A Matter of Ethics, Not Ideology

To the Editor:

In his counterpoint ("No Mandatory Dues for Ideology") to State Bar President Brian Einhorn in the May *Bar Journal* regarding judicial campaign ads, disclosure of donors, and the proposal to make State Bar membership voluntary for Michigan lawyers, Richard McLellan's characterization of the State Bar's efforts to require donor disclosure as an "ideological campaign" was dishonest.

What the State Bar is dealing with here is the very integrity of the judicial system. Einhorn called it right in pointing out that "issue" ads are frequently worded to influence votes for or against a candidate without using the "magic words" that appear in Public Act 252. Public disclosure of those who bankroll such ads is necessary because they may have business before the court in question. If these donors remain secret and judges whose campaigns they've helped to finance decide their cases, we wind up with a corrupt court system, with money trumping legal merit and the public kept in the dark.

The United States Supreme Court recognized this problem even when donors were disclosed in the 2009 case of *Caperton v A T Massey Coal Co, Inc*.[1] After losing a $50 million judgment in 2002 in a West Virginia trial court, Massey CEO Don Blankenship contributed $3 million of the $5 million raised by the successful 2004 campaign of Brent Benjamin for the West Virginia Supreme Court of Appeals. Blankenship's intention was to rig his appeal, and Benjamin did his bidding by casting the deciding vote in 2006 in a 3–2 decision in Massey's favor.

That was too much for the United States Supreme Court, which overturned this decision, ruling that Benjamin should have disqualified himself from hearing the case because of a perceived conflict of interest, with the probability of actual bias rising to an unconstitutional level, according to Justice Anthony Kennedy.

Requiring disclosure of donors to issue ads in judicial campaigns isn't a matter of ideology but of ethics, and pursuing this issue falls well within the State Bar's mission of regulating the judiciary to see that the legal system has integrity, instead of being for sale to the highest bidder, whose identity may be kept secret. In that context, the proposal to make State Bar membership voluntary is a vindictive response from those who want a corrupt court system where they can pay to rig the results. For promoting judicial corruption and dishonestly calling the State Bar position "ideological," McLellan ought to be ashamed of himself.

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ENDNOTE

1. *Caperton v A T Massey Coal Co, Inc*, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009).

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