



For Immediate Release  
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**Modern Courts Releases Recusal Report  
Designed to Preserve Judicial Independence**

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New York, NY – The Fund for Modern Courts today released a report entitled, “A Heightened Recusal Standard for Elected New York Judges Presiding over Cases, Motions or Other Proceedings Involving Their Campaign Contributors.”

The report was prepared in response to the January 2010 decision of the United States Supreme Court in *Citizens United vs. Federal Election Commission*, which held that the First Amendment prevents government from limiting independent corporate and union campaign expenditures, even to the campaigns of judges who preside over corporate and labor cases.

Victor A. Kovner, Chair of Modern Courts, said, “As result of the *Citizens United* case it is now clear that judicial election campaigns may be inundated with excessive amounts of corporate and union spending. Our report proposes a simple, practical way to immediately end this current threat to the independence and impartiality of the judiciary.”

The report recommends that the Administrative Board of the Courts establish a *per se* rule which would obligate judges to recuse (disqualify) themselves from hearing cases in which any party has made total contributions to the judge totaling \$1,000 or more.

Under the rule, each party’s “total contribution” would be defined as the sum of the contributions made during the previous three years or the pendency of the case by: (1) the party or real parties in interest; (2) any holder of five percent or more of the party’s stock, if the party is a corporation; (3) any insurance carrier for the party which is potentially liable for the party’s exposure in the case; and (4) the attorney or attorneys and/or law firm or firms of record for the party.

The burden of disclosing the relevant campaign contributions would be on the parties rather than the judge.

Mr. Kovner said, “We believe that such an automatic disqualification rule would address legitimate public concern about the influence of campaign contributions on judges, even if they do not rise to the level of the extraordinary situation in *Caperton v. A.T. Massey Coal Co.* which the United States Supreme Court decided last year.”

In *Caperton v. A.T. Massey Coal Co.*, the Supreme Court held that the failure of a Justice of West Virginia’s highest court to recuse himself from the appeal of a \$50 million jury verdict in a case, where the CEO of the lead defendant spent over \$3 million in support of his election, violated the Due Process Clause of the Fourteenth Amendment.

Mr. Kovner continued, “A recusal rule like ours would prevent a wide variety of other instances in which public confidence in the judiciary might be undermined as a result of campaign contributions by the parties in a case.” He noted that, “The *Caperton* Court made clear that “[t]he Due Process Clause demarks only the outer boundaries of judicial disqualifications. Congress and the states, of course, remain free to impose more rigorous standards for judicial disqualification than those we find mandated here today.”

Lenore H. Banks, Judicial Specialist, The League of Women Voters of New York State said, "The escalating costs of judicial campaigns, especially when lawyers are the major contributors to those campaigns, erode public trust in the judiciary. Modern Courts' proposed recusal rule is timely and it will serve to protect the independence of the judiciary."

J. Adam Skaggs, Counsel, Democracy Program, Brennan Center for Justice at NYU School of Law said, "With unprecedented levels of money pouring into judicial elections across the country, strong disqualification rules are needed to ensure that judges step aside when their financial supporters appear before them. Modern Courts should be commended for their carefully researched report, which underlines the need for meaningful recusal reform in New York."

The report was prepared for Modern Courts by Board member, Amelia T.R. Starr and her associates at Davis Polk & Wardwell LLP, Sarah M. Egan, Chaim Kagedan, Christina Krause, and Rebecca Stone.

A copy of the report is attached.

The Fund for Modern Courts is an independent nonpartisan statewide court reform organization committed to improving the court system for all New Yorkers. Modern Courts supports a judiciary that provides for the fair administration of justice, equal access to the courts, and that is independent, highly qualified and diverse. By research, public outreach, education and lobbying efforts, Modern Courts seeks to advance these goals and to ensure that the public confidence in the judiciary remains strong.

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