

WebMemo



Published by The Heritage Foundation

No. 3004
September 9, 2010

Hijacking Justice: The Well-Funded Campaign to Replace Judicial Elections with Selection by Liberal Special Interests

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Over the past 10 years, special interests have engaged in a highly coordinated, well-funded campaign to fundamentally alter the composition of America's state courts. The campaign's goal: to 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.

A groundbreaking study released by the American Justice Partnership, *Justice Hijacked: Your Right to Vote Is at Stake*, reveals that Soros's Open Society Institute has invested at least \$45.4 million in earmarked funds in its campaign to reshape the judiciary. Shockingly, this is a conservative estimate that does not include the millions of additional dollars that flow to these organizations' general operating funds or through intermediary "conduit" organizations.

Merit Selection. This multi-million-dollar campaign to reshape America's 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—whose politics, not surprisingly, are more liberal than the general public.

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 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 decision in *Citizens United v. Federal Election Commission*—a decision that allows corporations and unions to make independent expenditures related to federal races but does not permit corporations or unions to make direct contributions to candidates—as its rallying cry, arguing that the decision will precipitate a "flood of money" into state judicial races.

Backroom Political Deals. Ironically, the same opponents of judicial elections who loudly protest

This paper, in its entirety, can be found at:
<http://report.heritage.org/wm3004>

Produced by the Center for Legal & Judicial Studies

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

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about contributions negatively affecting the independence of the judiciary—a claim for which they have yet to provide any concrete evidence—are receiving and spending tens of millions of dollars to not merely influence judicial elections but eliminate them and turn judicial selection over to special interests and backroom political deals. This does not remove politics from the process but rather moves politics outside of public view.

The well-funded proponents of so-called merit selection engage in a kind of political self-dealing, promoting selection by interest groups who are more closely aligned to their liberal agenda. Those

who are concerned about the influence of money in judicial elections should pay more attention to the money spent by those seeking to use “merit” selection not to eliminate politics but to embed interest group politics formally into the selection process, thereby tilting judicial selection in their political favor.

—*Colleen Pero is an attorney and consultant with Pero Consulting. American Justice Partnership’s full report, Justice Hijacked: Your Right to Vote Is at Stake, is available at <http://www.americanjusticepartnership.org/hijacked>.*