The Persistent Legislative, Executive, and Corporate Attempts to Control the Judiciary

By Dorothy F. Easley[1]


D. EASLEY

A. Introduction

Congress and the Executive Branches have long-attempted to wrest power from the courts. *Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60 (1803), is perhaps the most well-known and consistently invoked case on this issue. *Marbury* established the power of the Supreme Court to strike down an act of Congress as unconstitutional and by doing so elevated the Supreme Court to an equal status of the other branches of government as the Constitution directed.

B. The History of "Court Stripping" and Efforts to Limit Court Jurisdiction

Efforts to limit the jurisdiction of the courts and the judiciary well predate the 1830's and continue with zeal today.[2] Franklin Roosevelt's "court packing" plan was conceived after the Supreme Court struck down certain statutory provisions in his New Deal. This legislation would have allowed President Roosevelt to appoint six new Supreme Court justices.[3] This part of the bill was eventually excluded from the final bill that passed the Senate.[4]

Over a fifteen-year period, from 1953 and 1968, more than sixty bills aimed at restricting the federal courts were presented to Congress.[5] These bills included efforts to remove federal court jurisdiction to "review actions of federal law-enforcement agencies and state courts in order to reverse decisions they did not like, punish judges, or even avoid future rulings they may not like."[6] For example, the Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483, 495 (1954), which held that segregated public schools violated the Equal Protection Clause, infuriated segregationists..[7] Segregationists, in response, sought, albeit unsuccessfully, to remove federal court jurisdiction over school desegregation matters.[8]

C. Executive-Legislative Attempts to Control the Judicial Branch Today

Struggles to place issue-friendly judges on the bench and restrict judicial review of the legislative and executive branches are tactics still practiced today.[9] The Supreme Court has described "protecting the Executive's discretion from the courts. . . . [as] fairly. . .said to be the theme of the legislation."[10]

The Antiterrorism and Effective Death Penalty Act of 1996 (the "AEDPA"), for example, eliminated court jurisdiction to review any form of review over criminal aliens.[11] It stated that "[n]otwithstanding any other provision of law, no court shall have jurisdiction to review any final order of removal against any alien who is removable by reason of having committed a criminal offense." The AEDPA also eliminated earlier federal law that allowed *habeas corpus* review of the claims of aliens held in custody under deportation orders.[12]

The Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) further limited judicial review by establishing that only "final" removal orders directed at aliens were reviewable, further limiting judicial review.[13] Section 1252(a)(2)(B)(ii)'s "Judicial Review of Orders of Removal" provided:

> Notwithstanding any other provision of law, no court shall have jurisdiction to review . . . (ii) any other decision or action of the Attorney General the authority for which is specified under this subchapter to be in the discretion of the Attorney General, other than the granting of relief under section 1158(a) of this title.

The majority of the circuits have construed this language to mean that, although not a complete preclusion of judicial review, all Attorney General decisions under the IIRIRA that are "discretionary in nature" are now "jurisdictionally precluded" from judicial review.[14]

Courts continue to be targets of court-stripping attempts.[15] The "hot" topics triggering such restrictive ventures include religion, abortion, school busing, detainee rights, and same sex marriage.[16] Several states, for example, have recently attempted to pass court-packing legislation. In 2007, a Florida senator introduced an infamous bill to increase the number of the state's Supreme Court Justices from seven to fifteen.[17] In 2007, a Georgia senator introduced a bill to change the number of that state's highest court justices from seven to nine.[18] In retaliation against the Iowa Supreme Court ruling in favor of the constitutionality of same-sex marriage in 2010, a bill was introduced to increase the number of justices there from seven to nine.[19] In 2011, a bill was introduced in Montana to reduce the number of supreme court justices there with the sole purpose of increased case loads for the justices leading to tort reform.[20]

In 2006, the South Dakota Legislature rather remarkably sought to change the law to remove judicial immunity so that judges could be sued for their rulings. This was called the Judicial Accountability Initiative Law, and was placed on the ballot.[21] South Dakota voters refused to approve it.[22] In 2013 in North Carolina, the Senate Judiciary Committee sought to exert more control over reprimanding judges and attempted to make previously private reprimand recommendations public.[23] In March 2013, New Hampshire considered a bill that would allow the legislature

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to overturn judges' decisions.[24] That bill would have even removed judges from office.[25]

Also during the 2012 elections, many items were placed on ballots directed to greater executive and legislative controls over the judiciary. In Arizona, Proposition 115 was placed on the ballot. This Proposition would have afforded the governor more control over the appointees to the Arizona Supreme Court, among other things.[26] Seventy-three percent of the Arizona voters rejected Proposition 115.[27]

The Florida Legislature also acted to wrest more control over Florida Supreme Court appointments, originally by dividing the Florida Supreme Court into two Courts, one for Civil and the second for Criminal, with the Governor responsible for appointing new Justices to the remaining openings that the expansion would leave.[28] Eventually HJR 7111 was modified to create Amendment 5, which was placed on the ballot in 2012.[29] What remained in HJR 7111 were three major provisions granting the Florida Legislature more power and oversight over the judicial branch: (1) a requirement that a Florida Supreme Court justice appointed by the governor must be confirmed by the Senate to take office; (2) a provision authorizing the Legislature to repeal court rules through passage of general law; and (3) allowing House review of the Judicial Qualifications Commission files that were confidential.[30] Sixty-three percent of Florida voters rejected Amendment 5.[31]

New Hampshire has been perhaps the most blatant about its desire to control the judiciary with the New Hampshire State Court Amendment or CACR 26 in 2012. "The legislature shall have a concurrent power to regulate the same matters by statute. In the event of a conflict between a statute and a court rule, the statute, if not otherwise contrary to this constitution, shall prevail over the rule."[32] The vote on this measure was alarmingly close to forty-nine percent "for" and fifty-one percent "against" this amendment.[33] The voters almost handed the legislature veto power over the judicial branch.

The close vote in New Hampshire demonstrates that the public does not always receive or appreciate the civics lessons and constitutional foundation information necessary to recognize the dangers of these proposals. In New Hampshire, the legislature almost had the power to veto the courts and their decisions, and that does not bode well for the future of democratic governments if the public is acquiescent to these dangers. Our constitutional framers came from other governments that were not functioning and envisioned, for a reason, that the judicial branch must be a separate branch of a tripartite government -- instead of a lower rung of government to be molded by politicians and particular interests.

New Jersey illustrates this continuing "tug of war" between the judiciary and executive and legislative branches. New Jersey has been a battleground with Governor Chris Christie's attempts to change laws and the New Jersey State Supreme Court's rulings that do not advance his politics. Governor Christie has, in turn, desired to change the composition of the New Jersey State Supreme Court. In 2010, Governor Christie successfully rid that state supreme court of Justice John Wallace, Jr. by not reappointing him.[34] No New Jersey governor had ever failed to grant a justice reappointment, not since 1947 when the New Jersey Constitution was adopted.[35]

Additionally, in 2011 the New Jersey Legislature passed the Pensions and Healthcare Benefits Act, which applied to public employees and that designation included judges.[36] This was significant because the New Jersey Constitution protects judicial salaries and those salaries cannot be decreased during the judicial terms in office.[37] The 2011 Act, however, increased health care and pension contributions, which in turn reduced the justices' judicial salaries by at least $17,000.[38] The Act was unsurprisingly held to be unconstitutional in *DePascale v. State*.[39] The New Jersey Supreme Court explained its reasons for so holding:

> By barring the Legislature and Executive from diminishing the salaries of sitting justices and judges, the Framers intended to prevent those branches from placing a chokehold on the livelihood of jurists who might be required to oppose their actions. The constitutional restraint on diminishing judicial salaries is not for the benefit of judges, but for the benefit of the public. The public is the ultimate beneficiary of a fearless and independent judiciary, for a timid and subservient judiciary will be an uncertain guarantor of fundamental rights. The public must have confidence in the integrity of the judiciary. Article VI's No–Diminution Clause promotes that goal in perception and reality.[40]

The New Jersey courts have, nevertheless, faced formidable challenges. In 2011, the Supreme Court of New Jersey also held that the legislature and Governor Christie's school-funding cuts violated the School Funding Reform Act and, further, ordered that the legislature and Governor Christie increase funding by approximately $500 million for the next fiscal year.[41] If the constitutional and judicial checks and balances in New Jersey had not been truly independent and robust, public employees and public schools would have suffered the lack of separateness.

The Florida Legislature aimed to exercise more control over death penalty cases and to expedite executions when it enacted the Death Penalty Reform Act of 2000. The Florida Supreme Court, citing Article V, Section 2(a) of the Florida Constitution, successfully precluded the Legislature from exerting that level of control over judicial decisions, and the Court struck down the statute three months later in *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000). The Florida

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Legislature, however, did not stop. It then introduced SJR 1740 to amend Florida's Constitution to add Section 2(b): "Notwithstanding subsection (a), post conviction or collateral review of capital cases resulting in a sentence of death shall be governed exclusively by, and to the extent provided by, general law."[42] This was not passed either, so HJR 7081 was the next to be introduced, which read: "Notwithstanding subsection (a), the procedures for post conviction or collateral review of capital cases resulting in a sentence of death shall be governed exclusively by, and to the extent provided by, general law."[43] This again failed, but a companion bill, HB 7083, passed. HB 7083 required the Florida Supreme Court to annually report certain information from capital post-conviction cases to the Florida Legislature.[44]

D. All Branches Need to Advance the Independence and Impartiality of the Judiciary

To be sure, there are interested, well-intentioned parties on both sides of these propositions and amendments who work to get the public to vote for what is believed to be in the best interest of the public. It is imperative, however, that the public is provided the correct information about proposed changes to state constitutions so that the public can make informed decisions within the framework of one of the most important structural features of constitutional law: a tripartite branch where the judicial branch remains separate from and equal to the legislative and executive branches.

In our country there are three main ways judges are placed on the bench: partisan elections, nonpartisan elections, and merit selection. The processes differ by state and even within different courts within each state. Florida, however, now has primarily a merit selection process that affords its appellate courts and supreme court greater structural independence, though pressures exerted by the other branches of government to control courts do not assist that independence. Pursuant to the Florida Constitution, circuit and county judges are chosen by election.[45]

Not all states, however, have these structural protections for higher courts, and the importance of protection for judicial independence cannot be overstated.

> Having worn a judicial robe for a few months shy of thirty years, having run and won five times in partisan elections, having been involved in the most expensive appellate court race in the nation in 2006, I am sincerely concerned about judicial elections, the obscene amount of money which has flooded into campaigns, and the damage that has been done to the image of our beloved judicial system. This politicization of the courts puts justice at risk.[46]

Another justice described it this way:

> I never felt so much like a hooker down by the bus station. . .as I did in a judicial race. Everyone interested in contributing has very specific interests. They mean to be buying a vote.[47]

Another justice candidly discussed the potential conflicts presented by judicial campaign contributions:

> To this day, I don't know to what extent I was subliminally motivated by the thing you could not forget — that it might do you some good politically to vote one way or the other.[48]

As far back as 1907 and the Tillman Act, it was recognized that judicial campaigns could be influenced by campaign contributions, particularly those from business.[49] Congress at that time wanted to keep elections fair and impartial and keep "independence" in independent. In 1947, the Taft-Hartley Act added labor unions to the list of entities that should not influence campaigns with contributions.[50] Then in 2002, the Bipartisan Campaign Reform Act was passed to further the protection of fair elections and to prevent parties from receiving unlimited contributions.[51] Most provisions of this Act went into effect on November 6, 2002.[52]

The Act was an important complement to judicial independence, of late referred to in Florida as 'judicial impartiality'. The American Constitution for Law and Society recently completed a study on judicial elections and how contributions from businesses affected the judges' rulings.[53] This study concluded that campaign

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contributions alarmingly affect the way judges rule in cases favoring businesses where businesses contributed to their campaigns.[54] The public already suspects this. Seventy-six percent of voters believe that when businesses contribute to campaigns it influences the judges' decisions.[55] What the public does not know is that forty-six percent of judges share the same concerns that campaign contributions influence, in some way, judicial decisions.[56] The study determined that the influence exists in partisan and nonpartisan elections, but not in retention elections.[57]

Judges have been among the most grateful for the added legislative protections of judicial independence or 'impartiality'.[58] With big business funding so many elections, judges have a real concern that business money influences decisions and they do not like it. "[J]udges generally agree that money matters in judicial decision-making. Forty-six percent of judges believe that campaign contributions have at least 'a little influence' on their decisions, and fifty-six percent believe 'judges should be prohibited from presiding over and ruling in cases when one of the sides has given money to their campaign.' Moreover, eighty percent of judges believe that with campaign contributions, interest groups are trying to use the court to shape policy."[59]

Public concern over campaign contributions and how it affects the outcome of cases occurs due to the obscene amount of money spent by special interests on campaigns. In the 1990s, state supreme court candidates raised $83.3 million dollars for their campaigns.[60] But the next 10 years revealed a significant increase in the funding for the candidates, up to roughly $206.4 million.[61] Television advertising shaped the public's view of campaigns and in 2000-09 those candidates spent $93.6 million on television ads. In fact, $39.3 million of the $93.6 million spent was by special interest groups and political parties.[62]

Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010) then changed decades-old law on election financing. The U.S. Supreme Court in *Citizens United* held that corporations, unions and other special interests could spend as much as they chose to advocate the election or defeat of political candidates.[63] The special interest groups still could not contribute directly to campaigns, but the ruling lifted controls on political donations that had been in place for decades.[64] With *Citizens United* came Super PACS and their unlimited fundraising from corporations and individuals.[65] These Super PACS have funneled that money into supporting a party or person they want to elect and even outspend the actual candidates.[66]

The bigger problem with judicial campaign funding is perception, however. Perception can shape public opinion about judges and their decisions when a case comes to public attention that the public deems unfair, or when it is politicized to the public as unfair. One such case that has raised the public's ire was a recent U.S. Supreme Court decision, with a 5-4 vote, that illustrates how important it is to keep politics and corporate money out of the judicial system. On June 24, 2013 in *Mutual Pharmaceutical Co., Inc. v. Bartlett,* the Supreme Court in an opinion authored by Justice Alito held that pharmaceutical companies have no legal liability for injuries from generic drugs. Generic drugs constitute over 80 percent of all drugs prescribed in the United States.[67] The decision, albeit well reasoned, effectively shielded pharmaceutical companies from legal liability for actions including fraud, mislabeling, side effects and accidental death, and overturned a $21 million jury award to a woman who had been horribly disfigured by a reaction to a generic drug.[68]

Justice Sotomayor wrote a strong dissent:

> The Court laments her 'tragic' situation, *ante,* at 2480, but responsibility for the fact that Karen Bartlett has been deprived of a remedy for her injuries rests with this Court. If our established pre-emption principles were properly applied in this case, and if New Hampshire law were correctly construed, then federal law would pose no barrier to Karen Bartlett's recovery. I respectfully dissent. . . .And I do not doubt that Members of the majority personally feel sympathy for Karen Bartlett. But the Court's solemn affirmation that it merely discharges its duty to 'follo[w] the law,' *ante,* at 2478, and gives effect to Congress' policy judgment, rather than its own, is hard to accept. By once again expanding the scope of impossibility pre-emption, the Court turns Congress' intent on its head and arrives at a holding that is irreconcilable with our precedents. As a result, the Court has left a seriously injured consumer without any remedy despite Congress' explicit efforts to preserve state common-law liability.[69]

Conclusion

The public needs to be continually educated about a fundamental principle: all branches must protect judicial independence and efforts to erode that independence, through politicized retention battles, dilution of judicial salaries, or campaign contributions, promote an unpredictable system, with economic stagnation and undermined justice for individuals and businesses alike. Former Justice Leah Ward Sears, Georgia Supreme Court, explained:

> Without justice we have no rights, no peace, and no prosperity. Judicial independence is the cornerstone of justice. This means that judges, who are empowered to ensure that justice always reigns supreme, must never be beholden to any particular political party or special interest group. Nor should they have favored financial backers. Their

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> only 'constituency' must be the law and the law alone. You need only open your daily newspaper to the international section to read about countries where judicial independence doesn't exist to see how bad things can become.[70]

Endnotes

1. Dorothy F. Easley earned her J.D., with honors, in 1994 from the University of Miami School of Law and her M.S., with highest honors, in 1986 from SUNY/CESF. She is board certified in appellate practice and managing partner of Easley Appellate Practice, PLLC, specializing in the appellate substantive areas of business, family, health, and intellectual property. Ms. Easley is a past chair of the Appellate Practice Section, 2009-2010.
2. Donald S. Dobkin, *Court Stripping and Limitations on Judicial Review of Immigration Cases,* 28 The Justice Sys. J. 104 (2007) (hereinafter "Dobkin, *Court Stripping*").
3. Craig L. Jackson, *Symposium Introduction: FDR and Obama: Are There Constitutional Law Lessons from the New Deal for the Obama Administration?*, 15 U. Pa. J. Const. L. 1, 2 (2012).
4. Senate Judiciary Committee, *Franklin Delano Roosevelt's "Court Packing" Plan*, http://www.judiciary.senate.gov/about/history/CourtPacking.cfm.
5. Dobkin, *Court Stripping* 104-05.
6. *Id*.
7. Helen Norton, *Reshaping Federal Jurisdiction: Congress's Latest Challenge to Judicial Review*, 41 Wake Forest L. Rev. 1003, 1009 (2006) (hereinafter "Norton, *Federal Jurisdiction*").
8. Norton, *Federal Jurisdiction* at 1009 (citing H.R. 1228, 85th Cong. (1957); J. Patrick White, *The Warren Court Under Attack: The Role of the Judiciary in a Democratic Society*, 29 Md. L. Rev. 181, 187-88 (1959) (discussing southern attempts to "humble the Supreme Court" through proposals to strip federal court jurisdiction, which were later left to be forgotten by referral to Congressional subcommittees)).
9. Laura A. Cisneros, *Transformation Properties of FDR's Court-Packing Plan and the Significance of Symbol*, 15 U. Pa. J. Const. L. 61, 62-64 (2012) (some experts contend that even FDR's unsuccessful attempt at "court-packing" influenced the Supreme Court's decisions on "politically-charged constitutional questions"); Dobkin, *Court Stripping* at 105-07 (and citations therein).
10. Dobkin, *Court Stripping* at 104-05 (quoting *Reno v. Arab-American Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1997)).
11. Dobkin, *Court Stripping* at 104-05.
12. *Id.*.
13. Dobkin, *Court Stripping* at 105.
14. Dobkin, *Court Stripping* at 105-07 (and citations therein).
15. Norton, *Federal Jurisdiction* at 1009.
16. *Id.*
17. S.J.R. 408, Gen. Ct., (2007); Bill Raftery, *Over a dozen efforts to alter number of state supreme court justices, almost all related to "packing" the courts, in last several years*, Gavel to Gavel, (Feb. 5, 2013), http://gaveltogavel.us/site/2013/02/05/over-a-dozen-efforts-to-alter-number-of-state-supreme-court-justices-almost-all-related-to-packing-the-courts-in-last-several-years/.
18. S.R. 370, Gen. Ct., (Ga. 2007); Bill Raftery, *Over a dozen efforts to alter number of state supreme court justices, almost all related to "packing" the courts, in last several years*, Gavel to Gavel, (Feb. 5, 2013), http://gaveltogavel.us/site/2013/02/05/over-a-dozen-efforts-to-alter-number-of-state-supreme-court-justices-almost-all-related-to-packing-the-courts-in-last-several-years/.
19. H.J.R. 2012, 83rd Gen. Ct., (Iowa 2010); Bill Raftery, *Over a dozen efforts to alter number of state supreme court justices, almost all related to "packing" the courts, in last several years*, Gavel to Gavel, (Feb. 5, 2013), http://gaveltogavel.us/site/2013/02/05/over-a-dozen-efforts-to-alter-number-of-state-supreme-court-justices-almost-all-related-to-packing-the-courts-in-last-several-years/.
20. H.B. 245.01, 62nd Gen. Ct., (Mont. 2011); Bill Raftery, Plan to Shrink Montana Supreme Cour*t: designed to force the court into tort reform and out of redistricting lawsuits?*, Gavel to Gavel, (Jan. 18, 2011), http://gaveltogavel.us/site/2011/01/18/plan-to-shrink-montana-supreme-court-designed-to-force-the-court-into-tort-reform-and-out-of-redistricting-lawsuits/.
21. Michael Traynor, *Judicial Independence: A Cornerstone of Liberty: Golden Gate University School of Law Jesse Carter Distinguished Speaker Series*, 37 Golden Gate U. L. Rev. 496 (2010).
22. *Id.*
23. H.B. 122 (vsn. 3), Gen. Ct., (N.C. 2013).
24. H.B. 613, 163rd Gen. Ct., (N.H. 2013).
25. Id.
26. S.R. 1001, 50th Gen. Ct., (Ariz. 2011).
27. Arizona Secretary of State, *State of Arizona Official Canvass*, 1, 17 (2012).
28. H.J.R. 7111, Gen. Ct., (Fla. 2011).
29. H.J.R. 7111, Gen. Ct., (Fla. 2011).
30. Ballotpedia, Florida Supreme Court, Amendment 5 (2012), website: http://ballotpedia.org/wiki/index.php/Florida_Supreme_Court,_Amendment_5_%282012%29#cite_note-3 http://gaveltogavel.us/site/tag/new-hampshire/.
31. Ballotpedia, *Florida Supreme Court, Amendment 5* (2012), website: http://ballotpedia.org/wiki/index.php/Florida_Supreme_Court,_Amendment_5_%282012%29#cite_note-3 http://gaveltogavel.us/site/tag/new-hampshire/.
32. CACR 26, 162nd Gen. Ct., (N.H. 2012).
33. Ballotpedia, New Hampshire State Court Amendment, CACR 26 (2012), website: http://ballotpedia.org/wiki/index.php/New_Hampshire_State_Court_Amendment,_CACR_26_%282012%29.
34. Caroline E. Oks, *Independence in the Interim: The New Jersey Judiciary's Lost Legacy*, 36 Seton Hall Legis. J. 131, 132 (2011).
35. *Id.*
36. *DePascale v. State*, 211 N.J. 40, 42, 47 A.3d 690, 692 (2012).
37. *Id*.
38. *Id*.
39. *Id.*
40. *DePascale v. State*, 47 A.3d at 692-93.
41. *Abbott ex rel. Abbott v. Burke*, 206 N.J. 332, 475, 20 A.3d 1018, 1045 (2011).
42. S.J.R. 1740, Gen. Ct., (Fla. 2013).
43. H.J.R. 7081, Gen. Ct., (Fla. 2013).
44. H.B. 7083, Gen. Ct., (Fla. 2013); § 924.056, Fla. Stat. (2013); § 924.057 Fla. Stat. (2013).
45. Fla. Const. Art. V § 10, cl. b(1)(2).
46. Hon. Sue Bell Cobb, Alabama Supreme Court Chief Justice (Retired) (*quoted in* Joanna Shepherd, *Justice at Risk an Empirical Analysis of Campaign Contributions and Judicial Decisions*, Introduction (2013)).
47. Joanna Shepherd, *Justice at Risk an Empirical Analysis of Campaign Contributions and Judicial Decisions*, Am. Const. Soc. 1, 6 (2013) (quoting Ohio Supreme Court Senior Associate Justice Paul Pfeifer *in* Adam Liptak. *Tilting the Scales?: The Ohio Experience; Campaign Cash Mirrors a High Court's Ruling*, N.Y. TIMES, Oct. 1, 2006)) (hereinafter "Shepherd, *Justice at Risk*").
48. Shepherd, *Justice at Risk* at 1, 7 (quoting *in* Philip Hager, *Kaus Urges Reelection of Embattled Court Justices*, L.A. TIMES, Sept. 28, 1986, at 3 (discussing the influence of elections on judges)).
49. Ch. 420, Pub. L. No. 59-36, 34 Stat. 864 (1907) (codified as amended at 2 U.S.C. § 441b(a) (2006)).
50. Ch. 120, sec. 304, § 313, 61 Stat. 136, 159 (1947) (codified as amended at 2 U.S.C. § 441b(a) (2006)).
51. Bipartisan Campaign Reform Act of 2002 (BCRA), Public Law 107-155, 116 Stat. 81 (Mar. 27, 2002).
52. BCRA § 402 is codified at 2 U.S.C. § 431 (2000 & Supp. 2002).
53. Shepherd, *Justice at Risk* at 1.
54. Shepherd, *Justice at Risk* at 1, 13.
55. Shepherd, *Justice at Risk* at 1.
56. Shepherd, *Justice at Risk* at 1, 7 (citing Greenberg Quinlan Rosner Research Inc., Justice at Stake Frequency Questionnaire 7 (2001), available at http:// justiceatstake.org/files/JASNationalSurveyResults.pdf; Greenberg Quinlan Rosner Research Inc., Justice at Stake Frequency Questionnaire 5 (2002), available at http:// www.justiceatstake.org/files/JASJudgesSurveyResults.pdf)).
57. *Id.*
58. *Id*.
59. *Id*.
60. James Sample *et al*., *The New Politics of Judicial Elections 2000-2009: Decade of Change*, 1-2 (2010); Bert Brandenburg, *Big Money and Impartial Justice: Can They Live Together?*, 52 Ariz. L. Rev. 207, 208-209 (2010).
61. *Id.*; Bert Brandenburg, *Big Money and Impartial Justice: Can They Live Together?*, 52 Ariz. L. Rev. 207, 208-209 (2010).
62. *Id.*
63. *Citizens United v. Fed. Election Com'n*, 558 U.S. 310 (2010).
64. *Citizens United*, 558 U.S. at 310.
65. *Stop This Insanity, Inc. Employee Leadership Fund v. Fed. Election Com'n*, 902 F. Supp.2d 23, 37 (D.D.C. 2012).
66. James A. Kahl, *Citizens United, Super Pacs, and Corporate Spending on Political Campaigns: How Did We Get Here and Where Are We Going?*, Fed. Law. 40, 42 (June 2012).
67. *Mut. Pharm. Co., Inc. v. Bartlett*, 133 S. Ct. 2466, 2496 (2013); Generic Pharmaceutical Ass'n, *Generic Drug Savings in the U.S.* 1, 2 (2012).
68. *Mut. Pharm. Co., Inc. v. Bartlett*, 133 S. Ct. 2466, 2496 (2013).
69. *Id.* at 2483, 2496.
70. Shepherd, *Justice at Risk* at 1, 5 (quoting Former Justice Leah Ward Sears, Georgia Supreme Court).