“Justice” at Stake

Connecting the Dots on the Undisclosed Campaign to Restrict Freedom of Political Speech in the Maag-Karmeier Race

A Study Conducted By:

Illinois Civil Justice League
"Justice" at Stake: Connecting the dots on the undisclosed campaign to restrict freedom of political speech in the Maag-Karmeier race

With final reports showing that more than $9 million was spent in the 2004 Supreme Court election, the race between Gordon Maag and Lloyd Karmeier will make history as the most expensive judicial contest in U.S. history. The campaign, while noted for its attack ads, the contentious medical liability issue, and the large amount of money raised, also marked the first time in Illinois history that significant efforts were made to restrict the free political speech of reform groups in judicial elections.

The efforts by the Illinois Campaign for Political Reform (ICPR) began with a call for a “campaign pledge” in March to a new push to “educate” voters by October. In the eight-month period of their interest in the Fifth District race, ICPR representatives worked to establish a third-party monitoring committee to keep third-party advertising “at a minimum.” Portraying themselves as non-partisan, the ICPR established a Judicial Project and put Mary Schaafsma in charge of the effort, which included the creation of media guides, online voter guides and intensive interaction with the Fifth District media.

Unfortunately, while the Illinois Campaign for Political Reform spent its time challenging the motives of third-party interest groups, the money they spent advertising to the public, and dividing the parties into “special interests,” the ICPR was – in fact – working on the same projects it was criticizing. The ICPR was working hand-in-hand with Justice at Stake, a massively-biased special interest organization that poured non-disclosed special interest money into Southern Illinois in the last week of the election.

As a result of an intensive investigative study by the Illinois Civil Justice League, the Illinois Campaign for Political Reform and its partners – the Justice at Stake campaign and Illinois Citizen Action – have been exposed for what they are: a concealed campaign to restrict judicial election education to only one voice – the voice of the Trial Lawyers.

The following study details the undisclosed connections between ICPR and the ultra liberal, special interest group Illinois Citizen Action and its biases against judicial reform. The results show that, in 2004, “justice” really was “at stake” in a campaign to restrict the views of judicial reform advocates while promoting the trial-lawyer-favored status quo.

Ties between ICPR leaders and the trial lawyers

The efforts of the Illinois Campaign for Political Reform’s interest in the Fifth District Supreme Court race are well documented from their genesis as the “broker” for a committee to monitor third-party advertising. Undisclosed in a March 16, 2004, letter sent directly to Judge Lloyd Karmeier was the relationships between ICPR, partner Illinois Citizen Action, and Citizen Action’s national affiliate organization, USAction. Also undisclosed was the organizations’ collaboration in forming Justice at Stake and its interest in purchasing paid media for “voter education” campaign during the final week prior to Election Day.
The results of an ICJL investigation into the staff and relationships between the ICPR and liberal, trial-lawyer-sponsored special interest groups shows that the ICPR Judicial Project and Justice at Stake’s “extensive advertising campaign” are most likely just pawns for the plaintiffs lawyers, who obviously sought to use the organizations to eliminate the alternate voices that favor legal reforms.

The connections between the trial lawyer agenda and ICPR are extensive. Both the Assistant Director and Judicial Project Director for ICPR have worked on behalf of the trial lawyer agenda in their previous professional ventures. David Morrison, ICPR’s assistant director, was a top researcher for the Coalition for Consumer Rights (CCR), a trial-lawyer-created and -sponsored organization that opposes any reforms to the civil justice system. His work includes studies for the CCR-titled “One Year Later: The Failure of Tort Reform” and “Adding Insult to Injury: Punishing the Victims of Cumulative Trauma Disorders.”

A 1993 Chicago Tribune article revealed the origins of the Coalition for Consumer Rights. According to the Tribune article, 1985-86 Illinois Trial Lawyers Association President David Decker bragged about his group’s efforts at promoting anti-tort-reform causes, stating: “We aided in the formation of support groups like the Illinois Public Action Council and the creation of the Coalition for Consumer Rights.”

If the strong connection between Morrison and the trial lawyers were not enough evidence to demonstrate the ICPR’s connection to the trial lawyer agenda, ICPR Judicial Project Director Mary Schaafsma’s connection to another of the aforementioned groups – the Illinois Public Action Council – quickly confirms the verdict that ICPR was control the outcome the Fifth District election for the trial lawyers.

Schaafsma was the lead ICPR contact to the Karmeier campaign, writing in her March 16 letter, “Our interest is primarily, but not exclusively, from a campaign finance as well as voter education and confidence perspective.” While ICPR claims to be a “non-partisan public interest group,” Schaafsma’s past professional positions fit mostly with “interest group” rather than “non-partisan.”

Schaafsma led the private and public effort from March to May 2004 of getting the Karmeier and Maag campaigns to agree to third-party monitoring (the early proposals for a “Tone and Conduct Pledge” did not involve the Illinois State Bar Association, but instead put Schaafsma at the lead with the SIUC Public Policy Institute).

Schaafsma also participated in the early media coverage denouncing the negativity of the Supreme Court race. However, at that point in the campaign, the only negative campaigning in the campaign was from Judge Gordon Maag himself, as well as the pro-trial-lawyer group Victims and Families United.

Playing directly to the agenda of ICPR, Judge Maag instituted a self-imposed $2,000 campaign contribution limit – a pledge that Maag would only need several months to break. Immediately after Judge Maag’s announcement, his negative tone towards Judge Karmeier turned personal and ugly.
The first attack by Judge Maag was in his statement of candidacy provided to the Illinois Civil Justice League’s Illinois Judges 2004 website:

“There should not even be a hint that large corporations or wealthy individuals, be they doctors, lawyers, or businessmen enjoy a special status. In contrast, my opponent’s campaign spokesman has announced that his committee will not adopt any contribution limits. This speaks volumes about Lloyd Karmeier’s integrity and independence.”

(Maag’s lengthy comments to the ICJL were printed verbatim, as Maag insisted.)

The attacks would then continue, with a May 2004 Belleville News-Democrat article, Judge Maag stated: “I’m the only mouthpiece of my campaign. It’s real simple. I don’t have any big corporations behind me.”

Then, Maag turned to refuting Judge Karmeier’s academic excellence with Maag telling the Illinois Times: “My opponent never tells you of any academic excellence. I assume he would, if he achieved academic excellence.” The Victims and Families United (VFU) would then attack Judge Karmeier for campaign contributions from the Illinois Civil Justice League, calling Judge Karmeier “unethical” among other things.

The attacks on Judge Karmeier eventually caused the Karmeier campaign to withdraw from the discussions with Schaafsma, especially after a confidentiality agreement on the discussions was made public. Despite the fact that no attacks were initiated by Judge Karmeier’s campaign, the News-Democrat reported that “Schaafsma said she doesn’t know who’s right.”

**Schaafsma’s 17-year connection to more than a dozen trial lawyer leaders**

Mary Schaafsma’s unwillingness to isolate Judge Maag’s negative tone is probably due to her connection to more than a dozen trial lawyer leaders in Illinois. Prior to her employment with ICPR, Schaafsma worked extensively with Illinois Public Action – also known as Illinois Citizen Action – the same organization that recently ran advertising criticizing President Bush for his views on judicial reform. In fact, Schaafsma has nearly two decades of trial lawyer ties, starting with her involvement with the Illinois Public Action Council – the same organization that the Chicago Tribune cited the trial lawyers for helping to form.

Schaafsma’s first publicly-disclosed relationship with Illinois Public Action appears up on the 1987 annual report, in which she is disclosed as Assistant Treasurer. (All documents are available for free viewing at the Secretary of State’s Business Services Division, specifically in Room 330, Howlett Building, Springfield, IL.) Illinois Public Action’s executive director Robert Creamer, the spouse of Congresswoman Jan Schakowsky, has been indicted by a federal grand jury for check-kiting scheme he allegedly used the organization to commit.

During a 17-year period (1987-2004), Mary H. Schaafsma would be listed as a named director on corporate filings for a series of incorporated businesses under the umbrella of Illinois Public Action or Citizen Action, including:
Illinois Public Action (first in 1990, board of directors)
Citizen Action Center for Consumer Rights (1996, founding director)
Citizen Action of Illinois (1996, founding director)
Citizen Action/Illinois Chapter (1997, registered agent, founding director)
Citizen Action Network (1998, secretary and founding director)
Campaign for Consumer Protection (1999, founding director)

Schaafsma’s service with Citizen Action was far from severed prior to her ICPR work, in fact her most recent listing on corporate documentation shows as “Secretary” for Citizen Action Network and has a filing date of November 5, 2004 – three days after the 2004 Election Day.

**Illinois Citizen Action/USAction and their trial lawyer agenda**

Illinois Citizen Action (and its predecessor Illinois Public Action) has long been advocating the trial lawyer agenda. Citizen Action’s corporate filings include a long list of trial lawyer directors, including more than a dozen ITLA Presidents or law partners of ITLA Presidents. The connections include directors from Clifford Law Offices, Power Rogers & Smith, Hayes & Power, Salvi Schostock & Pritchard, Corboy & Demetrio, Maher & Associates, Goldberg Law Offices, and Dwyer McCarthy & Associates. **Partners and associates of these firms donated more than $1.2 million to the Maag campaign.**

Illinois Citizen Action has a long history of helping to groom future political stars in the Democratic Party. Their membership has included several high-profile Illinois legislators, most prior to their first run for public office, including legal/political heavyweights Glenn Bradford (former state representative and current law partner of Morris B. Chapman), Julie Hamos (state representative), Kathy Ennen (former state representative candidate), and Laurel Prussing (former state representative who is now running for Mayor of Urbana). Other prominent Democrat officials that regularly held positions on the Board with Citizen Action, including former DNC Chairman David Wilhelm and his public relations partner Kevin Conlon (Wilhelm & Conlon). Wilhelm was also campaign chair for Governor Blagojevich’s 2002 campaign – the same Governor who has obstructed legal reform in Illinois.

Rochelle Davis and Heather Booth have both been listed as agents and directors for Citizen Action and Citizen Action Network. Davis has been executive director of a variety of pro-consumer (aka pro-trial-lawyer) organizations, including Generation Green, The Consumer’s Voice. Booth is now a consultant for the controversial 527 group MoveOn.org.21 Bob Hudek, the founder of trial-lawyer-sponsored Coalition for Consumer Rights, is now Executive Director of the Wisconsin Citizen Action and an Executive Committee member of Citizen Action’s national affiliate USAction.22

**Illinois Campaign for Political Reform and Citizen Action form “Justice at Stake”**

Illinois Campaign for Political claims in its “reform goals” to advocate “mandating timely and full disclosure of lobbying activities, public officials' economic interests, campaign contributions and expenditures” and “supporting an informed electorate by developing non-partisan, state-
sponsored voter education guides.” With an agenda that preaches full disclosure, voters and reporters might assume that ICPR would fully disclose the obvious special interest and partisan ties of its employees and partnerships. However, an October 25, 2004, press release from ICPR detailing the campaign activities of its Justice at Stake campaign makes no mention of partner Citizen Action and its ties to trial lawyers.

The October press release highlighted an “extensive advertising campaign” from Justice at Stake and ICPR and touted them as “two non-partisan groups.” However, a 2002 memo from the Justice at Stake website show the connection between Schaafsma, Citizen Action (and its trial lawyer directors), and ICPR:

“The Illinois Justice at Stake Campaign—founded by the Citizen Action/Illinois, the Illinois Campaign for Political Reform, and Protestants for the Common Good – is educating the public on how public financing and voter guides can address the threat to fair and impartial courts. Justice at Stake is helping to produce and place radio public service announcements to promote an on-line judicial voters guide created by the Illinois Campaign for Political Reform.”

An amazing coincidence, the third co-founder, Protestants for the Common Good, is an organization that Mary Schaafsma served as Deputy Director prior to her hiring at ICPR.

The documentation of connections – if not ownership – between Citizen Action and Justice at Stake are numerous. In a December 2003 memo, USAction/Citizen Action director William McNary states: “In Illinois, the Illinois Justice at Stake Coalition -- of which Citizen Action is a leader -- is advocating a Clean Money system applicable to Illinois Supreme Court races.” However, Citizen Action’s concept of “clean money” is any money that comes from trial lawyers. By seeking to eliminate any other reform voices, the trial lawyers and their front groups would control the only third-party voice to the voters.

During the Supreme Court campaign, Justice at Stake commissioned a public opinion poll, ran educational newspaper advertisements and appeared in USA Today masquerading as a non-partisan “watchdog” group to “monitor” judicial elections – while failing to include their connections to the trial-lawyers and Citizen Action.

While Citizen Action, ICPR, and Justice at Stake could have been welcomed third-party participants simply exercising their First Amendment freedoms in an important electoral campaign, their failure to disclose biased, anti-reform, and pro-trial-lawyer relationships and collaborations further impugns the electoral process and should make voters even more skeptical of the good government guises of which the trial lawyers typically devise.

The only problem with Schaafsma’s pursuit for “fair and impartial courts” is that her and her supporters are not “fair and impartial,” nor were they disclosed to the public or the media. Justice at Stake claims to support a mission to “educate the public and work for reforms to keep politics and special interests out of the courtroom – so judges can do their job protecting our Constitution, our rights and the rule of law.”
However, the group’s failure to disclose their trial-lawyer connections and their charade as a non-political source does nothing more than work to create an imbalance of special interests favoring the trial attorneys and further advances the need for organizations like the Illinois Civil Justice League to scrutinize, investigate, and report such findings.

In the end, “justice” was at stake. The Illinois Campaign for Political Reform representatives were working as “non-political” sources for the media and attacking “third-party special interests” for their First Amendment freedoms to criticize the governmental judiciary, while failing to disclose the fact that they had staff (Mary Schaafsma) with conflicts of interest, partners (Citizen Action) with conflicts of interest, and an agenda that favors trial lawyers.

It should be noted that civil justice reform advocates, including the Illinois Civil Justice League, have not attempted to portray themselves as something they are not: the do not deny that they are financed by major employers, hospitals and doctors, local governments and not-for-profit entities; they do not deny that they are in favor of reforms to the civil justice system that include limits on damage awards, more inclusive juries, and efforts to reduce the number of lawsuits.

Were it not for the voices of judicial reform advocates, only one side of debate – the trial lawyer side – would have been represented by the efforts of Justice at Stake, Citizen Action, and the Illinois Campaign for Political Reform.

**Post-Election attacks on President Bush**

The camouflaged political animal lurking beneath the ICPR’s Judicial Project, Justice at Stake, and Citizen Action took a bold new stand with the Center for Justice & Democracy – another trial lawyer front group – on the eve of President Bush’s visit to Madison County in January 2005. The group USAction, which is the national network of Citizen Action-type groups (in fact, USAction and its affiliate Citizen Action/Illinois share a director/president, William McNary), sponsored negative advertising in the St. Louis and Washington DC markets attacking President Bush for his support of tort reform.\(^{32}\)

USAction’s consumer agenda\(^ {33}\) is clearly to play defense for trial lawyers, like the ones from Madison and St. Clair counties. Included in the agenda is to “protect and promote”\(^ {34}\) asbestos litigation, “oppose efforts to limit”\(^ {35}\) class action litigation, and “oppose efforts to…limit compensation”\(^ {36}\) in medical liability cases.

The USAction-supported McDougall advertisement\(^ {37}\) that ran in St. Louis during President Bush’s visit, is almost identical to an advertisement\(^ {38}\) used by American Family Voices, another DC-based “consumer” group. The two groups are connected by two Citizen Action boardmembers, former DNC Chair David Wilhelm and Kevin Conlon, who now operate Wilhelm & Conlon Public Strategies. The same video firm, Fenn Group, is linked to both ads. Further research shows that the same advertisement was used in 2003 by both the Center for Justice & Democracy and other Citizen Action groups in Oregon, Maine, Idaho, Nevada, Rhode Island, Tennessee and Vermont.\(^ {39}\)
Now that Citizen Action groups has spent an estimated half-million dollars on negative advertising to promote their pro-trial-lawyer bias, it is fair to ask if the Illinois Campaign for Political Reform owes the voters and media of the Fifth Judicial District an explanation about the ties between its employees (Morrison and Schaafsma), its collaborations (Justice at Stake) and partners (Citizen Action), and its conduct in the Karmeier-Maag race.

While the negative and expensive natures of the Supreme Court race might suggest a need for judicial campaign reform, the fact that the Justice at Stake campaign and its trial lawyer connections went unnoticed for the entire extent of the campaign ultimately validates the need for third-party organizations – such as the Illinois Civil Justice League – to have a voice in the electoral process.

**The ISBA Committee and a Madison County movie**

On August 25, 2004, the Illinois Campaign for Political Reform and Mary Schaafsma finally achieved their goal of creating a “Tone and Conduct” pledge and monitoring committee. After enlisting the Illinois State Bar Association as yet another partner in the effort, a press conference placed both candidates – Maag and Karmeier – in front of the media to pledge to disavow negative third-party advertising (neither campaign would observe the committee’s actions). By this time, an additional suspicious entity had entered the Supreme Court race – film producer Wayne Ewing and the Madison County documentary.

Almost immediately upon the film crew’s arrival, the Illinois Civil Justice League on its website exposed the movie producers’ Michael Moore-type endeavor. In fact, it has now been fully disclosed in the media that Michael Moore has a direct connection to the Center for Justice & Democracy, another pro-trial-lawyer group that has commented on both judicial campaigns and legal reform efforts in Illinois. At the ISBA press conference announcing the Tone and Conduct Committee formation, the Madison County Movie producers sought immediate review of Illinois Civil Justice League advertising from the ISBA representatives.

Over the next several months, movie “excerpts” made available on the movie website would show the slant of the project, including the prominent display of interviews by Cindi Canary, ISBA President and trial lawyer Terrence Lavin, and ISBA President Ole Bly Pace III. In “Excerpt 6” on the madisoncountymovie.com website, ICPR director Cindi Canary would state that her organization pushed the ISBA to create the Tone and Conduct Committee.

Having established the documented conflicts of interest between the trial lawyers, Citizen Action, Mary Schaafsma, the Illinois Campaign for Political Reform, and Justice at Stake, the only remaining question is whether the Illinois State Bar Association was a willing participant in the campaign to limit judicial reform voices in the 2004 Supreme Court Campaign? Or were they just duped?

The actions of the ISBA have moved closer to those of the ITLA in recent years, and especially while under ISBA President Terrence Lavin’s leadership in 2003-2004. Lavin discussed his mentoring from prominent Chicago trial attorneys Corboy, Demetrio, Clifford, and Power in his July 2003 article in the Illinois Bar Journal.
Could the trial lawyer Lavin have steered the bar association towards a Tone and Conduct Committee commitment, considering that Cindi Canary admits pushing the ISBA to participate for several months.\textsuperscript{43} The first “tone and conduct” issue put before the ISBA’s committee was a review of an Illinois Civil Justice League newspaper ad that described the problems created by “bad judges.” The ad was submitted to the Committee by the film producers and a discussion of the ad plays a prominent role in one of the movie segments. The Tone and Conduct Committee chose to take no action on the innocuous ad that did not refer to any specific candidates.

\textbf{The future of judicial campaigning}

Previews\textsuperscript{44} of the Madison County Movie display American Bar Foundation senior fellow Stephen Daniels stating, that “there isn’t an explosion of tort litigation” in Southern Illinois, denying ICJL-supported facts and statistics about Madison County that have been well-documented by both judicial reform groups and prestigious newspapers. During the promotion of the ISBA Tone and Conduct Committee formation, ISBA President Ole Bly Pace III told the Chicago Daily Law Bulletin that he was aware of tort reform efforts in other parts of the country, and stated: “We’re aware of what appears to occur nationally. We want to try to help these candidates and the electorate be sure it doesn’t happen here.”

\textbf{The mere thought of the ISBA and ICPR working in tandem to eliminate the voices of tort reform advocates and replace them with the ICPR-suggested program of state-sponsored voter guides seems to eliminate the spirit of placing judicial selection in the hands of the voters.}

The same day the ISBA and ICPR announced the formation of the Tone and Conduct Committee, Cindi Canary told the Southern Illinoisan newspaper: “When I look at Maag and Karmeier I see the seeds of what will flow into their campaigns in October. It is all smoke and mirrors right now.”\textsuperscript{45}

After looking at the efforts of ICPR, Justice at Stake, Illinois Citizen Action, USAction, Victims and Families United, and – now possibly – even the Illinois State Bar Association, “smoke and mirrors” is an apt description for what has transpired in the event to limit and restrict judicial reform advocates from educating voters about the nature of the trial lawyers influence in the election of Supreme Court justices.

Madison County Movie producers are set to unveil their final product, “Benched: The Corporate Takeover of the Judiciary,” on February 8, 2005, in Washington, D.C.\textsuperscript{46} The preview excerpts show Maag supporters Rex Carr – the same lawyer who is now pushing a $110 million defamation suit on behalf of Gordon Maag – slamming ICJL advertising as “insulting” and “lies”. Additionally, ICPR director Cindi Canary is quoted in Excerpt 6 of the Madison County Movie, stating: “I think you can learn an awful lot about elected officials if you look at where they get their money and how they spend their money. The money that’s going into the races and the rhetoric that is rising around these races are probably the biggest political tragedy that we have in front of us right now.”
Upon further review, it appears the covert actions of trial lawyer interests, acting to eliminate voices from the electoral debate, is the biggest tragedy in front of the judicial system today, as it has been for the past several years in Illinois. The actions and conflicts of interest demonstrated and documented in this report demand immediate explanation from the Illinois Campaign for Political Reform and the Illinois State Bar Association.

While the amount of money spent in the 2004 Illinois Supreme Court race does deserve analysis, the attempt to have judicial campaigns determined by only the interest of the trial lawyers – a phenomenon detailed in the ICJL’s “Justice for Sale” studies – is a new trend that presents the biggest threat to a fair civil justice system in Illinois.
Footnotes

1Brueggemann, Brian. “$9.17 million was spent in Karmeier-Maag race.” Belleville New-Democrat, February 1, 2005.


5Community Media Workshop website. Available at: http://www.newstips.org/21march96tips.htm

6Community Media Workshop website. Available at: http://www.newstips.org/7nov96tips.htm


9Illinois Campaign for Political Reform website. Available at: http://www.ilcampaign.org/about/staff.asp

10E-mail from Mary H. Schaafsma to Karmeier campaign. March 24, 2004.


13ICJL Study. “Justice for Sale II.” July 26, 2004


19 Illinois Secretary of State – Business Division. Available for free viewing at the Secretary of State’s Business Services Division, Room 330, Howlett Building, Springfield, IL.


23 Illinois Campaign for Political Reform website. Available at: http://www.ilcampaign.org/about/goals.asp


26 Justice at Stake memo. “Legal, Civic, Reform Organizations Mobilize To Keep Fall Supreme Court Campaigns From Growing ‘Nastier, Noisier, Costlier.’” October 17, 2002. Available at: http://www.faircourts.org/files/PartnerCampaignEffortsRelease.pdf#search='Mary%20Schaafsma%20Citizen%20Act

27 Call For Reform website. Available at: http://www.callforreform.org/about_us/faith_issue.htm


31 Justice at Stake website. Available at: http://www.justiceatstake.org/contentViewer.asp?breadCrumb=8


33 USAAction website. Available at: http://www.usaction.org/site/pp.asp?c=eiJPJ5OVF&b=85327

34 USAAction website. Available at: http://www.usaction.org/site/pp.asp?c=eiJPJ5OVF&b=85339
35 USAction website. Available at: http://www.usaction.org/site/pp.asp?c=eiJPJ5OVF&b=85335

36 USAction website. Available at: http://www.usaction.org/site/pp.asp?c=eiJPJ5OVF&b=85337

37 Fenn Group website. Available at: http://www.fenn-group.com/usact/ourrights/OurRights_windowsmedia.html

38 Fenn Group website. Available at: http://www.fenn-group.com/afv/mcdougal/McDougal_quicktime.html

39 New Jersey Consumers for Civil Justice website. Available at: http://www.njccj.org/medicalmalpractice/cjd-email.htm

40 Center for Justice & Democracy website. Available at: http://www.centerjd.org/about/board.htm

41 Madison County Documentary website. “Excerpt Six.” Available at: pnm://realmedia.madisoncountyfilm.com/madis009/MadisonCountyPart6.rm

42 Lavin & Nisivaco Law Offices website. Available at: http://www.lavinlaw.com/pub/Membership.pdf#search=’Terry%20Lavin

43 Madison County Documentary website. “Excerpt Six.” Available at: pnm://realmedia.madisoncountyfilm.com/madis009/MadisonCountyPart6.rm

44 Madison County Documentary website. “Excerpt Five.” Available at: pnm://realmedia.madisoncountyfilm.com/madis009/MadisonCountyPart5.rm
