

People for the American Way The Campaign to Control America's Vote

Liberal Group Leads Fight Against Bush Judicial Nominees and School Choice

By Patrick J. Reilly

Summary: Texas Supreme Court Justice Priscilla Owen is the latest victim of People for the American Way's campaign against President Bush's judicial nominees. On September 5, the Senate Judiciary Committee in a 10-9 party-line vote rejected her nomination to the Fifth Circuit of the U.S. Court of Appeals.

When the electronic voting machines introduced in last month's Florida primary elections failed to correct the voting irregularities that appeared during the state's 2000 presidential election, People for the American Way (PFAW) cried foul.

"For all too many Floridians, this is déjà vu all over again," said PFAW vice president Elliot Minberg, an overseer of the PFAW and NAACP volunteers who monitored the returns.

Minberg's "déjà vu" remark was quoted in newspapers across the country. But it was more an inside joke than a clever off-the-cuff comment, and it reflected a partisan attitude that *another* Florida election was illegitimate. The notion that bad history was repeating itself turned up the same day when Democratic National Committee chairman Terry McAuliffe said: "It's déjà vu all over again." Later that evening, NBC Nightly News anchor Tom Brokaw introduced a reporter's story on the Florida voting machine fiasco with, "NBC's Kerry Sanders on déjà vu all over again"—and he didn't attribute the quote to Minberg or McAuliffe. PFAW president Ralph Neas repeated the "déjà vu" comment to the *Los Angeles Times* the following day.



Judge Priscilla Owen is the latest victim of PFAW's judicial witch hunt.

Coincidence or collaboration? America's left-leaning media, politicians and advocacy groups seem to communicate by using a common vocabulary, a shared language of phrases and symbols. The "nonpartisan" PFAW frequently operates from the same playbook as liberal Democratic Party activists, and its interpretation of events is accepted by the major news media. This year, PFAW's priorities include opposing Bush nominees for federal courts, energizing public-school defenders to oppose President Bush's agenda of school reform, and mobilizing traditional Democratic constituencies to

vote in the November elections.

PFAW is one of the most radical political organizations of the Left, but you'd never know it from the respect—and support—it elicits from the media. Byron York of *National Review* has documented the financial contributions PFAW has received from leading media organizations including America Online, CBS, Disney (ABC), NBC and the New York Times Company. Time, Inc. claims that it stopped its contributions in late 2000 when it realized its gifts to PFAW were "inappropriate" for a media organization. But there is no evidence that the other communications giants have similarly repented.

CBS has a particular affinity for PFAW, whose founder, Norman Lear, is the producer of popular television shows including the CBS hit "All in the Family." Since 1981, when Lear put his celebrity status to work by setting up PFAW to oppose Jerry Falwell's "Moral Majority," the group has relied on star-power to expand its influence. PFAW board members include Lear, actor Alec Baldwin, former Congressman Rev. Robert Drinan, rock star ex-wife Bianca

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Jagger, NAACP president Kweisi Mfume, philanthropist Paul Soros, Hollywood activist Margery Tabankin, and actress Kathleen Turner. Last month, actor/director Rob Reiner hosted a PFAW fundraiser in Beverly Hills to celebrate Lear's 80th birthday.

PFAW's formidable budget helps ward off criticism. In 2000, People for the American Way received \$5.1 million in contributions, even though it is a 501(c)(4) non-profit and gifts to it are not tax-deductible.

The affiliated People for the American Way Foundation, a 501(c)(3) nonprofit (for which gifts are tax-exempt) collected nearly \$7.5 million in 2000. Substantial foundation support came from the Ford Foundation, Eastman Kodak Charitable Trust, Phillips Family Foundation, John S. and James L. McKnight Foundation and the Pincus Family Fund among others. (See Box on page 4).

Since 1998, the PFAW Foundation has received corporate support from Archer Daniels Midland, the H.J. Heinz Com-

pany and Slim-Fast Nutritional Foods.

Notwithstanding the legal distinctions between PFAW and its 501(c)(3) educational foundation, both affiliates act in concert: They promote a leftist policy agenda that almost always coincides with Democratic Party interests. In a year when Democrats hope to gain full control of Congress, PFAW activities are especially noteworthy.

Get Out the Democratic Vote

Like other left-wing advocacy groups, PFAW gets away with a curious mix of "issue education," voter registration activities and Democratic party politics.

It engages in direct partisan activities through the People for the American Way Voters' Alliance, a political action committee established in 1998 to "Fight the Right." As of June 30, this PAC had contributed \$51,500 to 29 federal candidates in the 2002 cycle, all of them Democrats. Since 1998, it has supported only two Republicans—Rhode Island Senator Lincoln Chafee and New York Representative Amo Houghton—who received less than one percent of its contributions.

During the 2000 presidential campaign, PFAW sponsored an ad which noted that a president's judicial appointees can have "40 years of influence over our freedoms." The ad then portrayed George W. Bush as opposing "choice, gun control and strong environmental protections." And it trumpeted Vice President Al Gore as a candidate who "favors justices who are pro-choice, support gun safety laws and environmental protection."

PFAW's tax-exempt and "non-partisan" educational foundation also supports Democratic candidates by registering and motivating voters drawn from traditional Democratic constituencies. For instance, this year PFAW teamed up with the NAACP in Florida and with the League of United Latin American Citizens (LULAC) in California to mobilize voters for hotly contested races.

In Florida, PFAW's "Arrive With Five" campaign – complete with a statewide bus

tour and door-to-door canvassing – is encouraging "black and underprivileged" voters to bring five friends and family members along when they go to the polls. Campaign leaders claim the effort is non-partisan, but the emphasis on black college students and low-income residents clearly favors Democrats. A similar campaign during the 2000 presidential election is credited with boosting black voter turnout by almost two-thirds in parts of Florida, giving Gore votes he needed to threaten Bush's victory. In traditionally Republican Orange County, Gore won because PFAW helped spur a large turnout of Puerto Rican Hispanics.

PFAW's voter registration drive prior to last month's primary election—a rarity, as registration drives usually focus on general elections—was hardly disinterested. While it identifies itself as a neutral party while monitoring polling places for vote irregularities, PFAW's Florida director led the opposition to a Miami-Dade ballot initiative to repeal the county's anti-discrimination law for homosexuals. (The initiative narrowly failed on September 10.) PFAW is also supporting a statewide ballot initiative to reduce school class sizes. It goes before voters in November.

With Florida Democrats gearing up for a high-profile bid to unseat Gov. Jeb Bush in November, PFAW's complaints about the new voting machines were designed to humiliate him. Bush has touted his election reform efforts over the past two years, so PFAW has ample opportunity to embarrass the president's brother. PFAW's Neas insisted that the Governor should be held ultimately responsible for last month's fiasco, even though the two counties with the worst problems are run by Democrats.

PFAW also has decided to focus heavily on Florida in other ways. It is participating in a NAACP lawsuit against the Jeb Bush administration for election violations in 2000 and has criticized the federal Justice Department for closing its investigation into the state's conduct of the 2000 election. And PFAW's PAC is contributing large sums to Florida Democrats, including U.S. Senator Bill Nelson,

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whose seat is likely to be challenged by Jeb Bush in 2006.

Besides the "Arrive With Five" campaign, PFAW has two other projects to register voters. Its African American Ministers Leadership Council targets black

port in her home state of Texas and she is a qualified jurist," Miller told *The Washington Times* following the committee vote. "I really hope we will not begin the trend of rejecting nominees over narrow, single-issue litmus tests."

differences such as abortion. "Rejecting a qualified nominee because of this sort of disagreement," said the editorial, "sends a chilling message to judges everywhere."

Last March PFAW also helped defeat another Bush nominee to the Fifth Circuit appeals court when Democrats on the Senate Judiciary Committee prevented the full Senate from confirming Judge Charles Pickering. Again, PFAW's opposition was not based on his qualifications for the job, but because Pickering "embraces a right-wing judicial philosophy that would turn back the clock on civil rights, reproductive rights and many other important issues." (See the June 2002 issue of *Organization Trends*, "The Alliance For Justice, Part II: The Borking of Charles Pickering.")

In July, the Senate did confirm Judge D. Brooks Smith to the U.S. Court of Appeals for the Third Circuit over PFAW's loud protestations. Despite an overwhelming 64-35 vote, PFAW claimed Smith was not qualified for the bench because of his judicial philosophy and views on federalism.

No Choices for Children

PFAW has been at the forefront of efforts to stamp out school vouchers and other reforms that would give children and their parents more choice in schooling, a policy favored by President Bush.

In June, PFAW was co-counsel for Ohio citizens opposing Cleveland's school voucher program. It sharply criticized the U.S. Supreme Court's ruling that the program giving school choice to low-income inner-city children did not violate the First Amendment's prohibition against the establishment of religion. PFAW claimed the ruling created "a serious crack in the constitutional wall between church and state" and would drain Cleveland's public schools of needed funds. (See the September 2002 issue of *Organization Trends*, "What Next After the Education Voucher Victory.")

PFAW was also co-counsel in a Florida circuit court case that struck down Gov. Jeb Bush's "A+" voucher program in

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churches to "get all souls to the polls." And PFAW has launched a website, *ivote2.com*, encouraging voter registration and communication with elected officials.

Blind Justice

In recent months PFAW has conducted a relentless attack on President Bush's nominees to the federal courts. On September 5, in a stunning blow denying the full Senate an opportunity to reach a decision, the Senate Judiciary Committee in a 10-9 party-line vote rejected the President's nomination of Texas Supreme Court Justice Priscilla Owen to the Fifth Circuit of the U.S. Court of Appeals. PFAW led the charge against Owen, a close friend of the president, calling her "ultraconservative" and—borrowing a term conservatives usually apply to liberal judges—a "judicial activist."

Owen received a unanimous "well-qualified" rating from the American Bar Association, a tag that heretofore ensured a candidate's approval by Democrats on the Judiciary Committee. With support from Sen. Zell Miller (D-GA) she might have expected to be confirmed by the full Senate.

"Justice Owen enjoys bipartisan sup-

port in her home state of Texas and she is a qualified jurist," Miller told *The Washington Times* following the committee vote. "I really hope we will not begin the trend of rejecting nominees over narrow, single-issue litmus tests."

But liberal groups opposed Owen, claiming that she took extreme positions in opposition to abortion rights. On CNN's "Crossfire," PFAW president Ralph Neas gloated about Owen's defeat: "Today was a great victory for the American people because the Senate Judiciary Committee defeated a right-wing ideologue who would have turned back the clock on civil rights, consumer rights, the environment, and also reproductive rights."

PFAW's concerted media campaign against Owen's confirmation included a highly critical report following her July 23 testimony to the Senate Judiciary Committee. The report targeted her reasoning in a controversial abortion case in Texas and claimed she is "a right-wing activist committed to remaking the law according to her own ideology." The charge stuck, in part because White House counsel Alberto Gonzales, once a fellow justice on the Texas Supreme Court, had criticized her for "an unconscionable act of judicial activism" in an abortion case.

The type of tactics used by PFAW and other liberal activists drew an unusual rebuke from the liberal *Washington Post*. In a September 13 editorial, the *Post* said the process of selecting judges is going down a "dangerous road" if judicial nominees are rejected strictly over ideological

August. The state is appealing the decision, but PFAW secured an important victory when Judge Kevin Davey ruled that the Florida Constitution forbids the use of public monies at sectarian institutions. The ruling renews concern that the legality of school voucher programs will be challenged in many states on *state* constitutional grounds arising out of anti-Catholic attitudes prevalent in the late nineteenth century.

"Regardless of the Supreme Court's ruling on the federal Constitution, the legal issues concerning state voucher laws will depend largely on the language in these individual state constitutions," said PFAW's Minberg.

PFAW's efforts to oppose vouchers include attacks on existing voucher programs in Milwaukee and Cleveland, criticism that Wisconsin taxpayers are "overcharged" by state payments to voucher schools, and legal actions against Milwaukee School Board members who allegedly violated open meetings laws by privately preparing a joint letter in support of vouchers. Last December, PFAW issued a special report attacking the Black Alliance for Educational Options, a group that sponsored television ads promoting school choice.

PFAW also attacks President Bush for other aspects of his education agenda. Its ADA Watch Action Fund, a project ostensibly to promote civil rights for people with disabilities, has challenged the President's appointment of Gerard Reynolds to be Assistant Secretary of Education for Civil Rights. Reynolds criticized the federal Americans with Disabilities Act (ADA) and has worked with the Center for Equal Opportunity, an organization opposed to race and gender preference programs.

Another PFAW lobbying program, Partners for Public Education, builds coalitions to support increased public school funding and oppose school choice vouchers and tax credits.

The 501(c)(3) PFAW Foundation is involved in several legal cases affecting

Major Donors to People For The American Way Foundation (Grants are for Fiscal Year 2000)

John S. and James L. Knight Foundation — \$160,000
Ford Foundation -- \$100,000
Jay and Rose Phillips Family Foundation -- \$65,000
Chartwell Charitable Foundation -- \$50,000
Eastman Kodak Charitable Trust -- \$40,000
Scherman Foundation -- \$40,000
Louis & Anne Abrons Foundation — \$25,000
Esther A. & Joseph Klingenstein Fund — \$25,000
Pincus Family Fund — \$25,000
Picower Foundation — \$20,000
Louis B. & Dorothy Cullman Foundation -- \$10,000

education. PFAW was co-counsel in a case challenging the constitutionality of an Illinois state law providing tuition tax credits, and it supports a legal challenge to New York State's "inadequate school funding system." This year PFAW lost a court battle to prevent Washington State from including private colleges in a student grant program. (See chart on page 5 listing PFAW litigation).

Mixing Funds?

PFAW maintains a national office in Washington, D.C. in which the 501(c)(4) lobby group shares resources and employees with the 501(c)(3) PFAW Foundation. However, because federal law does not permit 501(c)(3) charitable organizations to engage in lobbying or legislative activity, the two organizations are supposed to maintain and administer their funds in separate accounts.

Yet in its 2000 Form 990 report to the IRS, PFAW explains that the two affiliates "share the same management and facilities. Each organization pays expenses of the other organization and accounts for the reimbursement via a 'Due to/From Affiliate' account." But federal tax laws have

been violated if tax-deductible contributions to the PFAW Foundation are used to pay for PFAW lobbying and political expenses.

People for the American Way and its affiliates work together as a powerful lobby for leftist ideology and Democratic party politics. Whatever its tax lawyers may say, the scandal of PFAW is that foundations and corporations inflate its budget and pay for its politics. Every dollar contributed to PFAW advances a profoundly political agenda.

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Selected PFAW Litigation (Current & Recent)

Holmes v. Bush (Leon County Circuit Court)

Issues: Constitutionality of Florida voucher law

PFAW Foundation Role: Co-counsel to plaintiffs

Administrative Complaint filed with Wisconsin Dept. of Public Instruction (DPI)

Issues: Violations of random selection requirement of Wisconsin voucher law by private and religious schools participating in Milwaukee voucher program

PFAW Foundation Role: co-complainant and co-counsel

Simmons-Harris v. Zelman (U.S. Dist. Ct. N.D. Ohio)

Issues: Constitutionality of Ohio school voucher plan for Cleveland

PFAW Foundation Role: Co-counsel for plaintiffs

Advisory Opinion to the Attorney General re: Florida's Amendment to Reduce Class Size (Supreme Court of Florida)

Issues: Whether proposed amendment to FL Constitution to reduce class size in public schools complies with state constitution and statutory law

PFAW Foundation Role: *Amicus* on behalf of proponents of the amendment

PSINet Inc. v. Chapman (U.S. Ct. App - 4th Cir.)

Issues: Constitutionality of state law criminalizing the display of Internet material that could be deemed "harmful to minors"

PFAW Foundation Role: Co-counsel for Plaintiffs and Plaintiff (PFAW)

American Library Association v. United States (U.S. Dist. Ct. E.D. Pa.) (3 judge panel)

Issues: Constitutionality of part of "Children's Internet Protection Act" imposing mandatory Internet filtering restrictions on adults' and minors' access to the Internet at public libraries.

PFAW Foundation Role: Co-counsel for library patron plaintiffs.

Notice of Inquiry on the Application of the Federal Election Campaign Act to the Internet (No. 1999-21).

Issues: Comments on the application of the Federal Election Campaign Act to political speech on the Internet.

PFAW Foundation Role: Co-Commenter

Sarah Jones v. FCC (U.S. District Court S.D. NY)

Issues: First Amendment challenge to FCC's ruling that "Your Revolution" is "indecent"

PFAW Foundation Role: Co-Counsel on behalf of plaintiff

SAVE Dade v. Take Back Miami-Dade, et al (Dade County Fla. Circuit Court)

Issues: Challenge to county's certification of ballot petitions submitted by anti-gay group in effort to repeal county's gay rights ordinance

PFAW Foundation Role: Co-counsel for SAVE Dade

NAACP, et al. V. Katherine Harris, et al. (U.S. District Court - Southern Dist. Of FL)

Issues: Whether defendants violated Equal Protection and Due Process Clauses, Voting Rights Act, NVRA, and other federal and Florida laws by adopting and implementing non-uniform election practices that disenfranchised African-American voters or impeded their exercise of the franchise.

PFAW Foundation Role: Co-counsel for plaintiffs.

BrieflyNoted

Major liberal activist groups have asked the **Federal Election Commission (FEC)** to exempt them from new regulations restricting political advertisements, arguing that they inhibit public debate. Key provisions of the new McCain-Feingold law prohibit television and radio advertisements that make reference to federal candidates within 30 days of a primary and 60 days of a general election. **The Alliance For Justice**, which leads a coalition of environmental, civil rights and consumer-advocacy groups, and the **Sierra Club** want the agency to create "safe harbors" from the advertisement curbs. They say exemptions are necessary because there will be "confusion and overcautious behavior" that will affect candidates and nonprofit organizations. Senators McCain and Feingold urge the FCC to be skeptical of requests for exemptions.

Environmentalists bemoan the outcome of the Johannesburg Earth Summit. The summit reached agreement on only two issues, marine ecology and management of industrial chemicals, complains the **World Wildlife Fund**. Says WWF's director general, "So far, negotiations have fallen dramatically short of the kinds of commitments that would ensure a sustainable future for our planet." **Friends of the Earth** decries excessive corporate influence at the summit: It displayed 6,000 biodegradable statues representing "diverse voices of people struggling to defend their lives, their communities and their environment." **Rainforest Action Network** created a full-page ad labeling President George W. Bush, Citigroup CEO Sandy Weill and World Bank President James Wolfensohn the "Unholy Trinity Behind Global Warming and Forest Destruction." Wolfensohn is a protégé of noted international environmental activist Maurice Strong.

The Auburn, Alabama-based **AgBioWorld Foundation**, led by biotechnology expert Dr. C.S. Prakash, applauds environmental organizations for supporting the shipment of genetically-modified food to aid famine-plagued southern Africa. AgBioWorld informs journalists and policymakers about biotechnology developments and corrects misunderstandings about the safety of genetically-modified food. It welcomes remarks by **Greenpeace's** Annette Cotter ("When it comes to famine, telling anybody not to eat GM food in this situation is a position we absolutely can't take.") and **Friends of the Earth** endorsing use of genetically-modified food to ease the famine. Adds Patrick Moore, a founding member of Greenpeace who now opposes their tactics, "They [Greenpeace] should urge their members and allies to stop compounding the impact of this and other crises by politicizing food aid."

Greenpeace recently won wide media coverage for publishing before-and-after photos of an incredibly shrinking Arctic glacier. Man-made global warming is blamed for the receding glacier, photographed in 1918 and 2002 and captioned, "The blame can be put squarely on human activity." But professor Ole Humlum, a leading glaciologist, says, "That glacier had already disappeared in the early 1920s as a result of a perfectly natural rise in temperature that had nothing to do with man-made global warming."

People for the Ethical Treatment of Animals (PETA) is mounting a national campaign to ban fishing as a cruel and violent sport. But PETA's campaign, which aims to ban fishing in all state parks, has been rejected by nine states, including California. Says fisherman Andy Young: "Everyone wants to get in everyone else's business but their own. Leave me alone. Let me enjoy my fishing."