Free the judges

by the St. Louis Post-Dispatch

It has been a good week for the concept that justice requires judges, not politicians, to have the final say in how criminals are punished.

- On Monday, the U.S. Supreme Court handed down a pair of 7-2 decisions that restored a measure of independence to federal trial judges in deciding how to assess punishment.

- On Tuesday, the U.S. Sentencing Commission, which sets guidelines for federal prison sentences, gave judges the right to reconsider sentences imposed in nearly 20,000 crack cocaine cases.

Lest anyone believe the Roberts court suddenly has gone soft, it should be pointed out that federal sentencing guidelines remain very tough. But in Monday's decision, both Chief Justice John G. Roberts Jr. and Justice Antonin Scalia, two of the court's four-member conservative bloc, were among the majority that built on the court's 2005 ruling that those guidelines are advisory, not mandatory. The rulings say that appeals courts must defer to the right of a trial judge to use his discretion in departing from sentencing guidelines.

Although both of the cases decided Monday involved drugs, the ruling applies to sentences for other crimes as well. Still, it's significant that one of the cases directly addressed the 20-year controversy over disparities in sentences imposed for crimes involving crack cocaine as opposed to those associated with powder cocaine.

Congress, in enacting federal sentencing laws in 1986 and 1988, bought into the prevailing mythology that when powdered cocaine is crystallized with water and baking soda into rock form and then smoked, it becomes far more dangerous. The sentencing laws set a mandatory minimum sentence of five years for anyone convicted of possessing as little five grams (about the weight of a nickel) of crack. To get the same sentence, someone would have had to be convicted of possessing 100 times that much powder cocaine (more than a pound) and the intent to distribute it.

By 1995, the sentencing commission had concluded that the devastation created in urban areas in the 1980s had been created not by the drug itself but by competition for control of the market for a cheap version of cocaine. But by then, prisons were filling up with crackheads, 85 percent of whom were African-American.

In the case decided Monday, Justice Ruth Bader Ginsburg, writing for the majority, called the federal crack law "disproportionate and unjust." However, the decision merely affirmed the trial judge's sentence of 15 years, rather than the 19 1/2 to 22 years called for under the sentencing guidelines.

Similarly, under the ruling announced Tuesday by the sentencing commission, trial judges won't be emptying jail cells en masse. The average sentence could end up being reduced by about 17 percent, or about two years.

The next logical step in this progression belongs to Congress, which for years has been considering reducing the sentencing disparities for crack and powder cocaine convictions. No one is suggesting that drug dealers get a free pass; the argument is that it's foolish to fill up prisons with addicts who are serving longer sentences than the dealers who supplied them.

But Congress is full of politicians, a breed that too often puts the interests of politics over the interests of justice. This is why judges at the federal and state levels, too, should be free from political meddlers.

Reprinted from the St. Louis Post-Dispatch CNS.

Free the judges by the St. Louis Post-Dispatch