

**Senate Committee on the Judiciary**  
**Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights**  
**“What’s wrong with the Supreme Court: The Big-Money Assault on Our Judiciary”**

**Senator Whitehouse’s Questions for Ben Jealous**

1. Former President Trump acknowledged that the Federalist Society “picked” his judges. Don McGahn described the group as being “insourced” into the Trump White House. Has People For the American Way (“People For”)—or any group on the left—ever “picked” judges for a Democratic administration? Has any particular organization ever been “insourced” to pick Democratic judges?

**RESPONSE: To the best of our knowledge, President Trump was the first and only U.S. President to allow outside interest groups to select his judicial nominees as opposed to recommending them. This is even more disturbing when one considers the relationship between these specific organizations and their corporate and billionaire sponsors.**

- a. Do you see any problems with having one person or group have such an outsized role in the selection of life-tenured federal judges? Why or why not?

**RESPONSE: President Trump outsourced the selection of federal judicial nominees to the Federalist Society and the Heritage Foundation. These organization are funded by billionaires and corporations that are allowed to remain anonymous. It does not take a rocket scientist to understand the profound possibilities for corruption in such arrangements. These groups are part of a long-term right-wing movement to take ideological domination over the federal judiciary. The goal is to impose into law a view of the Constitution that sacrifices the interests of ordinary Americans to the power of big business, and threatens to restrict the authority of the federal government to protect individuals, communities, and the common good. In essence, President Trump deputized the wolves to select the shepherds.**

2. In his testimony, Mr. Walter painted your organization as part of a liberal dark money network “originally launched out of the Tides Foundation’s ‘dark money’ empire.” How would you respond to his characterization?

**RESPONSE: The Tides Foundation is a public charity, which helps to incubate new organizations committed to serving the public interest. People For the American Way was co-founded by Norman Lear and Barbara Jordan, who convened a bipartisan group of religious leaders, business people, and activists outraged by the far right wing assertion that anyone who disagreed with them was a bad Christian and therefore**

**unAmerican. Our mission then and now is to build a tolerant democratic society that implements the ideals of freedom, equality, opportunity, and justice for all. We disclosed our top 5 donors when Senator Cruz asked; we would note that to our knowledge no conservative group on the panel or involved in Trump's judicial nominations selection process has followed suit. This is emblematic of our character as an organization. We would welcome the day when every such organization is required to disclose their donors.**

3. What is People For's position on legislation that would require transparency and disclosure of dark money?

**RESPONSE: The American people have a right to know who is attempting to sway our elections, gain control over our government, and affect the quality of Americans' lives. As such, People For has long supported legislation such as the DISCLOSE Act. Provisions of that bill have been incorporated into the For the People Act, a package of vital democratic reforms that we strongly endorse.**

4. Mr. Walter has argued that we should stop worrying about the flood of anonymous money in politics, and that "focusing on making better arguments to the public is a much better strategy than focusing on the money" of your opponents. How do you respond to that?

**RESPONSE: This is not an either/or choice. We should both educate the people about the harm to them from the corporate capture of the courts AND expose the influence of dark corporate money in that capture. People For the American Way is absolutely committed to its historic mission of protecting Americans' well-being by protecting our federal courts from being controlled by corporations and billionaires.**

5. If all of the Supreme Court's lawmaking is merely "calling balls and strikes," or an effect of applying pre-existing "doctrinal commitments," as Prof. Adler argues, why do you think anonymous donors spend so much money to influence judicial selection and confirmation?

**Response: The Roberts Court majority is not just neutrally applying the law. Take for example the anti-union case of *Knox v. SEIU*, the beginning of the Court's effort to attack public sector unions. In that case, the Court ruled against the union on a constitutional question that none of the parties**

**had even raised, let alone had a chance to address. It's not calling "balls and strikes" if the Court decides a case when no ball is even being thrown.**

**Senate Committee on the Judiciary**  
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**Response by Benjamin Todd Jealous to Written Questions by Senator Booker**

1. The Voting Rights Act of 1965 is often called the crown jewel of the Civil Rights Movement. In 2013, the Supreme Court’s decision in *Shelby County v. Holder* gutted the Voting Rights Act’s preclearance provision.<sup>1</sup> Then, in 2018, the Court watered down another protection in the Voting Rights Act against intentional racial discrimination.<sup>2</sup> And now the Court is considering a pair of cases that could threaten a critical protection against state voting laws that have a racially discriminatory impact.<sup>3</sup>

As Justice Ginsburg wrote in her dissent in *Shelby County*, jettisoning voter protections that have succeeded in stopping discrimination “is like throwing away your umbrella in a rainstorm because you are not getting wet.”<sup>4</sup>

- a. In your assessment, what are some of the most pernicious kinds of restrictions on the right to vote that states have enacted in recent years? And how did the *Shelby County* decision make it harder for the federal government to block those restrictions?

**RESPONSE: Some of the most pernicious restrictions on the right to vote include restrictive and unnecessary voter ID requirements; purging voters from the voter rolls; closing and relocating polling places; curbing early and absentee voting; and eliminating or limiting Souls to the Polls. These efforts have increased since the 2020 election. The Brennan Center [reports](#) that in just the first three months of this year, more than 360 voter-suppression bills have been introduced in 47 states. This coordinated push to limit access to voting is just the most recent evidence of how wrong Chief Justice John Roberts was to justify *Shelby County* by claiming that voter suppression practices were a thing of the past; states began proving him wrong within hours of the ruling.**

**Under *Shelby County*, states that previously had to get changes such as these cleared by the Justice Department before putting them into effect can now implement them immediately. The only remedy the Justice Department now has to prevent these laws from going into effect immediately is to prove to a court that the voter suppression law should be blocked pending a full trial.**

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<sup>1</sup> 570 U.S. 529 (2013).

<sup>2</sup> *Abbott v. Perez*, 138 S. Ct. 2305 (2018).

<sup>3</sup> *Brnovich v. Democratic Nat’l Comm.*, No. 19-1257 (U.S. 2021); *Ariz. Republican Party v. Democratic Nat’l Comm.*, No. 19-1258 (U.S. 2021).

<sup>4</sup> *Shelby Cty.*, 570 U.S. at 590 (Ginsburg, J., dissenting). See generally DEMOCRATIC POL’Y & COMM’NS COMM., WHAT’S AT STAKE: EQUAL JUSTICE UNDER LAW (2020), <https://www.democrats.senate.gov/imo/media/doc/Captured%20Courts%20Equal%20Justice%20report.pdf>.

- b. With the exception of one school district settlement last year, the Justice Department evidently did not file a single new Voting Rights Act suit during the Trump Administration.<sup>5</sup> In your view, what kind of signal did such under-enforcement of the Voting Rights Act over the past four years send to state election officials?

**RESPONSE: The Trump Justice Department's failure to enforce the Voting Rights Act sent a clear message to state and local officials that they could act with impunity to restrict voting rights, particularly for Black and brown citizens. That's why we have seen more than 360 voter suppression bills in 47 states just since the 2020 elections. We must pass the For the People Act and the John Lewis Voting Rights Advancement Act.**

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<sup>5</sup> See Voting Section Litigation, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/crt/voting-section-litigation>; Sam Levine, 'An Embarrassment': *Trump's Justice Department Goes Quiet on Voting Rights*, GUARDIAN (June 23, 2020), <https://www.theguardian.com/us-news/2020/jun/23/us-justice-department-voting-rights-2020-election>.

**The Senate Committee on the Judiciary, Subcommittee on Federal Courts, Oversight,  
Agency Action and Federal Rights - Questions for the Record from Senator John Kennedy  
March 10, 2021**

Hearing entitled: “What's Wrong with the Supreme Court: The Big-Money Assault on Our Judiciary.”

**Questions for Ben Jealous**

1. In your testimony, you accuse the Supreme Court of “pro-corporate and special interest judicial activism.” How would you define “judicial activism”?

**RESPONSE: Our concern is with judges who regularly ignore precedent, distort the facts of a case, and/or reach out to decide major issues not properly before the court in order to reach the policy result they want. The Roberts Court’s assertion in *Citizens United* that corporations are people is a glaring example of pro-corporate judicial activism.**

2. In *Americans for Prosperity Foundation v. Becerra*, The American Civil Liberties Union, the NAACP Legal Defense and Educational Fund, and Human Rights Campaign have submitted an amicus brief in support of petitioners arguing that public disclosure requirements are constitutionally suspect and should be subject to heightened scrutiny. Do you disagree with the position taken in this amicus brief? And, if so, on what grounds?

**RESPONSE: People For the American Way has not been involved in that case and has not studied all of the legal issues it raises.**

3. You discuss in your testimony why *NAACP v. Alabama* has no application to the disclosures being proposed by Chairman Whitehouse. Can you explain why the NAACP itself completely disagrees? Why the Human Rights Campaign and the ACLU also disagree? Do you think it is because the NAACP, Human Rights Campaign, and ACLU have been influenced by Koch donations?

**RESPONSE: We obviously cannot speak for any other organization. We believe the disclosures being discussed today are a far cry from the situation in the 1950s, when the NAACP was being compelled to disclose the names and addresses of all its members to a white supremacist state government aligned with violent terrorists who had killed many of their members.**

4. How would you define the term “borking”? One hearing witness criticized your organization People for the American Way for “smearing” Robert Bork in his 1987 confirmation. Do you in any way regret the expensive public campaign your organization conducted four decades ago? Do you see it as the cause of the many expensive, invective-filled public nomination campaigns waged since?

**RESPONSE: People For the American Way is proud of our work in alerting Americans to Robert Bork’s extreme views on the Constitution, First Amendment, and civil rights. Right-wing activists have tried to turn “borking” into a synonym for unfairly smearing a nominee. But Bork’s confirmation hearing may have been the most in-depth conversation about the U.S. Constitution that many Americans had ever heard. Bork fully explained his views on civil rights, women’s rights, freedom of expression, privacy, corporate power, and more. And that’s why a bipartisan majority of senators voted 58-42 to reject his nomination. Books and articles that Bork published after his rejection confirmed senators’ wisdom in denying him a lifetime appointment to the Supreme Court. For instance, he later condemned the “feminization” of the U.S. military and wrote that “censorship is going to have to be considered as popular culture continues plunging to ever more sickening lows.”**

5. Does the legal status of People for the American Way differ from the legal status of the Judicial Crisis Network? How is People for the American Way’s work over the years in judicial appointments different from the work of the Judicial Crisis Network?

**Response: People For the American Way is organized as a 501(c)(4) entity. Our basic name and mission have remained constant since our early days. Our commitment is to the values of freedom, equality, opportunity and justice for all. Those values ground us in the kind of country we are working earnestly to build.**

**Records indicate that the Judicial Crisis Network is organized under the same provision of the federal tax code. It was founded in 2005 as the Judicial Confirmation Network, with the goal of confirming President George W. Bush’s federal judicial nominees. The organization changed its name after President Obama took office to the Judicial Crisis Network to oppose the President’s nominees.**

**Throughout our history we have fought for the promises and protections contained in our Constitution and the values and institutions that sustain a free society. We defend civil rights, civil liberties, and freedom of thought, expression, and religion. We promote inclusion and tolerance and oppose hatred and bigotry. We champion civic engagement and resist voter suppression. We support a healthy democracy and seek to hold**

**accountable those who undermine it, such as those who promoted and supported the Capitol insurrection. Co-founded by Norman Lear, the legendary Rep. Barbara Jordan, and other civic, business, religious and civil rights leaders, our board continues to reflect the best of America, including Norman Lear, who is still going strong at age 98, Dolores Huerta, Mary Frances Berry, Rabbi David Saperstein, Rev. Timothy McDonald, Khizr Khan, and other leaders reflecting the multigenerational, multiethnic, and multiracial democratic society we seek to build.**



**SENATOR TED CRUZ**

**U.S. Senate Committee on the Judiciary**

**U.S. Senate Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights**

**Question for the Record for Ben Jealous, President, People for the American Way and People for the American Way Foundation**

**I. Directions**

Please provide a complete answer to the question below, as pledged by you at the hearing. If you have decided you are no longer willing to answer the question, please explain why you have changed your mind since appearing before the Subcommittee.

**II. Question**

1. You are the President of People for the American Way, a 501(c)(4) organization that accepts “dark money.” Please list, in the interest of transparency and disclosure, your top five donors and the amount that they have contributed to the organization.

**RESPONSE: Per your request at the hearing, People For the American Way disclosed our top 5 donors, but neglected to include the amounts of those donations. We apologize for the oversight. Here is the information you requested:**

**<https://www.pfaw.org/people-fors-top-donors/>**