is influencing the outcome."

While the study examined arbitration awards, LeRoy says the influence of campaign contributions could affect rulings in a host of areas, from employers seeking to duck liability in workplace injury or wage and hour disputes to activist groups seeking favorable rulings in right-to-life or gun-control cases.

He says courts could eliminate the conflict of interest by changing

standards for disqualifying judges from hearing cases. Now, judges assigned to civil cases rule themselves on requests to appoint a new judge. Under LeRoy's proposal, another judge would make that ruling if the assigned judge received campaign donations from a company or cause involved in the case.

"I think that in itself would have a restraining influence," LeRoy said. "If corporations knew they might not get a particular judge, why pony up millions of dollars?"

He says the move would be a good first step to ensure that courts remain "pure institutions," above the bias that can come with money.

"Money should not decide a single case," LeRoy said. "The question I have is what is the difference between donating millions of dollars to a judge in hopes of getting a particular outcome and bribing the judge? There's a difference, but I'm uncomfortable with the narrowness of the difference."

Provided by University of Illinois at Urbana-Champaign

Citation: Looming high court ruling could taint justice, legal expert says (2010, January 13)
retrieved 19 April 2024 from

<https://phys.org/news/2010-01-looming-high-court-taint-justice.html>

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