

GRANT PROPOSAL RECORD

Judicial Education Project

ADDRESS:

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Washington, DC 20007

CONTACT:

Mr. Neil Corkery

AMOUNT REQUESTED: \$200,000

STAFF RECOMMENDATION: \$150,000

PROJECT TITLE: To support *amicus curiae* representation before the Supreme Court

BOARD MEMBERS AFFILIATED WITH REQUEST:

STAFF: Mike Hartmann

MEETING DATE: 2/24/2015

PROPOSAL ID#: 20150015

BACKGROUND: The Judicial Education Project (JEP) in Manassas, Va., requests a \$200,000 grant award in first-time support, for the research, writing, and coordination of *amicus curiae*, or "friend-of-the-court," briefs in two important cases pending before the U.S. Supreme Court.

The request is initiated by Bradley Prize recipient Leonard Leo of the Federalist Society for Law and Public Policy Studies (about which see the pending, separate recommendations by the Implementation & Impact Committee and earlier in these IRA materials), who works closely with JEP president Neil Corkery.

JEP is dedicated to strengthening liberty and justice in America through defending the Constitution as envisioned by its Framers -- creating a federal government of defined and limited powers, dedicated to the rule of law, and supported by a fair and impartial judiciary. JEP educates citizens about these constitutional principles, and focuses on issues such as judges' role in our democracy, how they construe the Constitution, and the impact of the judiciary on our society. Its educational efforts are conducted through various outlets, including print, broadcast, and internet media.

JEP has itself supported the preparation of *amicus* briefs in two cases before the Court -- the challenge to Obamacare's federally run health-care exchanges in *King v. Burwell* and to compulsory union dues for non-union, public-school employees in *Friedrichs v. California Teachers Association*.

The *King* statutory-interpretation case itself was brought with Bradley support by the Competitive Enterprise Institute, and the *Friedrichs* freedom-of-speech and -association case was brought with Bradley support by the Center for Individual Rights. The legal work on both cases has been done in cooperation with Jones Day attorneys.

Obamacare

As briefly described in the previous recommendation for the Foundation for Government Accountability in this section of these materials, *King* specifically challenges an Internal Revenue Service rule allowing tax subsidies to those participating in health-care exchanges established by the federal government *and* not the states. The Court will hear oral arguments in the case on March 4.

Should the challenge succeed, there would only be subsidies for those in state-established exchanges and not those in the other states that rejected Obamacare and thus with federally run exchanges. Obamacare would largely be gutted. Congress would have to "start over" on health care again, and it likely would draw on conservative ideas that have been discussed for years -- including tax credits to buy insurance, high-risk pools, and allowing insurance to be sold across state lines.

Various *amici* in *King* include members of Congress, state attorneys general, leading administrative-law academics who previously clerked on the Court for key justices, and at least two other Bradley-supported organizations -- the Pacific Research Institute (PRI) and the Galen Institute.

The briefs have been put together by attorneys with Cooper & Kirk, Ogletree Deakins, Boyden Gray & Associates, and Wiley Rein, with former clerks of Supreme Court justices on most of them.

Compulsory union dues

In *Friedrichs*, the Court will consider whether forcing the plaintiffs -- 10 California public-school teachers and members of the Christian Educators Association International group who work in public schools -- to pay "agency-shop" fees to a union of which they have chosen *not* to be a member, as a condition of their employment, violates their constitutionally guaranteed freedoms of speech and association.

This type of forced-payment, "agency-shop" scheme assumes that collective bargaining is "non-political," but the union's bargaining with local governments is inherently political. And the scheme's methods for non-members to opt out of contributing to the union's tens to hundreds of millions of dollars' worth of political activities, moreover, are burdensome and essentially unworkable. Teachers cannot take advantage of them.

The plaintiff teachers are asking the Court to overrule its precedents allowing states to mandate any union fees.

Various *amici* in *Friedrichs* likely will include current and former governors, state attorneys general, First Amendment scholars, and leading Bradley-supported education-reform entities -- including PRI. At this writing, two or three others may be commissioned.

Some of the briefs are being put together by attorneys with Gibson, Dunn & Crutcher and Jones Day. The additional ones may be done by Bancroft & Associates, Boyden Gray & Associates, and Kirkland & Ellis -- again, with former clerks of justices on most of them.

Budget information: JEP's annual overall expense budget in its fiscal-year 2015 is \$2,060,000.

Each of the two *amicus*-brief efforts costs approximately \$250,000, for a total of \$500,000.

STAFF RECOMMENDATION: At this highest of legal levels, it is often very important to orchestrate high-caliber *amicus* efforts that showcase respected, high-profile parties who are represented by the very best lawyers with strong ties to the Court. Such is the case here, with *King* and *Friedrichs*, even given Bradley's previous philanthropic investments in the actual, underlying legal actions.

Therefore, staff recommends a \$150,000 grant to JEP for the *amicus* representation.

Judicial Education Project

Grant History

Project Title	Grant Amount	Approved	Fund
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