


**U.S. PROGRAMS  
Transparency Fund  
Summary of Recommended Grants  
Early Docket - March 1, 2012**

**Program Area / Organization**

<b>Organization</b>	<b>Grant Code</b>	<b>Recommended</b>	<b>Term</b>	<b>2012</b>	<b>2013</b>
<b>Information Access, Design and Regulation</b>					
Government Accountability Project <sup>1</sup>	T1: 21107	\$ 400,000	2 years	\$ 200,000	\$ 200,000
	T1: 21133	\$ 100,000		\$ 50,000	\$ 50,000
Media Democracy Fund (Proteus Fund)	T1: 21107	\$ 600,000	2 years	\$ 300,000	\$ 300,000
<b>Independent and Diverse Judiciary</b>					
American Bar Association Fund for Justice and Education	T1: 21110	\$ 325,000	2 years	\$ 175,000	\$ 150,000 C
National Council of Jewish Women	T1: 21110	\$ 400,000	2 years	\$ 200,000	\$ 200,000 C
Constitutional Accountability Center	T1: 21110	\$ 1,100,000	2 years	\$ 300,000	\$ 800,000 C
National Constitution Center	T1: 21110	\$ 90,000	1 year	\$ 90,000	
<b>Total Recommended:</b>		<b>\$ 3,015,000</b>		<b>\$ 1,315,000</b>	<b>\$ 1,700,000</b>
<b>GRANTMAKING TOTAL THIS DOCKET:</b>		<b>\$ 3,015,000</b>			

  
Approval Signature

  
Date

<sup>1</sup> This grant of \$500,000 to the Government Accountability Project is jointly funded by the Transparency Fund, T1: 21107 (\$400,000) and the National Security and Human Rights Campaign, T1: 21133 (\$100,000).

## MEMORANDUM

**To:** Aryeh Neier  
**From:** Laleh Ispahani, for the Transparency Fund, and Nancy Chang, for the National Security and Human Rights Campaign  
**Date:** February 24, 2012  
**Re:** Transparency Fund & National Security and Human Rights Campaign, March 1 docket meeting

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We look forward to meeting with you on March 1, 2012, to discuss the grants described below, recommended by the Transparency Fund and the National Security and Human Rights Campaign. The Transparency Fund respectfully seeks approval of six grants in this docket, one of them a joint recommendation with the National Security and Human Rights Campaign. In addition, the Transparency Fund recommends a grant co-funded with and presented by the Democracy Fund on this docket. The National Security and Human Rights Campaign seeks approval for four grants, one of which would be co-funded with the Transparency Fund.

### **Transparency Fund Grants**

As reflected in its 2010-2012 strategic plan, the Fund's grant making and program strategies seek to promote government transparency and accountability, the integrity of the judicial and electoral systems, and informed public engagement by supporting:

- Media and government 'watchdog' groups and the development and use of emerging technology tools and practices that increase public involvement and access to information;
- Efforts aimed at expanding access to the ballot and addressing the impact of *Citizens United*;
- Efforts to ensure a fair, impartial and diverse judiciary; and
- Creative responses to the challenges and opportunities facing journalism.

The Fund's total contribution to the grants it is recommending in this docket is \$3,065,000. Grant recommendations and a financial summary are attached.

### ***Access to Information***

This portfolio's goals are to support groups working to collect and disseminate information that empowers citizens as well as watchdog groups monitoring the regulation of public information and government practices. The Fund recommends two grants for this work.

The Fund recommends renewed general support to **The Government Accountability Project**. The Project is a leading defender of government and corporate whistleblowers. Its mission is to ensure government and corporate accountability by advancing occupational free speech, defending whistleblowers, and empowering citizen activists. Its

major program initiatives focus on both government and corporate accountability related to worker health and safety, corporate and financial accountability, nuclear and environmental oversight, food and drug safety, international anti-corruption reform, and national security.

We also recommend renewal support to **The Media Democracy Fund**. The Fund promotes a fair and open media and communications system that fosters freedom of expression and increases access to information and ideas. It was created to meet the need for collaborative grantmaking by foundations already involved in media, technology, and communications policy issues, and to provide a reliable re-granting vehicle for foundations and individual donors wishing to enter the field. The Fund is a particularly effective vehicle to support organizations engaged in public education and organizing at the state and local level, where significant media and information policy decisions are made and where there are often varied and important opportunities for public input. These efforts help reinforce public interest media policy work at the federal level. The Fund engages in ongoing field and policy analysis, and maintains a current, comprehensive perspective on this complex and fast-moving field. It is an important partner as OSF continues its support for civil society organizations working to improve the digital communications environment in which public debate over open society issues takes place and to defend a free and open media system as a bedrock element of an open society.

### *A Fair, Diverse & Impartial Judiciary*

Recognizing the central role the judicial branch plays in checking government power and providing access to justice for those most marginalized in our society, OSF has long supported work to advocate for a fair and independent judiciary. A robust judiciary – with a diversity of viewpoints and experiences, and a judiciary accountable to law and the Constitution rather than any rigid ideology or partisan agenda – is critical to advancing the many issues U.S. Programs addresses. OSF’s judiciary-related funding focuses on: (1) reforming state courts to ensure that they are as independent as possible from undue outside influence, and (2) fostering a diversity of viewpoints about the law and the Constitution. The Fund recommends four grants to further its work on the judiciary.

We recommend a renewal grant to **The American Bar Association**. The ABA is the world’s largest voluntary professional organization, representing the American legal profession. This grant will support its Standing Committee on Judicial Independence to continue its current public education and policy development activities in coordination with members of the Justice at Stake coalition. The Committee will focus on three projects: judicial disqualification, judicial diversity, and public education about the role of the courts in a democracy.

We also recommend renewal support for **The Constitutional Accountability Center**. The Center is a think tank, law firm, and action center dedicated to fulfilling the promise of the Constitution, using the document’s text and history to advance civil rights and equality, protect the balance between state and federal governments, appropriately limit

the role of corporations in the democratic process, and guarantee access to justice for all. The Center is now implementing a three year strategic plan that aims to deepen its capacity and increase its influence. Central to this plan is the merger of the Federal Rights Project, led by attorney Simon Lazarus, with the Center. Funded by OSF since 2000, the Project's mission is to oppose litigation and court decisions that restrict enforcement of federal civil rights and public benefit laws under the guise of "federalism," "pre-emption," "standing," and "state sovereign immunity." The merger will allow for deeper collaboration and a more tightly focused strategy to challenge conservative jurisprudence and the direction of the courts.

As part of a renewed focus on federal judicial nominations, and particularly an emphasis on developing new models of grassroots-level education and organizing, we recommend renewal support to the **National Council of Jewish Women**. NCJW is the oldest Jewish women's volunteer organization in the United States, with more than 90,000 members organized in a network of approximately 100 sections (local affiliates). NCJW seeks renewal support to sustain and expand its grassroots organizing work on federal judicial nominations. Building on education and organizing it has facilitated in three cities over two years – Omaha, Cleveland, and Pittsburgh – the project's goal is to engage a diverse range of communities and organizations in building active and sustainable vehicles for action and advocacy relating to the future of the federal judiciary. NCJW will seed and build coalitions in three to six new cities over the coming two years.

Finally, we recommend support for **The National Constitution Center's** Peter Jennings Project. Through a two-day intensive seminar, the Project will enable journalists to produce informed coverage of the debates surrounding the constitutionality of the 2010 Patient Protection and Affordable Care Act during the coming election season. It will also equip them with key critical thinking skills for reporting on other constitutional issues that arise this year by providing them with a special multi-platform series of focused, nonpartisan programs and resources before and after the Supreme Court's late-March oral arguments and anticipated late-June ruling on the validity of the health care law.

### **National Security and Human Rights Campaign Grants**

The National Security and Human Rights Campaign seeks approval for four grants, one of which would be co-funded with the Transparency Fund, on this docket.

The National Security and Human Rights Campaign works to promote the acceptance of Arab, Middle Eastern and South Asian (AMEMSA) individuals and communities in American society. Vital strategies in this effort include supporting credible messengers to speak out against intolerance and empowering AMEMSA organizations to fight abusive national security policies that disproportionately target their communities. In light of these priorities, the Campaign recommends renewed support for two innovative projects. A grant to the **Islamic Society of North America** will renew support for the **Shoulder-to-Shoulder Campaign**, an interfaith coalition of national religious organizations dedicated to ending anti-Muslim sentiment in the U.S. Shoulder-to-Shoulder is governed

by a steering committee that represents 27 Christian, Jewish, Muslim and interfaith groups. Renewed support will enable the coalition to expand its national media presence, deepen its collaboration with over 150 grassroots groups and local faith communities, and continue urging policymakers to denounce intolerance.

A renewal grant to **Rockefeller Philanthropy Advisors, Inc.** will enable Hattaway Communications to expand its research on messaging to improve perceptions of American Muslims. During the first phase of this project, the Washington, D.C.-based strategic communications firm conducted public opinion research and developed a set of messages designed to propel a positive narrative of Muslims in America. Additional funding will allow Hattaway to create a more targeted and nuanced set of messages that speak directly to recent, ongoing and anticipated events and controversies focused on American Muslims. To ensure that these messages gain traction in current debates, Hattaway will engage and provide direct rapid response support to a broad range of organizations working to end anti-Muslim bigotry, including AMEMSA, religious and civil rights groups. It will also arm government leaders and military officers with research findings and tested messages to encourage them to speak out against profiling and discrimination. Finally, it will provide tailored communications capacity building services to Muslim Advocates, an organization poised to become a leading voice for adhering to civil liberties in countering terrorism.

The NSHR Campaign recommends renewed support for the **National Security Initiative** (NSI) for its project, Liberty in Security: An Effective Partnership. This project will advance fire of the Campaign's goals: shifting the national security paradigm away from the "war on terror" framework; promoting the voices of unusual allies who are advancing progressive national security policies; combating anti-Muslim bigotry; stopping the arbitrary and indefinite detention of terrorism suspects; and holding government officials and private actors accountable for past abuses and violations of law, including the use of torture. Based in Washington, D.C., NSI is the 501(c)(3) arm of the National Security Network, whose membership includes hundreds of foreign policy, security and counterterrorism experts. Through its Liberty in Security project, NSI will continue work it first undertook in 2009 with OSF support. It will encourage strategic alliances among security experts and civil liberties, human rights, interfaith, and Muslim, Arab, and South Asian advocates who share the conviction that the U.S. must maintain its commitment to human rights as it addresses the challenges posed by terrorism. By leveraging the complementary strengths of these unlikely partners and its own media and outreach capabilities, NSI will aim to shape a new national discourse that recognizes that U.S. counterterrorism measures are most effective when they respect rights.

NSHR's final recommendation for this docket is a renewal general support grant for the **Government Accountability Project** (GAP), which we would co-fund with the Transparency Fund. GAP's work aligns with the Campaign's goal of reducing government secrecy in national security policy, and we have been particularly impressed with its defense of national security whistleblowers. One notable example is GAP's recent success in the case against Thomas Drake, a former senior official of the U.S. National Security Agency (NSA) who exposed serious cost, efficacy, and security

problems with an NSA technology program designed to monitor and analyze computer data, cell phone records and email. Initially indicted on ten felony counts under the Espionage Act—which could have resulted in a 35 year prison sentence—Drake saw all of the original charges against him dropped after GAP launched an aggressive media and public advocacy campaign on his behalf. He eventually pleaded to one misdemeanor count for unauthorized computer access and received probation and community service. The total NSHR contribution to the four grants it is recommending in this docket is \$845,000. NSHR's four grant recommendations and a financial summary are attached.

**We look forward to discussing these recommendations with you on March 1, 2012.**

**Transparency Fund Grant Recommendations**  
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**Grant ID:** 20035363

**Name of Organization:** Government Accountability Project

**Tax Status:** 501(c)(3) public charity

**Purpose of Grant:** to provide general support

**Grant Description:** The Government Accountability Project (GAP) is a leading defender of government and corporate whistleblowers. GAP's mission is to ensure government and corporate accountability by advancing occupational free speech, defending whistleblowers, and empowering citizen activists. Its major program initiatives focus on government and corporate accountability related to worker health and safety, corporate and financial accountability, nuclear and environmental oversight, food and drug safety, international anti-corruption reform, and national security. This renewal grant would advance the Transparency Fund's goals of strengthening key government watchdog organizations that serve a critical function in advocating for government transparency and access to information. It would also advance the National Security and Human Rights Campaign's priorities of strengthening the capacity of watchdog organizations to document government abuses in the national security arena and of reducing excessive government secrecy in national security policy.

**Previous OSI Support:** \$1,325,000  
\$775,000 Transparency Fund (2008, 2010)  
\$300,000 Nat. Security and Human Rights Fund (2009)  
\$250,000 Strategic Opportunities Fund (2006-2007)

**Organization Budget:** \$3,077,000

**Project Budget:** n/a

**Major Sources of Support:**

Jewish Communal Fund:	\$410,000
Rockefeller Family Fund:	\$205,000
Nathan Cummings Fdn.:	\$155,000
Individual Donors:	\$511,000
Fees for Service:	\$290,000

**Amount Requested:** \$500,000 over two years



**Is this a contingent grant?** No

**Amount Recommended:** \$500,000; \$400,000 from the Transparency Fund (Guarantee Access to Information T1:21107) and \$100,000 from the National Security and Human Rights Campaign (Limit Secrecy and Expand Oversight and Accountability T1: 21133)

**Term:** Two years, beginning March 2012

**Matching Requirements:** None

**Description of Organization:**

The Government Accountability Project (GAP) is a leading defender of government and corporate whistleblowers. Founded in 1977, GAP's mission is to increase government and corporate accountability by protecting occupational free speech, litigating whistleblower cases, publicizing whistleblower concerns, and developing policy, legal, and legislative reforms to protect whistleblowers.

GAP provides legal representation and expert advice to government and corporate employees who want to raise concerns about serious problems of public concern within their agencies or companies; organizes national campaigns to publicize charges brought by whistleblowers and push for accountability for wrongdoing; drafts model and actual legislation for federal, state, and local governments as well as for international institutions and governments; helps government agencies, corporations, and international NGOs develop and implement whistleblower policies; and serves as experts on occupational free speech issues. GAP provides a variety of training services in internal justice systems, ethics offices, and whistleblower/witness protection policies for government agencies, United Nations staff delegations, lawyers, unions, and other professionals. GAP staff members regularly publish articles in academic and non-academic publications, teach continuing legal education courses, and annually conduct accredited legal clinics for law students on whistleblower protection.

GAP's major program initiatives focus on both government and corporate accountability related to worker health and safety, corporate and financial accountability, nuclear and environmental oversight, food and drug safety, international anti-corruption reform, and national security. GAP is located in Washington D.C.

**Description of Program for Which Funding Is Sought:**

This recommendation is for general support.

## **Rationale for Recommendation:**

The Transparency Fund (the Fund) and the National Security and Human Rights Campaign (the Campaign) recommend a grant of \$500,000<sup>1</sup> over two years (\$400,000 from the Fund; \$100,000 from the Campaign). This grant would advance the Fund's goals of strengthening key government watchdog organizations that serve a critical function in advocating for government transparency and access to information. It would also advance the Campaign's priorities of strengthening the capacity of watchdog organizations to document government abuses in the national security arena and of reducing excessive government secrecy in national security policy.

From detainee abuse at Abu Ghraib prison to the dangers of the drug Vioxx, some of the most significant revelations of corporate and government wrongdoing originate from insiders who come forward at enormous personal and professional cost. Although whistleblowers' actions often save lives and bring to light threats to public health, safety, and the environment, these individuals are vulnerable to retaliatory investigations, harassment, intimidation, demotion, and dismissal. With GAP's assistance, whistleblower disclosures have exposed, for example, health dangers and environmental threats at over 25 nuclear power and nuclear weapons facilities across the country, the CIA's use of Eastern European "black sites" in its program of extraordinary rendition of terror suspects, the involvement of telecommunications companies in an extra-legal National Security Administration program of warrantless domestic surveillance, and threats to public health from ineffective regulation of the food, medical device, and pharmaceutical industries.

Since its inception, the GAP has represented 2,150 clients, and has informally assisted an additional 5,000 people. It currently averages 60 to 80 clients per year across a broad range of national concerns. For example:

- Three U.S. military veterans who, while working as private contractors in Iraq, raised concerns with the FBI about illegal arms dealing and were subsequently illegally rendered, detained, and interrogated by the U.S. military.
- A civilian civil engineer with the U.S. Army Corps of Engineers, who informed the Office of Special Counsel of the installation of defective hydraulic pumps in the Corps' post-Katrina reconstruction work in New Orleans. In addition to flagging this public safety issue, the Project's client also raised concerns about the integrity of the corporate contracting process by which the pumps were obtained.
- Federal Air Marshals and Federal Aviation Administration employees challenging and exposing practices that undermine both agencies' missions and threaten public safety and national security.

With past OSF project support, GAP has built a robust National Security and Human Rights Program, which aims to investigate and expose the negative impact of policies related to torture, secret domestic surveillance, excessive secrecy, and political

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<sup>1</sup> OSF support will satisfy two separate matches and trigger the release of \$150,000 in new funds.

discrimination. For example, GAP represents Thomas Drake, a former senior official of the U.S. National Security Agency (NSA), who exposed serious cost, efficacy, and security problems with Trailblazer, a new NSA technology program designed to monitor and analyze computer data, cell phone records, and email. Over the course of several years, Drake followed protocol and brought his complaints about the Trailblazer program to his supervisors, the NSA's inspector general, and the House and Senate intelligence committees, all to no avail. In 2006, he described his concerns to a reporter for the *Baltimore Sun*, although he did not share any classified documents. In 2010, after a protracted and aggressive investigation, the government alleged that Drake "mishandled" documents. He was initially indicted on 10 felony counts under the Espionage Act and faced a possible 35 years in prison. GAP conducted a national media and public advocacy campaign, which catapulted Drake's case into the national spotlight and resulted in a feature on *60 Minutes* and a *New Yorker* investigation by Jane Mayer. In June 2011, all 10 of the original charges against him were dropped. He eventually pleaded to one misdemeanor count for unauthorized computer access and received probation and community service. Judge Richard Bennett lambasted the government for its aggressive handling of the case. Soon after, the Trailblazer program was shut down as a failure, after the NSA had already paid contractors more than \$1 billion. GAP is currently working with Drake to organize a conference in April 2012 that will focus on the tension between the constitutional freedoms of speech and the press and national security interests, particularly in light of the unprecedented string of Obama administration prosecutions under the Espionage Act.

In 2012, GAP plans to expand its Corporate Accountability Program. It currently represents Eileen Foster who was an Executive Vice President at Countywide and later Bank of America. Foster was responsible for monitoring internal compliance with bank controls and monitoring fraud investigations. She found bank fraud in most major urban markets in the country and was fired for attempting to bring this fraud to light. After *60 Minutes* aired a story about the Bank of America fraud cover-up, GAP was contacted by several U.S. Attorney offices, the Housing and Urban Development Inspector General, investigators from the Federal Housing Authority, the Attorney General of New York, and the new federal Bureau of Consumer Protection, and several law firms pursuing cases against Bank of America.

GAP is also expanding its outreach to universities, law schools, and business schools across the country. In 2011, the University of Nebraska colleges of law, business administration, and journalism jointly sponsored a week of activities with GAP related to whistleblowing. The main event in this program attracted 2,000 people and was broadcast live across the campus. In 2012, GAP will develop similar events for at least 13 other universities across the country. GAP is working with a multi-disciplinary committee of 30 faculty members representing schools across the country to create curriculum materials for undergraduate, graduate programs in law, ethics, business, management, public affairs, social work, and journalism.

GAP's International Program intersects with broader OSF interests across the network. This work is focused on multilateral development banks, the United Nations, and international public health issues. For example,

- GAP is working with a prominent HIV/AIDS researcher who came forward with evidence that World Bank funds have been used for several years to purchase defective HIV test kits for use by the Indian government, despite repeated appeals to the National AIDS Control Organization and the Department of Institutional Integrity, the World Bank's anti-corruption unit.
- In the wake of the uprising that deposed the Mubarak regime, GAP was approached by an Egyptian whistleblower with information about significant corruption connected to privatization in Egypt, linked to a Managing Director at the World Bank. GAP has translated all of its investigative blogs into Arabic in order to ensure that the people affected by these issues can directly access the GAP's analysis.
- In January 2011, in coordination with Open Society Fund Prague and the American Embassy, GAP organized a conference in the Czech Republic focusing on how investigative journalists, whistleblowers, and NGOs could work together for greater transparency and accountability. The Open Society Fund Prague is currently considering a funding proposal from GAP to continue this work.

GAP's President, Louis Clark, assumed directorship in 1978, having first served as legal counsel for the organization. Over the past 30 years, Clark has built an impressive staff of veteran attorneys and advocates who have pioneered the public policies and case law for whistleblower protection in the United States and internationally. GAP works in coalition with several current and former OSF grantees, including the Union of Concerned Scientists, OMB-Watch, Consumers Union, Project on Government Oversight, and Federation of American Scientists.

GAP has had an extraordinary impact on the fight to expose corruption and to hold the federal government and corporations accountable to the highest standards of justice, transparency, and scientific integrity. There is an extraordinary demand for GAP's services, and the organization has the capacity to take only a small percentage of the cases that come to its attention. Continued OSF support will enable GAP to continue serving its vital role in protecting and expanding the rights of those who bring critical information forward for public discussion and debate.

**Grant ID:** 20035364

**Name of Organization:** Media Democracy Fund

**Tax Status:** 501(c)(3) public charity

**Name of Fiscal Sponsor:** Proteus Fund

**Purpose of Grant:** core support for the Media Democracy Fund

**Grant Description:** The Media Democracy Fund (the Fund) promotes a fair and open media and communications system that fosters freedom of expression and increases access to information and ideas. The Fund was created to meet the need for collaborative grantmaking by foundations already involved in media, technology, and communications policy issues, and to provide a reliable re-granting vehicle for foundations and individual donors wishing to enter the field. The Fund engages in ongoing field and policy analysis, and maintains a comprehensive perspective on this complex and fast-moving field. The Fund is an important partner as OSF supports civil society organizations working to improve the digital communications environment in which public debate over open society issues takes place. This grant would advance the Transparency Fund’s goal of supporting information policy that ensures an open, democratic communications infrastructure for speech, information, and knowledge exchange.

**Previous OSI Support:** \$1,400,000  
\$1,000,000 from the Transparency Fund (2008, 2010)  
\$400,000 from the Strategic Opportunity Fund (2006-2007)

**Organization Budget:** \$12,376,000 (Proteus Fund)

**Project Budget:** \$1,963,000

**Major Sources of Support:**

Ford Foundation	\$1,000,000
Quixote Foundation	\$ 187,500
Nathan Cummings Foundation	\$ 100,000

**Amount Requested:** \$1,000,000 over two years

**Is this a contingent grant?** No

**Amount Recommended:** \$600,000 from the Transparency Fund (Guarantee Access to Information T1:21107)

**Term:** Two years, beginning March 1, 2012

**Matching Requirements:** None

**Description of Organization:**

The Proteus Fund, Inc. is a philanthropic services organization. It administers a number of funder collaboratives, including the Civil Marriage Collaborative Fund, the Media Democracy Fund, the Piper Fund, and the Security and Rights Working Group.

**Description of Program for Which Funding Is Sought:**

The Media Democracy Fund (the Fund) promotes a fair and open media and communications system that fosters freedom of expression and increases access to information and ideas. The Fund was created to meet the need for collaborative grantmaking by foundations already involved in media, technology, and communications policy issues, and to provide a reliable re-granting vehicle for foundations and individual donors wishing to enter the field.

Since its launch in late 2006, the Fund has awarded \$7.6 million in grants to a diverse array of local and national groups that engage in organizing, litigation, research, public education, and regulatory reform. The Fund works to engage new constituencies in technology and communications policy debates, such as rural populations, youth, Native Americans, immigrants, and communities of color. The Fund engages in ongoing field and policy analysis, and maintains a comprehensive perspective on this complex and fast-moving field.

The Fund's grantmaking strategy is focused on the following policy goals: 1) protect freedom of expression and civil liberties on all communications platforms; 2) guarantee universal, fast, affordable and open Internet access; 3) strengthen public interest journalism and public media; 4) diversify media ownership; and 5) require full disclosure in political advertising carried on broadcast channels. Fund grantees lead public interest advocacy efforts in each of these policy areas at the local, state, and national level. Over the past year, the Fund has broadened its scope beyond the U.S., recognizing that U.S. technology policy and policy debates are increasingly influential in setting standards and precedents globally. Conversely, treaties and trade agreements not involving the U.S. as a party, in areas such as copyright and net neutrality, and actions taken by bodies such as the European Union can be used to influence U.S. policy.

The Fund's 2011 docket of 31 grants represents an interconnected network of organizations working at the national, state, and local level. For example, the Center for Rural Strategies in Kentucky, the Main Street Project in Minnesota, and the Mountain Area Information Network in North Carolina are organizing diverse rural constituencies, all of which recognize that the lack of affordable access to high-speed Internet in rural areas limits opportunities for education, health care, civic engagement, and economic development. Fund grantees the National Hispanic Media Coalition and Native Public Media work to advance Latino and Native American participation in media policy at both the local and national level.

Fund grantees, often working in close partnership, have achieved significant public interest victories. In 2011, after ten years of coordinated public education and advocacy led by Fund grantee Prometheus Radio Project, the Community Radio Act was signed into law, clearing the way for hundreds of new low power radio stations across the country. The FCC created this service in 2000 to address the shrinking diversity of voices on the radio dial. Over 800 LPFM stations, all locally owned and non-commercial, are already on the air, and an additional 1,000 new radio licenses will now be available in urban and rural areas across the U.S. These stations are run by non-profit organizations, local governments, churches, schools, and emergency responders. The Prometheus Radio Project is now taking the lead to provide technical assistance to groups applying for these competitive licenses, coordinating closely with other organizations in the Fund's portfolio.

The Fund is supported by grants from nine private foundations, including the Ford Foundation, Nathan Cummings Foundation, Wyncote Foundation, Park Foundation, Andy Warhol Foundation for the Visual Arts, Panta Rhea Foundation, Quixote Foundation, and the Robert W. Deutsch Foundation, as well as several individual donors. OSF is a founding member of the Fund and is a member of its steering committee. The Fund is directed by Helen Brunner, who brings over 15 years of experience as a philanthropic advisor in communications and free expression policy.

### **Rationale for Recommendation**

The Transparency Fund recommends a grant of \$600,000 over two years. This grant would advance the Transparency Fund's goal of supporting information policy that advances an open, democratic communications infrastructure for speech, information, and knowledge exchange.

New tools and practices built on and around the Internet are transforming how we receive news and information, participate in the economy, engage with government, and educate our children. Yet in the U.S., our networks are several times slower and more expensive than the high-speed Internet access service in many European and Asian countries. And even as the Internet becomes more of an essential utility than a consumer product, more than 30 percent of American households do not have access to it. Without fair communication and media policies to protect the needs of the public, millions of people will remain underrepresented and excluded from important economic, educational, and social opportunities.

A small handful of corporations with enormous political power and a strong incentive to avoid regulation effectively control high-speed access to the Internet. In the U.S., broadband providers are currently restrained neither by meaningful competition nor by comprehensive rules to protect the openness of the Internet. They have both the technical means and the financial incentives to interfere with the free flow of information, and are a formidable lobbying force in Washington. Media and telecommunications companies are among the biggest lobbyists and campaign contributors in Washington, successfully securing policies that limit competition, permit unconstrained consolidation, and give them near-monopoly control over both content creation and distribution. Between 1989

and 2011, the second largest contributor to political campaigns in the U.S. was AT&T. In 2010, Verizon, AT&T, and Comcast spent roughly \$45 million in lobbying, and in 2011 that amount rose to \$54 million.

OSF and our grantees in every field depend on the existence of an open, democratic communications infrastructure for speech, economic opportunity, civic engagement, and knowledge exchange. With most information and media increasingly traveling a single network – the Internet – an unprecedented potential is building for centralized control over what the public sees and hears. The effects of media and information policy are felt by everyone, whether through television, radio, telephone, the Internet, or the print media. FCC rulemaking and other state and local media policies impact free speech and public debate; access to information; economic and educational opportunity; and the right to meaningful participation in the political process.

The Media Democracy Fund is providing critically needed resources for grantmakers and advocates working to promote and protect the public interest. The Fund is a particularly effective vehicle to support organizations engaged in public education and organizing at the state and local level, where significant media and information policy decisions are made and where there are often varied and important opportunities for public input. These efforts help reinforce public interest media policy work at the federal level. Fund director Helen Brunner is well-known for her foresight and skill in identifying timely and strategic funding opportunities, particularly at the state and local level. She has devoted a great deal of time and energy to building strong working relationships among D.C. policy specialists and grassroots organizations across the country. She is trusted and respected by funders and grantee organizations.

The Fund's aggressive outreach and organizing in the philanthropic community has proven to be effective in raising the profile of these policy issues and is generating new, albeit modest, interest in the issue among funders from different sectors. Although the issues inherent to media and information policy often intersect with other program areas, such as civic participation, the environment, global trade, racial justice, civil liberties and international human rights, the field is technically complicated. Beyond Ford and OSF, there are few program officers with expertise in this area. The Fund provides an important service for those foundations that recognize the importance of media and information policy but do not have the capacity to develop and administer a grantmaking program on their own. The Fund helps experienced funders and those new to the field to navigate a complex, fast-moving, and often highly technical policy landscape.

OSF's continued participation in the Fund would provide us with both a forum for agenda-setting with media and information policy funding partners and a mechanism for supporting media and information policy reform efforts at the state and local level. The Media and Democracy Fund is an important partner as OSF continues its support for civil society organizations working to improve the digital communications environment in which public debate over open society issues takes place and to defend a free and open media system as a bedrock element of an open society.



**Grant ID:** 20035360

**Name of Organization:** American Bar Association Fund for Justice and Education

**Tax Status:** 501(c)(3) public charity

**Purpose of Grant:** To renew project support for the work of the Standing Committee on Judicial Independence

**Grant Description:** The American Bar Association is the world's largest voluntary professional organization, representing the American legal profession. The ABA requests renewed support for its Standing Committee on Judicial Independence to continue its current public education and policy development activities in coordination with members of the Justice at Stake coalition. The Committee will focus on three projects: judicial disqualification, judicial diversity, and public education about the role of the courts in a democracy. This grant would support the Transparency Fund's goal of supporting core judicial independence organizations working to ensure courts at the state and federal levels remain fair and impartial.

**Previous OSF Support:** \$7,310,224

- \$400,000 from Transparency Fund (2008-2010)
- \$175,000 from Progressive Infrastructure (2007)
- \$2,218,536 from USJF (1998, 2000-2007)
- \$90,000 from Chairman's Fund (2007)
- \$15,000 from CEP (2005)
- \$21,000 from Legal Inst. Justice (2005)
- \$3,240,000 from L&S (1997-2004)
- \$75,000 from U.S. Programs General (2002)
- \$850,000 from ELF (1997-1999)
- \$25,688 from President's Fund (1996, 1997, 1999)

**Organization Budget:** \$199,512,814

**Project Budget:** \$982,234

**Major Sources of Support:** ABA General Funds \$568,954

**Amount Requested:** \$400,000 over two years

**Is this a contingent grant?:** Yes

**Amount Recommended:** \$325,000 from the Transparency Fund (Foster an Independent and Diverse Judiciary T1: 21110; \$175,000 in year one; \$150,000 in year two)

**Term:** Two years, beginning April 1, 2012

**Description of Organization**

The American Bar Association (ABA) is the world's largest voluntary professional organization, representing the American legal profession. Among its missions, the ABA is strongly committed to promoting judicial independence and reform of the judicial selection process. Based in Chicago, Illinois, the ABA Fund for Justice and Education is a 501(c)(3) charitable fund that supports the public service and educational programs of the ABA, pursuing more than 200 public service and educational programs each year. The ABA Standing Committee on Judicial Independence promotes public awareness of the role of an independent judiciary in protecting individual rights and the rule of law; mobilizes members of the bar and the judiciary to respond to inappropriate and misleading criticism of judges and our system of justice; and promotes improvements in the way state court judges are selected.

**Description of Program for Which Funding Is Sought**

The ABA requests renewed support for its Standing Committee on Judicial Independence (the Committee) to pursue its public education and policy development activities. The grant would support the Committee initiatives (outlined below) in conjunction with members of the Justice at Stake coalition. The recommended renewal grant would support two full-time program staff (a program manager and a judicial independence initiatives coordinator), who develop programming for the Committee, coordinate its various programs and participate in the Justice at Stake campaign's planning and strategy meetings. The Committee will focus its activities on three initiatives:

**Judicial Disqualification Project:** After five years of research, organizing, and alliance-building, this past August the ABA House of Delegates passed a resolution calling on states to create clear disqualification (recusal) procedures, including judicial review of refusals to recuse. The Committee is now working with Justice at Stake partners and the Conference of Chief Justices to push for adoption of reformed procedures in three states (currently being identified), with a broader campaign to be developed based on lessons learned in these pilot states.

**Judicial Diversity Project:** The Committee will continue to collect, manage, and disseminate information on the diversity of the judiciary at both state and federal levels. As Justice at Stake partners have spearheaded diversity campaigns in Washington, Kansas, and South Carolina, and as partner organizations pursue new projects in North Carolina and Maryland, the Committee database is providing valuable information for research and advocacy on the current status of judicial diversity in the U.S. and serves as a tool for identifying and supporting qualified candidates for elevation to higher courts.

**Least Understood Branch Project:** The Committee developed this project to provide teaching and public education materials on the proper role and purpose of the judiciary in a democratic system. As attacks on the courts have increased and judicial elections have undermined judicial independence, these materials play an important role in inoculating the public against these misrepresentations of the judicial role. Consistent with the Justice

at Stake strategic plan, the ABA will become more focused in its mobilization of Least Understood Branch public education campaigns, identifying states (such as Tennessee, which is likely to have a merit selection amendment on the ballot in November) where focused effort is most needed and will have the greatest impact.

The Committee will also continue to work – in a far more limited way – on a few other projects, including: mobilizing ABA leaders and members to speak out in favor of increased funding for state courts; joining Justice at Stake efforts to denounce the growing partisanship in the federal judicial nominations process; and, providing rapid response training and capacity in reaction to attacks on the judicial system. Finally, the Committee will initiate research on the growing problem of judicial re-districting – how legislatures are drawing lines to determine judicial districts in states.

### **Rationale for Recommendation**

The Transparency Fund recommends a contingent renewal grant of \$325,000 over two years (\$175,000 in year one; \$150,000 in year two). This recommended grant would advance the Fund’s goal of supporting core judicial independence organizations working to ensure courts remain fair and impartial.

Since OSF began making grants to support judicial independence, the ABA – and specifically its Standing Committee on Judicial Independence – has been central to the national public education and organizing efforts of the Justice at Stake Campaign. Judicial independence has long been a fundamental part of the ABA’s mission and resonates across its constituencies. That commitment has only grown deeper in the past few years, with successive ABA presidents putting this issue at the top of the organization’s agenda (an unprecedented phenomenon). We are particularly excited about the potential of the judicial disqualification project. Since the Supreme Court’s decision in *Caperton v. Massey*,<sup>2</sup> judicial recusal reforms have received more attention but little action. With the ABA committing resources and mobilizing influential attorneys in a targeted manner, we are optimistic that states will begin to adopt much needed reforms.

The Committee is newly led by Peter Bennett, a lawyer deeply committed not simply to this issue, but to seeing that the ABA’s contribution is more than just rhetorical. He and the ABA staff are coordinating with Justice at Stake and other partners to an extent that reveals that they have heard OSF’s refrain on the need to build a coordinated, strategic judicial independence movement. The ABA is the most established professional legal institution in the country and has used its stature to bring other voices into discussions of judicial independence. With new leadership and greater strategic focus, we believe that the organization’s impact will more closely align with its stature.

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<sup>2</sup> In *Caperton* the Supreme Court held that a due process issue can arise when a judge fails to recuse him or herself from a case involving a major supporter of that judge’s election.

**Grant ID:** 20035362

**Name of Organization:** National Council of Jewish Women

**Tax Status:** 501(c)(3) public charity

**Name of Fiscal Sponsor:** n/a

**Purpose of Grant:** To expand its grassroots organizing and action relating to federal judicial nominations

**Grant Description:** The National Council of Jewish Women (NCJW) is the oldest Jewish women’s volunteer organization in the United States, with more than 90,000 members organized in a network of approximately 100 local affiliates. NCJW seeks renewal support to sustain and expand its grassroots organizing work on federal judicial nominations. Building on education and organizing it has facilitated in three cities over two years – Omaha, Cleveland, and Pittsburgh – the project’s goal is to engage a diverse range of communities and organizations in building sustainable vehicles for action and advocacy relating to the future of the federal judiciary. In addition, the organization will hold events and provide training in up to six states (Florida, Illinois, Indiana, Louisiana, Michigan, and Washington), providing ongoing support to those NCJW leaders with the best plans for building broad-based coalitions on the model of those formed since 2009. This grant would advance the Fund’s goals of supporting efforts to educate and engage citizens around the need for a fair and independent federal judiciary. Specifically, this grant would advance the portfolio’s goal of building viable models for grassroots engagement on the issue of federal judicial nominations.

**Previous OSI Support:** \$340,000  
\$340,000 from Transparency Fund (2009-2010)

**Organization Budget:** \$4,562,033

**Project Budget:** \$480,000

**Major Sources of Support:** Individual donations \$30,000

**Amount Requested:** \$400,000

**Is this a contingent grant?** Yes

**Amount Recommended:** \$400,000 from the Transparency Fund (Foster an Independent and Diverse Judiciary T1: 21110)

**Term:** Two years, beginning April 1, 2012

**Matching Requirements:** None

**Description of Organization:**

The National Council of Jewish Women (NCJW) is the oldest Jewish women’s volunteer organization in the United States. Founded in 1893, NCJW works to unite people of diverse backgrounds determined to improve their communities and country regardless of faith, ethnicity, race, or gender. NCJW boasts more than 90,000 members organized in a network of approximately 100 sections (local affiliates). NCJW’s State Public Affairs Network trains volunteer advocates in 18 states for work at the state and local level. Based in New York City with a legislative office in Washington, DC, NCJW is an active participant in the Leadership Conference on Civil Rights, the Religious Coalition for Reproductive Choices, the Coalition Against Religious Discrimination, and the Coalition for Constitutional Values.

**Description of Program for Which Funding Is Sought:**

NCJW seeks renewal support to sustain and expand its grassroots organizing work on federal judicial nominations. Building on the judicial nominations education and organizing it has facilitated in three cities over two years – Omaha, Nebraska; Cleveland, Ohio, and; Pittsburgh, Pennsylvania – the project’s goal is to engage a diverse range of communities and organizations in building active and sustainable vehicles for action and advocacy relating to the future of the federal court in up to six more states.

In 2009, with OSF support, NCJW revived coalitions it had built during the Roberts and Alito nominations in 2005, seeing a need for local infrastructure that remains consistently engaged on federal nominations issues – not simply during high profile Supreme Court fights. Local volunteers reached out to a diverse group of allies in putting together coalitions to educate the public and speak out on the importance of a federal judiciary in defending core constitutional values. The resulting coalitions involve an impressive array of organizations. The Cleveland coalition includes the NAACP, Ohioans to Stop Executions, local synagogues, the League of Women Voters, and the Hispanic Roundtable. The Pittsburgh coalition includes the local National Organization of Women chapter, the Union of Reform Judaism, and local labor leaders. The Lincoln, Nebraska chapter includes the Nebraska Civil Liberties Union, Nebraska Appleseed, American Association of University Women, B’nai B’rith, Planned Parenthood, and leaders from the Latino community. NCJW’s D.C. office provides technical assistance and capacity-building support, including media training tailored to judicial nominations efforts.

With renewal support, NCJW will be able to provide existing coalitions with research, communications, and technical assistance necessary to further strengthen and activate local residents around federal district court and appellate court nominations (as well as any Supreme Court nomination in 2012 or 2013). Local coalitions will hold monthly meetings to update members on vacancies and pending nominees in their circuit and others. Coalitions will develop action plans to engage the public on particular nominees, crafting unified messages and launching coalition-wide efforts. NCJW's Washington office will also create materials to assist activists in other states and localities in launching similar nominations coalitions. In this work, NCJW will coordinate with the grassroots committee of the Coalition for Constitutional Values (which it co-chairs). NCJW will also seed coalitions in three new locations. The organization will hold events and provide trainings in up to six states (Florida, Illinois, Indiana, Louisiana, Michigan, and Washington), providing ongoing support to those NCJW leaders in the states with the best plans for building broad-based coalitions on the model of those formed since 2009.

### **Rationale for Recommendation:**

The Transparency Fund recommends a contingent renewal grant of \$400,000 over two years. This grant would advance the Fund's goals of supporting efforts to educate and engage citizens on the need for a fair and independent federal judiciary. Specifically, this grant would advance the portfolio's goal of building viable models for grassroots engagement on the issue of federal judicial nominations.

The last three years have demonstrated clearly that a lack of progressive grassroots concern and engagement in debates about the direction of the federal courts and judicial nominations lies at the heart of conservative dominance in debates over the federal courts and the Constitution. While evangelical and pro-business conservatives have made courts a "top five" issue, progressives – particularly at the grassroots – have largely ignored the courts. Over the past two years, in conversations with board members, advocates, academics, and other funders, we have come to the conclusion that OSF's work in this area must be targeted at a longer-term organizing effort that educates important constituencies about why courts matter on a range of issues, then engages members of those communities in efforts to move the federal courts back towards ideological balance. Our grant to NCJW has been a valuable test of that strategy.

NCJW has been involved in grassroots organizing on judicial nominations for close to a decade, including two years with OSF support. Engaging its city and state-based chapters, the group first mobilized its members to speak out during Supreme Court nominations battles – focusing on reproductive rights issues. While valuable, NCJW's leadership realized that such episodic and narrow advocacy was insufficient. Each Supreme Court vacancy required rebuilding dormant coalitions that were not engaged on vital circuit court and district court nominations. They realized that significant impact would only come through involving a broader set of communities on a wider range of issues on *all* federal court nominations. With OSF funding in 2009, NCJW sought to try this new model.

The new model – coalitions organized and supported by local NCJW chapters but including (and at times led by) members of a diverse array of communities – has proven a successful experiment. Coalitions in Nebraska, Ohio, and Pittsburgh have brought new attention to federal nominations through events, letter to the editor campaigns, op-eds, and meetings with elected officials. Groups in Washington, D.C. praise NCJW’s approach because they see building grassroots engagement on this issue as an essential step in changing the federal courts to reflect progressive values. It is for this reason that we are not only recommending renewal support to NCJW, but increased funds so that the organization can take its model to new states.

Combined with another grassroots effort OSF is already funding – the Infinity Project in the states of the 8<sup>th</sup> Circuit – we are beginning to see the emergence of a number of promising models for new advocacy on judicial nominations. Together with the HJW Foundation, we are currently developing a slate of grants for later in the year to support complementary efforts by other organizations in other states.

**Grant ID:** 20035361

**Name of Organization:** Constitutional Accountability Center

**Tax Status:** 501(c)(3) public charity

**Purpose of Grant:** To provide general support

**Grant Description:** The Constitutional Accountability Center is a think tank, law firm, and action center dedicated to fulfilling the promise of the Constitution, using the document’s text and history to advance civil rights and equality, protect the balance between state and federal governments, appropriately limit the role of corporations in the democratic process, and guarantee access to justice for all. The Center accomplishes these goals through research, public education, communications, litigation, and collaboration to shape the law in the courts and public discourse. The Center now plans to deepen its capacity and increase its influence. Central to this plan is the merger of the Federal Rights Project with the Center. Funded by OSF since 2000, the Project’s mission is to oppose litigation and court decisions that restrict enforcement of federal civil rights and public benefit laws under the guise of “federalism,” “pre-emption,” “standing,” and “state sovereign immunity.” The merger will allow for deeper collaboration and a more tightly focused strategy to challenge conservative jurisprudence and the direction of the courts. This grant would advance the Transparency Fund’s goals of supporting the most innovative and effective efforts to reframe debates concerning the future of the Constitution and the courts.

**Previous OSF Support:** \$4,823,200

*Constitutional Accountability Center*

\$2,550,000

\$850,000 from Transparency Fund (2011)

\$1,800,000 from Progressive Infrastructure (2007-2011)

\$500,000 from Justice Fund (2005)

\$150,000 from Strategic Opportunities Fund (2003-2004)

\$100,000 from Law and Society (2000-2001)

*Federal Rights Project*



\$2,273,200  
\$750,000 from Transparency Fund (2009-2011)  
\$170,000 from Democracy and Power Fund (2008)  
\$500,000 from Progressive Legal (2007)  
\$600,000 from Judicial Nominations (2003-2005)  
\$203,200 from Law & Society (2000-2003)  
\$50,000 from Emma Lazarus (1997)

**Organization Budget:** \$1,600,000 in 2012; \$1,900,000 in 2013

**Major Sources of Support:** Deer Creek Foundation \$ 75,000  
Wallace Global Fund \$ 50,000  
HJW Foundations \$485,000

**Amount Requested:** \$1,900,000 over three years

**Amount Recommended:** \$1,100,000 from the Transparency Fund (Foster an Independent and Diverse Judiciary T1: 21110)  
\$300,000 in year one; \$800,000 in year two

**Contingent Grant:** Yes

**Term:** Two years, beginning April 1, 2012

### **Description of Organization**

The Constitutional Accountability Center (the Center) is a think tank, law firm, and action center dedicated to fulfilling the promise of the Constitution, using the document's text and history to advance civil rights and equality, protect the delicate balance between state and federal governments, limit the role of corporations in the democratic process, and guarantee access to justice for all. Founded in 2008 as the successor organization to Community Rights Counsel,<sup>3</sup> the Center accomplishes these goals through research, public education, communications, litigation, and collaboration to shape the law in the courts and public discourse. In the last year, the Center developed a three year expansion plan to deepen its capacity in all areas of its work and increase its influence in debates over the Constitution and the federal courts.

Central to this expansion is the merger of the Federal Rights Project (the Project) with the Center this year. Housed since its founding in 2000 at the National Senior Citizens Law Center, the Project's mission is to oppose litigation and court decisions that restrict enforcement of federal civil rights and public benefit laws under the guise of "federalism," "pre-emption," "standing," and "state sovereign immunity." The Project uses a combination of litigation, public education, and strategic communications to make

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<sup>3</sup> Community Rights Counsel's work focused on environmental law (particularly takings clause cases) and reform of federal court ethics policy and practice.

policy makers and impacted communities aware of the threats that conservative efforts pose to civil rights, the social safety net, environmental regulation, and other important federal laws, powers, and programs. The Project has used the media and Senate hearings to re-frame popular and elite understanding of the federal courts and of the increasing activism of the Roberts Court and the federal courts more broadly.

The Project and its staff – led by attorney Simon Lazarus – have enjoyed a long and productive collaboration with the Constitutional Accountability Center. From development of strategy on federal judicial nominations battles to public education on the impact of Supreme Court jurisprudence and litigation on important legal and Constitutional rights, the two groups have helped bolster and strengthen each other’s work. The merger will allow for deepened collaboration and a more tightly focused strategy to challenge conservative jurisprudence and the current direction of the courts. Specifically, the Center’s expansion plan envisions:

*Significantly increasing the Center’s litigation program to focus on shaping the docket of cases heard by the Supreme Court and the lower federal courts.* In order to move constitutional jurisprudence in a more progressive direction, the Center plans to deepen its litigation work to include more amicus brief writing in the Supreme Court and circuit courts as well as direct representation at the trial level. The Center will review every petition for Supreme Court review and file amicus briefs at the certiorari stage in hopes of bringing to the docket cases with the potential for victory and broad impact across a number of issues. This broad view of litigation has been the principal strength of the Federal Rights Project, and its experienced lawyers will instantly increase the Center’s capacity to realize this goal. The Federal Rights Project will also bring to the Center its trusted relationships with hundreds of federal court litigators who can be enlisted to test and/or implement new legal theories in the lower courts.

*Building out the Center’s think tank operation to promote “new textualism” – the idea that the use of text and history in Constitutional decision making lead to progressive results.* The Center will increase its efforts to produce accessible scholarship and reports on progressive constitutionalism and integrate its ideas into public discussion and debate. It will continue publishing new “text and history narratives” – a series that has synthesized groundbreaking scholarship to challenge conservative interpretations of the 14<sup>th</sup> Amendment, Congressional power, and corporate personhood doctrine. It also plans the publication of two book-length studies: 1) *The Constitution at a Crossroads* – a roadmap for transforming federal law and jurisprudence akin to the Reagan administration’s *The Constitution in the Year 2000* report, and; 2) *Our Progressive Constitution: How the Reconstruction Amendments Remade America’s Constitution*. Merging with the Federal Rights Project will bring the scholarly efforts of Simon Lazarus to the Center. In the past year alone, Lazarus published articles on constitutional interpretation in two top law journals.

*Bolstering the Center’s advocacy in Washington legal and policy debates.* Over a four year period, the Center has not only established a strong presence in debates over the meaning of the Constitution, but has begun to set the agenda in those debates. For

instance, last fall the Center's call for politicians and the public to pledge to support "The Whole Constitution" (rather than selected parts) generated media discussion about the contested meaning of the Constitution. In a similar vein, the Federal Rights Project has been challenging claims of libertarian law professors, Tea Party activists, and members of Congress that the Affordable Care Act (and particularly the individual mandate) is an unconstitutional over-extension of Congressional power. Lazarus has researched and written issue briefs on the constitutional and historical support for the mandate, briefed the press on constitutional issues before and after federal court hearings and decisions on the health care law, and, in less public settings, gone from Capitol Hill to advocacy groups (such as the AARP and the National Women's Law Center) to help allies and potential allies understand that the goal behind challenges to the Affordable Care Act is not simply to stop "Obamacare" but, ultimately, to minimize the federal government's powers and turn back the constitutional clock to the pre-New Deal era. Lazarus' decades of experience and connections – demonstrated in these recent efforts – will provide valuable increased capacity as the Center continues to increase its growing presence as a voice in debates about federal judicial nominations and the direction of the courts.

### **Description of Program for Which Funding Is Sought**

This recommendation is for general support.

### **Rationale for Recommendation**

The Transparency Fund recommends a contingent general support grant of \$1,100,000 over two years. This grant would advance the Fund's goal of supporting the most innovative and effective efforts to shape discussions concerning the future of the Constitution and the courts.

Since its founding in 2008, the Constitutional Accountability Center has had an outsized impact on national legal and political debates over federal law and the Constitution. The Center's President, Doug Kendall, and his staff have proven to be a first-rate litigation firm, filing briefs on behalf of a wide array of clients (e.g., the League of Women Voters, the National League of Cities, Justice at Stake, state legislators, and law professors) in a wide range of cases. Their work is gaining notice: one of the Center's briefs was cited twice in a Supreme Court majority opinion, and another was selected for inclusion in a book of exemplary legal writing in 2009 (one of two briefs to be so honored). Kendall has established a stellar reputation as a lawyer, researcher, and commentator on federal Constitutional issues. Journalist and Supreme Court expert Dahlia Lithwick called him "the smartest lawyer in Washington." Looking to increase the Center's impact, Kendall has now developed an ambitious growth plan for the Center that would strengthen its capacity in all areas of the Center's work: litigation, idea generation, and policy advocacy. It is in support of that plan – including the Center's merger with the Federal Rights Project – that we are recommending a new grant to supplement and extend the current grant.

The merger with the Federal Rights Project makes a great deal of sense for many reasons. OSF has enthusiastically supported the Project for over a decade. More than any other organization working in this field, the Project has looked across issue silos to understand the broad impact of federal court decisions limiting access to the courts, reinterpreting federalism, and challenging Congressional power. In public statements concerning the decisions, the Project emphasizes the ways in which these decisions threaten the economic health of average working Americans (a particularly resonant message during a recession). When combined with the Center's turn-the-tables response to conservative "originalist" jurisprudence, the merged organizations will be able to deliver a one-two punch to be reckoned with. By sharing staff and communications, they will substantially enhance their reach.

The Center will benefit immensely by taking on the Project's current staff, and its expansion plans will advance immediately. The Project is led by Simon Lazarus, one of the leading thinkers and strategists on judicial issues in Washington. Lazarus has a keen understanding of the Court, technical aspects of civil procedure and other areas of law, and the importance of framing debates over law in clear terms for the media, advocates, and the public. His colleague Rochelle Bobroff is a nationally recognized litigator in the federal rights and public benefits communities. The Center's extremely talented (but still young) staff will gain much from working with such experienced lawyers.

The Project will benefit by relocating to a more appropriate institution. Its current home at the National Senior Citizens Law Center has been a poor fit for a number of years as its mission only partially overlapped with the Project's core goals. This ill fit was particularly evident in the Project's difficulty finding funding. Funders who support the elder population have not been interested in supporting a project that looks beyond the interests of one specific interest group. At the same time, funders interested in federal courts that work more broadly have hesitated to support a project housed in an interest group-focused organization. We have already heard from the HJW Foundation that it is prepared to commence funding the Project once it moves to its new home at the Center, thus establishing a more solid and diverse funding base.

The Center's growth plan is ambitious and will entail securing significant resources from new and existing donors between now and 2015. But, given its track record as an organization – and the strong reputations and abilities of Kendall and Lazarus – this is an organization where increasing our support makes sense. The Center is arguably the most impressive organization working on federal courts issues today. Providing stable support during its expansion will serve to advance its growth and impact for years to come.

**Grant ID:** 20035365

**Name of Organization:** National Constitution Center

**Tax Status:** 501(c)(3) public charity

**Name of Fiscal Sponsor:** n/a

**Purpose of Grant:** to support the efforts of the Peter Jennings Project to inform journalists (and the general public) about the Constitutional issues in the Supreme Court’s forthcoming ruling on the Patient Protection and Affordable Care Act

**Grant Description:** The National Constitution Center is a nonpartisan, nonprofit museum and education center dedicated to increasing public understanding of the U.S. Constitution, its history, and contemporary relevance. The National Constitution Center seeks support for the Peter Jennings Project for Journalists and the Constitution, an educational program aimed at helping journalists understand Constitutional debates across a wide range of issues and beats. In 2012, the Jennings Project will conduct a series of events and produce a variety of educational materials that will better inform journalists (and the general public) about the Constitutional issues in the Supreme Court’s forthcoming ruling on the Patient Protection and Affordable Care Act. This grant would advance the Transparency Fund’s goal of supporting the most innovative and effective efforts to shape discussions concerning the future of the Constitution and the courts.

**Previous OSI Support:** n/a

**Organization Budget:** \$14,885,648

**Project Budget:** \$146,010

**Major Sources of Support:** General Funds \$33,770

**Amount Requested:** \$112,240

**Is this a contingent grant?** No

**Amount Recommended:** \$90,000 from the Transparency Fund (Foster an Independent and Diverse Judiciary T1: 21110)

**Term:** One year, beginning March 1, 2012

**Matching Requirements:** \$22,240 from one or more new donors to the Project

**Description of Organization:**

The National Constitution Center is an independent, nonpartisan, nonprofit museum and education center dedicated to increasing public understanding of the U.S. Constitution, its history, and contemporary relevance. Chartered by Congress in 1988 and opened in 2003, the center pursues its mission through permanent exhibits, public events, and outreach programs. Located in Philadelphia, the Center receives an average of 800,000 visitors annually.

**Description of Program for Which Funding Is Sought:**

The National Constitution Center seeks support for the Peter Jennings Project for Journalists and the Constitution (the Jennings Project), an educational program aimed at helping journalists understand Constitutional debates across a wide range of issues and beats. Now in its fifth year, the Jennings Project has brought over 300 journalism fellows to Philadelphia for intensive discussion and education with lawyers, professors, politicians, and judges about the interpretation and application of the Constitution in different areas of American life.

In 2012, the Jennings Project will focus on debates about the Constitutionality of the Patient Protection and Affordable Care Act. In June, the Supreme Court is expected to rule on the constitutionality of the Act. Coming in a Presidential election year and a matter of high public interest, this ruling will garner especially significant attention and be the focus of vociferous legal and political debates in the media, on the campaign trail, and across a broad swath of the public. In anticipation of this ruling, the Jennings Project will host a series of events and produce a variety of educational materials that will better inform journalists (and the general public) about the Constitutional issues in the case. The goal is to help journalists comprehend the nuances and specific legal matters at the heart of this complicated debate so that those journalists are better prepared to explain the issue to the public.

To achieve this goal, the Jennings Project is preparing two major events that will explore the case. First, the Jennings Project will hold a moot court on the Affordable Care Act that will serve as a prelude to the Supreme Court's own hearing of oral arguments on the law later that month. Participating in the moot court will be present and former federal judges, distinguished law professors, and other legal thinkers. Second, in early June (prior to the expected ruling in the case), the Jennings Project will host a panel debate on the history, meaning, and use of the Commerce Clause – the provision at the heart of the debates over the Affordable Care Act's constitutionality. Both events, to be held at the National Constitution Center, will be open to the public and videotaped for broadcast and webcast. The Jennings Project will conduct targeted outreach to journalists around the country to encourage them to view the events.

These onsite programs will be prefaced and succeeded by additional virtual programs and resources hosted on the Jennings Project website, including an online primer on the arguments, expert bloggers on the impacts of various directions the Supreme Court may go with its decision, and live chats with legal experts.

**Rationale for Recommendation:**

The Transparency Fund recommends a grant of \$90,000 over one year to support the Peter Jennings Project at the National Constitution Center. This grant would advance the Fund's goal of supporting the most innovative and effective efforts to shape discussions concerning the future of the Constitution and the courts.

The debate over the Affordable Care Act has been one of the most intense struggles over the meaning of the Constitution in memory. The question as to whether or not the law – and in particular the “individual mandate” that taxes people who refuse to obtain health insurance – exceeds the power of Congress under the Commerce Clause has been debated everywhere from courthouses to the halls of law schools to Tea Party rallies. As Transparency Fund grantee the Federal Rights Project (also in this docket) has realized through its work on this issue, there is a great deal of misinformation and misunderstanding about the history and meaning of the Commerce Clause, particularly among journalists. The Jennings Project promises to provide a much needed antidote to this problem.

Over the first five years of hosting similar events, the Jennings Project has developed a good reputation for working with journalists to help them better understand the complexities of Constitutional issues. The Project recruits top-notch lawyers, judges, politicians, and academics to participate in their events (U.S. Programs Board Chair Sherrilyn Ifill is on the Jennings Project's board). Past fellows are very enthusiastic about the education they receive.

This is the first time the Transparency Fund is recommending support for the Jennings Project. It represents a possible new direction for funding going forward: support for efforts, in an accessible format, to expose both targeted and broad audiences to a wide range of perspectives on law and the Constitution (rather than grants to support the generation and dissemination of progressive legal ideas that have been neglected in public debates). We will closely monitor this Project to see if it can have the impact and reach required to merit further support going forward.