



Colorado Judicial Institute  
P.O. Box 118  
Broomfield, CO 80038-0118  
(303) 766-7501  
(303) 303-975-5290 fax  
[www.coloradojudicialinstitute.org](http://www.coloradojudicialinstitute.org)

For Immediate Release:  
March 23, 2010

Contact: Dana Nelson  
Phone: 303-489-3432  
E-mail: [Dana@ColoradoJudicialInstitute.org](mailto:Dana@ColoradoJudicialInstitute.org)

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## Voters Turn Against Politicians on the Bench

Denver—Americans have been shocked by abuses in the legal system as special interests wage multi-million dollar campaigns to elect their hand-picked candidates to high judicial offices. Now, more states are turning toward nonpartisan judicial merit selection systems such as Colorado's, two prominent legal reformers told the Colorado Judicial Institute's fourth annual membership breakfast March 18.

About 120 people came to the University Club to hear Rebecca Love Kourlis and Theresa Spahn outline judicial reform efforts. Kourlis is a former justice of the Colorado Supreme Court who now leads the Institute for the Advancement of the American Legal System at the University of Denver. Spahn is director of the Institute's O'Connor Judicial Selection Initiative.

"The good news is that things are changing for the better," Kourlis said. "There is a distinct willingness now to look at reform in states we once thought were impossible."

Two recent U.S. Supreme Court decisions have fueled the interest in reforming how state judges are picked, Kourlis said. The first was the *Caperton* case from West Virginia, where coal executive Don Blankenship spent \$3 million to help elect Brent Benjamin to the West Virginia Supreme Court – while the appeal of a \$50 million punitive damages award his company lost was on its way to that very court. After being elected, Benjamin cast the decisive vote in a pair of 3-to-2 decisions throwing out the \$50 million jury verdict against his financial backer's coal company.

Last June, the U. S. Supreme Court, in a 5-4 ruling, said the U.S. Constitution's due process clause can require a state judge to abstain when a party in a case before that judge has had a "significant or disproportionate" influence on placing the judge on the court through large campaign contributions.

Not long after that high court ruling highlighting the danger of runaway spending on judicial elections, the Supreme Court issued another ruling in the *Citizens United* case that many critics fear opens the door to still higher spending by corporations and labor unions in political campaigns.

CJI president Bob Miller responded to that January ruling by saying, "Whatever the impact this *Citizens United* ruling has on partisan elections in Colorado, it should have little if any effect on our court system. That's because since 1966, Coloradans have chosen our judges through a merit selection system. Our record has been so



CJI Vice Chair Sheila Gutterman, Justice Rebecca Love Kourlis and Theresa Spahn.

successful that Colorado’s Merit Selection, Performance Evaluation and Retention Election system has been hailed as the ‘gold standard’ of state judicial election and accountability by experts throughout the country.”

Kourlis echoed Miller’s theme Thursday and said the desire for reform was also fueled by the skyrocketing costs of campaign for state judicial offices, especially for seats on the Supreme Court in giant states like Texas. In the 2008 elections, more than \$33 million was spent in 26 contested high court elections in just 15 states.

Spahn agreed with Kourlis and added that the merit selection movement is gaining ground as evidenced by the fact that Nevada voters this fall will decide whether to scrap their old election system and adopt a Colorado-style merit selection process.

“If voters approve, Nevada will be the first state in sixteen years to go from electing judges to merit selection,” Spahn said. “Furthermore, serious reform efforts are underway in Minnesota, Washington, Maryland and other states.”

Noting that in Nevada, judicial candidates often take out giant billboards posing with law enforcement officers who have endorsed them, Spahn quoted a prominent Nevada defense attorney as saying his clients always ask him the same question before their trials: “Did you contribute to the judge’s campaign?”

That is simply a question that shouldn’t have to be asked, Spahn said. As former Justice Sandra Day O’Connor said in a National Public Radio interview last January, “*The founders realized there has to be someplace where being right is more important than being popular or powerful and where fairness trumps strength – and in our country, that place is supposed to be the courtroom.*”

The Colorado Judicial Institute works to support Colorado’s system of merit selection and accountability. CJI gives annual “Judicial Excellence” awards to honor outstanding judges in Colorado. It has raised over \$200,000 to help provide advanced education and training for Colorado judges and judicial department personnel.

Thursday’s membership breakfast was fully underwritten by supporting firms: Barkley Martinez, P.C., Burg Simpson Eldredge Hersh & Jardine, P.C., GHP Horwath, P.C., Gutterman Griffiths PC, Harper Lutz Zuber Hofer & Associates, LLC, Holland & Hart, LLP, Isaacson Rosenbaum P.C., Kennedy Childs & Fogg, P.C., Perkins Coie LLP, Divorce Law Listserve and Law Office of Stephen J. Harhai

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Retired Denver Post editor and columnist Bob Ewgen is Journalist in Residence at the Colorado Judicial Institute and a member of the CJI Board of Directors.

### [The Colorado Judicial Institute: A Shared Vision of Judicial Excellence](#)

The mission of the 30-year old non-partisan, non-profit Colorado Judicial Institute is: 1) to preserve and enhance the independence and excellence of Colorado courts, 2) to further public understanding of the Colorado judicial system, and 3) to ensure that the courts meet the needs of the people.