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POLITICS, ELECTIONS, AND THE WISCONSIN SUPREME COURT: PRESERVING DEBATE AND THE MARKET OF IDEAS*

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I wrote recently that the April 1 Gableman-Butler race for Wisconsin Supreme Court was going to get “ugly.” It has.

“POLITICS IS LIFE”

In the great *ad noir* tradition of modern politics, the campaigns and their third-party acolytes are pumping out the usual hyper-ventilated hatchet jobs portraying ordinary politics as basest corruption. One of the dumber ads claims that Gableman’s help organizing a \$1,250 fundraiser for Gov. Scott McCallum influenced McCallum to appoint him a circuit court judge. Besides the fact that a \$1,250 payola seems pretty light for a judgeship, the only thing *really* suspect would be if Gableman or Butler (appointed by Gov. Jim Doyle) claimed that politics, relationships, and judicial philosophy *didn’t* have anything to do with their appointments.

Of course judges should be bright, capable, even-tempered, and committed to the law and impartial justice. Many of them are. But the fact still is, they don’t become judges without getting to know the governors and the people who appoint and elect them, and without saying things those constituencies want to hear. The first joke you hear at law school is that a judge is just “a lawyer who knew the governor.” As Andrew Jackson supposedly quipped when accused of appointing his friends to office, “Who do you expect me to appoint – my enemies?”

That’s not an indictment of the office, the candidates, or the system. Obviously, judges should try to apply the law, not personal preferences. But politics and policy are part of most cases (the important ones, anyway), and a judge will consider them within the context of his judicial and constitutional philosophy. That two candidates’ political *vitae* and judicial philosophies are vastly different doesn’t mean that one of them is evil – it just means that in consequential cases, they will almost certainly disagree on what the law is and how it applies.

None of this is news. As final arbiters of common law and constitutional, statutory, and contractual meaning, state and federal judges have always wielded incredible power to shape policy and culture. As courts began wielding that power more aggressively in the mid-20th century, the correlation became more

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obvious between political and judicial philosophy and how judges would vote in particular cases.* The importance of achieving philosophical majorities on courts became just as obvious, and candidates, political parties, and interests groups began spending fortunes to influence elections and confirmation hearings. (Most famously, the word “Borked” entered the political lexicon in 1987 when left-wing interest groups mounted a classic inside-outside operation to defeat Judge Robert Bork’s Supreme Court nomination.)

The Wisconsin Supreme Court is no less a political prize than any other. For years the court has tilted “liberal” or “conservative” by one vote, and elections have become successively nastier. The 2007 Clifford-Ziegler race reached an unprecedented nadir. Gableman-Butler is worse.

The ugliness is regrettable, but perfectly understandable given the stakes. Virtually every major social and political issue in the state eventually ends up before the court, and competing constituencies have concluded that outcomes in such cases can be more or less predicted based on who the justices are deciding them. The amounts of money spent and the sheer meanness of the races reflect the obvious - the greater the power of the court and the greater the consequences of its decisions, the more extreme the measures employed to decide who sits on it. People don’t spend millions of dollars obfuscating and assassinating character for nothing. They believe that who sits on the bench makes a difference, and spend their money accordingly.

Again, I’m only pointing out the obvious. I value as much as anyone the ideal of “neutral principles of law” and a dispassionate, impartial judiciary, but that’s not reality. Cases of monumental importance come before the court, justices view those cases and their roles with radically differing philosophies, and those differences do affect outcomes.

THE BRENNAN CENTER AND THE WISCONSIN BAR

Whatever the defects of selecting judges by popular vote,[†] naiveté about the power of the courts and the consequences of a candidate’s philosophy is even worse. Debased campaigns are an awful way for the public to learn such things, but they’re with us to stay as long as judges are elected, the stakes are high, and free speech is legal.

So to save us from ourselves and show us a better way, enter the Brennan Center for Justice and the Wisconsin Bar Association. The Center is a public interest organization created in 1995 at New York University Law School. Reflecting the philosophy of its namesake, the Center is supported primarily by left of center foundations. Its largest contributor is George Soros’ Open Society Institute.[‡]

The “Fair Courts Project” is one of the Center’s main activities.[§] Fair Courts works to ensure “that elected benches remain impartial arbiters of the law,” and promotes “diversity on the bench to ensure that courts are, and are perceived to be, fair to all.”**

* Also not news is the vigorous debate between competing judicial philosophies. The modern watershed is Attorney General Ed Meese’s 1985 speech to the American Bar Association arguing for “originalism,” and Justice William Brennan’s 1986 response arguing the “living document” approach.

[†] States entering the union during the mid-19th Century *Dred Scott* furor intentionally provided for elected judiciaries to prevent life-tenured judges from imposing slavery on them through constitutional interpretation. Perhaps critics of judicial elections underestimate the ability of the people to understand the issues and vote accordingly.

[‡] <http://www.discoverthenetworks.org/groupProfile.asp?grpId=6922>

[§] http://www.brennancenter.org/content/section/category/fair_courts/

** <http://www.justiceatstake.org/partnerViewer.asp?breadCrumb=9,66> From my admittedly restrained view of judging, it requires a singular endowment of *hubris* and a concomitant dearth of introspection to secure a small fortune from left-leaning foundations, create the *Brennan* Center, then traverse the country hectoring folk about keeping personal views out of judging. But consistent

The inherent contradiction in those goals is endemic to the Center's entire enterprise. If judges are to be "impartial arbiters of the law," then "diversity on the bench" is irrelevant because a judge's race, gender, political views, or any other characteristic just don't matter, and the Center should spend its resources explaining that to the public. But that's not what it does. Instead, it argues that diversity is necessary to ensure that courts are fair in both substance and perception. So rather than *destroying* the perception the courts are unfair, its incessant campaigning *perpetuates* it. Worse yet, it perpetuates the malignant idea that the solution to such unfairness is not to find and select impartial judges, but rather to create a Brennan-conceived and blessed affirmative action program for judges.*

Those problems are only the beginning. Most judges, regardless of philosophy, have thought a great deal about constitutional and statutory interpretation and try sincerely to be consistent as possible – not an easy task, given what all they have to say to get elected, and considering that the parties who appear before them are rarely incarnations of virtue and reason. But judges are also human beings like everyone else - less than perfect and, given the nature of the job, perhaps a bit ambitious and autocratic. The more power they have, and the longer they have it, the more suspicious we should be of them.

Further, as always, an "impartial" judge turns out to be one who sees the law more or less the way the Brennan Center sees it. A mere cynic might view the Center the way Clemenceau viewed Wilson. All the talk about peace, justice, and self-determination was just *realpolitik* with a vengeance - a Machiavellian ruse to extend American hegemony by first weakening Europe's grip on its possessions and colonies. I think the truth is actually more dangerous than that. I think the folks at the Center really believe that there's such a thing as an "unbiased" judge, that they know one when they see one, and that they've been anointed to instruct the great unwashed on how to achieve such secular bliss and put judges like that on the bench.

A critical element of the Fair Courts program is setting up "impartial" commissions across the country to tell voters which candidates and interest groups are being honest and fair. In 2007, the Wisconsin Bar Association did just that, creating the "Wisconsin Judicial Campaign Integrity Committee" under the direction of Bar president Tom Basting. The Committee's homepage menu links the Center as a resource.† In fact, the website's even *named* after the Fair Courts project, "<http://www.wifaircourts.com/>." The website explains,

[T]he Code of Judicial Conduct requires judges and justices to administer justice to all in a nonpartisan manner; to be arbiters of conflict, not spokespersons for the varying interests of certain political or demographic constituencies; and to be fair and impartial . . . ‡

with my general view of things, I don't think the Brennan folks are necessarily more evil or insincere than anyone else - they're just wrong.

* Even the word "fair" signals the Brennan Center's position in the debate over the proper role of the courts that permeates the Butler-Gableman race and the ongoing national battle for control of the judiciary. It the courts' proper role to accept the judgment of the people's elected representatives, or should they substitute their own more enlightened ideas, as Chief Justice Earl Warren frequently interjected from the bench and in conference, asking "But is it *right*?" The Center's successful defense of McCain-Feingold typifies yet another related debate. On one hand, McCain-Feingold created unprecedented regulation of political speech. On the other, it created Sec. 527 – a loophole big enough to float a battleship through. Loopholes like Sec. 527 are better than none at all, but they don't do you much good unless you're wealthy enough to afford the battleship. Typical of "reform" like McCain-Feingold, Sec. 527 doesn't level the playing field, it just raises entrance barriers for those on the outside. That increases the relative power of those wealthy and sophisticated to get past the barriers or connected enough to be in the game already - which is what the game is about anyway. Not surprisingly, reform is inevitably favored by incumbents like McCain and Feingold, and by people like George Soros, who can, in fact, buy as many battleships as he wants.

† <http://www.wifaircourts.com/>.

‡ <http://www.wifaircourts.com/Agreement.html>

To ensure that judicial candidates toe the line, the Committee demands that he sign a Committee pledge to “publicly disavow” any advertisement he believes is false or unfair or leads people to believe a judge might decide a case in a “predetermined manner.” Paragraph 5 of the pledge states,

I agree, based upon my personal examination of judicial advertisements, to publicly disavow advertisements that impugn the integrity of the judicial system; falsely or unfairly impugn the integrity of a candidate for the Supreme Court; or erode public trust and confidence in the independence and impartiality of the judiciary by verbally or visually attempting to lead voters to believe that a candidate will decide issues or cases in a predetermined manner.*

Sounds high and noble, but a few observations are in order. First, the Committee’s opening stroke of impartiality was to stack itself with Democratic operatives and donors,[†] leading to the obvious question, “If we need the Committee to make sure *judges* have integrity, who’s going to make sure the *Committee* has it?”

Second, the Committee’s effort focuses *exclusively* on the state supreme court race. Even if it’s not set up that way to deliberately tip the race, it’s still an admission that they know the stakes are high and that they hope what they say will affect how voters assess advertising from the campaigns and independent groups.

Third, whatever the Committee means by “predetermined manner,” the multiple millions of dollars spent by the campaigns and outside groups indicate pretty clearly that just about everyone else in Wisconsin has figured out that there are profound differences between Gableman and Butler and that those differences will affect the way they decide the cases that come before them.

Fourth, the Committee’s pledge (Butler signed it, Gableman refused) commits a candidate to conduct his own unilateral investigation of an ad, reach his own unilateral verdict, and, as an exemplar of the judicial function, publicly condemn a speaker by denouncing his speech as false or unfair – *not merely without due process, but with no process at all*. It is difficult to imagine a process more antithetical to the market of ideas and the function of judges in a constitutional system. Contrary to the ideals of due process, the Committee has combined investigation, fact-finding, sentencing, and public condemnation in a single *ex parte* function, with no opportunity for the accused to defend himself.

Fifth, the Committee website is a 21st Century pillory, inflicting public humiliation by electronically posting its denunciations over the heads of the condemned. Exercising exclusive control over selecting the denunciations to be posted, the “News Roundup” on the Committee’s current home page includes *over a dozen links* criticizing Gableman alone. There are *none* criticizing only Butler.

Sixth, it is especially disappointing that such a system is created by a mandatory bar association acting under supreme court authority, which all lawyers must join and support financially whether they agree or not. If the Wisconsin Bar is to be involved in elections at all, it would better serve the First Amendment by creating a virtual forum instead of a virtual pillory. At least the condemned would have an equal forum to respond. Unfortunately, Bar leadership have become Brennan disciples, and that’s not the Brennan way.

Last, and most important, the ultimate Fair Courts agenda is to increase the power of the judiciary by enhancing the integrity and “mystery” of the courts and by discouraging scrutiny of judges’ personal, political and philosophical biases. Not surprising, because left of center interest groups like the Brennan Center have historically achieved greater success through judicial decisions than by popular elections. However, being the longest tenured and most insulated from public scrutiny, judges should be *more* suspect

* *Id.*

[†] <http://wicfg.com/index.cfm/m/10.cfm/story/48.cfm>

than other officials, not less. Thomas Jefferson called the courts “the most dangerous branch.” His 1823 letter to Admantios Coray is worth quoting at length.*

At the establishment of our Constitutions, the judiciary bodies were supposed to be the most helpless and harmless members of the government. Experience, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a freehold and irresponsibility in office; that their decisions, seeming to concern individual suitors only, pass silent and unheeded by the public at large; that these decisions nevertheless become law by precedent, sapping by little and little the foundations of the Constitution and working its change by construction before any one has perceived that that invisible and helpless worm has been busily employed in consuming its substance. In truth, man is not made to be trusted for life if secured against all liability to account.

Jefferson was right. We need *more* suspicion of the courts, not less.

CASE STUDIES

Despite all that, I don’t think the Committee’s bias is unique. Bias and perspective are part of the finite human condition. Thus, in contrast to the Brennan/Bar idea of anointing insiders as official “guardians of the good,”[†] the First Amendment envisions a market of ideas – a process that enables voters to more efficiently assess competing views free of official viewpoint selection and influence. Politics, judicial philosophy and judging are pretty much inextricable, and it doesn’t damage the system or a judge’s credibility to admit that and let the people sort it out for themselves. Two cases make my point.

JUSTICE CROOKS AND SCHOOL CHOICE

In 1997, the race between Justice John Wilcox and challenger Walt Kelly decided the fate of the Milwaukee Parental Choice Plan (“MPCP”) and paved the way for school choice across the nation. In the late 1980’s and early 1990’s, Rep. Polly Williams and Gov. Tommy Thompson led the fight for MPCP. At first, MPCP reimbursed only “non-sectarian” private schools for low income children who attended them. In 1994, the legislature realized that there weren’t enough such schools to meet demand or make MPCP a *bona fide* educational experiment, so it removed the “non-sectarian” restriction and allowed families to choose religious schools as well.

By that time, federal courts had largely moved toward the view that “non-preferential” aid does not violate the Constitution – that is, if religious persons or schools otherwise qualify for a government program, the Establishment Clause does not require government to selectively discriminate against them on the basis of religion. Consequently, WEAC (the Wisconsin state teachers union), the ACLU, and Americans United for Separation of Church and State sued in *state* court, alleging in *Jackson v. Benson* that the Wisconsin Constitution raised a higher bar than the federal Constitutional against aid to religious schools.

The trial court ruled MPCP unconstitutional, and the court of appeals sent it directly to the Wisconsin Supreme Court. The supreme court split 3 – 3 (one justice recused herself), and sent it back to the court of appeals, which ruled 2 – 1 that MPCP violated the state constitution’s prohibitions against aid to religion. The case then returned to the supreme court in 1997.

In the interim, Chief Justice Roland Day had retired. Day had been one of the “no” votes, and Judge

* A compendium of Jefferson’s comments about judicial power has been posted by the library of the University of Virginia, which he founded in 1816. <http://etext.virginia.edu/jefferson/quotations/jeff1270.htm>

[†] Almost 2,500 years ago, Plato wrote in the Republic that only special people with gold in their souls were fit to tell everyone else what to think and do. Naturally, the gold-souled people turned out to be pretty much like Plato. Nothing’s really changed.

Patrick Crooks won the race for the vacant seat. Crooks' conservative judicial and political philosophy were well-known, and most everyone following the case believed he would vote "yes." A Milwaukee Journal reporter wrote,

Madison Call [sic] Judge N. Patrick Crooks "Mr. Conservative," and a lopsided grin brightens the lined face of the veteran Brown County judge, who hopes the label and those [sic] kind of voters help make him the newest justice on the Wisconsin Supreme Court.

At every opportunity, Crooks drops the word conservative into his speeches and conversations. Almost as often, Crooks likes to point out that his opponent, Marathon County Judge Ann Walsh Bradley, is backed by the leader of the high court's liberal wing, Chief Justice Nathan Heffernan.

"I am a judicial conservative, and I've been consistent in saying that," Crooks said in a recent interview, thumping a table with his finger to make the point. "I am not a Johnny-come-lately to this."*

Despite Crooks' victory, one of the "yes" votes, Justice Jon Wilcox, was up for election, so if he were defeated by a "no" opponent, the vote would still be 3 – 3, the court of appeals' decision would stand, and religious school choice would die, and MPCP with it. But if Wilcox won, the vote would be 4 – 2, and they would survive.

The political stakes were enormous, because *Jackson v. Benson* was a bellwether for the entire nation. Attorney Walt Kelly challenged Wilcox, with backing from WEAC, liberal interests groups, and the Democratic party. School choice organizations, conservative groups, and the Republican party backed Wilcox. Special interest money poured in on both sides from across the country. Wilcox won, and the court upheld MPCP 4 - 2, just as anticipated. Justice Don Steinmetz wrote the majority opinion, noting that Wisconsin courts had historically interpreted the state constitution's religion clause in harmony with federal law, under which MPCP was permissible as an instance of "non-preferential aid."

The Wilcox-Kelly race was the first in recent Wisconsin history to be so overtly political. Kelly later filed a complaint with the Elections Board claiming that the Wilcox campaign had illegally coordinated with an outside group called Wisconsin Coalition for Voter Participation ("WCVP) to flood the state with "get out the vote" postcards shortly before the election. The court of appeals held that the Board could investigate the coordination whether or not the postcards themselves would have been regulated as "advocacy," and the Wilcox campaign and WCVP eventually settled the case by agreeing to sanctions.[†]

In response, WCVP filed a complaint of its own that the Kelly campaign had also illegally coordinated with WEAC. WEAC and the Kelly campaign admitted to communicating with each other, but the Board declined to investigate on the grounds that WEAC was a union with a right to communicate with its own members. Of course, the WCVP complaint was about WEAC-Kelly coordination, not WEAC-WEAC coordination, but the Board dismissed it anyway, leading WCVP to complain that the Board was a politicized agency carrying water for the 84,000 member WEAC organization.[‡]

WEAC and Milwaukee Magazine later published an extended expose of the race,[§] and anti-MPCP parties unsuccessfully challenged the decision on the grounds that Wilcox should have recused himself because of

* http://findarticles.com/p/articles/mi_qn4207/is_19950402/ai_n10191559

[†] *Wisconsin Coalition for Voter Participation*, 231 Wis.2d 670, 650 N.W.2d 654 (Wis.App., 1999).

[‡] The WCVP complaint and disposition are apparently not posted, but should be available from Board archives. The Wisconsin legislature recently abolished the Board, combining its functions with those of the Ethics Board under the new Government Accountability Board, which began operations in January, 2008.

[§] Murphy, *Dirty Hands*, Milwaukee Magazine, Feb. 2001 .

the illegal coordination. The motion was deemed frivolous and the anti-MPCP group was forced to pay fees and costs.*

Whatever else one thinks of *Jackson v. Benson*, it is naïve to think it emerged from a political vacuum.

GOV. DOYLE, JUSTICE BUTLER, AND “ETERNAL CASINOS.”

More recently, the Indian gaming wars provided another legal-political saga. In 2001, Dairyland Greyhound Park sued Gov. Scott McCallum because dog tracks were losing business to Indian casinos. Dairyland alleged that the gaming compacts between the state and the tribes allowed games beyond what was permitted under the state constitution.†

Dairyland was still pending in November, 2002, when then-Attorney General Jim Doyle challenged McCallum for the governor’s office. Days before the election, the Democratic National Committee received over \$700,000 from Wisconsin Indian tribes, an amount far in excess of what the tribes could contribute directly to Doyle under state campaign finance law. The DNC then transferred over \$1 million back to the state Democratic Party for the last-minute media blitz that took Doyle over the top.‡

Doyle was inaugurated on January 6, 2003. On February 19, he signed new compacts with the tribes that had made the DNC donations, expanding gaming and eliminating expiration dates from the compacts – depriving the state of the ability to ever again terminate or renegotiate the compacts.§ Within weeks, Sen. Mary Panzer and the Republican legislature filed suit in *Panzer v. Doyle* to void the compacts on the grounds that Doyle exceeded his authority under the state constitution. *Id.*

In November that year, President Bush nominated Wisconsin Supreme Court Justice Diane Sykes to the federal Seventh Circuit Court of Appeals. With *Dairyland* on a more-or-less parallel track with *Panzer*, the circuit court rejected Dairyland’s claim while her nomination was pending. The court of appeals certified it to the state supreme court, which sent it back because the court was equally divided whether to affirm or reverse the circuit court. Justice Sykes voted with Justices Prosser and Roggensack to reverse (concluding Doyle’s actions were unconstitutional), and Justices Abrahamson, Bradley and Crooks voted to affirm (approving Doyle’s actions). Justice Wilcox did not participate.**

Panzer reached the supreme court in 2004 while *Dairyland* was again pending back in the court of appeals. The *Panzer* issues were similar to those in *Dairyland*, but this time Wilcox participated. On May 13, 2004, Sykes held with the majority that the compacts were void because Gov. Doyle had exceeded his constitutional authority.††

On June 24, 2004, Sykes was confirmed to the 7th Circuit. Even though Justice Crooks had been “trending left,” the court had still tilted 4 – 3 conservative with Sykes on the bench. Her departure gave Gov. Doyle the chance to appoint her successor and tilt the court 4 – 3 left. Justice Butler interviewed with Doyle’s selection committee on August 17, 2004. According to the Milwaukee Journal-Sentinel, he discussed *Panzer* in terms of policy rather than constitutional law, stating that it was “one of [the court’s] most significant [cases] in recent years, because it stands to have a ‘huge impact’ on how much tribes with

* *Jackson v. Benson*, 255 Wis.2d 24, 647 N.W.2d 815 (2002).

† <http://wcca.wicourts.gov>

‡ <http://www.wisdc.org/suntodark.php#phony>; http://www.casinowatch.org/indian_casinos/political_contributions.html;
http://www.casinowatch.org/indian_casinos/political_contributions.html.

§ *Panzer v. Doyle*, 2006 WI 107.

** *Dairyland Greyhound Park v. Doyle*, 2004 WI 34.

†† *Panzer*, 2006 WI 107.

casinos pay state government for that franchise.” The very next day, Doyle announced Butler as his choice to replace Sykes.*

Meanwhile, the court of appeals had still not reached a decision in *Dairyland*. On November 4, 2004, it recertified the case to the state supreme court, explaining that (1) Butler replacing Sykes had changed the court’s composition and (2) the *Panzer* decision indicated that the court might no longer be evenly divided on related issues in *Dairyland*.†

The supreme court accepted the case and issued its decision on July 14, 2006. With Butler writing for the new 4 - 3 liberal majority, the court reversed *Panzer* and affirmed Doyle’s power to sign the compacts that expanding gaming and eliminated the state’s right ever to renegotiate or deny renewal altogether.‡

That Butler tipped his view on *Panzer* to the selection committee doesn’t mean that his vote to approve Doyle’s mega-million dollar gaming compacts was a payoff for his appointment any more than Gableman’s raising \$1,250 for McCallum was a payoff for his. It just means that, like the *Jackson* decision, it’s naïve to think *Dairyland* emerged from a political vacuum.

CONCLUSION

One side of the philosophical divide might argue from *Jackson* and *Dairyland* that Republicans and conservatives want judges who read constitutions to empower the poor and weak and constrain the rich and powerful. The other side might argue that Democrats and liberals want judges who read the same constitutions to preserve separation of church and state and enable officials to act in the best interests of the people who elect them. The truly cynical might conclude that a post on the supreme court is a lot pricier than a circuit court job.

The Brennan/Bar view of such things is that money buys votes and corrupts judges and that we need to appoint official guardians to wag fingers and tell voters who is fair and truthful and who is partisan and lying.

I disagree. In the interest of full disclosure, I was one of the attorneys for intervening defendants in *Jackson* where I think the court got it right, and represented an *amicus* in *Dairyland*, where I think the court got it wrong. That being said, I don’t find either *Jackson* or *Dairyland* especially disturbing. Despite a constitutional system with separation of powers, popular elections make politics and judicial philosophy practically inseparable.

Given the vicissitudes of human nature and the stakes and temptations of high office, judicial candidates on both sides of the spectrum seem to me to be relatively ethical and principled. Individuals and interest groups don’t spend money to change minds and buy votes of candidates they disagree with. Rather, they put their money behind candidates they *already* agree with precisely *because* they believe those candidates are principled enough to decide cases consistent with their stated views once they reach the bench.

In sum, a system that facilitates debate and allows voters to make up their own minds is a good thing. An official “Truth Committee” authorized to pass unilateral judgment and influence voters to make right decisions is just plain dangerous. As regrettable as the meanness and nonsense that pass for debate may be, at least it helps voters realize that the courts are important and that it makes a difference who they elect to sit

* <http://www.jsonline.com/story/index.aspx?id=251999>; <http://www.wrn.com/gestalt/go.cfm?objectid=AF76B323-1B17-4F19-B7C58F0548E8A46E>.

† *Dairyland*, 2004 WL 2522611.

‡ *Dairyland*, 2006 WI 107.

on them. And believing that popular elections are the worst system in the world except for all the others, I'm satisfied that most folk don't need officials to review ads and tell them what to think.

So I think tough judicial campaigns are actually progress, which is why the Brennan Center and Integrity Committee approach is so troubling. Just when everyone else in the room is beginning to realize there's something going on besides fire and bombast and Toto's running to pull back the curtain, they descend on their broomsticks scolding, "Bad dog! Bad dog!" Whether they look like the Wicked Witch of the West or Glenda the Good depends upon the point of view you choose to take – a decision most people can make on their own, without help from a special Committee of lawyers.