



Carnegie Results

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The Brennan Center for Justice

A Bipartisan Champion of Democracy Comes of Age

Beyond the campaign hype, negative advertising and media clutter, the 2008 election campaign may well be influenced by a judicious gamble on expanding democracy made more than a dozen years ago.

The Brennan Center for Justice at New York University is now a nationally recognized powerhouse for research and activism in the fields of campaign finance and election reform, voting rights and combating special interests in judicial elections. Its efforts, in concert with activist groups throughout the nation, have been felt from city and state legislatures to Congress and in court cases up to the Supreme Court. As a result, the Brennan Center has an impact on a wide range of issues that affect America at the ballot box. Yet it was just a small start-up organization in the mid-1990s.

At its heart is a group of former Supreme Court law clerks so inspired

by their mentor that they audaciously chose to eschew the usual retirement mementos that hang on the wall of an ex-Justice's study. Instead, they passed the hat to create a living memorial to Justice William Brennan's ideals of standing up for the downtrodden. Even with that daunting goal finally accomplished and the center established in New York, there was no guarantee of long-term sustainability, a concern of all involved, even an aging ex-Justice Brennan.

With a former law clerk serving as its part-time director, the fledgling Brennan Center's standing was, by all accounts, greatly boosted by one of its first foundation grants. That initial \$25,000 grant from Carnegie Corporation of New York in 1996 was followed up by increasingly larger amounts over the years that brought the total Carnegie Corporation investment to \$3,650,000.

But as much as providing desperately needed cash inflows, Carnegie Corporation's grant-making was used to help leverage other donors. Although the Corporation's unrestricted funding is set to end next year, the Brennan Center is not now dependent on any single foundation donor. While the outlook for any donor-reliant organization is never certain, the Brennan Center's firm base at New York University's law school and wide range of foundation and corporate support speak volumes about its hopes for the future.

Interestingly, the Brennan Center's stability is at least partly due to a set of seeming contra-

dictions. In an era of increasing specialization, the Brennan Center is a unique hybrid. It doesn't simply focus on research or outreach like many groups. Nor does the center concentrate just on national issues, but on state and local initiatives as well. There are enough lawyers at the Brennan Center to staff a fair-sized public interest law firm. Yet the Center tries to use litigation as a select tool, rather than a first step.

Many of its lawyers are not fresh out of law school idealists, but seasoned professionals. They possess both experience and prestigious educations that could earn them hundreds of thousands of dollars a year, yet they work diligently for a fraction of the going salaries in Manhattan firms.

Brennan Center activities funded by Carnegie Corporation in the past dozen years have focused broadly on areas of promoting democracy. The center engages in other activities, but reducing the influence of money on politics and judges as well as increasing American voters' access to the political system are areas where the Brennan Center has achieved a significant name in the civic reform community.

Though nonpartisan, the center is generally seen as espousing a progressive or liberal point of view, like its Supreme Court namesake long known as the "Liberal Lion" on the court. Yet it has at times allied itself with strange political bedfellows. Some of the accomplishments the Brennan Center

is best known for include helping get current Republican presidential candidate John McCain on the New York State ballot during his 2000 primary run and working with him in the Senate on his landmark McCain-Feingold campaign finance legislation.

In another curious example, conservative legal scholar Bruce Fein, who opposes many of the Brennan efforts, nonetheless was willing to lend both his name and write a legal paper for a cause in which he found common ground with the center.

Still, there is no mistaking Brennan's inspiration. A hallway at the Brennan Center, lined with display cases and photos, is a shrine to the justice who saw himself as the defender of the common man. His black judicial robe with the monogram *WJB Jr* hangs as a full-length reminder of the long-serving justice, along with his framed nomination to the Supreme Court by Dwight Eisenhower. There are also family and Supreme Court pictures and mementos, interspersed with such Brennan quotes as "The law is not an end to itself...It is preeminently a means to serve what is right."

But perhaps the most telling example of the Brennan Center's willingness to defy a conventional label is the fact that it has spent its entire existence working to undo a major Supreme Court opinion issued by the very man it exists to honor. And that effort suited Justice William J. Brennan, Jr. just fine.

How to Honor a Celebrated Justice?

Brennan who passed away in 1997, was a unique justice, known for his staunch defense of liberal values and personal charm. So after 34 years on the bench, he accumulated a large number of former law clerks along with a huge reservoir of affection.

Unlike some aloof Supreme Court justices, Brennan was "a man who would literally embrace you and wrap himself around you" recalls Clyde Szuch, Brennan's first law clerk. "The warmth and humanity of the man just radiated from him...and the clerks responded and wanted to give it back."

That ruled out the standard gifts marking a Supreme Court retirement. "Most of the time, what you do is have a portrait painted of the justice or have a bust made," Szuch notes. But Brennan's clerks wanted to do something extraordinary.

Greatly aiding that goal, Brennan's ex-clerks during their reunions made it clear that they "absolutely adore him, would put ourselves on the railroad tracks for him," says Joshua Rosenkranz, a former law clerk behind the establishment of the center. After Brennan retired from the court in 1990, the clerks' reunion was marked by a "general buzz about what we should do to memorialize him," Rosenkranz recalls. But Rosenkranz steered the conversation back to the present. "Why are we talking about doing something after he dies?" he asked Brennan's loyal for-

mer aides. Why not do “something significant while he’s still around to see the love that gets poured into it and to be part of the conversation about what it is?”

Even that brought a spirited debate among law clerks used to professional conflict and “not shrinking violets,” Rosenkranz notes. Finally, two workable ideas emerged: a think tank or as an agent of change, a public interest law firm. Rosenkranz offered a solution to bridge the gap. “Bill Brennan never chose” to sacrifice one of his ideals, Rosenkranz declared. “Why not do . . . a hybrid of a think tank and activist organization?”

With both sides satisfied by this bridging solution, the project “started in concentric circles that grew larger and larger,” recalls Rosenkranz. But Justice Brennan was adamant about one thing. “You have to promise me this won’t be the Brennan Defense Fund where a bunch of brilliant lawyers go running back to my old opinions from an age long passed to figure out what I would have thought about a problem,” Brennan insisted to his former clerks. “He kept saying, ‘don’t be bound by [my] opinions. Make up your mind,’” adds former law clerk Peter Fishbein.

Another major question was not of philosophy, but practicality. Where would the new center be located? The clerks soon narrowed it down to three major law schools: Harvard, Georgetown and New York University (NYU).

In the end, what drove the decision was that then-NYU law school dean John Sexton

“really did have a passion for it” and a plan, Fishbein remembers. Sexton “had a real vision about how it would be integrated as part of the law school.”

“From the beginning both NYU and I were enthusiastic about the idea and were willing to put sweat equity and energy into it,” recalls Sexton. They saw it as “a unique opportunity in that it combined a potentially powerful public interest organization and a law school in a deeply symbiotic way.”

The advantage to the university was “a tremendous fluidity between law school faculty and students. . . and a cadre of powerful public interest lawyers,” notes Sexton. NYU also clinched the Brennan Center deal by offering the services of law school professor Burt Neuborne, who had a national reputation in civil liberties circles. Neuborne, still legal director at Brennan, “really was the intellectual sculptor of the early projects around voting and democracy,” Sexton says.

Known for nurturing his ex-clerks, Justice Brennan cheerfully encouraged Rosenkranz on the project. But his daughter reveals that while Justice Brennan was “delighted” at the thought, privately he couldn’t believe such a living tribute would actually come to fruition.

My father was just like a reluctant debutante,” says Mary Brennan. “He’d ask for and occasionally get a progress report and he’d shake his head and change the subject. . . He always thought this would just *poof*, go away, because there wouldn’t be any funding,

nobody would take an interest.”

But his former clerks were not only interested in seeing their tribute through to fruition, many had achieved wealth and power in the legal profession. The clerks raised the considerable amount of seed money to start an endowment. The tiny Brennan Center opened its doors at the end of 1995 and soon began seeking outside grants to ensure its long-term survival.

Carnegie Corporation's Early Funding Makes a Difference

Carnegie Corporation's influence came right at the beginning due to its role, along with the Joyce Foundation, as the new Brennan Center's earliest funder. By all accounts, the Corporation's backing helped the new organization grow from a staff of two to a staff of forty in eight years.

Initially, Geri Mannion, director of the U.S. Democracy Program at Carnegie Corporation, made the \$25,000 grant to Brennan because “it was an intriguing idea. . . a great opportunity to honor someone who had an amazing legacy.”

But for the Corporation, the grant was a modest amount of funding for a promising idea, not the promise of long-term support. “We were not going to build the Brennan Center for Justice,” Mannion explained. This was an initial grant. We said, ‘let’s see where it would go.’”

Still, the grant encouraged other funders

to come to the center. Major funding can bring a “lemming kind of opportunity. The thing about Corporation funding,” Mannion explains, is “if you get money from us, it [builds] confidence to get more.”

In fact, soon after the initial \$25,000 came from the Corporation in 1996, a smaller foundation made a whopping \$175,000 grant to the new organization.

Carnegie Corporation added another \$75,000 the next year and much bigger grants would flow to the center. Brennan's founders say the Corporation grants helped to ensure the center's survival.

“In the early days, the Corporation grant delivered two things,” Nancy Brennan says. “One was that although it was a project grant, it wasn't written like a straightjacket and allowed a young nonprofit to feel its way. The second was that it delivered credibility and cachet,” which was “hugely important.”

Philanthropist George Soros and others “took notice” she recalls. “Grant funding, particularly of the quality and nature of the Corporation's support, was the key,” Justice Brennan's daughter explains.

“Carnegie Corporation is responsible for putting the Brennan Center on the map,” adds Rosenkranz, the center's first executive director. “The Brennan Center might not even be there had it not been for that initial bet.”

But with the Corporation money and other funders coming along behind it, the Brennan

Center achieved results from the start. The *Legal Times* saluted the Center's "remarkable first year success" in 1996. "As it gained a sound financial footing, Brennan began hiring lawyers and was on its way to becoming a power in the campaign reform field. Instead of spending its first year getting acclimated," legal and Supreme Court expert Tony Mauro wrote, "the Center plunged almost immediately into a program of litigation, teaching, public-policy advocacy, and research projects that bodes well for its future."

Yet success also brought growing pains for Joshua Rosenkranz and the Brennan Center. "Joshua was and is brilliant," Mannion recalls, but "he had to kind of restrain himself... Because he could be perceived among the grassroots advocates in the field as the big know-it-all legal eagle from New York who would tell everyone in the field—including other national groups—what to do... Brennan had to realize that they would be more welcome if they approached the field as willing and able partners, albeit from the legal angle, all working toward a common goal of making the electoral system—and our democracy—much more efficient, responsive, and inclusionary. Brennan learned that it could advance the center's overall objectives better in collaboration with those working on similar issues, especially at the state and local levels. And now the election reform/civic engagement field leans on Brennan as if it were their own personal legal counsel."

The lesson took hold well enough that rep-

resentatives of several organizations working with the Brennan Center say it's actually more deferential in partnerships than other organizations.

Brennan is "very respectful," according to Janice Thompson, executive director of Democracy Reform Oregon in Portland. "They recognize that it's up to the local players who have on-the-ground expertise to make the policy calls. Their goal is just to make sure...the policy is as legally defensible as humanly possible."

"With the Brennan Center," she adds, "they're just about as far away as I could imagine a national group being from taking a big-footed approach. That dynamic really doesn't exist," she declares. "They treat us like clients and they treat us well. It's like having a democracy public interest reform law firm at my fingertips...and they don't bill us, which is a huge help for our strapped local budgets."

The unrestricted nature of most recent Corporation grants is credited by the Brennan Center as a major factor in allowing its Democracy Program to assist local organizations and file legal challenges quickly if necessary. "Its general support allows us the flexibility to deal with problems as they come up," explains the center's Justin Levitt.

That's exactly what Geri Mannion intended for the Corporation grants. "I'm a big believer in general support," she says, since it allows groups to be quick and nimble in their response. One example is Brennan's effort

to spotlight the “dysfunctional” nature of the New York state legislature.

The campaign “reaped a huge amount of publicity” and movement toward reform. “We would not normally fund New York-based groups or organizations,” Mannion says. “If I had only funded Brennan on a project-by-project basis, they might not have been able to take on this issue. Because it is so hard to constantly be fundraising, especially for project grants, groups end up missing important opportunities to respond to breaking issues.”

Mannion’s grantmaking philosophy is based on rewarding successful grantees by providing general support when appropriate and getting out of the way. “Our money facilitates good work. We don’t do the work,” she points out. “We select good organizations. We bet on smart people, who are strategic and visionary, effective in what they do, and who prove it by showing results. Brennan has a track record in succeeding.”

“That’s everybody’s hope,” remarks David Udell of the Brennan Center. “Some foundations are more enlightened than others when it comes to trusting good organizations to do good things with their money.”

That trust extended to additional funding for Udell’s Justice Program to help battle what he calls “grossly unjust” restrictions on federal legal services funding on behalf of poor individuals. Udell points to a small success with the Brennan Center winning a 2001

Supreme Court case striking down one of the funding restrictions.

Recently, Corporation support also allowed the Justice Program to publish the results of a conference on the controversial issue of civil liberties and national security. Carnegie Corporation’s support “made a difference at a critical time. I’m sure it was helpful in encouraging other foundations to support the work,” Udell says. Another intriguing tie comes through Aziz Huq, deputy director of Brennan’s Justice Program and a 2006 recipient of a Carnegie Scholars award from the Corporation. “There’s a congruence between the scholarship that is fostered by Carnegie Corporation and the substantive work at the Brennan Center,” Huq remarks. “There’s still really an unfortunate dearth of clear and critical policy thinking on what we should be doing to strengthen national security.” His concern points to an issue that the Corporation continues to work toward on many fronts: forging stronger and more direct connections between scholarship and policy, so that policymaking is informed by data, analytical thinking and objective information.

A Variety of Tactics

Not only does the center house a variety of democracy and justice programs, it can take a multifaceted approach to achieving reform. Brennan officials carefully weigh their “very robust toolkit” of scholarship, legislative drafting, lobbying and legal action.

“We persuade where we can and sue where we have to,” observes Justin Levitt. This goes well beyond legal bluster, he notes. “We’re fortunate not only to have a hammer because when you only have a hammer, everything looks like a nail.”

Instead, the center tries to take a “savvy approach” about going to court. “We are a bunch of lawyers—we know litigation is very expensive and time consuming,” Levitt says. Before taking that drastic step, Brennan’s legal staff spends “a lot of time” on persuasion and legislative counsel “with a very strategic eye and pragmatic eye.”

The hybrid aspect of the center had great appeal to Justice Brennan, who envisioned an organization staffed with the likes of Harvard law school graduate Levitt. “The main thing that he really liked was the idea of having a progressive or liberal institution,” Fishbein says, “that would have really bright people take positions on the issues of the day and file lawsuits if needed.”

As a result, Geri Mannion calls Brennan’s success “just phenomenal in a relatively short period of time. What stands out about them is the melding of legal acumen, research and advocacy. They’re not just fusty old researchers who produce information and recommendations that sit on a shelf, or lawyers that litigate; rather, they put all these skills together in an almost seamless effort aimed at action. They have become the legal defense fund for electoral reform, starting with campaign financ-

ing but including felony re-enfranchisement, election administration, voting rights, etc.”

Becoming a Power in Campaign Finance Reform

The Brennan Center was designed “to create a new breed of public interest organization that had one foot in the world of ideas and one foot in...policy advocacy,” Rosenkranz says. “That was almost unheard of and didn’t exist in any of the areas we set out to tackle.”

Also unheard of was the organization’s stunning decision on its first major campaign finance reform target. The center would aim to undo Justice Brennan’s majority opinion in the case of *Buckley v. Valeo* that deemed unconstitutional some limits on campaign spending.

But the suggestion that the Brennan Center’s first task would be to try and overturn one of its namesake’s famous decisions did not sit well with some former clerks who were reportedly furious at what they saw as a disrespectful act.

Still, the biggest concern was the reaction of Brennan himself. Rosenkranz went to Washington to break the news to the former justice about the startling plans by the center named after him.

Brennan was a creature of habit, even in retirement. Justice Brennan “always had lunch in chamber and he would order the same club sandwich every time,” Rosenkranz

observes. But what he sought to tell his former boss was far from routine. “Boss, we figured out what the first thing would be,” Rosenkranz nervously hemmed and hawed.

“Out with it!” Brennan responded. When Rosenkranz told Brennan the effort was to reverse his *Buckley v. Valeo* opinion, “he starting laughing. He was downright tickled at the fact that we were thinking on our own. That we were addressing an old problem with new ramifications and really starting from scratch.”

Nancy Brennan adds that her father “thought it was great” because the move showed the center was focused on “the evolution of legal thinking, not fixed on a place in time that would be passé...He was thrilled.”

The unusual move also bolstered the center’s reputation for forward thinking.

“When it first started, people thought it would be to kind of keep the Brennan aura going—he’s such a beloved figure in liberal circles,” Tony Mauro now recalls.

Taking on his opinion “won them respect that it wasn’t just going to be a backward-looking memorial to Justice Brennan...[The Brennan Center] very quickly became a major player in a number of hot legal issues.”

The center also began to confound the stereotypical liberal Democratic and conservative Republican divide. Mauro’s 1996 article cited “a singular victory” in opening up the New York Republican primary

process, “which has always been a king-makers affair... Yes, the center named for the Court’s liberal lion went to bat for Republican voters and candidates.”

In fact, the Brennan Center also forged an affiliation with the man who is now the Republican standard-bearer: John McCain.

Arguing that New York’s access rules were too burdensome, the Brennan Center helped represent McCain in his legal challenge to appear on the 2000 Republican primary ballot throughout the state. Demonstrating the center’s impact, McCain made the announcement of his legal challenge at the Brennan Center’s New York headquarters. Burt Neuborne was co-counsel in the case.

A U.S. District Court judge ruled in McCain’s favor and he was placed on the ballot. A few years later, the Brennan Center-McCain affiliation would yield even bigger results.

McCain-Feingold is the informal name of a bipartisan sponsored law that is synonymous with modern election reform. It also demonstrates the range of the Brennan Center’s contributions both before and after legislation is passed. Formally known as the Bipartisan Campaign Reform Act of 2002, McCain-Feingold established Brennan as a major participant in bipartisan efforts to pass and defend the law that placed new restrictions on the use of “soft money” contributions to influence federal campaigns.

Brennan not only made the case to help

McCain-Feingold's passage in Congress, but also worked to uphold it in the nation's highest court. After McCain-Feingold took effect, the center's lawyers worked with a former Solicitor General, Seth Waxman, to successfully defend the law in a 2003 Supreme Court case.

But not everything Brennan works on turns into federal case. Another distinguishing factor of the center's efforts is its deep involvement in local and state campaign reform efforts.

"There is this sort of intimacy in the working relationship between state-based groups and this New York-based group, which is very unusual," explains Lawrence Hansen of the Joyce Foundation. He cites as proof "top to bottom evaluations of five state campaign finance laws" that Brennan conducted last year.

Bringing Voter-Owned Elections to Portland

In Portland, Oregon, campaign reform has taken root so firmly that city contests are termed "voter-owned elections."

Portland was the first city in the country to offer full voluntary public financing of election campaigns. Janice Thompson says Brennan's "incredibly valued" help in reviewing a proposed ordinance, providing legislative counsel and testifying on its legality in hearings contributed to the legislation's passage in 2005.

Pointing to such efforts, those who work in

the field say the center is seen as the "go-to" organization for state and local groups active in campaign reform. "The Brennan Center folks are really the national experts," says Thompson. State and local laws "can be vulnerable to federal legal challenges and that's where the Brennan Center can help make sure you minimized a state law's vulnerability."

This also aids in bringing together activist coalitions around an issue. "Being able to say, 'I've been able to run this idea by the Brennan Center and they think it's legally sound,'" notes Thompson, "really holds a lot of weight when I'm talking to allied groups."

In fact, she says Brennan could do better in spreading the word about its range of services. "One way they could improve is letting local groups know more about how they can help with legal questions on election and voting reforms, beyond just campaign reform."

Expanding the Voter Pool

Another area where Brennan is active is in increasing the number of eligible voters. These efforts range from a focus on those who lost their votes by committing a crime, others who simply don't have photo identification to individuals accidentally or wrongfully purged from the rolls in an attempt to clean up voter lists.

Demonstrating the effort's impact, Kimberly Haven "cried like a baby" out of happiness—

and on television—after she and other Maryland convicted felons aided by the Brennan Center had their right to vote restored last year. The ability to vote has special meaning for her. “It wasn’t important to me until I lost it,” says Haven, who served three years in prison for a white-collar crime and is now executive director of Justice Maryland, a statewide criminal justice organization based in Baltimore.

Carnegie Corporation funding was used in supporting the “Right To Vote” coalition, which, in addition to Brennan, included the American Civil Liberties Union and the Sentencing Project, among other groups, and was designed to place felon re-enfranchisement on the national agenda. This was followed by other Brennan efforts to change or challenge state laws barring felons from voting.

In Maryland, Brennan testimony “carried a lot of weight during legislative hearings. The center’s argument was ‘other states are doing this. This is the right thing to do,’” recalls Haven. “That’s what led to our allies being really vocal when it came down to fighting on the floor.”

Another technique center experts employ to spur change is piggybacking on the experiences of the groups it works with in disparate states.

Brennan “made the introduction” of advocates in Maryland to other felony voting restoration groups, “saying this is what happened in

Kentucky...in Rhode Island. There were a lot of lessons learned,” says Haven. She would now return the favor “if others were to call and say Brennan referred me to them. That helped us immensely. We’ll do whatever we can to help other states.”

While aiding the civic rehabilitation of those who served their sentence after wronging society, the center has also made a point of helping those wrongfully dropped from voter rolls by overzealous state election officials. Brennan estimates it’s helped 300,000 to 700,000 individuals purged in attempts to clean up the rolls. Some are quite legitimate cases of voters who have moved, etc., but others can be victims of typographical errors.

Florida in late 2007 still hadn’t shaken the mantle of its notorious 2000 election problems. So Brennan won a preliminary federal court injunction in Florida that specifically restored 14,000 people it says were mistakenly kept from the voter rolls.

Brennan’s legal maneuvers, in coordination with other lawyers, were on behalf of the NAACP’s Florida branch, the Haitian-American Grassroots Coalition, and the Southwest Voter Registration Education Project. Because of confusion over hyphenated or compound names for Haitian-Americans and Latinos, “proportionally enormous numbers were getting rejected” from voting lists, Levitt says. In addition to the 14,000 cases covered in court, the effort also “allowed more voters to get onto the

rolls” while the December 2007 injunction remained under appeal.

Justin Levitt believes “that’s precisely what Andrew Carnegie intended. It certainly fulfills his wish that eligible citizens become engaged in democracy.”

Fighting to Prevent Special Interest Money From Buying Justice

Brennan’s Fair Courts effort is designed to combat the spiraling influence of money on judges’ campaigns. Judicial elections are an area of campaign reform largely outside of the public spotlight. But the Brennan Center is quite prominent in efforts to reform and publicize the issue.

Brennan is, “in my view, preeminent...in matters involving the financing of judicial election campaigns,” comments Roger Warren, former president of the National Center for State Courts (NCSC). “They are a particularly formidable agent for positive change.”

A former California judge, Warren found the judicial fundraising experience simply “awful.” Holding elections “pressures judges to kind of rule in ways that are politically popular, whereas they took an oath to rule solely in accordance with the law and constitution.”

Fueling the problem is the skyrocketing cost of judicial elections. “Increasingly, in this country, there is a wave of special interests [willing] to pour millions of dollars

into judicial campaigns to elect judges they think will rule in their favor,” Warren says. Campaign ads for judges are “just as nasty and misleading as negative TV advertising in political races.”

Brennan is working with the NCSC to seek more judicial appointments, public financing and better reporting of campaign donations. “[The Brennan Center is] a terrific organization to collaborate with,” says Warren. “They listen...They’re not dogmatic. They don’t just tell you what you want to hear.”

As in other areas, Brennan serves as a clearinghouse for news of nationwide reform. Particularly effective is Brennan’s *E-lert* online newsletter, a compilation of developments relating to impartial courts. “It is the principal centralized source of information from around the country in this field,” Warren states.

But there have also been tangible results from the center’s efforts. North Carolina and New Mexico have adopted public financing reforms for judicial elections “based in large part on their work,” Warren says.

In May 2008, the Brennan Center celebrated what it termed “a major victory” after a federal appeals court ruling upheld public funding in North Carolina’s Judicial Campaign Reform Act. The Brennan Center was the lead counsel in the case.

“This ruling preserves a campaign finance system that protects appellate judicial candidates in North Carolina from going

hat in hand to the very parties and lawyers who appear before them in court,” observed outgoing Brennan Democracy Program director Deborah Goldberg.

Though it can be appealed up to the Supreme Court, Brennan Center supporters see the ruling as an important precedent in nationwide efforts for public financing of judicial elections.

Not All Success

The center has tasted failure along with celebrating success. In recent years, there was concern the center’s Democracy Program was doing too much. Geri Mannion says there was a risk it was spreading itself too thin, as was demonstrated by the Free Expression Policy Project, which was dropped by the center last year. Its aim of fighting censorship and “democratizing the mass media” did not fit in with the center’s strategic plan.

The program was picked up on “an experimental basis,” Goldberg says. But it “didn’t integrate as well” as the other projects. “Better to be able to set some priorities and go with them,” Goldberg explains. “I do think it is possible to do too much.”

And despite the center’s success in court and in forging coalitions, it still is fighting its first battle. A dozen years of Brennan’s efforts have failed to overturn the Buckley decision. “We don’t think we are going to overturn Buckley anymore,” Goldberg says,

“but we do think there is a legislative strategy” instead that includes working with members of Congress on a public funding bill for congressional elections.

A recent example also demonstrates the difficulty of fostering Brennan’s agenda with the current Supreme Court. Along with other groups, Brennan was a force behind a Supreme Court case, *Crawford v. Marion County Election Board*. The groups opposed the requirement to present certain photo identification at the polls, such as a driver’s license, which they say can discourage the elderly and poor from voting.

Brennan and other supporters lost their challenge in late April 2008, when the Supreme Court voted 6-3 to uphold the Indiana voter ID law. Given the makeup of the Supreme Court, Brennan officials had realized even before the ruling they would likely lose the case.

But Indiana’s presidential primary election helped to dramatize their point less than a week later. The Associated Press reported that “about a dozen nuns in their 80s and 90s at St. Mary’s Convent in South Bend were denied ballots because they lacked the necessary identification.” Another nun serving as a poll worker had no choice but to turn them away because of the law.

In a nod to the Center’s efforts, the worldwide wire service article quoted Brennan’s Myrna Perez, who was coordinating a hotline for spurned voters. Perez also observed that on the other end of the age

spectrum, a young woman was unable to cast her first vote because she could only produce her college ID and an out-of-state driver's license, neither of which was acceptable for voting in Indiana.

The defeat may also serve to energize Brennan's base of support by dramatizing the challenges ahead. In fact, Brennan Center executive director Michael Waldman sent an e-mail to supporters on the day the ruling came out, warning "we do expect that there will be a major push in state legislatures and Congress to pass very restrictive voter ID laws, this year or next."

Brennan's Waldman also noted "we are moving to strike down other barriers to voting and fair elections" in court cases. But he also pointed to the potential for legislative action, as with the *Buckley* case. "We will be putting forward a draft proposal for universal voter registration, including Election Day Registration, for Congress and others to consider," Waldman promised Brennan supporters. He also solicited their input on new strategies.

Curious Allies

The center is bridging ideological divides by allying with strange political bedfellows for a liberal-oriented organization. One example is religious groups,

Erika Wood was in her Brennan office one day this spring strategizing on how to partner with former Nixon aide Chuck Colson's Prison Fellowship

Ministries on efforts to restore voting rights for felons. "I love working with what we call unusual allies," she says.

For example, conservative legal scholar Bruce Fein is generally on the opposite end of issues from the Brennan Center. "I certainly wouldn't subscribe to their tirades against campaign finance money," he explains, linking the center to positions often on a "Democratic liberal agenda."

But along with ideological opposite Burt Neuborne, Fein wrote an essay for the Brennan Center on judicial independence because he finds the idea of electing judges "misguided."

One recent Brennan success stems from its drive to make voter registration easier and ultimately, universal. Early this year, the Brennan Center won a permanent injunction in a lawsuit challenging restrictions on voter registration drives in the pivotal state of Ohio. "We make trouble and that's a good thing," declares Goldberg, who is leaving Brennan for another position.

A Solid Base for the Future

The Democracy Program should continue its vigor in promoting reform if it can replace the highly respected Goldberg with a director of similar energy. The ability to thrive despite such losses has been a hallmark of the organization. While there has been staff turnover over the years, includ-

ing among executive directors, the Brennan Center continues to attract the cream of the intellectual crop by finding passionate, smart, and effective leaders.

The Democracy staff is already imbued with the zeal to work long hours and weekends. “I knew I could call them on Saturday morning at home and say ‘I’m panicking, I’m not sure of my vote count.’ The staff of the Brennan Center was right there to take that call,” Haven says of her successful felony voting restoration effort. “If we had to pay for this level of expertise, we’d still be fighting the fight.”

Meanwhile, the Brennan Center remains a powerful fundraising draw in New York legal circles, with plans to increase solicitations. One sign of Brennan’s influence is its annual fundraising dinner that raises more than a million dollars.

“I know of no nonprofit that can raise as much money every year for their dinner,” Geri Mannion declares. The annual Brennan dinner has featured star attractions from symposia speaker Justice Ruth Bader Ginsburg to Hollywood celebrity Alec Baldwin. “A who’s who of New York City’s prestigious law firms contribute to the Brennan Center,” Mannion says.

Major law firms also devote millions in free legal work as a powerful multiplier to the center staff. The roster of top-level law firm donors to the Brennan Center ranges from Arnold and Porter to Wilmer Cutler Pickering

Hale and Dorr.

There’s also no question of NYU’s continued affiliation in lending not only the university’s name, but the expertise and energy of law school professors and students. John Sexton is now president of the university. “The Brennan Center is a permanent part of NYU at this point,” he declares.

In addition, the center has become an integral part of the electoral reform landscape.

The Chicago-based Joyce Foundation continues to fund Brennan, Lawrence Hansen points out, because of its efforts with Midwest state groups. These include a citizens redistricting guide “that is going to be used as a tool for a year-long public education campaign,” he says. “We watched them from a very early age mature into what I think is one of the crown jewels of public interest organizations in the area of political reform,” he observes.

“It’s not just an effective think tank,” adds Tony Mauro. “It actually litigates, advocates, and it has been much more influential than I thought when I covered its opening.”

Carnegie Corporation of New York shares in the credit for Brennan’s success, according to founder Rosenkranz. “For better or worse, the Corporation created an institution. The one thing that isn’t up for debate is that Brennan is now a force out there,” Rosenkranz states. “And it’s a force that would never have come to be without people like Geri Mannion using their position at a major foun-

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ation to place bets on a promising upstart with interesting ideas.”

To Carnegie Corporation, the impact of the Brennan Center is no longer a gamble.

“The result to me is that we put our money on a bet that has paid back in multiple dividends. And those dividends have gone way beyond the Corporation and the Brennan Center; they have been given to millions of people who would never know the Brennan Center’s name—the American voting public. That’s a public that, whether or not they know it, has the Brennan Center protecting their public interest, their vote, and their voice in this democracy.

Justice Brennan would be very proud,” Mannion declares. “While maintaining his vision and spirit, they’ve spread their wings.”

Written by: Lee Michael Katz. Katz is a freelance writer with expertise in covering policy issues from his Washington, D.C. area base.



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