

Judicial Elections and Due Process

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Summary

Modern judicial elections are characterized as nastier, noisier, and costlier, because of the change of legal culture, called as law explosion, and polarization of ideology since the late 1980s. State courts must comport with the constitutional requirement of procedural due process that they adjudicate fairly and impartially. Modern judicial elections, however, make fair and impartial adjudication difficult, if not impossible, to achieve in most states.

The U.S. Supreme Court recognized the national problem of judicial campaign contributions and due process in *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009), and concluded that there is a serious risk of actual bias when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent.

Judicial campaigns in the age of frenetic fundraising may not only put fair trial and due process rights at stake, but also ultimately lose public confidence in the courts. It should be an important step for state courts to strengthen recusal practice, and since *Caperton*, Arizona, California, Iowa, Michigan, Missouri, New York, Oklahoma, Utah, and Washington have successfully adopted recusal reform.