



VOTE  
HERE



# JUSTICE HIJACKED

Your Right To Vote Is At Stake

# **JUSTICE HIJACKED**

Your Right To Vote Is At Stake

The \$45 Million (and Counting) Campaign to  
Abolish Judicial Elections and Reshape America's Courts



A report published by American Justice Partnership  
September 2010

©American Justice Partnership 2010

# Table of Contents

Executive Summary	Page 4
The Campaign to Reshape America's Courts	Page 5
“There Should Be No Such Accountability”	Page 6
The Creation of Justice at Stake	Page 7
Using Hardball Campaign Tactics to Change Judicial Selection	Page 8
The JAS Campaign Playbook in Action: Focus on Pennsylvania	Page 9
Follow the Money: The Campaign to Abolish Democratic Judicial Elections	Page 10
The Flawed Theory Behind Justice at Stake	Page 12
The Use and Abuse of “Merit Selection”	Page 13
“Merit Selection” and <i>Citizens United</i>	Page 16
Elections - the Worst Way to Pick Judges...Except For All the Others	Page 16
Appendix I	Page 18
Appendix II	Page 28
About The Author	Page 29

# Executive Summary

---

**O**ver the past 10 years, a highly-coordinated, well-funded campaign has been underway to fundamentally alter the composition of America's state courts. The campaign's goal: exclude conservative, rule-of-law judges from the bench. This campaign has been bankrolled by George Soros, a hedge fund operator with a net worth of \$13 billion, according to the Forbes 400 list of the world's richest people.

An analysis of sources, ranging from documents and websites to foundation and nonprofit IRS Form 990s, reveals that Mr. Soros' Open Society Institute (OSI) has invested at least \$45.4 million into its campaign to reshape the judiciary. This is likely a conservative estimate.

This multi-million dollar campaign to reshape our courts encompasses efforts to revise state constitutions, rewrite judicial recusal rules, abolish democratic judicial elections, and impose a judicial selection system known by its proponents as “merit selection.” Under “merit selection,” the power to select judges is transferred from the people to a small, unelected, unaccountable commission comprised primarily of legal elites, typically including representatives of

powerful special interest groups, such as state trial lawyers associations.

As this report describes, the Soros-funded effort deploys a full range of hardball campaign tactics. The campaign unfolds according to a well-developed playbook, often led and coordinated by OSI grantee, Justice at Stake. Justice at Stake's efforts are driven by the claim that judges who accept campaign contributions cannot be impartial. To date, neither Justice at Stake nor any OSI grantee has presented hard evidence to prove this claim.

Promoted as a method to keep “politics” out of the judicial selection process, the “merit” committees in many states are extremely politicized and have fueled several high-profile political controversies in just the past few years. Such confrontations have prompted scholars to question whether the “merit selection” system serves any of its stated purposes.

Nevertheless, proponents of “merit selection” have continued their campaign unabated. Indeed, the campaign now uses the Supreme Court's recent *Citizens United* decision as its rallying cry, arguing that the decision will precipitate a “flood of money” into state judicial races. ■

**Over the past 10 years, a highly-coordinated, well-funded campaign has been underway to fundamentally alter the composition of America's state courts.**

# The Campaign to Reshape America's Courts

“When historians take stock of our legalistic age,” the *American Bar Association Journal* wrote in 2000, “they may find evidence that the greatest impact was made by a non-lawyer who happened to be a Hungarian-born immigrant.”<sup>1</sup> That non-lawyer is George Soros, a hedge fund billionaire (ranked 15th on the 2009 Forbes 400 list with a net worth of \$13 billion) who has used his immense wealth to create and finance a myriad of liberal-oriented organizations and foundations through his Open Society Institute.<sup>2</sup>

Many Americans are familiar with Mr. Soros' political activities through his support of left-leaning groups such as MoveOn.org and America Coming Together. While these activities have been widely chronicled in news outlets, including *The New Yorker*,<sup>3</sup> *Time*,<sup>4</sup> and NPR,<sup>5</sup> little attention has been paid to Mr. Soros' efforts to reshape America's courts. As *Investor's Business Daily* describes, “...Soros is no hands-off donor. According to the Open Society Institute's website: 'Despite the breadth of his endeavors, Soros is personally involved in planning and implementing the foundation network's projects.’”<sup>6</sup>

Mr. Soros' ultimate impact on our judicial system “remains to be seen, and some reasonable minds question his efforts,” the *ABA Journal* article concedes. “But by sheer ambition and focus, he could bring more change to the justice system and the legal profession than anyone since a small group of founders crafted the Constitution.”<sup>7</sup> Mr. Soros, we learn, is committed to “putting millions of dollars where his mouth is.” The author notes that “if his high-dollar effort to fix what he thinks is broken continues and is anywhere near as successful as it is ambitious, Soros may have more impact in those areas than any individual ever.”

Of course, we should take the ABA's breathless elevation of Mr. Soros into the ranks of Madison and Hamilton with a grain of salt. After all, at the time of the article's publication (January 2000), Mr. Soros, through his Open Society Institute, had already given over \$2.6 million to the American Bar Association.<sup>8</sup>

The Soros/OSI largesse came with a political agenda. Of the initial \$2.6 million investment, \$807,000 was targeted for “protecting judicial independence,” of which \$500,000 was earmarked to “increase public awareness of the need for impartial judges.”<sup>9</sup> Between 2000 and 2008, financial records show the OSI contributed an additional \$4.444 million to the ABA, with \$1.985 million budgeted for the work of the Standing Committee on Judicial Independence.

Mr. Soros' efforts to reshape America's justice system to suit his personal ideological views do not stop with the American Bar Association.

**“...he could bring more change to the justice system and the legal profession than anyone since a small group of founders crafted the Constitution.”**

An analysis of hundreds of documents and websites, foundation and nonprofit IRS Form 990s,<sup>10</sup> reveals that OSI has funneled at least \$45.4 million into a highly-coordinated campaign to reshape the judiciary and fundamentally change the way judges are chosen in many American states. This figure is almost surely a conservative estimate, for these same organizations have received an additional \$52.5 million from OSI to

finance a range of activities, some of which, such as “general support” contributions, may be supporting OSI's judiciary campaign. As *Investor's Business Daily* noted, “Soros' 'shaping public policies,' as OSI calls it, is not illegal. But it is a problem for democracy because it drives issues with cash and then only lets the public know about it after it is old news. *That means the public makes decisions about issues without understanding the special agendas of groups behind them. Without more transparency, it amounts to political manipulation.*”<sup>11</sup> [Emphasis added]

<sup>1</sup>Terry Carter, “Mr. Democracy, Giving More Millions to Further Justice Than Anyone - Ever” 86-JAN A.B.A. J 56, (American Bar Association Journal), January 2000.

<sup>2</sup>For those who suggest that the Open Society Institute is a separate organization, completely independent of Mr. Soros and his philosophy, one only has to note the website name: www.soros.org.

<sup>3</sup>Jane Mayer, “The Money Man,” *The New Yorker*, October 18, 2004. (He and 4 other billionaires met with a common goal: to use their fortunes to engineer the defeat of President George W. Bush in the 2004 election.)

<sup>4</sup>Karen Tumulty, “10 Questions for George Soros,” *Time*, March 1, 2004. (“...his latest passion is politics, and he has pledged \$15 million to defeat President Bush.”)

<sup>5</sup>Steve Inskeep interview, NPR Morning Edition, May 9, 2005. (“Billionaire and philanthropist George Soros spent \$27 million during the last presidential election to try to keep George W. Bush out of office.”)

<sup>6</sup>“George Soros: The Man, The Mind and the Money Behind MoveOn,” *Investor's Business Daily* Editorial, <http://ibdeditorials.com>, September 20, 2007.

<sup>7</sup>Terry Carter, “Mr. Democracy, Giving More Millions to Further Justice Than Anyone - Ever” 86-JAN A.B.A. J 56, (American Bar Association Journal), January 2000.

<sup>8</sup>Id.

<sup>9</sup>Id.

<sup>10</sup>Form 990 is an annual reporting return that certain federally tax-exempt organizations must file with the Internal Revenue Service. It provides the public with the organization's mission, programs and finances, and is often the only source of such information. There are three types of Form 990's: the Form 990 (standard long form); Form 990-EZ (short-form); and Form 990-PF (form required of all 501(c)(3) private foundations and 4947(a)(1) non-exempt charitable trusts). The Open Society Institute uses the Form 990-PF.

<sup>11</sup>“The Soros Threat to Democracy,” *Investor's Business Daily* Editorial, <http://ibdeditorials.com>, September 24, 2007.

OSI has also earmarked tens of millions of dollars to promote softer sentencing guidelines, the legalization of drugs and other radical changes to the judicial system. This report will focus on one aspect of OSI's activities: the campaign to alter the composition of our judiciary by ending citizen participation in judicial elections.

This campaign encompasses efforts to rewrite state constitutions, abolish judicial elections and impose a judicial selection system that takes power away from ordinary citizens and gives it to a handful of legal elites.<sup>12</sup> No wonder the *ABA Journal* gushed that Mr. Soros could have the greatest impact on our legal system since the founding fathers. ■

## “There Should Be No Such Accountability”

Approximately 95 percent of civil disputes in America wind up in state courts, giving the judges who hear these cases enormous power over our lives, property, and business affairs. The authors of our state constitutions recognized the need for a check on this power, which is why 39 states hold some form of judicial elections to determine who will sit on state benches. The goal was to balance the virtues of independence and accountability in the judiciary by requiring judges to assume office by the consent of the people.

Many people recall James Madison's famous maxim from *Federalist 51*: “If men were angels, no government would be necessary.” Far fewer remember the sentence that followed: “If angels were to govern men, neither external nor internal controls on government would be necessary.” For more than a century, a strong majority of states, recognizing that judges are not angels, have utilized contested elections as the primary “external control” over a powerful state judiciary.

By this means, if judges were inept or exceeded the judicial role by engaging in lawmaking (inserting themselves into social, economic and regulatory issues that are the domain of elected legislatures) they could be removed. When judges stray from following the strict rule of law, serving their own social or political visions instead, a dose of democracy through the judgment of the

people is often the surest corrective.

Over the last few decades, judges who are willing, even anxious, to usurp legislative powers have resulted in a more intense spotlight on state judicial elections. As “judicial activists” began to substitute their decision making for that of elected legislators, citizens and organizations impacted by their rulings became more engaged in judicial races as a way to demand accountability. Where judges once often ran unopposed, today's races can feature full-blown campaigns, complete with extensive fundraising and negative television advertising as with any other high-profile race for public office.

Predictably, the rise of contested elections has not set well with everyone, particularly legal elites, who recoil from the inevitable coarseness of the campaign, and those individuals and groups who favor or benefit from an activist judiciary. Rather than trace this new unease with judges back to the source, these groups and individuals instead blame the “system.” Their solution: change how judges are selected so as to protect them from “political influences” or “special interests.” They advocate junking democratic elections and replacing them with a “merit selection” system where a small committee (not all citizens) picks the most “qualified” to sit on the bench.

All this would shock the founding generation who formed our nation and states on the notion that all power traces back to the people. The people control policymakers and officeholders, not vice versa. Imagine their dismay with “merit selection” supporters who want to turn this principle on its head by protecting the government (or at least our public servants on the bench) from the people.

As one retired judge put it:

*“I do not mean to suggest that elected judges are necessarily unqualified or corrupt, but rather that merit selection is far superior to selection by election, since the voting public does not have the slightest idea which candidates are qualified or what are the qualifications for a good judge. As I have said previously, there is a suggestion that elections should be retained because they make judges accountable to the people, but there should be no such accountability.”<sup>13</sup>*

12 The ABA article on Soros stated: “Lawyers who might ask, ‘What effect is this going to have on me?’ likely will be influenced by or feel the impact of Soros in the near future and simply not know why.” The fact is that Soros’ funding of these policies will not only be felt by lawyers, they will likely be felt by all U.S. citizens.

13 H. Lee Sarokin, “End Judicial Selection by Election,” *Huffington Post*, [http://www.huffingtonpost.com/judge-h-lee-sarokin/end-judicial-selection-by\\_b\\_406128.html](http://www.huffingtonpost.com/judge-h-lee-sarokin/end-judicial-selection-by_b_406128.html), December 29, 2009.

It is important to remember that calls to restrict or abolish judicial elections often come from those who are not at all unhappy with a muscular judiciary: leaders of state bar associations, retired or even sitting judges, prominent trial lawyers and other legal elites. In other words, the calls to restrict or abolish judicial elections come from the same people who would sit on “merit selection” boards and would hold the power to pick all judges once voters are pushed aside. A look behind this effort reveals not the organic, grassroots uprising against judicial elections advocates claim, but a highly-coordinated campaign fueled by millions of dollars from one of the most powerful special interest groups in the country. ■

## The Creation of Justice at Stake

The Open Society Institute finances judicial selection reform through its U.S. Justice Fund, particularly through its Judicial Independence Program. The OSI website casts this mission in grandiose terms:

*“[T]he Judicial Independence Program promotes fair and impartial courts through increased public support for an independent judiciary and through reform of judicial selection. Eighty-seven percent of judges in the United States are elected, and in recent years big money and special interest political pressure have become a staple of judicial campaigns, raising questions about the integrity of U.S. courts. The program seeks to counter the influence of political and special interest groups that threaten both the integrity of the court system and the ability of judges to render fair and impartial decisions.”<sup>14</sup>*



**Justice at Stake**  
c a m p a i g n

The Judicial Independence Program led to the formation of Justice at Stake (JAS). An umbrella organization to oversee the judicial reform campaign, JAS purports to be a “non-partisan, judicial watchdog group” out to restore judicial integrity by replacing elections with a “merit selection” system. JAS was created specifically to coordinate the work of the various organizations, many of which were already being funded under OSI’s “Judicial

Independence” Program. The Open Society Institute’s website confirms that “The Justice at Stake Campaign (JAS) is a broad-based national and grassroots campaign organization, created by OSI to work with various OSI grantees and various other organizations engaged in judicial independence work.”<sup>15</sup>

The formal launch of the Justice at Stake Campaign took place on February 14, 2002. In the initial press release, JAS claimed “more than 30 judicial, legal, and citizen groups from across the country” were coming together for this effort and referenced several organizations with non-partisan-sounding names, including the American Bar Association, the Brennan Center for Justice at NYU School of Law, and the National Institute on Money in State Politics. The campaign’s launch was accompanied by public opinion survey results decrying the politicization of judicial races.<sup>16</sup>

**“...We need to protect the independence of the judiciary as urgently as ever.”**

Despite the “independent, non-partisan” gloss, remarks by OSI leaders reveal the political purposes behind the formation of JAS. Excerpts from a June 2005 article by Gara LaMarche, then Vice President and Director of U.S. Programs for OSI, provide insight into the harshly partisan mindset that then pervaded OSI while the JAS campaign was underway.

*“In the last few years, radical-right political leaders have moved from the fringe to essential control of much of the national and many state governments. They, the fundamentalist clerics and their followers who comprise the ‘base’ to which they feel most accountable, and the network of think-tanks and attack media which supports them, make clear their intent to roll back the Great Society and the cultural, social and political gains of the 1960’s. Now, with the Social Security fight and the battle over the courts, they are going after the New Deal.”*

*“...It is not necessary to believe that the election of 2000, or even of 2004, was stolen (despite the persistence of rules and practices which disadvantage low-income and minority voters), in order to take the view that democracy itself has been tampered within order to consolidate power.”*

<sup>14</sup> As taken from OSI web site accessed in December 2009.

<sup>15</sup> As taken from OSI web site accessed in December 2009. A list of these organizations can be found online at the Justice At Stake website: <http://www.justiceatstake.org>.

<sup>16</sup> “Judicial Groups Join Forces to Launch Justice at Stake Campaign As Landmark Surveys of Judges and Voters are Released,” Justice at Stake website, [http://justiceatstake.org/newsroom/press\\_releases.cfm/judicial\\_groups\\_join\\_forces\\_to\\_launch\\_justice\\_at\\_stake\\_campaign\\_as\\_landmark\\_surveys\\_of\\_judges\\_and?show=news&newsID=5740](http://justiceatstake.org/newsroom/press_releases.cfm/judicial_groups_join_forces_to_launch_justice_at_stake_campaign_as_landmark_surveys_of_judges_and?show=news&newsID=5740), February 14, 2002.

*“...Progressive institutions and alternative policies and messages need to be built and nurtured. That must and will be done, with our involvement.”*

*“... In many ways, the Open Society Institute and its grantees, and many of our donor colleagues, are dealing with the range of open society threats I discuss above. In some areas we need to step up our work; in others we need to find or help create new initiatives and institutions; in all we need to recognize the integrated nature of the threats and integrate our own responses accordingly.”*

*“...We need to protect the independence of the judiciary as urgently as ever. The key U.S. advocacy groups are in the vanguard of resistance, but at least at the federal level, the situation has become steadily worse. Preserving the filibuster as an option to block the worst judicial nominees is only a first step. We need a longer campaign to monitor judicial appointments, particularly with the balance of the Supreme Court at stake. Such a campaign must involve the civil liberties and pro-choice groups already in the foreground, and also build the broader civil-rights and environmental communities. It must include groups whose social and economic justice agenda is threatened by judges determined to reverse hard-won civil rights and the very underpinnings of social welfare and regulation in the public interest.”<sup>17</sup>*

A November 2002 speech by then JAS Executive Director Geri Palast stated that “two years ago, Justice at Stake's partners came together to stand up for fair and impartial courts.”<sup>18</sup> Financial records confirm that the OSI began spreading seed money well in advance of the formal launch of Justice at Stake. In 2000, for instance, OSI gave the Georgetown University Office of Sponsored Programs \$550,000 to support a public education campaign in cooperation with Citizens for Independent Courts and other coalition organizations.<sup>19</sup> (This was about the same time as the \$500,000 contribution to the ABA to increase public awareness of the need for impartial judges.) A gift of \$300,000 was given to Georgetown's Office of Sponsored Programs for the same purpose in 2001, with an additional \$200,000 later that year to “support the public education campaign.”<sup>20</sup>

The first reference to JAS in the OSI IRS Form 990-PF occurs in 2001, when OSI gave \$400,000 “to provide operating support to the Justice at Stake Campaign central office”<sup>21</sup> within the Office of Sponsored Programs at Georgetown University. Another \$280,000 was provided to finance “polling and focus group work in states identified by Justice at Stake.”<sup>22</sup> Polling, as we will see, plays a major role in the campaign tactics employed by JAS. ■

## Using Hardball Campaign Tactics to Change Judicial Selection

To further its efforts to end judicial elections and replace them with “merit selection” systems, JAS deploys a full range of modern hardball campaign tactics. The campaign unfolds according to a well-developed playbook, with JAS as the quarterback (just as envisioned by OSI).

### 1 Define the problem.

Once a state is targeted, JAS typically finances a public opinion poll<sup>23</sup> that purports to show that a majority of citizens in that state believe judicial decisions are influenced by campaign contributions. Since judicial candidates must often raise large amounts of money to get elected, JAS argues that elections and the fundraising required to conduct them creates this public perception of judicial favoritism, which undermines judicial integrity and independence.

### 2 Raise the issue's profile.

JAS uses its poll findings to generate media coverage suggesting that judicial races have become too expensive and overly political.<sup>24</sup> Judicial campaigns themselves become a “perception problem” among citizens, requiring a policy solution. It is ironic to hear majority opinion in a poll cited as an argument against majority rule in the selection of judges. Yet, many in the media fall for it, reporting the results as if JAS was a fair and impartial source.

<sup>17</sup> Gara LaMarche, “The Crisis of Democracy in America, June 30, 2005,” [http://www.soros.org/resources/articles\\_publications/articles/crisis\\_20050701](http://www.soros.org/resources/articles_publications/articles/crisis_20050701), (viewed June 21, 2010).

<sup>18</sup> Prepared Remarks of Geri Palast, Executive Director, Justice at Stake Campaign, Press Conference, November 20, 2002.

<sup>19</sup> Open Society Institute Form 990-PF - 2000, Grants to U.S. Charities, p. 29.

<sup>20</sup> Open Society Institute Form 990-PF - 2001, Grants to U.S. Charities, p. 31.

<sup>21</sup> Open Society Institute Form 990-PF - Grants to U.S. Charities, p. 32.

<sup>22</sup> Id.

<sup>23</sup> According to Gavel Grab, Justice at Stake's blog ([www.gavelgrab.org](http://www.gavelgrab.org)), JAS funded public opinion surveys related to judicial selection in Minnesota and Wisconsin in 2008, and in Missouri in 2007. In 2004, JAS funded a national survey related to campaign contributions and judicial elections. In 2001, JAS commissioned two national polls - one which surveyed ordinary citizens and another which surveyed sitting state judges - the results of which were embargoed until the kick-off of the Justice at Stake Campaign in February 2002.

<sup>24</sup> ABC News recently reported on a study funded by JAS, the Brennan Center for Justice and the National Institute on Money in State Courts which show “unprecedented sums of cash flowing into campaign accounts of state judge around the country.” It reports that “candidates in state judicial elections raised more than \$206 million in the past decade, more than double the \$83 million raised in the 1990's.” Source: <http://www.gavelgrab.org/?p=9018> (viewed March 22, 2010).

**3 Finance an artificial grassroots campaign.**  
Through contributions, JAS recruits state-based organizations and partners to join in the call to eliminate “politics” from the judicial selection process and end the “perception” of judicial favoritism. Oftentimes, local academic experts are enlisted, while JAS also works to expand the voices calling for reform to include well-meaning business groups, judges, minority organizations, nonprofit good government foundations and associations, and religious groups.

**4 Establish the desired policy outcome.**  
JAS lobbyists push for legislation or a constitutional amendment to replace judicial elections with some variation of a “merit selection” system, often with retention elections that allow citizens only a “yes” or “no” vote on a judge after sitting a full term. Alternately, public financing of judicial elections may be proposed, but the end goal remains the same: reduce the power of the people in judicial elections by either replacing them or protecting appointed incumbents.

**5 Demonize the opposition.**  
Any group, especially within the business community, that defends the democratic election of judges or opposes “merit selection” is instantly demonized as trying to “buy” seats on the state court. The idea is to intimidate opponents and marginalize them in the debate.

The staff at JAS is well suited to carry out the organization's campaign strategy. The group's leadership boasts significant experience working at the highest levels of partisan political campaigns (See Appendix II). ■

## The JAS Campaign Playbook in Action: Focus on Pennsylvania

The ongoing debate over judicial selection in Pennsylvania provides a vivid illustration of the JAS campaign playbook in action.

**1 Define the problem.**  
In June, Pennsylvanians for Modern Courts (PMC), a group that has been partially bankrolled by OSI since 2001, released the results of a public opinion poll that it spins as “proof” that voters in the state prefer “merit selection” over democratic elections.<sup>25</sup> On hand were officials from JAS and the Committee for Economic Development, organizations that also derive substantial funds from OSI.

“...79 percent of Pennsylvanians believe democratically elected judges are ‘qualified’...”

Not surprisingly, the fact that the poll showed 75 percent of Pennsylvanians believe “merit selection” will not remove politics from judicial selection and that nearly 70 percent believe “merit selection” gives “politicians and trial lawyers” the power to pick judges was never mentioned, nor were the poll's findings that 79 percent of Pennsylvanians believe democratically elected judges are “qualified” and 73 percent describe them as “fair.”

**2 Raise the issue's profile.**  
As part of the spin campaign, PMC organized a press conference featuring political heavyweights, such as Governor Ed Rendell and former Governors Tom Ridge and Richard Thornburgh. Pennsylvania newspapers and editorial boards fell predictably into line, printing major stories about the poll's release but nothing about the poll's funding. PMC has also established a blog called JudgesOnMerit to continue the “merit selection” drum beat.

25 Pennsylvanians for Modern Courts, “Merit Selection Poll,” <http://judgesonmerit.org/wp-content/uploads/2010/06/2010-Merit-Selection-Poll1.pdf>, results announced June 9, 2010.

**3 Finance an artificial grassroots campaign.**  
For nearly a decade, OSI has been financing an artificial grassroots campaign in Pennsylvania through PMC to “educate the public on the need to reform the state’s judicial selection system.” Since 2004, the grants have been specifically in support of “merit selection.”

**4 Establish the desired policy outcome.**  
PMC and the “merit selection” crowd promoted legislation that would take the power of choosing judges away from Pennsylvania’s 8.7 million registered voters and hand it to a 14-member panel. The governor and legislators would pick a majority of eight panel members, most likely chosen from legal special interest groups, such as the trial lawyers association.

**5 Demonize the opposition.**  
When Pennsylvania House Judiciary Chair Tom Caltagirone, a Democrat, blocked the “merit selection” bill, he was pilloried in the media. Rep. Caltagirone’s sin: “I would rather let the people decide.”<sup>26</sup>

Various aspects of the JAS campaign have also played out in Wisconsin, Minnesota, Nevada and other states “merit selection” supporters have targeted. ■

## Follow the Money: The Campaign to Abolish Democratic Judicial Elections

According to the JAS website, the organization receives funding from the Open Society Institute, the Joyce Foundation, the Carnegie Corporation, the Moriah Fund, and the Herb Block Foundation.<sup>27</sup> However, the IRS records for

these organizations make it clear that the prime bankroller behind JAS has always been Mr. Soros’ Open Society Institute.

Between 2001 and 2008, the OSI contributed more than \$5.5 million to JAS.<sup>28</sup> By comparison, since joining the JAS team in 2003, the Carnegie Corporation and the Joyce Foundation have contributed just \$750,000 and \$970,000 respectively, while the Moriah Fund’s 990-PF’s show contributions totaling \$80,000 through 2008. According to its website, the Hebert Block Foundation contributions total \$20,000 and include one contribution made in 2009.<sup>29</sup>

**“Between 2001 and 2008, the Open Society Institute contributed nearly \$5.5 million to Justice at Stake.”**

Yet the reach of the OSI into the judicial arena runs far deeper than simply financing JAS. An examination of the published list of JAS “partners” and their funding sources exposes a complex web of like-minded groups all sharing a common financial benefactor: the Open Society Institute. OSI funds found their way, directly or indirectly, to over 80 percent of the JAS partners. Even more revealing is the political agenda that comes along with these gifts; in many instances, the “partner” organizations receive funding from OSI for the specific purpose of joining or assisting in the JAS campaign.<sup>30</sup> ■



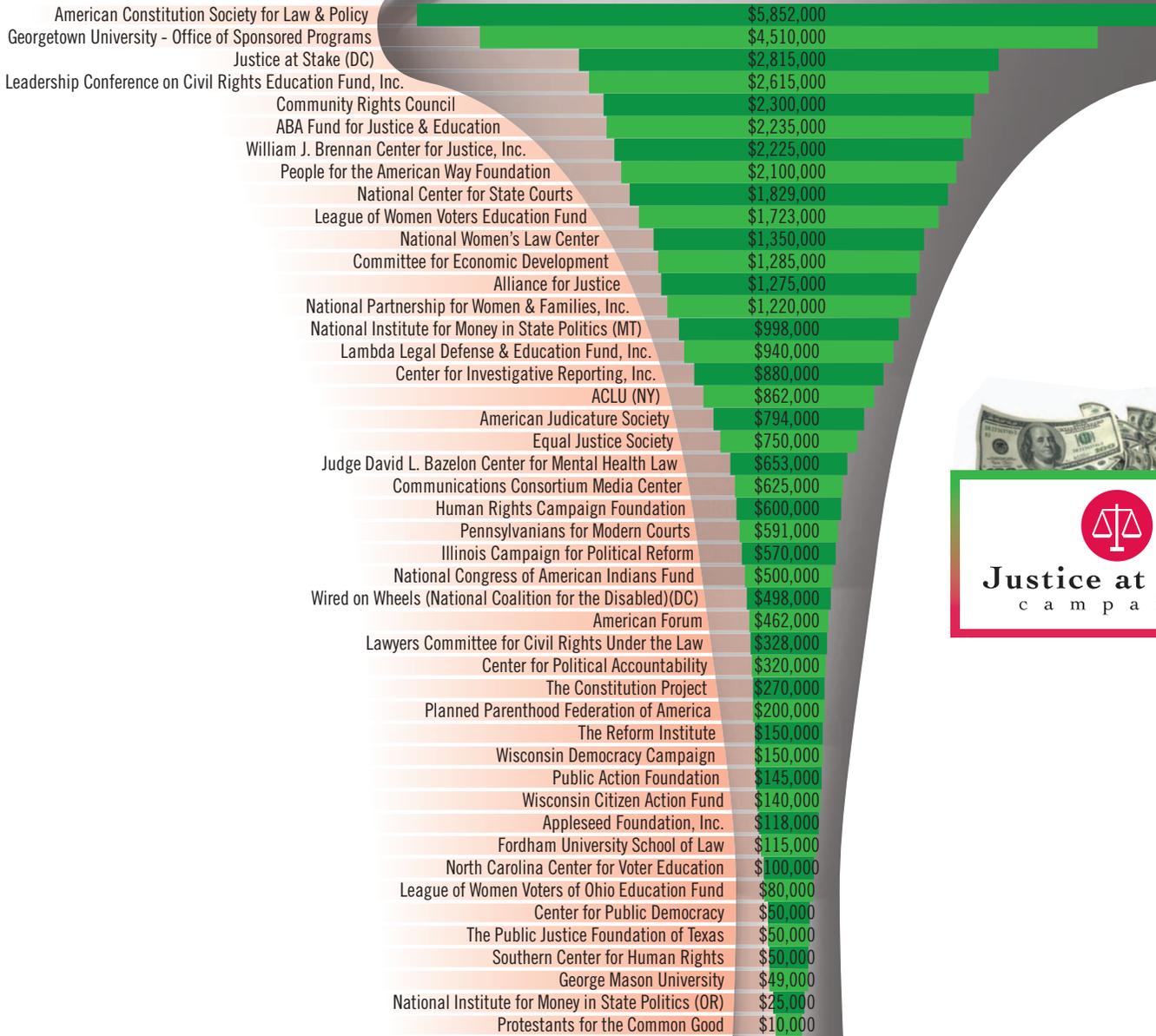
<sup>26</sup> Tom Barnes, “Governors push to end elections for appellate judges,” Pittsburgh Post-Gazette, <http://www.post-gazette.com/pg/10160/1064374-100.stm?cmid=latest.xml#ixzz0qgZmoHD>, June 9, 2010.

<sup>27</sup> <http://www.justiceatstake.org>.

<sup>28</sup> According to IRS records, OSI contributed \$2,705,000 to Justice at Stake between 2001 and 2006 - while it was still housed in Georgetown University’s Office of Sponsored Programs. OSI contributed another \$2,815,000 to Justice at Stake as a stand-alone organization between 2006 and 2008.

<sup>29</sup> <http://www.herblockfoundation.org>.

<sup>30</sup> OSI 990-PFs show: the ABA received \$175,000 to work with JAS campaign and partner organizations in 2008; the Illinois Campaign for Political Reform received \$150,000 between 2002 and 2004 to work with JAS (subsequent gifts totaling another \$420,000 were renewal grants to continue the organizing campaign started in the earlier years); The National Center for State Courts was awarded \$685,000 between 2004 and 2007 to engage justices and judges in the JAS “reform efforts”; Pennsylvanians for Modern Courts received \$60,000 in 2002 to work in concert with the JAS national effort; Protestants for the Common Good (Illinois) received \$10,000 in 2002 to support the JAS Illinois program; Public Action Foundation (Illinois) also received \$145,000 between 2002 and 2006 to support the JAS campaign in Illinois; The Reform Institute (Virginia) received \$150,000 in 2003 to support its work with JAS.



**OSI's \$45 Million Campaign**

This chart lists OSI grantees and the amount each organization received. A more complete description of the partner organizations can be found in Appendix I.



# The Flawed Theory Behind Justice at Stake

JAS campaigns are built around the theory that judges who accept contributions cannot be impartial. This viewpoint was summed up succinctly by one of “merit selection’s” staunchest supporters, former U.S. Supreme Court Justice Sandra Day O’Connor, who told a Michigan audience in early 2010:

*“In order for judges to dispense law without prejudice, they need to be certain they won’t suffer political retribution.”<sup>31</sup>*

This is an extraordinary statement. Arguing that judges in the 22 states that hold competitive judicial elections<sup>32</sup> are incapable of “dispens[ing] law without prejudice” because they face possible “political retribution” every time they go before the voters is a very serious charge. But neither Justice O’Connor nor JAS present any evidence to support their theory.

However, in August 2007, three law professors from three prestigious law schools published a study<sup>33</sup> through the University of Chicago Law School that specifically addressed the question of whether appointed judges are superior to elected judges. Stephen J. Choi (NYU Law School), G. Mitu Gulati (Duke Law School) and Eric A. Posner (University of Chicago Law School) examined three years of decisions by every high court judge in every state – a total of 408 judges and nearly 30,000 opinions. They evaluated judges based on three criteria: judicial effort, skill and independence. As they put it in their conclusion:

*“We began this project with the assumption that the data would demonstrate that appointed judges are better than elected judges. Our results persuade us that the story is more complicated. It may be that elected judges are, indeed, superior to appointed judges. At a minimum, the conventional wisdom needs to be reexamined.”*  
(pp. 42-43, emphasis added)

## The O’Connor Judicial Selection Initiative

Since her retirement from the U.S. Supreme Court, Justice Sandra Day O’Connor has allied herself with Justice at Stake in the effort to abolish democratic state judicial elections. What began as a speaking tour became in 2009 a formal, nationwide campaign entitled the “O’Connor Judicial Selection Initiative.”

Under the auspices of the University of Denver’s Institute for the Advancement of the American Legal System, the O’Connor Initiative strives to provide intellectual cover and political assistance to the national campaign already underway to scrap judicial elections in dozens of states. The project’s director, Theresa Spahn, is backed by a 10-person staff and an 11-member advisory commission chaired by O’Connor and other legal luminaries.



Professors Choi, Gulati and Posner began their study by reviewing the conventional wisdom within the legal community using Justice Sandra Day O’Connor’s concurring opinion in *Republican Party of Minn. v. White* as a point of departure:

*“Justice [Sandra Day] O’Connor’s backhanded put-down of Minnesota’s elected judiciary (in Republican Party of Minn. v. White) reflects the conventional wisdom among lawyers and scholars that judges should be appointed by elected officials or independent commissions, and should not be elected themselves. The conventional wisdom reflects a deeply rooted conviction that voters are too unsophisticated to evaluate judges and candidates for judicial office.”* (p. 1, emphasis added)

The authors found no evidence in their review of 30,000 court opinions to support this conventional wisdom:

*“Conventional wisdom holds that appointed judges are superior to elected judges because appointed judges are less vulnerable to political pressure. However, there is little empirical evidence for this view.”* (Abstract)

Not only did the authors find that appointed judges are not inherently superior, they also concluded, based on the data, that elected judges have the highest independence.

*“... the data does not support the received wisdom that appointed judges are more independent than electoral judges.”* (p. 20) *In fact: “Judges subject to partisan election have the highest independence.”* (p. 19)

Finally, Professors Choi, Gulati and Posner noted potential shortcomings with appointed judges and concluded that voters can play a valuable role in the judicial selection process.

*“In a system that uses judicial appointments, nothing forces the appointing official to select judges on the basis*

31 “Ex-Justice O’Connor: Appoint Michigan Judges,” Detroit News, February 10, 2010.

32 From Justice At Stake website: [http://justiceatstake.org/issues/state\\_court\\_issues/index.cfm](http://justiceatstake.org/issues/state_court_issues/index.cfm).

33 Stephen J. Choi, G. Mitu Gulati, and Eric A. Posner, “Professionals or Politicians: The Uncertain Empirical Case for an Elected Rather Than Appointed Judiciary,” University of Chicago Law & Economics, Olin Working Paper No. 357; 2nd Annual Conference on Empirical Legal Studies Paper, August 2007. Available at SSRN: <http://ssrn.com/abstract=1008989>.

*of their legal ability; cronyism is very common.” (p. 1)  
“... when many people participate in a decision making  
process, aggregation of information occurs, which can  
produce more accurate results than when the decision is  
made by only one person.” (p. 1). ■*

## The Use and Abuse of “Merit Selection”

The fact that there is no scholarly evidence supporting the notion that appointed judges are superior to elected judges has done little to halt the push for replacing democratic election of judges with a “merit selection” system. JAS and its partners have successfully recruited academics, famous jurists, Republican lawmakers and even business interests to their cause. Editorials in major newspapers espouse their crusade. Legislation to impose “merit selection” has been introduced in multiple states.

There are several variations on the “merit selection” system, also known as the Missouri Plan, but all feature a commission that evaluates candidates and passes on an approved list to the governor, and all eliminate the right to vote for judges prior to their assuming office.<sup>34</sup>

### “Merit Selection” Puts Elites in Control

In theory, judicial “merit selection” commissions are supposed to be nonpartisan and independent. In practice, however, these commissions are typically controlled by legal elites (often trial lawyers) that have no accountability to the public whatsoever. Consider the following states:

- In **Kansas**, by law, five of the nine members of the Supreme Court Nominating Commission must be lawyers.<sup>35</sup>
- In **Missouri**, three of the seven members of the Appellate Judicial Commission have ties to the Missouri Association of Trial Lawyers.<sup>36</sup>
- In **Tennessee**, lawyers held 14 of the 17 seats on the state’s Judicial Selection Commission until 2009 when the legislature cut the number to 10 lawyer seats to reduce special interest influence. However, though the new Judicial Nominating Commission need not have more than 10 lawyers, it ended up with 15 of 17 lawyers.<sup>37</sup>

### Recusal Standards – “A Battle for the Soul of the Judiciary”

“Recusal is a battle for the soul of the judiciary 20-30 years from now.”  
– Bert Brandenburg, Executive Director, Justice at Stake

Justice at Stake often faces high hurdles persuading people to give up their right to vote. As a fall-back position, the organization has launched a new campaign: rewriting state supreme court recusal standards to make it easier to remove elected justices in certain cases.

The goal is to replace well-defined “actual bias” disqualification standards with nebulous “appearance of impropriety” guidelines, which are highly subjective and prone to abuse. Does a \$1,000 campaign contribution create the “appearance” that a justice cannot be impartial? Suppose a trial lawyer publicly compares a judge to Nazis, as happened in Michigan. When a judge is so viciously maligned, is it not easy to claim the judge can no longer rule impartially in cases involving that lawyer? What is to stop an unscrupulous attorney from attacking a justice with the goal of having that justice removed from future cases?

The effort to toss out clearly-defined, time-tested recusal standards is not based on any evidence that existing rules have failed to keep our courts impartial. Lacking such evidence, the effort comes across as driven by blatant partisan politics, targeting state court justices in hopes of pushing them to the sidelines in important cases. Temporarily unseating democratically elected justices from critical cases based on murky “appearance of bias” standards will do little to ensure a fair and impartial judiciary. Instead, as U.S. Supreme Court Chief Justice John Roberts predicted in his *Caperton* dissent, the endless series of bias charges that these fuzzy recusal standards invite will “bring our judicial system into undeserved disrepute, and diminish the confidence of the American people in the fairness and integrity of their courts.”

- In **Maryland**, lawyers control 16 of the 17 seats on the commission responsible for choosing appellate court judges.<sup>38</sup>

Armed with millions of OSI dollars, JAS and OSI benefactors are pushing to overturn state constitutions across the nation and impose similar “merit selection” systems that give legal elites the upper hand in choosing who will hear their cases.

<sup>34</sup> Some merit systems call for “retention” elections. A judicial retention election is a periodic process whereby a judge is subject to a referendum held at the same time as a general election. Rather than have a list of candidates from whom to select, the voter must simply vote in favor of or opposition to retention of the judge who was appointed by the merit system.

<sup>35</sup> The Supreme Court Nominating Commission is made up of 9 members: Four (4) non-attorneys are appointed by the Governor. Four (4) attorneys selected by the attorneys in each of the State’s four Congressional Districts. The chair is an attorney elected by attorneys in a statewide vote. <http://www.kscourts.org/appellate-clerk/general/Supreme-Court-Nominating-commission.asp> (viewed 8/3/10).

<sup>36</sup> Better Courts for Missouri, “The Current Process is as Political as it could possibly get,” <http://www.newmoplan.com/archive/materials/m20100809160233.pdf>.

<sup>37</sup> Tennessee Judicial Nominating Commission membership, updated 3/9/10. <http://www.tsc.state.tn.us/geninfo/boards/Judicial%20Nominating%20Commission.pdf>

<sup>38</sup> Maryland Appellate Judicial Nominating Commission make up: <http://www.msa.md.gov/msa/mdmanual/26excom/html/22jnoma.html> (viewed 8/3/10).

In Pennsylvania, for example, a group called Pennsylvanians for Modern Courts (an OSI grantee) is pushing a constitutional amendment that would end democratic elections for judges and put in place a 14-member Appellate Court Nominating Commission where at *least* seven members *must* be lawyers by *law*.<sup>39</sup> Even members of the legal establishment recognize the faults in this plan. As Professor Marina Angel of Temple University Law School recently put it:

*“The proposal would take away our right to determine the merits of judicial candidates and give that right to the appointees of Harrisburg politicians and special interests. And that’s supposed to be non-political ‘merit selection?’”*<sup>40</sup>

## “Merit Selection” Commissions Often Operate in Secret With No Public Accountability

Professor Angel also criticized the proposal because the commission will “operate in secrecy, not subject to Pennsylvania’s sunshine laws.” The issue here, Professor Angel wrote, is not “Republican vs. Democrats, educated vs. uneducated. It is one pitting those who believe in democracy vs. those who don’t. It’s the majority vs. the elitists.”<sup>41</sup>

Officials in other states have also battled entrenched special interests in an attempt to make “merit selection” commissions more open and accountable. In Tennessee, Democrat Governor Phil Bredesen pushed for a reform to have the state’s 17-member commission come out from behind closed doors and meet in public. This modest proposal was killed by what the *Knoxville News Sentinel* called a “lawyer-dominated House subcommittee.”<sup>42</sup> After his plan was scuttled, Governor Bredesen said he was “very, very disappointed” with the outcome:

*“I can’t imagine why they think a process as important as selecting judges...public officials with enormous power...ought to be conducted in secret.”*<sup>43</sup>

In Missouri, legislators introduced a bill that, along with other reforms to make the system more transparent, would have applied Missouri’s Sunshine Law to the state’s “merit selection” commission.

Even die-hard “merit selection” supporter former U.S. Supreme Court Justice Sandra Day O’Connor agreed that the commissions should no longer be allowed to meet behind closed doors, telling a group of law students, “you can’t have secret proceedings.”<sup>44</sup>

Although the legislation passed the Missouri House, the Senate adjourned without taking action. Perhaps in response to this legislation, the Missouri Supreme Court adopted a new rule in December 2009 that requires the commission to make public the names of the candidates they vet for judicial openings: a small victory for greater transparency. Nevertheless, a citizens group called ShowMe Better Courts launched a petition drive aimed at putting an initiative on the ballot to make the state’s judicial selection process more open and accountable.<sup>45</sup>

## “Merit Selection” Commissions Are Highly Political

“Merit selection” is typically portrayed as a method for keeping “politics” out of the judicial selection process. Many states that have adopted this system, however, have found just the opposite.

Judge Dale Workman, a Tennessee trial judge with 18 years experience on the bench, wrote one state legislator about the problems he has seen firsthand with the state’s “merit selection” system:

*“After 18 years on the trial bench, I have seen the Commissioners under the Tennessee Plan make the selection of judges the most partisan politics in the history of the state. This has never been ‘merit selection.’ There is less politics in almost any other method. The commission on one occasion submitted three names, one of which had never tried a lawsuit but had the ‘right’ politics and left off an applicant nationally recognized for her qualifications.”*<sup>46</sup>

The Tennessee Plan became so controversial that the legislature nearly let it expire last year until a last-minute agreement was reached to keep “merit selection” alive while weakening the influence of legal special interests and requiring the commission to open meetings to the public.<sup>47</sup> Debate over the proposed changes included public lobbying by several



39 Pennsylvanians for Modern Courts, “Summary of New Merit Selection Proposal,” <http://www.pmcconline.org/node/97>.

40 “Merit Selection Means Stealing My Vote,” *Philadelphia Daily News*, March 24, 2008.

41 *Id.*

42 “Dispute may end system for picking judges,” *Knoxville News-Sentinel*, April 14, 2008.

43 *Id.*

44 “O’Connor defends Missouri judicial selection plan,” *Associated Press*, February 28, 2009.

45 Missouri Secretary of State website, <http://www.sos.mo.gov/elections/2010petitions/2010-071.asp>.

46 Stacey Campfield, “Tennessee Plan,” <http://lastcar.blogspot.com/2008/04/tennessee-plan.html>, April 1, 2008.

47 “Tennessee Bar Fight,” *Wall Street Journal*, June 16, 2009, <http://online.wsj.com/article/SB124501939681813547.html>.

sitting members of the Tennessee Supreme Court, clearly demonstrating that judges chosen under “merit selection” can hardly be counted on to stay serene and aloof from partisan politics.

In Florida, Governor Charlie Crist has consistently tussled with the judicial nominating commission for not sending him candidates representative of Florida's diversity. The issue became so highly charged that Florida's NAACP filed an Amicus Brief with the Florida Supreme Court charging that “the specter of racial discrimination has been raised” by the commission's actions and argued that the commission's secret deliberations “fail to provide any measure of accountability in the event of misconduct or discrimination.”<sup>48</sup>

In Missouri, 20 of the last 21 nominees to the state Supreme Court have either been Democratic contributors, supporters or outright members of the state trial lawyers association.<sup>49</sup> Perhaps limiting judicial selections to a single party is one way to eliminate “politics” from the process, but it hardly represents the will of the people of Missouri. The Missouri Appellate Judicial Commission has even more clout than other states. Under this plan, the Commission submits three names to the Governor, but if the Governor fails to make a nomination, the Commission “shall make the appointment.” In fact, Stephen Ware, a professor of law at the University of Kansas School of Law, argues that the “Missouri Plan” is “the most elitist (and least democratic)” of the methods for selecting judges in the entire United States.<sup>50</sup>

After reviewing a number of studies and articles on “merit selection,” even the American Judicature Society's Director of Research concluded as follows:

*“This review of social scientific research on merit selection systems does not lend much credence to proponents' claims that merit selection insulates judicial selection from political forces, makes judges accountable to the public, and identifies judges who are substantially different from judges chosen through other systems. Evidence shows that many nominating commissioners have held political and public offices and that political considerations figure into at least some of their deliberations. Bar associations are able to influence the process through identifying commission members and evaluating judges.*

*“In addition, support for the effectiveness of retention elections in holding judges accountable to the public is*

*limited. Judges rarely fail in their bids for retention, and approximately one-third of those who cast votes in other races do not vote in retention elections....*

*“Finally, there are no significant, systematic differences between merit-selected judges and other judges. Some evidence suggests that merit plans may place fewer racial and religious minorities on the bench. The finding that merit plans may prevent the selection of bad judges is noteworthy, but this appears to be an isolated event.”*

Having concluded the above, one would assume that the author would then have an open mind to the democratic system of electing our judges, but this is not the case. After 16 pages of facts taken from studies across the country, and in spite of her conclusion, the author then surprises the reader with this, the last paragraph of the last page of the article:

*“Lest this review be interpreted as a call to abandon merit selection, I would suggest an additional criterion on which judicial selection systems should be judged - their impact upon the public's trust and confidence in the courts. By this standard merit selection is preferable to judicial elections....Judicial elections tend to politicize the judiciary in the eyes of the public. To foster the appearance of an independent and impartial judiciary, we need a system that emphasizes judicial qualifications, opens the process to all who meet the legal requirements, and in most instances eliminates the need for political campaigning. Merit selection is such a system.”<sup>51</sup>*

In other words, she is suggesting we take away the right of the citizens to vote on their judges not because it takes politics out of the system or produces better judges but simply to avoid a perceived negative “appearance.” Readers of this report will not be surprised to learn that the American Judicature Society has received nearly \$1.1 million from OSI, with the recent funding specifically earmarked to “promote the preservation and expansion of merit selection systems.”<sup>52</sup>

## “Merit Selection” Is Broken

Legal scholars have also raised serious and unanswered questions about whether “merit selection” is serving its intended purpose. Brian T. Fitzpatrick, a law professor at Vanderbilt University Law

48 “NAACP: Racial discrimination at play in Central Florida judicial standoff?,” Orlando Sentinel, April 27, 2009, [http://blogs.orlandosentinel.com/news\\_politics/2009/04/naacp-racial-discrimination-at-play-in-central-florida-judicial-standoff-.html](http://blogs.orlandosentinel.com/news_politics/2009/04/naacp-racial-discrimination-at-play-in-central-florida-judicial-standoff-.html).

49 Better Courts for Missouri, “The Current Process is as Political as it could possibly get,” <http://www.newmoplan.com/archive/materials/m20100809160233.pdf>.

50 Stephen Ware, “The Missouri Plan in National Perspective,” *Missouri Law Review* 74 (2009): 751-775, p.752. Available at <http://law.missouri.edu/lawreview/docs/74-3/Ware.pdf>.

51 Malia Reddick, “Merit Selection: A Review of the Social Scientific Literature,” *106 Dickinson Law Review* 729, 2002, p. 743-744.

52 American Judicature Society website, <http://www.ajs.org/ajs/publications/judicatories/2008/January/FeatureB-OSI.asp>, (viewed June 28, 2010).

School, recently published a report considering the merits of reauthorizing the Tennessee Plan. Among his findings:

*“...there are serious questions whether the Tennessee Plan serves any of the purposes it was designed to achieve. The principal purposes of the Tennessee Plan are to select judges on the basis of ‘merit,’ to foster judicial independence by removing politics from the selection process, and to foster racial and gender diversity on the bench. It is unclear if the Plan is serving any of these purposes.”*

Professor Fitzpatrick also questioned whether judges appointed by a political commission are better qualified or more independent than judges who run in democratic elections:

*“Scholars have been unable to find any evidence that judges selected by gubernatorial appointment from a nominating commission are better qualified or more productive on the bench than elected judges.*

*“Although the Tennessee Plan might produce judges who are more independent from the public, it may do so only by producing judges who are more dependent on the special lawyer’s organizations that control the list of nominations from which the Governor must appoint the judges. The members of these special lawyer’s organizations have political views just as do other members of the public. For these reasons, many scholars have found that methods of judicial selection like the Tennessee Plan do not take politics out of the selection process so much as substitute one group’s politics (the public at large) with another’s (the special lawyer’s organizations) [Emphasis added].”<sup>53</sup> ■*

## “Merit Selection” and Citizens United

In January 2010, the U.S. Supreme Court handed down its decision in *Citizens United v. Federal Election Commission*,<sup>54</sup> ruling that existing federal laws aimed at regulating and restricting political speech by corporations (or labor unions for that matter) are unconstitutional. This decision upholding the First Amendment rights of corporations elicited nearly hysterical

warnings about the so called “flood of money” soon to engulf judicial races. Commentator Bill Moyers made a typical comment on a PBS broadcast:

*“There’s now a crooked sign hanging on every courthouse in America reading ‘Justice for Sale.’”<sup>55</sup>*

But according to election lawyer, Jan Baran, “there is no factual basis to predict that there will be a ‘stampede’ of additional spending.”<sup>56</sup> In fact, Baran mentioned at one conference:

*“26 states already have no limits on corporate spending in state campaigns - and their elections are not that different from those that restrict corporate participation.”<sup>57</sup>*

The fact is corporations have always been able to donate to political causes. The only difference post-*Citizens United* is now these donations can be used expressly to advocate for a particular candidate, rather than only air issue ads.

Nevertheless, proponents of “merit selection” are attempting to channel the protests over *Citizens United* into its campaign to abolish democratic judicial elections across America. It would be ironic indeed if a U.S. Supreme Court decision intended to allow for fuller participation in the democratic process turned into a rallying cry that led state legislatures to disenfranchise their citizens when it comes to determining who will control one-third of the state government. ■

## Conclusion: Elections - the Worst Way to Pick Judges... Except For All the Others

The political intent behind Justice at Stake, the Open Society Institute and other Soros-funded entities is readily apparent to anyone with eyes to see. Since they have been unsuccessful at persuading the public to elect judges who share their partisan ideological proclivities, they are determined to take the public out of the equation.

The same cannot be said, however, for local citizens groups or state business organizations that genuinely believe that “merit selection” will ensure a fair and impartial judiciary. We do not

53 Brian Fitzpatrick, “A Report on the Political Balance of the Tennessee Plan,” The Federalist Society, April 13, 2009, [http://www.fed-soc.org/publications/pubID1324/pub\\_detail.asp](http://www.fed-soc.org/publications/pubID1324/pub_detail.asp). See also, Brian Fitzpatrick, “The Politics of Merit Selection,” Missouri Law Review, Vol. 74, 2009, October 19, 2009; Vanderbilt Public Law Research Paper No. 09-22. Available at SSRN: <http://ssrn.com/abstract=1491211>, wherein the author concludes that “no system of judicial selection delegates as much of its power to bar associations as merit systems do...” p. 703.

54 558 U.S. 50 (2010).

55 “Moyers on Citizens United: A ‘Corrosive Flood,’” Gavel Grab, <http://www.gavelgrab.org/?p=8164#more-8164>, February 22, 2010.

56 Jan Baran, “Stampede to Democracy,” January 25, 2010, <http://www.nytimes.com/2010/01/26/opinion/26baran.html?scp=1&sq=Jan%20Baran&st=cse>.

57 Baran made these comments at a January 26, 2010 conference on judicial elections at Georgetown Law Center, as reported in the article, “Reformers Hope High Court Decision Will Kill Judicial Elections,” National Law Journal, February 1, 2010.

question their motives, but we do not share their conclusions, and we hope they will keep an open mind to the shortcomings of this system.

America's Founders believed that judges should be independent but also accountable to the people. As James Madison wrote in *Federalist 39*:

*"It is essential to such a government [a democracy] that it be derived from the great body of the society, not from an inconsiderable proportion, or favored class of it....It is sufficient for such a government that the person's administering it be appointed, either directly or indirectly, by the people....Even the judges [under the Constitution] be the choice, though a remote choice, of the people themselves..."*

It seems plain that "merit selection", where judges are chosen not by the "great body of society" (i.e., the people), but by "an inconsiderable proportion, or favored class of it" (i.e., a small committee of lawyers) is exactly the type of system the Founders wanted to avoid.

Of course, there's nothing wrong with George Soros or anyone else financing efforts to influence the debate about America's judiciary. What's troubling is when they spend their money trying to silence other voices, especially "the great body of society" that has a constitutionally guaranteed right to participate in one of the most crucial decisions in public life. While judicial elections ensure that all voices can be heard, "merit selection" systems give the power to lawyers under the theory that voters can't be trusted to pick judges.

Everyone agrees that judges should remain independent. No one wants judicial candidates handing out promises on how they would vote on specific cases. But voters are entitled to know what principles and philosophy a judicial candidate will bring to the bench. It is hardly beneath a prospective judge to explain that philosophy so citizens can make their own decisions and vote accordingly.

Winston Churchill once said that democracy is the worst form of government, except for all the others. The same could be said about contested judicial elections. Yes, they can be too expensive.

Yes, they can be too political. But critics of judicial elections have no claim to the moral high ground for faulting others who want to protect voters' constitutional right to participate in the process of choosing judges. The authors of 39 state constitutions believed that judicial accountability was best secured when left in the hands of the people. They knew that a dose of democracy is often just what America's courts need. ■

**"...a dose of  
democracy is often  
just what America's  
courts need"**

# Appendix I

## OSI Grant Summary

### **Alliance for Justice, Inc. (DC) ([www.afj.org](http://www.afj.org))**

**OSI Contributions: \$1.850 million between 2002 and 2009; \$1.275 million earmarked for projects relating to the judiciary.**

The Alliance for Justice is dedicated to fighting the appointment of conservatives to the judiciary. In 2008, it created a blog “to focus attention on what they consider the deliberate politicization of the Justice Department and attempts by movement conservatives to pack the federal judiciary with like-minded ideologues.” In December 2009, the Alliance for Justice issued a press release entitled “Independent Report on ACORN Shows the Need to Stand Up for Groups that Make Democracy Work.” In its website section entitled “Independent Courts & Fair Judges,” the organization quotes U.S. Court Justice Lewis Powell as stating, “the judiciary may be the most important instrument for social, economic & political change.” The website goes on to deride “conservative justices,” stating “it is not enough to keep these judges off of the bench. We must also work to advance a positive vision of the law, a vision of the law that champions fairness, justice and equality for all.” Many of the members of the AFJ also receive Soros funds.

### **American Constitution Society for Law & Policy (DC) ([www.acslaw.org](http://www.acslaw.org))**

**OSI Contributions: \$5.85 million between 2002 and 2008.**

The American Constitution Society for Law and Policy (ACS) describes itself as one of the nation's leading progressive legal organizations. Its January 2008 Michigan Chapter dinner included top Michigan trial lawyers and leading Democratic politicians from the state, including Senator Carl Levin (D-MI), Congressman John Conyers (D-MI), Michigan Supreme Court Justice Marilyn Kelly (nominated by the Democratic Party), and Mark Brewer (Chair of the Michigan Democratic Party). In October 2008, the Constitution Society held a forum at Michigan State University during which Justice Marilyn Kelly condemned the conservative majority on the Michigan Supreme Court, singling out then Chief Justice Cliff Taylor who was standing for re-election. Recently, the ACS President stated in a NPR interview “[with the election of Obama] we now have the opportunity to actually get our ideas and the progressive vision of the Constitution and of law and policy into practice.” Its newest initiative is Constitution in the 21st Century. “The centerpiece

of the project is a series of issue groups focused on discrete areas of law and policy, through which a wide range of members will develop, communicate and popularize progressive ideas through papers, conferences and media outreach.”<sup>58</sup> It has been suggested that the ACS is the liberal version of the Federalist Society, with the difference being that at ACS events, they put forward only their own view and do not cover the view of others, while the Federalist Society requires that both sides of an issue be covered.

### **American Judicature Society ([www.ajs.org](http://www.ajs.org))**

**OSI Contributions: \$1.0938 million between 2000 and 2008; \$793,800 earmarked for projects relating to the judiciary.**



**Justice at Stake**  
Partner

The American Judicature Society purports to work to maintain the independence and integrity of the courts and increase public understanding of the justice system. Much of its efforts involve fighting democratic election of judges, including the recent announcement that the group “received \$200,000 from OSI to preserve and expand merit selection.”<sup>59</sup> The organization says it will push to end elections and establish merit selection in a target group of states, including Louisiana, Minnesota, Nevada, New York, Pennsylvania, and Washington. On the Judicial Selection page of its website, it features a three-page document entitled “Merit Selection: The Best Way to Choose the Best Judges.”

### **American Bar Association Standing Committee on Judicial Independence ([www.abanet.org](http://www.abanet.org))**

**OSI Contributions: \$5.819 million between 1999 and 2008; \$2.23 million earmarked for projects related to the judiciary.**



**Justice at Stake**  
Partner

The January 2000 edition of the *ABA Journal* referenced a gift of \$807,000 for judicial independence and \$1.253 million for other projects prior to publication of the article. In 2008, its grant specifically called for the ABA to work with the Justice at Stake campaign and partner organizations to improve public awareness of the importance of a fair, impartial, and accountable judiciary.

### **American Civil Liberties Union Foundation, Inc. (NY) ([www.aclu.org](http://www.aclu.org))**

**OSI Contributions: \$8.69 million between 1999 and 2008; \$862,400 earmarked for projects related to the judiciary.**

<sup>58</sup> Taken from ACS website as viewed on May 18, 2010 (<http://www.acslaw.org/c21>).

<sup>59</sup> <http://www.ajs.org/ajs/publications/judicatories/2008/January/FeatureB-OSI.asp> (viewed June 28, 2010).

**American Forum (DC) ([www.mediaforum.org](http://www.mediaforum.org))**

OSI Contributions: \$552,000 between 2001 and 2007; \$462,000 earmarked for projects related to judiciary.

American Forum “gives prominent and authoritative proponents of progressive measures an audience in their own communities as well as greater access to modern means of communications.” The \$462,000 in OSI grants given since 2004 were to be used to promote the need for a fair and impartial judiciary and a working group on judicial integrity.

**Appleseed Foundation, Inc. (DC) ([www.appleseeds.net](http://www.appleseeds.net))**

OSI Contributions: \$633,670 between 1999 and 2005; \$118,000 earmarked for projects related to the judiciary.



The Appleseed Foundation is a network of “public interest law centers.” Of their total OSI grant, \$118,000 was to “support a project to promote an independent, qualified and diverse judiciary in Kansas, Oklahoma, and Alabama.”

**Campaign Legal Center - formerly Campaign & Media Legal Center (in 2004, merged with Alliance for Better Campaigns) ([www.camlc.org](http://www.camlc.org))**

OSI Contributions: \$1.7 million between 1999 and 2006; though none of the OSI funding was earmarked for projects related to the judiciary, the organization is now a Justice at Stake partner.



(campaign reform issues only)

The Campaign Legal Center has received substantial Soros support in several of its previous incarnations. In 1999 and 2000, what was then the Alliance for Better Campaigns received \$700,000 “to create more informative and engaging formats for campaign discourse on television. It and subsequent organizations received \$850,000 for “general support.” In 2005, the Campaign Legal Center received \$150,000 to support “public education efforts to reform the presidential campaign finance system.” (This was the year after Mr. Soros spent some \$27 million to defeat then President George W. Bush.) Now a partner of Justice at Stake, the organization’s website banner proclaims that it is “Representing the public interest in enforcement of campaign and media law.”

**Center for Public Democracy, Inc. (TX)**

OSI Contributions: \$50,000 in 2002.

The money was given to support the Texans Impartial Justice Campaign, a broad-based public reform and advocacy campaign to reform judicial selection in Texas.

**Center for Investigative Reporting ([www.centerforinvestigativereporting.org](http://www.centerforinvestigativereporting.org))**

OSI Contributions: \$1.606 million between 1999 and 2009; \$880,000 earmarked for projects related to the judiciary.

A portion of the OSI money has been specifically earmarked for “Partisan Justice,” “Courting Justice” and “Court Influence Investigative Journalism Projects.” According to its website, the latest reports relating to the courts are entitled:

- “Money Trails to the Federal Bench” (citing articles/studies: Money Trails Lead to Bush Judges, Judge Apologizes, and CIR’s report on campaign contributions from federal judges appointed to the Bush Administration.)
- “Documents Show Controversial Bush Judge Broke Ethics Law” (citing articles: Embattled Bush Judge Disputes Salon Report, Bench Warfare, and Key Bush Judge Under Ethics Cloud).
- “Bush Nominee Appears to Violate Conflict of Interest Rules” (citing articles: Bush Withdraws Nominee, Bush Judge’s Rating Lowered, Bush Judge Under Ethics Cloud).

The grants of 2007-2008, totaling \$300,000, were designated to carry out a two-year news investigation to examine judicial independence, particularly as it relates to the federal bench.

**Center for Political Accountability (DC) ([www.politicalaccountability.net](http://www.politicalaccountability.net))**

OSI Contributions: \$820,000 between 2004 and 2008; \$320,000 earmarked for projects related to the judiciary.

The grantee says its mission is to bring transparency and accountability to corporate political spending. It is clear that their transparency reports were based on information taken from the Center for Responsive Politics ([www.opensecrets.org](http://www.opensecrets.org)), the Center for Money in State Politics ([www.followthemoney.org](http://www.followthemoney.org)) and the Center for Public Integrity ([www.publicintegrity.org/527](http://www.publicintegrity.org/527)), each of which has received funding from the Open Society Institute. According to the OSI

990-PF, the purpose of the 2006 grant to the Center for Political Accountability was to “support a monitoring and accountability project on the role of business in funding the drive to ideologically reshape the judiciary and influence judicial.”

**Committee for Economic Development (NY)**  
**(www.ced.org)**

**OSI Contributions: \$1.285 million between 2001 and 2008; all of the funding has been earmarked for projects related to the judiciary.**



**Justice at Stake**  
Partner

The \$475,000 given between 2001 and 2003 was to support an initiative to engage the business community in the need for judicial campaign reform and to fund the 2002 release of “Justice for Hire: Improving Judicial Selection.” The Justice for Hire report contends that “electing state and local judges undermines judicial independence and impartiality and jeopardizes public confidence in our state courts.”<sup>60</sup> From 2004 to 2008, an additional \$810,000 was given to support the judicial selection reform initiative. CED is a partner of Justice at Stake, and recently joined Justice at Stake touting a poll suggesting that “Pennsylvanians Favor Judicial Merit Selection.”<sup>61</sup>

**Common Cause Education Fund (DC)**  
**(www.commoncause.org)**

**OSI Contributions: \$1.776 million between 2000 and 2008; though none of the OSI funding was earmarked for projects related to the judiciary, the organization is now a Justice at Stake partner.**



**Justice at Stake**  
Partner

**Communications Consortium Media Center (DC)**  
**(www.ccmc.org)**

**OSI Contributions: \$1.2 million between 2000 and 2008; \$625,000 was earmarked for projects related to the judiciary.**

Starting in 2005, grants given to CCMC were specifically related to the judiciary. In 2005, the OSI funds were donated to provide technical assistance and advice on communications issues for organizations participating in public education efforts relating to Supreme Court nominations. From 2006 to 2009, an additional \$550,000 was given to provide strategic communications assistance and advice related to judicial nominations, and to provide assistance to organizations participating in the Coalition for a Fair

and Independent Judiciary. According to its website, the CCMC's goal is to provide communications leadership to the public interest community. The group contends that, since its inception, it has helped hundreds of progressive nonprofit organizations launch winning strategies for policy change. Furthermore, “working with the Coalition for a Fair and Independent Judiciary, CCMC has helped keep the public dialogue on judicial nominations balanced and fair since 2001....The Open Society Institute funds CCMC's work in this area.”

**Community Rights Council (DC)**  
**(www.communityrights.org)**

**OSI Contributions: \$2.55 million between 2000 and 2008; \$2.3 million has been earmarked for projects relating to the judiciary.**

The CRC calls itself a nonprofit private interest law firm formed to “assist communities to protect their health and welfare.” With respect to the judiciary, the website states that it “monitors the nation's courts to combat anti-environmental judicial activism.” It is interesting to note that two \$50,000 grants in 2000 and 2001 were targeted to “protect judicial independence from corporate lobbying in the form of privately funded judicial education.” The \$650,000 awarded between 2003 and 2006 was to support projects on judicial nominations, judicial ethics, and federalism. The CRC's 990 indicates that its total assets in 2005 were \$504,211 – the same year the organization received a \$500,000 grant from OSI. In 2007, the CRC received a grant to “launch the Constitutional Accountability Center, a public interest law firm and legal think tank that will utilize Constitutional text, structure, and history to advance progressive causes.” OSI grants earmarked for the Constitutional Accountability Center through 2008 total \$1.55 million.

**The Constitution Project (DC)**  
**(www.constitutionproject.org)**

**OSI Contributions: \$926,165 between 2000 and 2008; \$270,000 was earmarked for projects related to the judiciary.**



**Justice at Stake**  
Partner

According to its website, the Constitution Project “seeks consensus solutions to difficult legal and constitutional issues.” OSI has given it nearly \$270,000 for its “Courts Initiative,” the purpose of which is to support judicial independence. Its website complains that “attacks on judges for unpopular decisions, even when those decisions are a good faith interpretation of the law,

60 CED website as read on January 26, 2010. (www.ced.org)

61 CED Media Advisory, June 7, 2010, “Poll Shows Pennsylvanians Favor Judicial Merit Selection; Statewide poll also reveals citizens have negative opinions about judicial selection.” <http://www.ajs.org/ajs/publications/judicatories/2008/January/FeatureB-OSI.asp> (viewed June 28, 2010).

have become rampant.” Despite this, the group ignored President Obama’s public admonition of the U.S. Supreme Court majority in *Citizens United v. FEC*, and instead attacked Governor Bob McDonnell’s (R-VA) response to the State of the Union, in which the President suggested that “federal authorities erred in choosing to prosecute Umar Farouk Abdulmutallab in traditional federal court.”<sup>62</sup>

**Democracy South (NC) ([www.democracysouth.org](http://www.democracysouth.org))**

OSI Contributions: \$480,000 between 1999 and 2002; though none of the OSI funding was earmarked for projects related to the judiciary, the organization is now a Justice at Stake partner.



OSI grants were intended for building multi-issue coalitions to address issues of social justice and political reform, to support public education on money and politics in North Carolina and to work for campaign finance reform in the Southeast. According to the Democracy South’s website, its mission is to build, strengthen and link progressive multi-racial and multi-issue coalitions. Other supporters include the Carnegie Corporation, the Ford Foundation and the Tides Foundation.

**Equal Justice Society ([www.equaljusticesociety.org](http://www.equaljusticesociety.org))**

OSI Contributions: \$3.67 million between 2002 and 2009; \$750,000 earmarked for projects relating to the judiciary.

OSI funds were contributed to support the Judicial Nominations Project, which coordinates the Californians for Fair and Independent Judges Coalition, and for general support. According to the grantee’s website, “the Equal Justice Society is a national advocacy organization strategically advancing social and racial justice through law and public policy, communications and the arts, and alliance building.” It serves as a catalyst for new progressive legal strategies. A recent essay on its website stated “progressives can win these kinds of legal battles to lift the veil on big right wing money if they are willing to fight them.” Its site further states that the organization is “developing a progressive vision of the U.S. Constitution that will...inform considerations of judicial nominees...”

**Fordham University School of Law  
([www.law.fordham.edu](http://www.law.fordham.edu))**

OSI Contributions: \$114,500 between 2003 and 2006; all of which was earmarked for projects relating to the judiciary.

The 2003-2004 grants were given to “create a blueprint for enhancing public confidence in New York’s judiciary and promoting meaningful voter participating in judicial election.” By 2006, the purpose of the grant seemed to move in another direction, financing a symposium related to rethinking judicial selection.

**Fund for Modern Courts ([www.moderncourts.org](http://www.moderncourts.org))**

OSI Contributions: \$450 in 1999; though none of the OSI funding was earmarked for projects related to the judiciary, the organization is now a Justice at Stake partner.



According to its website, the Fund for Modern Courts is a private, nonprofit, nonpartisan organization dedicated to improving the administration of justice in New York. It endorses the judicial selection system known as a “commission based appointive system,” or “merit selection,” and opposes open primaries. It cosponsored a symposium on Rethinking Judicial Selection, the results of which were contained in Fordham Law School’s Urban Law Journal, a publication that was funded by the Open Society Institute. Fordham Law’s former Dean is a member of the Board of the Fund for Modern Courts.

**George Mason University**

OSI Contributions: \$49,000 in 2008; all of which was earmarked for projects relating to the judiciary.

The 2008 grant was to provide support for collaborative research on judicial diversity and judicial elections.

**Georgetown University - Office of Sponsored Programs  
(DC) ([www.georgetown.edu/OSP](http://www.georgetown.edu/OSP))**

OSI Contributions: \$5.95 million between 1999 and 2006; \$4.51 million earmarked for projects related to the judiciary.

Georgetown University was the birthplace of Justice at Stake. Of the total contributions given to Georgetown between 1999 and 2006, \$2,705,055 was specifically earmarked for the Justice at Stake Campaign ([www.justiceatstake.org](http://www.justiceatstake.org)). An additional \$2 million was dedicated to other judicial issues, including polling, public education and the Constitution Project. The last grant given to Georgetown for Justice at Stake was given in 2005. Since

62 “Constitution Project Rejects Governor McDonnell’s Assessment of Intelligence Gathering through Traditional Federal Prosecution,” Press Release, 1/27/10.

that time, Justice at Stake has become a full stand-alone organization and receives grants directly from OSI.

**The Greenlining Institute (CA) ([www.greenlining.org](http://www.greenlining.org))**

OSI Contributions: \$30,000 in 2006; though none of the OSI funding was earmarked for projects related to the judiciary, the organization is now a Justice at Stake partner.



**Justice at Stake**  
Partner

According to its website, the Greenlining Institute is “a national policy, organizing, and leadership institute working for racial and economic justice.”

**Human Rights Campaign Foundation ([www.hrc.org](http://www.hrc.org))**

OSI Contributions: \$600,000 between 2004 and 2008; all of which was earmarked for projects related to the judiciary.

The 2004 OSI grant was awarded to support a project to educate gay, lesbian, bisexual and transgender Americans on the importance of maintaining a fair and independent judiciary, while subsequent grants were simply labeled to support the Federal Judiciary Public Education Project.

**Illinois Campaign for Political Reform ([www.ilcampaign.org](http://www.ilcampaign.org))**

OSI Contributions: \$768,800 between 2002 and 2009; \$570,000 was earmarked for projects related to the judiciary.



**Justice at Stake**  
Partner

OSI funding is designated to support the Illinois Justice at Stake Campaign and to assist Justice at Stake in identifying and building consensus around justice system issues and reform strategies in Illinois. The OSI has also given money to several other organizations in Illinois for support of the Justice at Stake program (see Protestants for the Common Good and the Public Action Foundation). According to the grantee's website, it is a “non-partisan public interest group that conducts research and advocates reforms to promote public participation in government, address the role of money in politics and encourage integrity, accountability, and transparency in government.” A study completed by the Illinois Civil Justice League ([www.icjl.org](http://www.icjl.org)) reported on the motives of this group, illustrating its partisan approach to judicial reform and its involvement in an Illinois Supreme Court Race.<sup>63</sup> The ICJL issued a later study linking George Soros to the campaign finance reform movement

in Illinois.<sup>64</sup> Cynthia Canary, ICPR Executive Director, is a member of the JAS campaign, the National Center for State Court's Advisory Committee on Judicial Campaign Conduct, and the ABA's Coalition for Justice. The ICPR website does not disclose its funders despite its call for transparency in politics. However, according to 990s filed by the Joyce Foundation, the Illinois Campaign for Political Reform also received \$1.38 million between 2004 and 2007. OSI's contribution in 2008 was earmarked to “support a public education and organizing campaign in Illinois around judicial independence and the need for judicial selection reform.”

**Interfaith Alliance (DC) (& Interfaith Alliance Foundation) ([www.interfaithalliance.org](http://www.interfaithalliance.org))**

OSI Contributions: \$50,000 between 2004 and 2005; though none of the OSI funding was earmarked for projects related to the judiciary, the organization is now a Justice at Stake partner.



**Justice at Stake**  
Partner

According to its website, the Interfaith Alliance is “equally committed to protecting the integrity of both religion and democracy in America.” Grants from OSI were to fund a project related to abuses at Abu Ghraib and other US prisons.

**Judge David L. Bazelon Center for Mental Health (DC) ([www.bazelon.org](http://www.bazelon.org))**

OSI Contributions: \$2.307 million between 2000 and 2009; \$653,000 earmarked for projects related to the judiciary.

The Bazelon Center's mission is to “protect and advance the rights of adults and children who have mental disabilities.” Between 2000 and 2007, The Bazelon Center for Mental Health received OSI grants totaling \$1.2 million for a variety of projects related to mental health issues. However, beginning in 2006, OSI began earmarking additional grants for the purpose of “supporting an organizing campaign around the federal judiciary.” In 2008, the grant was specifically geared to “support legal research, issues education and coalition building to oppose federal court appointments whose confirmation could lead to the dilution of civil rights for people with disabilities.” In 2009, this was simplified to “expand the Center's legal research, issues education and coalition-building around judicial nominations.”

63 See “Justice’ at Stake: Connecting the dots on the undisclosed campaign to restrict freedom of political speech in the Maag-Karmeier race” ([http://www.icjl.org/archives/website05/resources\\_studies\\_justiceatstake.htm](http://www.icjl.org/archives/website05/resources_studies_justiceatstake.htm))

64 See “Watching the Watchdogs: How George Soros & Other Special Interest Foundations Have Hijacked Campaign Finance Reform in Illinois” ([http://www.icjl.org/archives/website05/resources\\_studies\\_watchingwatchdogs.htm](http://www.icjl.org/archives/website05/resources_studies_watchingwatchdogs.htm)).

### **Justice at Stake (DC) ([www.justiceatstake.org](http://www.justiceatstake.org))**

OSI Contributions: \$2.815 million between 2006 and 2008; (it previously received nearly \$3 million in seed money while based at Georgetown University)

### **Lambda Legal Defense & Education Fund, Inc. ([www.lambdalegal.org](http://www.lambdalegal.org))**

OSI Contributions: \$1.058 million between 2003 and 2009; \$940,000 related to projects related to the judiciary.

The OSI grants were awarded to support Judging Discrimination: A Campaign to Support an Independent Judiciary, the Courting Justice Campaign, and the Fair Courts Project, as well as provide general support. The organization's Fair Courts Project is designed to "make sure that courts can continue to make decisions based on the federal and state constitutions and other laws - not politics or popular opinion." In 2007, the grant line stated that the Court Justice Campaign was to "educate approximately 35,000 LGBT and HIV households about the critical link between judicial independence and their civil rights."

### **Lawyers Committee for Civil Rights Under Law ([www.lawyerscommittee.org](http://www.lawyerscommittee.org))**

OSI Contributions: \$974,000 between 2000 and 2008; \$328,000 earmarked for projects related to the judiciary.



OSI's grants in 2001 and 2002 were to "support efforts to raise public awareness of the importance of judicial independence as a civil rights issue and to bring civil rights leaders and organizations into the campaign to protect judicial independence." Later grants covered projects to support "civil rights and judicial independence," to print and disseminate a report on "diversity and state judicial selection methods," and to "educate the public on the advantages of a racially and ethnically diverse court system and unite civil rights groups in building a diverse judiciary." The group makes no mention of OSI as a funder on its website.

### **Leadership Conference on Civil Rights Education Fund, Inc. (DC) ([www.civilrights.org](http://www.civilrights.org))**

OSI Contributions: \$5.871 million between 2000 and 2009; \$2.615 million earmarked for projects related to the judiciary.

In 2001, OSI provided a grant to fund "a public education campaign aimed at improving public understanding of the US judicial system and the need to ensure that fair and moderate

judges who are committed to civil and constitutional rights are appointed to the federal bench." Later grants focused on "ensuring Fair and Impartial Courts for All Americans," and to support research on judicial independence and federal judicial selection. A grant of \$400,000 was given in 2005 to "provide support for the emergency campaign to filibuster" at a time when Republicans controlled the Congressional policy agenda and judicial appointment process. It is part of a coalition (Coalition for Constitutional Values) that produced an ad in support of Elena Kagan's confirmation.<sup>65</sup> In 2009, the grant was to support a "national education campaign that aims to improve public understanding of America's judicial system and the need to ensure that independent, fair-minded judges are appointed to the federal bench."

### **League of Women Voters Education Fund (DC) ([www.lwv.org](http://www.lwv.org))**

OSI Contributions: \$1.773 million between 2000 and 2009; \$1.723 million earmarked for projects related to the judiciary.



The vast majority of the OSI grants were provided to promote the importance of protecting a "fair and independent judiciary." The grants provided in 2007-2008, totalling \$330,000, changed slightly and are now aimed at "educating citizens about understanding and defending the system of checks and balances incorporated in the U.S. Constitution." In 2009, the League received a \$330,000 grant to promote "fair and impartial courts focusing particularly on the importance of ethnic, racial and gender diversity in the U.S. Court of Appeals for the Tenth Circuit." Many of the affiliated state League of Women Voters groups are now pushing "merit selection" for state court judges and are also JAS partners. The printed materials related to the LMV's programs often note that funding for the materials was provided by the Open Society Institute.

### **League of Women Voters Ohio Education Fund ([www.lwvohio.org](http://www.lwvohio.org))**

OSI Contributions: \$80,000 between 2001 and 2004; all of which was earmarked for projects related to the judiciary.



The Education Fund is the nonprofit, c(3) partner of c(4) League of Women Voters of Ohio and was the conduit for OSI's contribution to promote campaign finance reform for the Ohio Supreme Court and appellate court judicial candidates, including

65 <http://www.civilrights.org/archives/2010/05/971-kagan-nomination.html> (viewed July 6, 2010).

holding forums and working groups related to this purpose. At a Federalist Society debate held in Columbus, Ohio in January 2010, the President of the League of Women Voters of Ohio denied receiving any funding from George Soros or the Open Society Institute.

### **National Center for State Courts (VA)**

**([www.ncsconline.org](http://www.ncsconline.org))**

OSI Contributions: \$1.99 million between 2000 and 2008;  
\$1.829 million earmarked for projects dealing with the judiciary.



**Justice at Stake**  
Partner

The banner on the NCSC website says “Improving Justice through Leadership and Service to the Courts.” OSI grants to the National Center for State Courts have, for the most part, been related to reforming judicial selections. The other major grant earmark was to “engage chief justices and other judicial leaders in the Justice at Stake Campaign’s public education and reform efforts.” The two most recent grants to the NCSC were to “support state judiciaries, judicial organizations, and other concerned groups to anticipate and respond to measures that politicize state courts,” and to provide support for “a national campaign to ensure the racial and ethnic fairness of America’s state courts.” The National Center for State Courts also receives dues from state court systems across the country, i.e., tax dollars. Since 2008, the following “associations & partners” of NCSC are now also listed as “partners” of Justice at Stake: American Judges Association (AJA), National Conference on Metropolitan Courts (NCMC), National Association of Women Judges (NAWJ), National Association for Court Management (NACM).

Roger Warren, the current Chair of the Justice at Stake Board, is President Emeritus of NCSC. Also, the former Deputy Director of Justice at Stake, Jesse Rutledge, recently became the Vice President, External Affairs at NCSC.

### **National Congress of American Indians Fund**

**([www.ncai.org](http://www.ncai.org))**

OSI Contributions: \$500,000 between 2006 and 2008; all of it earmarked for projects related to the judiciary.

The OSI grants were provided “to support the Federal Judicial Selection Process (a joint initiative with the Native American Rights Fund).” [Note: the Native American Rights Fund received an additional \$300,000 between 2004 and 2007.] According to its website, the NCAI “serves to secure for ourselves and our

descendants the rights and benefits to which we are entitled; to enlighten the public toward the better understanding of the Indian people; to preserve rights under Indian treaties or agreements with the United States; and to promote the common welfare of the American Indians and Alaska Natives.” The NCAI Fund was designed to complement and reinforce the advocacy work of the organization. We were unable to find any mention of the Open Society Institute, George Soros, or the “Federal Judicial Selection Process” on the organization’s website.

### **National Institute for Money in State Politics (MT)**

**([www.followthemoney.org](http://www.followthemoney.org))**

OSI Contributions: \$2.168 million between 1999 and 2009;  
\$1.023 million earmarked for projects related to the judiciary.



**Justice at Stake**  
Partner

The vast majority of the funds were given to “conduct comprehensive research on campaign finance matters in judicial campaigns.” However, in 2005, an additional \$80,000 was awarded for other projects, including the Prison-Industrial Complex, Politics & Policy Project. In 2006, a \$30,000 grant was given to “support research on money and diversity in state judicial elections.” It’s also interesting to note how this organization categorizes contributions. For example, if a secretary who works for General Motors makes a contribution, it’s considered a “big business” donation because of her employer. In fact, except in cases where employees of large companies belong to a union, they will be considered as “big business” contributors. By rigging its reporting against business, the institute makes it easier for critics (like OSI) to demonize corporations and further their agenda.

### **National Partnership for Women & Families, Inc. (DC)**

**([www.nationalpartnership.org](http://www.nationalpartnership.org))**

OSI Contributions: \$2.595 million between 1999 and 2009;  
\$1.22 million earmarked for projects related to the judiciary.

OSI contributions between 1999 and 2003 were to be used for health related purposes and general support. However, between 2005 and 2007, the organization received grants totaling \$620,000 to support “the Supreme Court and Federal Judicial Initiative.” The purpose for the \$400,000 pledged in 2007 was more explicit: “to advance critical women’s rights, civil rights, and reproductive rights by insuring fairness, integrity, and a commitment to equal justice in our courts.” In 2009, the grant was to assist the organization’s efforts “to ensure that judicial nominees have a demonstrated

commitment to equal justice, increase the diversity of those nominated for judicial positions and protect and support the enforcement of civil rights laws and constitutional rights.” The organization’s website states: “Too often, ideologues want to use the courts to attack our cherished rights and freedoms. Every confirmation of a judge who has a partisan agenda, and is hostile to fundamental rights and liberties, is a profound loss to us all. Federal judges are appointed for life, so the judges appointed by President Bush and confirmed by the United States Senate will have an impact that lasts for decades.” The NPWF embraced the Sotomayor and Kagan nominations. Its website features the article, “Kagan’s Nomination is Sweet Smell of Progress,” by Judith Lichtman, its former president and now senior advisor.

**National Voting Rights Institute/Demos (MA/NY)**  
**(<http://www.nvri.org/about/index.shtml>)**

**OSI Contributions to Demos: \$2.35 million between 2001 and 2009; though none of the OSI funding was earmarked for projects related to the judiciary, the organization is now a Justice at Stake partner.**



According to its website, “The National Voting Rights Institute is a nonpartisan, nonprofit organization committed to making real the promise of American democracy that meaningful political participation and power should be accessible to all regardless of economic or social status. NVRI is based in Boston, though NVRI can be found wherever in the country voters are disenfranchised.” As of 2006, it has become fully integrated with Demos.<sup>66</sup>

**National Women’s Law Center (DC) ([www.nwlc.org](http://www.nwlc.org))**  
**OSI Contributions: \$2.625 million between 2004 and 2009; \$1.35 million earmarked for projects related to the judiciary.**

The specific purpose of the 2004 OSI grant was “to support the Federal Courts Project, a public education project to improve public understanding of the need for a fair and impartial federal judiciary.” The 2005 OSI grant was for a project on “Federal Courts and Administration of Justice.” The 2007 grant elaborates on administration of justice: “to ensure a judiciary committed to preserving the core legal protections for women. The group campaigned against mainstream conservative nominees to the Supreme Court, including Chief Justice John Roberts and Justice Samuel Alito. The 2009 grant was more specific “to educate the public and policymakers about the importance of the legal rights and protections that are within the

purview of the federal courts, the impact that the courts can have on Americans’ everyday lives, and the connection between the judicial nominations process and the legal rights that Americans have come to depend upon.”

**North Carolina Center for Voter Education (NC)**  
**([www.ncvoterred.com](http://www.ncvoterred.com))**

**OSI Contributions: \$165,000 between 2001 and 2007; \$100,000 was earmarked for projects related to the judiciary.**



According to its website, the North Carolina Center for Voter Education is a “nonprofit and nonpartisan group, dedicated to helping citizens more fully participate in democracy.” A \$65,000 grant in 2001 was given to support public education on money and politics in North Carolina. A \$50,000 grant given in 2006 related to judicial reform and judicial independence, while another \$50,000 was given in 2007 to launch the Better Courts Project aimed at the state judiciary.

**Pennsylvanians for Modern Courts ([www.pmconline.org](http://www.pmconline.org))**  
**OSI Contributions: \$591,000 between 2001 and 2008; all grants earmarked for projects related to the judiciary.**



PMC has been the primary promoter of ending the constitutional right to vote for judges in Pennsylvania and replacing it with merit selection. In 2001, OSI’s grant to PMC was intended to support a statewide education campaign on the need to reform the judicial selection system. In 2002, OSI provided funds to work in concert with the Justice at Stake Campaign to educate the public on the need for judicial selection reform. In 2003, the words “promote an independent judiciary” were added to the rationale for advancing judicial selection reform. From 2003 to 2008, the funds were specifically used to advance “merit selection.” (See pp. 9-10 of this study to view their most recent activities.)

**People for the American Way ([www.pfaw.org](http://www.pfaw.org))**  
**OSI Contributions: \$3.5 million between 1999 and 2008; \$2.1 million earmarked for projects related to the judiciary.**

In 1999, the grant was to be used “to conduct ‘opposition research’ on organizations and individuals seeking to undermine judicial independence.” In 2005, OSI grants went to support projects such

66 According to the National Voting Rights Institute’s website, “In the Spring of 2006, NVRI signed a formal collaboration agreement with the organization Demos. ...As of January 2007, all NVRI staff were hired by Demos, and now work out of Demos. NVRI as an organization continues to operate on a more reduced scale, supporting work done by Demos and continuing to further the goals of NVRI.” <http://www.nvri.org/about/index.shtml> (viewed July 6, 2010).

as the Emergency Campaign to Protect the Filibuster and the Judicial Nominations Project. In 2006, the group received a \$1 million grant to “support the Supreme Court Partnership to Protect Civil Rights and Constitutional Liberties.” One of its latest publications is entitled “The Human Toll: How Individual Americans Have Fared at the Hands of Bush Judges.”

**Planned Parenthood Federation of America, Inc. (NY)**  
**(www.plannedparenthood.org)**

**OSI Contributions: \$2.5 million between 2000 and 2008; \$200,000 earmarked for projects related to the judiciary.**

Early OSI grants were provided for activities related to reproductive rights and contraception programs. In 2005, however, the OSI grant was specifically made to “support an organizing campaign around the federal judiciary.”

**Protestants for the Common Good (IL)**  
**(www.thecommongood.org)**

**OSI Contributions: \$10,000 in 2002; all earmarked for projects related to the judiciary.**



According to its website, “Protestants for the Common Good was formed in 1995 to bring an informed and strong Protestant voice to public life and to offer educational resources and advocacy opportunities to people of faith on matters of public policy.” The group received the \$10,000 contribution in 2002 to “support the Illinois Justice at Stake Campaign.” At the time of the grant, the organization’s Deputy Director was Mary Schaafsma, who later joined another Justice at Stake affiliate and OSI grantee, the Illinois Campaign for Political Reform, where she was involved in the 2004 Illinois Supreme Court race.

**Public Action Foundation (IL)**

**OSI Contributions: \$145,000 between 2002 and 2006; all grants were earmarked for projects related to the judiciary.**



OSI grants to the Public Action Foundation were provided to support the Illinois Justice at Stake Campaign. The foundation is the research and education arm of Citizen Action/Illinois (www.citizenaction-il.org), a self-described “leader in the Illinois Justice at Stake campaign.” The Justice at Stake website calls Citizen Action/Illinois a “progressive political coalition committed to creating social change both in Illinois and across the country.”

Citizen Action/Illinois has a state PAC called Progressive Action Project, which endorses candidates in the State of Illinois.

**Public Campaign (DC) (www.publiccampaign.org)**

**OSI Contributions: \$1.275 million between 2000 and 2006; though none of the OSI funding was earmarked for projects related to the judiciary, the organization is now a Justice at Stake partner.**



Public Campaign is a 501(c)(3) organization whose website states, “Cleaning up politics is everyone’s business. Join us in working for real campaign reform.” It shares its office space and administrative personnel with Public Campaign Action Fund and Campaign Money Watch. According to its 2007 990, it promoted fairness in election funding process through nationwide media, advertising, and support of broad-based education and organizing efforts. Though the organization supports public funding, it dedicates significant space on its website to substantiate why Barack Obama was justified in not taking public funds after stating that he would do so in the 2008 presidential election. On the Public Campaign Action Fund website, it states, “we hold elected officials accountable for policy decisions they make that are tied to campaign contributions they receive.” Not surprisingly, all of the public officials targeted by Public Campaign’s ads are Republicans. David Donnelly, Public Campaign Action Fund’s National Director, previously led voter education campaigns against Tom Delay and Ralph Reed.

**The Reform Institute (VA)**

**OSI Contributions: \$150,000 in 2003; all of which was earmarked for projects related to the judiciary.**

The Reform Institute describes itself as a “nonpartisan not-for-profit educational organization working to strengthen the foundations of our democracy and build a resilient society.” The grant from OSI was to support the organization’s “work with Justice at Stake on judicial independence issues.”

**Southern Center for Human Rights (GA)**

**OSI Contributions: \$125,000 in 1999; \$50,000 was earmarked for projects related to the judiciary.**

Part of the 1999 grant was to “renew support for the Center’s ongoing work to investigate, document and educate the public about threats to judicial independence in the South.”

### **Texans for Public Justice (TX) ([www.tpj.org](http://www.tpj.org))**

OSI Contributions: \$225,000 in 2001 and 2009; \$50,000 was earmarked for projects related to the judiciary.



**Justice at Stake**  
Partner

OSI's grant was given to the Public Justice Foundation of Texas, which is located in the same office suite as that of Texans for Public Justice. The mast of the TPJ website states "Tracking the influence of money and corporate power in Texas." Their stated goal is to "add a clear voice to debates on political reform, consumer protection, civil justice and corporate accountability."

### **Transparency International - USA**

OSI Contributions: \$431,328 in 2006; though none of the OSI funding was earmarked for projects related to the judiciary, the organization is now a Justice at Stake partner.



**Justice at Stake**  
Partner

Though the OSI contribution doesn't appear to have anything to do with the judiciary, this organization recently appeared as a partner of Justice at Stake.

### **William J. Brennan Center for Justice, Inc.**

([www.brennancenter.org](http://www.brennancenter.org))

OSI Contributions: \$12 million between 1999 and 2008; \$2.225 million earmarked for programs related to the judiciary.



**Justice at Stake**  
Partner

Many of the OSI contributions to the Brennan Center relate directly to the judiciary. In 1999, the grant was to "support responses to ongoing and invidious attacks on the independence of the judiciary," and in 2001, it was to provide support for "research, scholarship, legal and policy counseling and development of public education materials for the benefit of organizations in the judicial independence campaign." It was in 2002 that the money was earmarked specifically for the benefit of organizations in the Justice at Stake Campaign.

### **Wired on Wheels, Inc. (National Coalition for Disability Rights) (DC) ([www.ncdr.org](http://www.ncdr.org))**

OSI Contributions: \$498,000 between 2006 and 2008; all of which was earmarked for programs related to the judiciary.

OSI contributions are earmarked for the Campaign for Fair Judges, a project that "engages in public education supporting

judicial nominees to the Federal Courts and Supreme Court who demonstrate a broad interpretation of disability rights and civil rights laws.

### **Wisconsin Citizen Action Fund**

([www.citizenactionwifund.com](http://www.citizenactionwifund.com))

### **Citizen Action of Wisconsin**

([www.citizenactionwi.org](http://www.citizenactionwi.org)) (WI)

OSI Contributions: \$140,000 between 2000 and 2003; all of which was earmarked for programs related to the judiciary.



**Justice at Stake**  
Partner

The Wisconsin Citizen Action Fund's website states, "Conservatives have been winning the values debate for years, with tragic consequences for our state and nation. Progressives will not win until they develop strong messages that ground policy reforms in the fundamental values which shape public attitudes and motivate action." Over 84 percent of the Wisconsin Citizen Action affiliates are organized labor groups, with the remaining affiliates made up of such groups as the League of Women Voters, Planned Parenthood Advocates of Wisconsin, and AARP - Wisconsin. The grants were earmarked for the Fund's Impartial Justice Project, a public education and citizen-organizing campaign built around the growing threat to judicial impartiality posed by the dependence of judicial candidates on campaign contributions.

### **Wisconsin Democracy Campaign ([www.wiscd.org](http://www.wiscd.org))**

OSI Contributions: \$150,000 between 2008 and 2009; all of which was earmarked for programs related to the judiciary.



**Justice at Stake**  
Partner

According to its website, the Wisconsin Democracy Campaign is a "homegrown network of citizens fighting government corruption and working for fair elections, judicial integrity, media democracy, and open and transparent government. The Democracy Campaign pursues these objectives through research, citizen education, community outreach, coalition building and direct advocacy."<sup>66</sup> In 2008, OSI's grant was to support the Wisconsin Judicial Reform Project, while in 2009, the program's title was changed to the Judicial Independence Project.

<sup>66</sup> <http://www.wiscd.org/wdcus.php>

# Appendix II

## JAS Staff At A Glance

Justice at Stake's first Executive Director, **Geri Palast**, spent many years working in organized labor, including stints with AFSCME, the National Treasury Employees Union and the Service Employees International Union. She served as the organization's Executive Director until she left to join the notorious plaintiff's firm of Milberg, Weiss.<sup>67</sup>

Current Executive Director, **Bert Brandenburg**, worked on the Clinton-Gore campaign and transition team and was later rewarded with a position as Spokesperson for Attorney General Janet Reno. Prior experience included work with Congressman Edward Feighan (D-OH) and the Progressive Policy Institute.

**Charles W. Hall**, the Communications Director of JAS, previously worked for the American Bar Association and the *Washington Post*. When running as a Democrat for political office in Fairfax County, an opponent scolded him as not having been active enough in Democratic politics. "Hall countered that he is a lifetime Democratic voter and that his former job as a reporter and editor at the *Post* kept him from engaging in partisan politics - until now."<sup>68</sup>

**Dag Vega** was listed as a contact in the press release launching Justice at Stake in 2002. In February 2009, he was named Director of Broadcast Media for the Obama White House. Prior to that, Vega served as Director of Surrogate Press for the Obama campaign, Deputy Communications Director at the Democratic National Committee, Deputy Communications Director during John Kerry's presidential campaign and a spokesperson for constituency media for Al Gore's presidential bid in 2000.

In a December 2009 press release, JAS announced several new staff members including Deanna Dawson, John Robinson and Aaron Ament.

**Deanna Dawson**, Director of Federal Affairs and Diversity Initiatives for JAS, also has deep roots in the Democratic Party. She recently left her position as City Council member in Edmonds, Washington to join Justice at Stake. In 2008, she was selected as a National Delegate for the Hillary Clinton for President campaign.

**John Robinson**, JAS's Director of State Affairs, previously served as a counsel for the Gore 2000 presidential campaign and its recount and as compliance counsel for the Democratic National Committee. In 2004, he acted as Chief Operating Officer and Chief Financial Officer for the John Edwards presidential campaign.

**Aaron Ament**, the Deputy Director of State Affairs, is a former Democratic consultant who worked for the Hillary Clinton presidential campaign as an online consultant. In 2009, he ran the Stand Up American PAC, a political action committee "designed to defeat the most controversial Republican members of Congress."<sup>69</sup>

**Caitlin Russi**, Federal Courts and Diversity Program Assistant, was a former intern for Senator John Kerry.

Two staff members that left Justice at Stake in 2008-2009 were also cut from the same mold.

**Jesse Rutledge** was the former Deputy Director of Justice at Stake, and before that, its Communications Director. He came to Justice at Stake from another Soros-funded organization, Democracy South. Ironically, Mr. Rutledge left Justice at Stake and is now the Vice President of External Affairs for the National Center for State Courts.

**Eamonn Donovan**, JAS's State Field Coordinator was the GOTV (Get out the vote) coordinator for the New Hampshire Coordinated Campaign in 2002 (for the Democrat Party). News articles indicate that Donovan worked in the Field Office for the Kerry for President Campaign in 2004. According to press reports, in 2007 he applied to become Executive Director of the New Mexico Democrat Party.

67 The firm, one of the Democratic Party's most generous contributors, recently saw two of its principal partners - Melvyn Weiss and Bill Lerach - sent to prison for paying kickbacks to front-men plaintiffs in phony class action lawsuits.

68 Election Challenge of ABA Flack/Ex-Postle Earns Ink, May 30, 2007, <http://www.potomacflacks.com/pdf/2007/05/index.html>

69 Politico, The Scorecard, "Targeting controversial House Republicans," September 16, 2009.

## About The Author

---

**C**olleen Pero is an attorney and public affairs consultant in Michigan who analyzes the philosophical trends and directions of state Supreme Courts. In 2008, she managed the re-election campaign of Michigan Supreme Court Chief Justice Cliff Taylor. Earlier in her career, she served as General Counsel and then Director of Ballot & Delegate Programs for Lamar Alexander's 1996 presidential campaign and as Special Counsel and Director of State Affairs for Michigan Governor John Engler. She also served as Co-Director of the Michigan Political Leadership Program at Michigan State University in 2001-2002. She also practiced law with the Michigan firm of Dickinson Wright and the Texas firm of Winstead, McGuire, Sechrest & Minick. She has written extensively and spoken frequently on questions concerning state courts and judicial accountability, including reports examining the Michigan Supreme Court and the Florida Supreme Court and reviews of numerous state Supreme Court decisions. Colleen earned her BA from Michigan State University, her MBA from the Thunderbird School of International Management and her JD from the University of Houston.

