January 30, 2010

EDITORIAL NOTEBOOK

Hanging a ‘For Sale’ Sign Over the Judiciary

By DOROTHY SAMUELS

As I read over last week’s aggressively wrong 5-to-4 Supreme Court decision greatly escalating the power of corporate and union money in elections, my thoughts turned to former Justice Sandra Day O’Connor.

That is not just because the ruling is another reminder of the court’s rightward shift since Justice O’Connor was replaced by the starkly conservative Justice Samuel Alito. Since retiring, Justice O’Connor has been warning about the threat to judicial independence from big-money state judicial campaigns and attack ads paid for by special interests hoping to influence future court decisions. The Citizens United ruling promises to make that problem worse, possibly much worse.

Thirty-nine states hold judicial elections. Between 2000 and 2009, State Supreme Court candidates raised $205.8 million, according to the Justice at Stake Campaign, a watchdog group that monitors money in court races. That was more than double the $84.9 million raised the previous decade. One immediate result of the Citizens United ruling, as Justice John Paul Stevens noted in dissent, is that these states “may no longer have the ability to place modest limits on corporate electioneering even if they believe such limits to be critical to maintaining the integrity of their judicial systems.”

Another result is that all states are now effectively barred from adopting curbs on corporate and union spending on political campaigns, including judicial races. Business and other outside interest groups able to spend the cash could further dominate the airwaves and the debate in campaigns. Judicial candidates concerned about retaining control of their message will need to devote even more time to fund-raising.

Thoughtful candidates known to look at the law on a case-by-case basis will be at a distinct disadvantage, forecasts Professor James Sample, a judicial elections expert at Hofstra Law School. The accelerated money war, he warns, will inevitably polarize the bench “because more moderate candidates are unlikely to be considered a bankable vote by any special interest group investing heavily in judicial campaigns.”

To protect the integrity of their court systems, states need to enact basic reforms: switching from judicial elections, for instance, to the selection of judges on merit, or adopting strict rules that bar judges from ruling in cases involving major financial supporters. “No states can possibly benefit from having that much money injected into a political judicial campaign,” Justice O’Connor said on Tuesday. Achieving these reforms won’t be easy, but now they are even more essential.