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FEBRUARY 3, 2015

Supreme Court could toss remaining rules on money in State judicial elections

 January 18, 2015 by [stevenyoder](#)  [Leave a Comment](#)



US Supreme Court Justices
2010 Courtesy Wikimedia Commons

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It had to come to this. At a GOP rally on October 25, Ohio Supreme Court Judge Judith French, who was up for reelection, [seemed to forget herself](#) for a few moments. “I am a Republican, and you should vote for me,” she said. “Whatever the governor does, whatever your state representative, your state senator does, whatever they do, we are the ones that will decide whether it is constitutional; we decide whether it’s lawful... So forget all those other votes if you don’t keep the Ohio Supreme Court conservative.”

You could hardly blame her—in states with judicial elections, judges increasingly operate like politicians. State judicial races became even more partisan after the Supreme Court’s 2010 *Citizens United* decision, which allowed unlimited spending by corporations and unions in those contests. Now another case in front of the high court could wipe out key remaining state laws governing political donations in judicial races.

Citizens United escalated the scale of spending in judicial elections almost immediately. Money for television ads in state Supreme Court races hit \$34 million in the 2011–2012 cycle, surpassing the previous two-year record of \$27 million by 26 percent, according to a 2013 [report](#) by the Brennan Center for Justice. A few big donors accounted for a disproportionate share of that money—the top 10 spenders were responsible for more than a third of total spending.

In some states, big-money judicial elections have eroded public confidence in their court systems. In Wisconsin, television attack ads hit new lows in the 2011 race between challenger JoAnne Kloppenburg and Justice David Prosser, according to the Brennan Center. An ad paid for by a progressive interest group accused Prosser, an ally of Governor Scott Walker, of covering up molestation by a priest when he was a district attorney. Another paid for by a conservative group described Kloppenburg as “so extreme she even put an 80-year-old farmer in jail for refusing to plant native vegetation on his farm.”

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[Commentary: For Hunger Games – Mockingjay, teens are doing the marketing](#)

December 4, 2014

By Joan Oleck – The Hunger Games:

Mockingjay—Part 1

is, for its teen fan base, a powerful lesson in marketing manipulation. For anyone not living in a cave, this third film in the series of four is based on the über-successful book series by



Along with negative ads has come increased public cynicism: a 2011 poll of Wisconsin voters found that their confidence in the Supreme Court had fallen to just 33 percent, down from 52 percent 3 years earlier, according to the center.

Nationally, voters appear increasingly uncomfortable with big-money state judicial races. In a 2013 [national poll](#) of a thousand voters commissioned by two reform groups, 87 percent said campaign contributions have some or a great deal of influence on judges' decisions. And 90 percent said allowing judges to rule on cases involving donors to their campaigns is a "very serious" or "somewhat serious" problem.

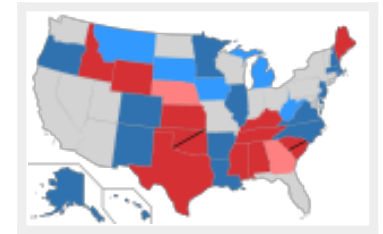
Those may be more than just perceptions. In an April 2011 [article](#) in the *New York University Law Review*, Emory University law professors Michael Kang and Joanna Shepherd described the results of their review of every state Supreme Court case in all 50 states from 1995 to 1998. Elected judges, they concluded, "are more likely to decide in favor of business interests as the amount of campaign contributions received from those interests increases."

In another [study](#) released last October, a team led by Kang and Shepherd examined 3000 criminal appeals cases decided in state Supreme Courts in 32 states from 2008 to 2013. The numbers showed that "the more TV ads that aired during state supreme court judicial elections in a state, the less likely justices are to vote in favor of criminal defendants," the authors noted. That's because they fear attack ads that portray them as soft on crime, the researchers concluded.

The outcome of a case before the Supreme Court could well intensify those trends. Of the 39 states that permit the election of state judges, 30 prohibit judges from soliciting campaign funds themselves. Florida is one of the 30 with such a prohibition. In the [case](#) before the high court, a *Florida nominee* for county judge is seeking to overturn a decision by the Florida Supreme Court to publicly fine and reprimand her for a mass mailing she sent out to raise money for her campaign.

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**Commentary:
The 2014 US
Midterms –
The
democratic
election
that wasn't**



November 11, 2014

Commentary: The 2014 US Midterms – The democratic election that wasn't American democracy is predicated on two critical pillars. The selection of political representatives by the majority via the ballot box, and the availability of timely and accurate information that is vital for voters in their assessment of candidates and policies consistent with their self-interest. [...]

**Commentary:
International
community
must address
Myanmar's
mistreatment
of Rohingya
minority at East Asian summit**



October 31, 2014

As Myanmar, a country with an

If the court rules that the Florida court's decision violates her First Amendment rights, Florida and the other 29 states could have their rules struck. If so, the results could be dramatic—sitting judges up for reelection could ask lawyers and plaintiffs who appear in their courts to contribute to their campaigns.

The larger issue may be the propriety of choosing judges through elections at all. One group of judges, political officials and lawyers led by retired Supreme Court Justice Sandra Day O'Connor has been trying to convince states to scrap judicial elections.

The judiciary is designed to insulate the minorities against the efforts of majorities to strip them of constitutional protections. Judicial appointments by the executive branch and lifetime tenure don't insulate a judge from the political process, but they do reduce its impact. So campaign funding rules or no, judicial elections create predictable results—majorities who dislike a judge's ruling simply have to vote them out.

That produces outcomes like the one in Iowa in 2010, when a \$1.4 million campaign by conservative groups targeted three Supreme Court judges for ruling that it was unconstitutional for the state to prohibit same-sex marriage. All three lost and were replaced by conservatives.

The conclusion that other judges draw from such results is that unpopular court decisions could lose them their jobs, even if they're the right call constitutionally. Without judges to stand up to majorities on constitutional grounds, those of all political persuasions have good reason to fear that constitutional safeguards mean little.

Florida Supreme Court Justice Fred Lewis was targeted by an effort similar to that in Iowa. He described the efforts of outside interest groups who targeted him as "a full frontal attack... on a fair and impartial justice system, which is the cornerstone and bedrock of our democracy." Those who believe in keeping one branch of government more insulated from public sentiment in the service of constitutional protections

incipient democracy and alarming human rights record, prepares to host a prestigious regional issues summit in coming weeks, the Southeast Asian nation's galling treatment of its ethnic minority populations is receiving renewed attention. It's an inopportune time for the country's president, Thein Sein, for these issues to be resurfacing in [...]

**Commentary:
Bandwagon
outrage over
Brunei's strict
Islamic
criminal
code all
but gone**



October 18, 2014

When Brunei became the first Southeast Asian country to nationally adopt a strict Islamic penal code known as Sharia earlier this year, the world was outraged. News and social media told us so in such headlines as "Brunei adopts sharia law amid international outcry" and "Ellen DeGeneres backs boycott of Brunei-owned hotels over 'stone the [...]"

might say the same about judicial elections generally.

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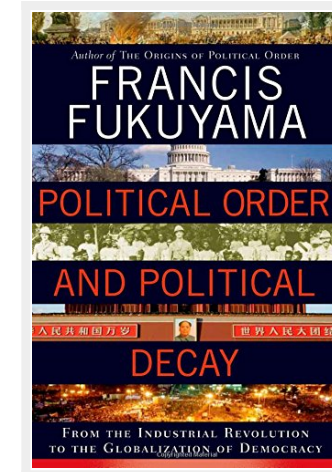
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Book recommendation: Political Order and Political Decay



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