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**OPEN SOCIETY  
U.S. PROGRAMS BOARD  
MEETING**

New York, New York  
February 11-12, 2016



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**U.S. Programs Advisory Board Meeting**  
**New York, NY**  
**February 11-12, 2016**

**THURSDAY, FEBRUARY 11**

- 9:00 - 9:15 a.m.      **Welcome and Approval of Minutes**  
*Geoff Canada, Board Chair*
- 9:15 - 9:45 a.m.      **Director's Update**  
*Ken Zimmerman*
- 9:45 - 11:15 a.m.    **Race, Place and Opportunity: Discussion with Raj Chetty, Professor of Economics at Stanford University**  
*Introduction: Eric Halperin*  
*Presentation: Raj Chetty*  
*Discussants: Rob Johnson (INET), Sherrilyn Ifill (NAACP LDF)(by video)*

As we develop our approaches to addressing economic inequality, we retain a special focus on understanding and addressing the structural challenges that African-Americans and other minorities face. To help deepen our focus on how to promote economic opportunity in deeply poor and racially segregated communities, we are asking Professor Raj Chetty, a recipient of a MacArthur "Genius" Fellowship and the John Bates Clark medal, to discuss his current research and its implications for policy and program work. In his widely acclaimed research, Professor Chetty notes disturbing consequences associated with the ongoing levels of economic and racial segregation and how the current ladders of opportunity are proving feeble to change economic mobility for minority communities in the United States. With the help of responses by INET's Rob Johnson and Sherrilyn Ifill, our discussion is intended to inform how we might respond to these challenges and will inform our future economic advancement strategy.

- 11:15 - 11:30 a.m.    **Break**
- 11:30 - 12:15 p.m.    **Child Care Sectoral Strategy**  
*Introduction: Eric Halperin, Deepak Bhargava*  
*Presenters: Peter Colavito, Service Employees International Union; Netsy Firestein*

In November 2015, as a result of an inquiry we conducted in response to the board's discussion at last February's meeting, we began a new exploration and effort to advance reform of childcare policy with a focus on the childcare workforce. This

session serves as an update of our initial foray into this important issue. As an example of a sectoral approach that combines our interest in economic advancement with our commitment to minority communities, we are beginning by supporting state and local undertakings to expand access to affordable and high-quality childcare and to put childcare issues at the forefront of the national conversation and lay the groundwork for a significant overhaul of federal child care policy. Netsy Firestein, a long-established and respected leader in the field of childcare policy, who has been retained by us as a consultant, and Peter Colavito, director of Government Relations for SEIU, will join us for this discussion. It will help illustrate the conditions and context that has created this opportunity, and the potential barriers to reform.

12:15 - 1:15 p.m.      **Lunch on the “2016 Effect” and Current Political Moment**  
*Guest: Dr. Robert Jones, CEO of Public Religion and Research Institute*

While U.S. Presidential campaigns are always important and can dominate political and policy conversations, there is an outstanding question of whether there is something different and deeply concerning about this one as it affects and relates to open society in the United States. In 2006 at USP’s 10th anniversary, George Soros wrote that “America was an essentially open society [but] even open societies are open to improvement.” Does this campaign reflect trends, ideas, and policy prescriptions that suggest the premise in George’s statement is open to question?

Using the term “2016 effect” as shorthand for the dynamics of this campaign and not limited to a particular candidacy, we will engage this question. There are some who assert that this campaign represents a qualitative shift in the nature of political dialogue, hidden and dominant role of private money and campaign structure, and erosion of acceptable policy and political positions. At the same time, there are others who, while lamenting aspects of the campaign, note that it represents deep-rooted and legitimate anger among the public at the failure of government and civil institutions, and further is part of long-term American political populist streak that is not fundamentally different than what has occurred in the past. Because this issue is of concern not only to OSF’s US programs but throughout the globe, we will be joined by several OSF’s Regional Directors from other continents who will offer a brief global perspective on the campaign. Dr. Robert Jones from PPRI will offer short background remarks at the outset.

1:15 - 1:30 p.m.      Break

1:30 - 3:00 p.m.

**[Portfolio Review] Money in Politics**

*Presenter: Sarah Knight, Program Officer*

*Moderator: Laleh Ispahani*

*Discussants: Steve Coll; Julie McCarthy, Director, OSF Fiscal Governance Program*

In this portfolio review, we will reflect on U.S. Programs' first two years of funding for its long-term concept to reform campaign finance jurisprudence. Using four principal strategies (idea development, litigation, communications and judicial nominations), the concept seeks to establish a new governing interpretation of the Constitution that allows for sensible regulation of money in politics and promotes a vibrant and inclusive democracy. The discussion will assess the concept's progress to date, the relative merits of investment in this concept versus providing funding for the traditional field, and the grantmaking lessons that can be gleaned from this effort to induce long-term legal change.

3:00 - 4:00 p.m.

**Building Powerful Organizations: USP's Anchor Portfolio**

*Introduction: Ken Zimmerman, Bill Vandenberg*

As we move into our strategic update to develop our plan for 2017-2020, we seek to engage the board in one of the several core elements of our work: our support for a limited number of large non-profits that are multi-issue, multi-tooled, and serve as key pillars in pushing for a more open society. As reflected in our past strategic plan, we believe a core roster of "powerful and effective" organizations is a key part of USP's strategy and intend to continue such an element in the upcoming plan. At the same time, we are prepared to shift our approach to focus further on what is needed to make such organizations "powerful and effective," redefine the desired relationship between our grant making and their work, and evaluate the appropriate percentage of our budget allocated to such organizations. This session is intended to enable the board to provide thoughts about this approach to inform our work in developing this approach in the coming months.

4:00 - 4:15 p.m.

Break

4:15 - 4:45 p.m.

**Update: Puerto Rico Debt Crisis**

*Introduction: Alex Soros*

*Updates: Andrea Batista Schlesinger; Chris Canavan, SFM*

At our October meeting, the board agreed with George Soros that we should engage in the unfolding debt crisis to pursue an outcome that was beneficial to Puerto Rico and its residents. With Chris Canavan, Director of Global Policy for Soros Fund

Management, we will update the board on recent developments and our strategy related to bankruptcy protection, the composition of a financial control board, a counter-narrative of the stakes of not intervening in the crisis, and to plan for the long-term economic growth of the island.

4:45 - 5:30 p.m.      **Executive Session, Including Presentation by Gail Scovell, Counsel**

BOARD DINNER (optional) at Chris Stone's home: 7:30 cocktails. 8pm dinner.

## FRIDAY, FEBRUARY 12

9:00 - 10:30 a.m.      **Why Vote? What Motivates (or Inhibits) People from Political Participation and is there a Connection between Voting and Other Forms of Civic Engagement?**

*Introduction: Bill Vandenberg*

*Presenters: Dr. Sylvia Manzano, a Principal at Latino Decisions; Roger Vann, Executive Director, State Voices*

We know that voting is not the 'be all, end all' of civic life in the U.S. Nonetheless, to achieve the type of reforms and the needed reboot of our democracy that informs our Project 2020, we believe that growing political participation, especially among communities of color, is critical. Drawing on preliminary observations we've developed in three states we've chosen to delve into more deeply (Arizona, Georgia, and North Carolina), we intend in this session to explore more fully what does research, available data, and experience tell us about (1) what motivates or inhibits voter participation, especially within communities of color, (2) about the relationship between voting and the broader continuum of engagement in civic, community, and economic life? and (3) about the potential and challenges especially at the state level regarding efforts to reach, inform, and inspire those who are not active in voting or civic life. In addition to the presentation and subsequent discussion, we will also update the board on several additional planned investments and initial steps we are taking related to Project 2020.

10:30 - 11:00 a.m.      **Update: Police Reform**

*Lenny Noisette, Bryan Stevenson*

We will update the board on our three-pronged strategy to advance a new police reform initiative, including creating a new national intermediary organization to add expertise and capacity to local campaigns, engaging with police unions, and advancing a federal police reform agenda.

11:00 - 12:00 p.m.      **Look Back at the 2015 Opportunities Fund: Impact, Reflections, Next Steps**

*Introduction: Andrea Batista Schlesinger*

We will take a look back at the impact of the investments made through the 2015 Opportunities Fund and reflect on lessons learned going into 2016.

12:00 - 1:00 p.m.      **Lunch and Board-led Opportunities Fund Discussion**

*Moderator: Geoff Canada*

As is tradition at each meeting, the Board will share their views on pressing issues that may merit US Programs response. Staff will report on developments in the Opportunities Fund since the October Board Meeting.

1:00 - 1:30 p.m.      **Executive Session With and Without Director**

## MEETING OVERVIEW MEMO

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TO: USP Advisory Board  
FROM: Ken Zimmerman  
DATE: February 5, 2016

This is our first board meeting of 2016, a year that will offer the country a moment for reflection and decision-making about future direction, and U.S. Programs as well. As we remain deeply engaged in work on the issues central to the upcoming election—economic inequality, racial justice, immigration and xenophobia and bigotry, money in politics, among them—we are also required to produce our next four-year strategy driven by our analysis of how the context in which we work has changed thus requiring new and updated approaches. In this meeting, we will tackle both these external and internal challenges and opportunities. We will look at the elections through a discussion of voter engagement strategies, key to our Project 2020, and by talking about the “2016 Effect and Open Society.” We will look at the issue that is animating much of the Presidential race, economic inequality, by engaging Raj Chetty on his research that challenges conventional views of what is needed to break cycles in racially concentrated poor communities. This conversation will lay the groundwork for introduction of our evolving economic advancement strategy. And we will engage the board in discussions that will provide the backbone for future strategic planning, namely about how we invest and engage with anchor organizations and use to date of the Opportunities Fund.

### THURSDAY, FEBRUARY 11

#### **Director’s Update** (9:15 - 11:15 a.m.)

Please see the State of USP memo on page 19.

#### **Race, Place and Opportunity: USP’s Economic Advancement Strategy** (9:45 – 11:15 a.m.)

While we will deepen our economic advancement strategy in more detail later this year as part of our strategic refinement process, we have been working with a three part focus in our work:

Place: transform opportunity for people in deeply poor and highly segregated communities by promoting policies that increase services and infrastructure and challenge structures that limit their access to higher opportunity neighborhoods.

Sectors: strategically invest in improving wages and working conditions in select sectors in which disproportionate numbers of workers of color are employed, especially those sectors that are likely to grow or persist in the future and in which there are credible opportunities for gains.

The social safety net and regulation in the emerging economy: modernize our outdated labor regulations, expand and adapt the social safety net to fit the needs of the changing economy, and reclaim the government’s role in creating economic opportunity for low-income people.



In past board meetings, we've discussed our work under the third prong, which includes areas identified in the Future of Work inquiry, such as portable benefits and universal basic income, as well as labor regulation in the new tech enabled economy. In this meeting we wanted to focus on work related to the other two areas. Later in the board meeting you will hear about our new initiative, funded through the Opportunities Fund, to improve the wages, working conditions and opportunities available to child care workers as a means of improving the quality of care and education. This represents an investment in a sector where we believe there is potential to advance the interest of [workers of color](#), as well as an effort to expand a critical part of the safety net for low-income workers.

To explore the first prong focused on the intersection of where one lives and economic opportunity further, we have invited [Professor Raj Chetty](#), a recipient of a MacArthur "Genius" Fellowship and the John Bates Clark medal given by the American Economic Association to the best American economist under age 40, to address his research on how to improve economic opportunities for low-income children. [Rob Johnson](#) of the Institute for New Economic Thinking and [Sherrilyn Ifill](#) will join the conversation to discuss the implications for U.S. Programs' economic advancement strategy.

The conversation with Professor Chetty will focus on our premise that one needs to address deeply racialized segregation and concentration of poverty to advance economic opportunity for people of color. This has implications for general interventions in the economy, such as minimum wage increases, and suggests that efforts to promote advancement for residents of these communities require addressing structures that disadvantage residents based on the places where they live. While there are many potential policy consequences, they include expanding opportunities that allow families to move to higher opportunity communities and challenging policies that limit opportunities in existing low-income communities, such as transit and public investments.

USP has worked to combat residential segregation and housing discrimination over the past several years. As we move forward, we have expanded the scope of our work in this area beyond housing to ensuring that communities of color are not excluded from access to transit, investments in infrastructure, and that low-income communities benefit from publicly-financed economic development projects. For more information about this work, please reference the Updates by Strategic Goal section, [page 60](#), which summarizes the work of grantee the NAACP LDF, who recently [filed a complaint](#) with the U.S. Department of Transportation against the state of Maryland for discriminating against African-American communities by canceling Baltimore's Red Line light rail project.

Based on an analysis of more than five million families' tax filings over time, Professor Chetty's [Equality of Opportunity Project](#) provided new insights into the prospects for economic mobility for children raised in families in the bottom 20% of income. He found that where someone grows up

had a significant impact on their prospects for upward income mobility. Children of all ages, but especially those that move to higher opportunity communities before 13, experience a corresponding increase in lifetime earnings for each year of their childhood that they live in a higher opportunity community. A low-income child's prospects for upward income mobility also varied substantially within the U.S., both by region and by county. Most relevant to our work, the study concluded that metro areas with higher levels of race and economic segregation, as well as high levels of economic inequality, are correlated with lower levels of upward economic mobility.

The neighborhood where you grow up does not just impact income, but also whether or not a child, especially a boy, is in the labor market at all when they are an adult. Earlier this month, Chetty's team [released a new paper](#) that finds there is a significant lifetime gender gap in employment for low-income children that grow up in low opportunity communities. In particular, Chetty finds that adult employment rates for low-income boys that grow up in economic and racially segregated communities are significantly lower than girls who grew up in those same communities. In Washington, DC, for example, about 72 percent of girls born in the early 1980s to poor families were working at age 30. Among boys of similar backgrounds, just 56 percent were. But in a high opportunity county like Fairfax County, VA, the rates for low-income kids mirror the general population, with the traditional gender imbalance in favor of more men than women in the workforce.

Chetty's affirmation of the positive outcomes for children who move to higher opportunity communities has received a great deal of attention from the [press](#), the Obama Administration, [presidential candidates](#), and local policy makers. It also provides evidence in support of OSF's long-time commitment to eliminating structural barriers and discrimination that prevents low-income people of color from being able to choose where to live. However, the two studies also identified that there is a wide range of "high opportunity" communities, not just your archetypical wealthy suburb, that provide ladders for success for their low-income children. In the next phase of his research Chetty's team intends to develop a deeper understanding of how communities can be successful in creating an environment where low-income children can succeed.

For purposes of the board discussion, we look forward to an animated discussion with Professor Chetty that we expect will inform our strategy about how to take into account the race and place specific dynamics of economic advancement strategies.

### **Child Care Sectoral Strategy (11:30 – 12:15 p.m.)**

At our February 2015 board meeting in Puerto Rico, board members identified child care as an emerging policy and political issue with special resonance given its potential emergence as the next front in the economic inequality debate and the disproportionately minority workforce who would be affected by any shifts. Based on this request, we developed and received approval in November 2015 for a time-limited effort that would attempt to make a transformative shift in child care policy a campaign issue that could be implemented in 2017 and use the 2016 cycle to test approaches at the

state and local level. To resource this, we drew \$1 million from the 2015 Opportunities Fund and are combining it with complementary funds from our budget in 2016 and 2017.

Access to affordable and high quality childcare has long been [recognized](#) as an important contributor to children's future educational attainment and working parents' ability to gain traction in the labor market. But despite the dramatic inadequacy of the current patchwork of government programs, the expense of expanding federal subsidies and improving the wages and training opportunities for providers conspired to keep the issue off of the mainstream political agenda. Now though, the resonance of this issue is emerging rapidly, driven by factors including growing alarm about economic inequality, attention to the issue from the spotlight of the presidential campaign on both sides of the aisle, increased attention to the particular plight of working mothers, and the potential for the issue to engage a wide range of constituencies. [SEIU](#), [AFT](#), and other worker-focused organizations have joined the broad coalition fighting for expanded and improved childcare, and with their engagement has also come increasing focus on the [issue of childcare providers' wages and work conditions](#).

The divided fields of childcare, worker organizations, and labor have begun to coalesce to take action to advance childcare policy reform, but coordination among the key actors remains limited. In large part, this has occurred because policy advocates who have focused on increasing child care service access and quality have never engaged with child care worker advocates historically focused on wages and working conditions. One premise we are testing is whether a collaboration that encompasses both those focused on improved services (reflecting community, parent and policy expert interests) and those focused on worker needs can create a political and policy imperative that results in significant added resources. We believe that OSF can play a critical role in bringing the disparate parts of the field together to ensure childcare does not go the way of education reform in which the teacher and student interests were painted as in conflict with each other. OSF will not be undertaking a new area of work, but rather will play a catalytic but time-limited role, providing seed funding to take advantage of a moment, facilitating relationships, and attracting new funders.

For OSF, an investment in this work helps advance two components of our economic advancement thinking: first, it offers the opportunity to meaningfully improve the economic prospects of childcare providers, a sector in which women of color are disproportionately represented and in which wages are among the lowest in the nation. Second, it also allows us the opportunity to broaden the mandate for the role of the public sector in our tattered social safety net and labor market regulatory regime. The focus for our work in this area will be to help develop and mature a field caught unprepared for its big political moment, and so we are moving quickly to deploy our funds to the right mix of grassroots organizing, communications, research, and policy organizations to play a range of much-needed roles and capacities. We will help local campaigns find their footing and gain local policy wins through early investments in local organizing capacity as well as national strategy, technical assistance, and coordination to ensure the movement is winning and building momentum toward a federal solution. These campaigns are seeking dedicated revenue for significant

expansion of services and improved wages and work conditions for workers, with revenue mechanisms ranging from new library or school district levies to capturing state budget surpluses to local ballot initiatives authorizing new revenues. We will also help advocates for children, working families, and childcare providers coordinate across silos to coalesce around national policy proposals and, eventually, national campaign strategies.

We are working closely with experts whose thought partnership will be essential as we move quickly to seize this opportunity. [Netsy Firestein](#), a long-established and respected leader in the field of childcare policy, will be serving as a consultant providing strategic advice and guidance, and helping to bring together a broad and diverse group of organizations. Netsy will also coordinate outreach to other funders, which will be critical to the success and sustainability of the campaigns. We are heartened by funder interest in this issue, including from non-foundation sources such as the [Democracy Alliance's](#) Inclusive Economy Fund, which has agreed to provide \$900,000 to the campaign; [Peter Colavito](#), director of Government Relations for SEIU, has been a crucial partner, providing both resources to local campaigns as well as strategic guidance. Two influential scholars from the [INET](#) network, [James Heckman](#), whose research has focused on the role of early childhood education in equality of educational and income outcomes, and [Robert Dugger](#), who has focused on the business case for investments in early childhood development, will be contributing their expertise to the project. We will also lean on the extensive knowledge and experience of [Sarah Klaus](#), director of the Open Society Early Childhood Program, to understand lessons in childcare policy that can be learned from other nations, both the established social welfare states of western Europe and those with less robust systems.

This discussion is intended as an update to the board to allow it to become more familiar with the initiative and interrogate our approach and assumptions.

### **The “2016 Effect” and Open Society in the Current Political Moment (12:15 - 1:15 p.m.)**

All U.S. Presidential elections are consequential, and lead to suggestions that they reflect transformational trends in the American body politic. Sometimes this is true. Using the term “2016 effect” as shorthand for the dynamics of the campaign and not limited to any single candidacy, we intend in this discussion to examine the 2016 Presidential campaign thus far from an open society perspective. We will explore whether the type of populism, nature of discourse, and new influences that have given rise to the seemingly anarchic form of public engagement signal something profound that OSF should focus on learning more about and potentially challenging. As part of our expanded effort to integrate our work in USP with that elsewhere within OSF, we have invited OSF Regional Directors from other continents to share brief observations on how the 2016 effect is viewed from afar.

The unpredicted rise of some candidates for President of the United States has left many political experts and the leadership of both political parties astounded. Equally significant is how the rules of the political game are being rewritten: we see the influence of unprecedented amount of unregulated

funding, the diminishment of traditional media as a source of fact-checking and other constraints, and public tolerance for candidate statements and stances that historically have been beyond the pale. Based on conversations with a range of experts and observers, we offer several points to inform the board conversation.

First, there is widespread agreement that the extremism in this election is [tapping into the anger](#) of the white working class about the future of the country and their belief that the nation's growing diversity is responsible for its decline. As observers like [Ruy Teixeira](#), Senior Fellow at the Center for American Progress, and [Dr. Robert P. Jones](#), CEO of Public Religion Research Institute, note, there is a powerful trend line among less educated whites, and particularly white men, that reflect a belief that a job no longer enables one to provide for one's family, and that the demographic, religious, and cultural changes in the nation are responsible. While the sense of economic anxiety is widespread (75 percent of Americans believe that their children will have a lower standard of living than they do), [Celinda Lake](#), political strategist and President of Lake Research Partners, suggests a particularly unsettling degree of alienation among young, white, blue-collar men, including a propensity toward violence. Given that many observers believe that long-term trends for all Americans, and especially younger Americans, is toward more inclusive and tolerant attitudes, one of the many open and important questions concerns how American democracy will contend with this deeply alienated group of people.

A second observation concerns the role of government, highlighted by a striking belief that government has been taken over by special interests and failed to prevent or respond to the economic crisis effectively. The Center for American Progress's polling (done with support from OSF) shows almost two-thirds of the public believe that government looks out for wealthy special interests instead of average people and gives special attention to those with money and access. Reflecting the complexity of these attitudes, however, an overwhelming majority of people want government to further our collective aspirations and do not ascribe to the belief that government is currently too big, as noted in [CAP's recent report](#). All told, there is strong consensus that the American public want a leader focused on "taking back our government."

A third set of observations concern the declining role of institutional influences in the political process. In perhaps one of the more extreme views, [Joe Trippi](#), a veteran campaign media manager, has stated, "The internet and social media have changed everything – but what they really changed was a massive shift in power...Anyone can move a message that could be seen by millions. The top has lost control." Others note the diminished role of political parties, and the expanded ability of single donors to promote candidates due to the eviscerated campaign finance rules.

There is much else to be observed and reflected upon, including whether the level of right-wing populism reflects just a [continued thread or something new](#); the extent to which libertarian tendencies suggest much further splintering of conservative perspectives; and the accuracy of polling and other forms of assessing the significance of these trends. (See, for example, the [thoughtful](#)

piece by Danielle Allen, political theorist at Harvard University and soon-to-join USP board member.) We intend this conversation to surface themes and trends that we will circle back to over the course of the year as we explore whether we are seeing fundamental changes in American democracy and how we might respond to them. We observe that some of this can build on prior work done by USP regarding the white working class, and are pleased that [Dr. Robert P. Jones](#), CEO of [Public Religion and Research Institute](#), will be able to join us for some introductory remarks.

**Portfolio Review: Money in Politics** (1:30 - 3:00 p.m.)

In this portfolio review, U.S. Programs Program Officer Sarah Knight will focus on the first two years of funding under OSF's long-term concept<sup>1</sup> to reform existing campaign finance jurisprudence. Using four principal strategies (idea development, litigation, communications and judicial nominations), we seek to establish a new governing interpretation of the Constitution that allows for sensible regulation and promotes a vibrant and inclusive democracy. The discussion will explore the concept's progress, structure and efficacy to date. Steve Coll and [Julie McCarthy](#), Director of OSF's Fiscal Governance Program, will serve as discussants.

In the wake of the Supreme Court's 2010 *Citizens United* decision, OSF and other foundations became increasingly concerned about the potential for vast amounts of money to flood the field during elections, distorting not only who is elected, but also the policies they would enact once in office. After two years of broad funding for the money in politics field, staff became convinced that only incremental change will be possible until the Supreme Court revisits its narrow First Amendment jurisprudence, which holds that corruption is the only proper basis for government regulation of campaign contributions. Since board approval of the concept in 2013, the Supreme Court has further narrowed its interpretation of what constitutes "corruption," requiring something akin to actual bribery. Indeed, the Court has struck down every limit on campaign finance regulation submitted to it since Justice Samuel Alito replaced Justice Sandra Day O'Connor. At the same time, spending on elections continues to increase, even as the number of individuals who contribute falls.

During this portfolio review, we will examine the progress made to date in each of our four principal strategies, the relative merits of investment in this concept versus providing funding for the traditional field, and the lessons that can be gleaned from this effort to induce long-term legal change. The discussion will include reflection on our effort to engage a USP anchor grantee in the work.

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<sup>1</sup> In OSF parlance, a "concept" is where we have our own insight and idea that we wish to drive and where we play an active role in organizing players to advance this agenda. Concepts are usually offered in contrast to "field" support, where we are deferring to the constellation of actors in the areas in which we work to determine priorities and direction.

### **Building Powerful Organizations: USP's Anchor Portfolio (3:00 - 4:00 p.m.)**

Since 2009, U.S. Programs has provided significant general support grants to a portfolio of our (typically) largest multi-issue grantees. These “anchor” organizations<sup>2</sup> (operate at very high levels of access, breadth, impact, and scale in their advocacy for a more open society. Several have noteworthy capacity in unique areas that benefits the open society ecosystem much more broadly, including intricate knowledge of the federal budget, large scale rapid response communications and reporting infrastructure, top notch litigation or legal strategy operations, vast networks of affiliates and partners that connect inside the Beltway conversations with work happening at the local and state levels, and/or elite access to White House and Congressional leadership. The anchor grantees are some of our closest strategic partnerships while frequently providing an anchoring or “hub” role for multiple fields in which we fund.

The anchor portfolio currently comprises roughly 13% of USP's annual budget in combined general and (frequently, additional) project support. Over the past three years, we have expanded our support for them so that at this point those grantees designated as anchors receive a minimum of \$750,000 in annual general support for two or more year grant terms. (These figures do not include total OSF support for certain major grantees—the ACLU, Planned Parenthood, and the Drug Policy Alliance—which are resourced at more expansive and longer levels from OSF funds aside from USP.) In addition, we provide 10-15% of our budget to a set of organizations that form the foundation of specific fields we support. Over the past three years, we have similarly endeavored to move the roughly 25 organizations that we have referred to as “core” organizations to general operating, multi-year support, although this is still a work in progress given funding constraints. All told, USP invests close to 30% of our budget to our anchor and core grantees.

As set out more fully in the memo on [page 30](#), we are proposing to revisit and refine our approach to the “anchor” portfolio as well as maintain our commitment to “core” grantees. All told, we seek the board's engagement and discussion on several central propositions:

- That it is important and desirable to continue to identify and fund at significant levels a select cohort of organizations that are, or could become, powerful and effective.
- That we should refine our approach, however, and seek to both extend the duration of our funding to at least three years and revisit how we select and engage these grantees. One intention is to develop a more collaborative form of engagement and focus our funding of these groups to strengthening the organization rather than necessarily driving toward specific policy outcomes.
- That we should revisit the composition of our anchor portfolio to ensure that we include not only existing elite organizations but also those which are emerging and may be able to use

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<sup>2</sup> Our current anchor portfolio includes eight grantees: Advancement Project, American Constitution Society, Brennan Center for Justice, Center for American Progress, Center for Community Change, Center on Budget and Policy Priorities, Leadership Conference on Civil and Human Rights, and the NAACP.

such committed funding to become the next set of key NGOs furthering open society values.

Ken will introduce our conversation and with other staff share impressions from our current grantmaking and thinking about the anchor portfolio in the future. The conversation will inform our approach to anchor and core grantees in the upcoming strategic refinement process.

**Update: Puerto Rico Debt Crisis** (4:15 - 4:45 p.m.)

The severe economic crisis in Puerto Rico has led to rising poverty and unemployment rates, budget cuts in the nonprofit and public sector, and the emigration of thousands of Puerto Ricans.<sup>3</sup> Without voting representation in Washington D.C., Puerto Rico is not positioned to influence Congress or the Treasury to secure a remedy to the unfolding debt crisis. President Obama recently called for [legislative reform](#) to allow the island to file for Chapter 9 (bankruptcy protection), but a conservative leaning Congress makes this unlikely. At the end of 2015, there were efforts to include these bankruptcy protections in the [Omnibus spending bill](#), along with other provisions that would help Puerto Rico's strained economy including Medicaid reimbursement parity and an Earned Income Tax Credit provision (from which the island is currently excluded). In a positive development, Speaker Ryan has urged relevant House committees to develop a plan to resolve the issue of the debt crisis by March of this year. Nonetheless, given the power held by creditors, Congressional action is far from assured. Even more, whatever Congressional action might occur is likely to reflect strongly a creditor perspective.

The government of Puerto Rico has responded to the crisis with [short term austerity measures](#) and high taxes, [burdening the most vulnerable](#). It has also [defaulted two times](#) on non-general obligation bonds and is on a pathway to run out of money to provide inmates with food, police officers with gas for their patrol cars and schools the necessary support they need to operate. This includes the largest higher education institution, [the University of Puerto Rico](#), which has frozen all January payments to vendors and workers at its 11 campuses.

As the last USP board meeting, George Soros asked Andy Stern and Alex Soros to work with staff to see how our support could help secure a solution that would be beneficial to Puerto Rico and its residents. Chris Canavan, Director of Global Policy Development at Soros Fund Management, and Caroline Chambers have joined this informal steering committee, working closely with Mike Soto of the Center for a New Economy on the ground. These efforts have three goals:

1. To identify and refine solution to the debt issue that are positive for Puerto Rico and its people, and through which leverage can be exerted to pursue more fundamental shifts in governance including greater transparency

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<sup>3</sup> A recent study reveals that, in 2013 alone, 74,000 people fled the island. Approximately 45% percent of Puerto Rico's population lives below the federal poverty line. The unemployment rate is over 12 %, and only 40% of its labor force works in the formal economy. A mere 27% of its population obtained a high school degree or equivalent, while 17% has less than a ninth-grade education.



2. Support the development of a long-term economic plan that provides the basis for growth and self-sufficiency
3. Increase the capacity of Puerto Rican civil society—here and on the island—to advocate for these immediate steps and other longer-term changes.

In a fast-moving crisis environment, there have been actions directed by USP for both short- and long-term goals. OSPC is also doing work related to the Puerto Rico debt crisis, and the following summaries of their activity is included with the acknowledgment that OSPC is a separate entity with independent governance and grantmaking authority doing concurrent work in the region.

In the short term, USP is working to:

*Exploit creditor divisions to force them to the bargaining table.* USP has retained Steven Abrecht, the former CFO and Deputy Chief of Staff at SEIU International, to develop a campaign plan to pressure creditors and bring them to the negotiating table. Engaging creditors will be a key strategy as Chapter 9 protection, the only relief under consideration by Congress, would only cover part of the Puerto Rican municipalities' debt (approximately 40%), leaving significant Commonwealth debt unresolved. This campaign will start by researching some of the top creditors who own the debt, engaging them in private conversations, and escalating pressure by engaging some of their clients. The campaign will organize press conferences and direct actions in targeted places where creditors and their clients are based –at times directly targeting creditors, at other times engaging some of their clients.

Over the short term, OSPC is working to:

*Push a legislative solution in Washington.* Caroline Chambers is identifying a Republican lobbyist for CNE to increase their presence in the debate in Washington advocating for Super Chapter 9 or Chapter 9. As mentioned before, the Chapter 9 legislation currently being considered will likely come with a federally imposed fiscal control board. It is imperative that our lobbying efforts push that this board is set up in a way that is respectful to the autonomy of Puerto Rican residents and political representatives.

*Advance a communications narrative of order versus chaos to reframe the debate.* OSPC has contracted Quinn and Gillespie to build a communications campaign that will target conservative and Republican audiences “inside the beltway.” Within this sphere, it will push a new message that positions the debate as *order versus chaos*: in order to avoid chaos, Congress needs to provide Puerto Rico with an orderly way to restructure its debt. Other funders are investing in an aggressive anti-hedge fund communications strategy to counter the lobbying efforts of many hedge funds that are against any type of debt restructuring. Quinn and Gillespie will help create a media relations center to serve Washington, DC and beyond and develop a marketing campaign to persuade targets in Washington, DC. The campaign will: 1) explain specifically what will happen if a common-sense debt deal is not adopted; 2) position the proposed deal not as a bailout at the expense of vulnerable retirees but, rather, as a win/win; and 3) showcase trusted voices that make an impact with the targeted

audiences (e.g. Republicans in Congress and conservatives who influence them). The campaign will begin with original content development and the identification and recruitment of spokespeople, such as conservative academicians, journalists and others that have influence in Republican spheres. To complement the mainland communications strategy, OSF has provided the Center for a New Economy with additional funds to hire a full-time communication specialist, with social media expertise. This should bolster the center's role as the go-to messenger on solutions to the economic crisis. At the same time, we are talking with potential media partners about a campaign that humanizes the crisis. As stated above, Puerto Ricans are already suffering in tangible ways and telling that story may help to keep attention on the crisis and prod Congress to act.

And over the long term, USP is working to:

*Develop a long-term economic growth plan for Puerto Rico.* We previously had committed funds to the Center for a New Economy (CNE) to undertake a project—the Roundtable for a New Economy—with Joseph Stiglitz at Columbia University and other economists at the Brookings Institute, Brown University, and the McKinsey Global Institute to develop a long-term industrial growth plan. Our Open Places Initiative grantee, Espacios Abiertos, will play an important part in this project, convening a series of “country dialogues” so that representatives from different sectors can comment on proposals, helping to build eventual support for the final recommendations.

And over the long term, OSPC is working to:

*Examine the viability of building influence of Puerto Ricans.* The lack of political power of Puerto Ricans on the mainland is evident. To identify possible leverage points, OSPC has invested \$20,000 in a poll that will shed light on the views and priorities of Puerto Rican voters in Florida, the candidates with which they align, and the messages and tactics that will lead them to vote in November 2016. The poll is co-funded by the Ford and Arca foundations, 32BJ (the SEIU local in New York), the Angel Ramos Foundation and the Banco Popular Foundation. Early focus groups conducted in January show that most interviewees believe that the cause of the crisis is predominantly on the hands of politicians in Puerto Rico. They believe that any help from the US needs to come hand in hand with some form of consequences for Puerto Rican politicians who have misused public funds. Most of these residents have family members still living in the island, and believe their Puerto Rican identity to be central to their values. Most believe that registering to vote is a way to express their “U.S. citizenship”—so new arrivals really believe in the need to register to vote.

The Puerto Rico Steering Committee welcomes the board's reactions as it continues to explore several ideas and proposals to help bring attention to the economic crisis and actions necessary for its resolution, setting the stage for serious consideration of a long-term economic development plan.

**Executive Session** (4:45 - 5:30 p.m.)

Materials will be distributed separately.

## FRIDAY, FEBRUARY 12

### **Why Vote: What Motivates (Or Inhibits) People From Participating Politically And Is There A Connection Between Voting And Other Forms Of Civic Engagement?** (9:00 - 10:30 a.m.)

OSF, via USP grantmaking and OSF-DC direct advocacy, has long supported efforts to expand the franchise of voting, protect voting rights, and encourage greater participation in our democracy, particularly for the communities that have faced – or continue to face – structural barriers to political equality. This includes long-standing efforts to invest in voting rights litigation, support advocacy to modernize voter registration systems, provide voter protection information to those who don't know if they will be able to vote, and, on occasion, to support community-based voter registration and participation drives.

We know that voting is not the 'be all, end all' of civic life in the U.S. and, indeed, OSF supports many other efforts – grassroots and otherwise – to engage and inspire greater participation in civic life. USP supports a number of efforts to catalyze community-based activism and advocacy, via organized efforts within congregations, constituencies, neighborhoods, workplaces, or online. Such efforts engage Asian, Black, and Latino, immigrant, faith-based, and youth communities, among others.

Nonetheless, we operate with a premise that to achieve the type of reforms and the reboot of our democracy that we believe must occur before 2020 in order to avoid another decade of deep distortions in our democracy (reflected most notably in redistricting) political change is necessary. Growing the political participation and building the political power of people of color may not be the only way to achieve success for our Project 2020 goals, but it is central to this effort, especially in the three states we've chosen to focus our efforts: Arizona, Georgia, and North Carolina. These states are among the fastest growing and most rapidly diversifying in the nation. They are also states where the political context and leadership may be most out of synch with the diversity of their populations, leading to the degradation of open society and promulgation of policies that suppress democracy, exacerbate economic inequality, incarcerate rather than educate, and exclude many from civic life.

As part of what we are calling Project 2020, our effort to address distortions in American democracy especially in anticipation of the significance of the decennial redistricting that will occur in that year, we are exploring the significance of efforts to increase voting, and the most effective ways to address distortions reflected in under-represented participation. In particular, as a complement to OSF's long-standing investments in voting rights and voting systems reform, we seek to better understand why people vote, or choose not to, and to illustrate the connections that exist between voting and other forms of civic engagement. In this session, we will be joined by two expert guests who will explore high level questions about the motivations and barriers to voting, which will then be followed by a Board discussion.

Questions that we will tackle include:

- What does research and available data tell us about what motivates – or inhibits – voter participation, especially within communities of color?
- What is known about the relationship between voting and the broader continuum of engagement in civic, community, and economic life?
- What is the view from the ground in the states and what are groups doing to reach, inform, and inspire those who are not active in voting or civic life?

Our guests will include [Dr. Sylvia Manzano](#), a Principal at [Latino Decisions](#), and [Roger C. Vann](#) Executive Director at [State Voices](#), who will help start a conversation and will participate in the discussion that follows. After they depart, USP staff will share brief updates on two noteworthy efforts to expand voter participation: (1) the fight in the states to expand automatic voter registration; and (2) a new partnership for OSF, with the Wyss Foundation, to build a \$50- 100 million large-scale, rigorous, data-driven effort to close the voter registration gap between people of color and white people in eight southern and southwestern states by 2020.

**Update: Police Reform** (10:30 - 11:00 a.m.)

Building on the conversation we had in conjunction with the last board meeting in October and subsequent engagement with a range of experts, we are prepared to initiate a new police reform initiative that we expect will involve an annual \$3-5 million commitment for at least three years, as well as further contributions from existing USP portfolios. We believe that this is potentially a transformative moment for police-community relations, but that it will require sustained effort and cannot be expected to occur overnight or emerge exclusively from local advocacy in response to horrific incidents. As we set out three major areas of focus, we are mindful that OSF cannot do this alone and, in fact, anticipate a set of complementary actions and investments by others. OSF has a special role, however, reflected in our proposed priorities. We recommend that U.S. Programs support three activities to promote police accountability and reform efforts across the United States:

1. Create a national intermediary organization with significant expertise to engage with and support local campaigns and offer new ideas for police reform.
2. Engage progressive police unions and leaders of national police associations serving officers of color and ethnic minorities to support police accountability and transparency
3. Improve the impact of federal intervention to address local policing practices

A critical separate but related commitment to provide support to emerging Black and youth-led organizing effort is essential to the success of any targeted police reform strategy. That complementary effort is being simultaneously developed by a team of USP staff across our various program areas. We do not at this stage recommend funding local police reform campaigns directly, although we recognize the need for such support, in large part because of the complexities involved in determining where such local intervention would be appropriate.

The current national “movement moment” demanding greater accountability to and respect for Black communities is a critical development that has the potential to catapult U.S. police reform forward. It is an exceptional moment, as previous calls for police reform have not captured the public imagination and attention at such scale, over such a sustained period, and with such legitimacy. The final report of President Obama’s Taskforce on 21 Century Policing, which made 59 specific recommendations across six pillars to comprehensively address improvement of policing practices across the nation, has been widely endorsed and embraced as a mandate and blueprint for reform.

Yet, the scope of the policing problem in the United States is overwhelming given the decentralization of law enforcement with over 18,000 law enforcement jurisdictions ranging in size from the large “Major Cities” departments to smaller entities. Moreover, we note a number of dynamics that affect the potential of translating the moment into actual change in the operation of police departments and police practice: the nature of the movement itself, given that the capacity of many of the participants varies widely; the limited role and capacity of mainstream institutions, with few having robust expertise or experience in police reform efforts; and the challenge of sustaining “inside” reforms, resulting from the politically charged nature of policing, including the frequent transition in executive leadership in both municipal government and police departments, and the often oppositional stance of police unions. The proposed three-pronged strategy we have developed seeks to address some of these concerns through the development of national capacity to strengthen the expertise and execution of sophisticated local reform efforts, break through perceived monolithic union opposition by engaging rank and file officers willing to join in reform efforts, and equip local activists to take better advantage of the power of the federal government to intervene and use its authority to propel and sustain reform.

We have drafted a brief description of the components of this [proposed strategy](#) and as well as a more detailed discussion of the [national intermediary concept](#). We seek directional approval from the board to move forward with this important work.

**Look Back at 2015 Opportunities Fund: Impact, Reflections, Next Steps (11:00 - 12:00 p.m.)**

The US Opportunities Fund is still in the early days of implementation, having first been established in 2013 as the US Programs Reserves. At our upcoming board meeting, we will look back on the 2015 Opportunities Fund to spark a conversation about what we funded (and didn’t), what impact those investments have made, and what lessons can be learned for the future.

A separate memo will be distributed closer to the Board meeting that offers an analysis of the funding decisions, considers mini-case studies of Opportunities Fund projects and their impact, and offers recommendations going forward.

As we embark upon our strategic refinement, this is an opportune moment to check in with the Advisory Board to make sure that this fund—which is the opportunistic book-end to our anchor funding—is fulfilling its ambition.

**Board-led Opportunities Fund Discussion (12:00 - 1:00 p.m.)**

As is common practice at our board meetings, Geoff will ask board members for their views on emerging opportunities. As a reminder, we consider the following two questions when we think about use of the Opportunities Fund:

1. Does an unexpected event or shift in external dynamics (e.g. a change in election, a Supreme Court ruling) create an opportunity to advance our strategy or to protect open society in the US against further threat?
2. Is there a new idea that merits a bold investment, a seed that can be planted at scale to move forward a new way of advancing our strategy?

Senior staff will be available to report on developments on ideas previously generated by the Board.

**Executive Session with and without Director (1:00 - 1:30 p.m.)**

We look forward to our upcoming Board meeting, and thank you in advance for your participation.

## THE STATE OF U.S. PROGRAMS

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TO: USP Advisory Board  
FROM: Ken Zimmerman and Andrea Batista Schlesinger  
DATE: February 5, 2016

The official start of the 2016 presidential selection process reminds us of the challenges USP faces, both in the near term, as an already heated campaign grows more intense by the week, as well as on the horizon, as we contemplate what fresh strategies may be required for contending with a new administration in Washington. In the past months, we have sharpened our focus on issues brought to heightened attention during the election season, such as voting rights and public engagement, immigration policy and the President's executive order, and police reform and the growing movement for racial justice. Even as these efforts have built out prior work, we have remained responsive to crises of the moment, ranging from Puerto Rico's economic meltdown to exploration of the Flint water crisis, and have taken the next step in refining our internal operations to engage our international colleagues more regularly and make our grant-making more effective and efficient.

Consistent with our recent practice, this memo provides an overview of the state of USP and its operations with a focus on items that are not otherwise covered in the upcoming board discussions. We begin with several "reports from the field" which highlight notable items, with a fuller set of key developments included in the USP Updates by Goal, beginning on page 48. An analysis of our grant making in 2015, with preliminary thinking on the use of the 2016 Opportunities Fund, follows. We conclude with updates on personnel and internal shifts.

### I. SELECTED REPORTS FROM THE FIELD

***Making Progress and Fighting Back in a Polarized Congress: the Budget Deal:*** Even though we frequently focus on the significance of gridlock in Congress, it is worth noting that the fights on Capitol Hill have great consequence for the issues we care about, and the recent budget deal provided significant opportunity for some of our leading grantees to seize the opportunity and fulfill long hoped-for gains. Drawing on the change in leadership in the U.S. House of Representatives, and new Speaker Paul Ryan's interest in fighting poverty, USP grantee Center for Budget and Policy Priorities led an effort that resulted, in Bob Greenstein's words, in "the single largest anti-poverty advance of the past 20 years, outside of the Affordable Care Act." Specifically, the package makes permanent the expansions of the Earned Income Tax Credit and the Child Tax Credit's low-income component that were originally enacted during the 2009 Recovery Act during the Great Recession. These were both set to expire in 2017 and are now permanently in the tax code. According to CBPP, this will lead to \$15 billion more each year in income for millions of poor and working poor families, and will lift 16 million people out of poverty, including 8 million children. An additional 30-35 million people, including 15 million children, who live modestly above the poverty line will also benefit. Of particular interest, CBPP engaged a set of organizations typically outside normal

advocacy lanes for this type of campaign, including the United Way of America and the Military Coalition, both of which proved highly influential but neither of which would otherwise have gotten involved. Grantee activity around the Appropriations bill was fierce and effective, with many OSF grantees ([National Fair Housing Alliance](#), CBPP, and others), who worked in partnership with OSPC-grantee [Americans for Financial Reform](#), to successfully defeat efforts to include riders that would weaken Dodd-Frank, curb the Consumer Financial Protection Bureau's ability to enforce lending discrimination laws, and stop the Department of Labor from issuing regulations that require financial advisors to act in retirement savers best interest.

### ***Rationalizing the Treatment of Juveniles in the Justice System: Important Steps Forward.***

USP has long fought to use persuasive scientific evidence and the moral authority related to the place of children in our society to fight the irrational and counterproductive treatment of youth in our justice systems. In the past months, we have seen significant movement on both the judicial and legislative fronts. In January 2016, responding to a multi-year legal strategy spearheaded by USP grantees Equal Justice Institute, the Juvenile Law Center, and the Campaign for the Fair Sentencing of Youth, the [U.S. Supreme Court](#) ruled in *Montgomery v. Louisiana* in favor of the retroactive application of its 2012 decision in *Miller v. Alabama*, which made unconstitutional the practice of imposing mandatory sentences of life without parole to youth convicted of homicide. Upwards of 2,000 individuals sentenced as youth to die in prison will now be eligible for review and possible release, reflecting the Court's and the nation's [progressively more sympathetic stance](#) on young people who come into conflict with the law, and their potential for rehabilitation. The majority of youth sentenced to life without parole are concentrated in just five states: California, Florida, Louisiana, Michigan, and Pennsylvania. Among them, Michigan, Louisiana, and Pennsylvania had previously ruled against *Miller* retroactivity in their respective high courts. At the same time, significant legislative proposals have been initiated by Connecticut Governor Malloy, New York Governor Cuomo and California Governor Jerry Brown (through a ballot initiative initially spearheaded by OSF grantee Californians for Safety and Justice). These efforts provide important context for USP's Transformative Youth Justice Initiative, which is both supporting national groups furthering this advocacy and investing in select local efforts to push this transformation much further.

### ***Immigration policy and Syrian refugees: Steps Forward and Back in a Volatile Time.***

USP grantees working on immigrant and refugee rights came together in the wake of the largest migration crisis since World War II, joining forces to urge the Obama administration to [do more with its program to resettle Syrian refugees](#). But their focus was tested by new challenges: a renewed surge of migrants crossing the southwestern border from the violence-wracked Northern Triangle countries of El Salvador, Guatemala and Honduras; a [fresh round of deportation raids](#) launched by the Department of Homeland Security, targeting undocumented persons whose bids for asylum have been rejected by immigration judges; and *U.S. v Texas*, the legal challenge to President Obama's immigration executive actions, which the Supreme Court has [agreed to hear](#) (and is expected to decide by June). There have been successes, notably on Capitol Hill, where OSPC



grantees helped turn a group of Democrats who had initially voted in favor of legislation putting severe restrictions on the refugee resettlement program, and [block an attempt to bring those restrictions to a vote on the Senate floor](#). Advocates have also helped hold the line on anti-sanctuary city bills. Yet the crosscurrents have stretched capacity, splintered efforts, and made for some awkward dealings with the administration, with advocates rallying in support of the executive actions one minute, then [fervently denouncing the raids the next](#).

The challenges going forward—magnified by harsh anti-immigrant rhetoric in the 2016 presidential campaign and an expected wave of punitive bills at the state level—will be to move beyond reacting to events and regain footing to begin executing a more forward-leaning strategic course. Grantees are seeking to influence the Justices (primarily via a sophisticated amicus briefs and media strategy) in hopes of securing a favorable ruling in *U.S. v Texas*, and using the case to redefine messaging and align the movement. We are also seeking to shore up state and local infrastructure through Emma Lazarus II investments, positioning the field to move swiftly on a large-scale implementation effort in the event of a favorable ruling—efforts complicated by lagging implementation capacity at the federal level. Grantees are planning for multiple contingencies that will come into play based on the Supreme Court outcome and the Presidential election. In response to the surge in migrants fleeing violence in Central America, grantees are supportive of the [State Department's recently announced efforts](#) to expand the refugee program for people from the Northern Triangle and set up screening centers in the region with the help of the United Nations. This builds on our efforts to persuade the administration to do more last year to address this growing crisis. We are also exploring the prospect of collaborations with Arab, Muslim, Middle Eastern and South Asian partners, building on ties formed at the OSF-sponsored Solidarity Summit, and sharing information from groups that have faced down attacks on refugee communities. Grantees the National Immigration Law Center and the ACLU's Texas chapter have brought lawsuits in defense of embattled refugees, and America's Voice and the Refugee Council USA have provided communications support.

### ***Investigating a Crisis: Exploring Responses to Flint's Water Debacle***

As the news about the lead poisoning of the water supply in Flint, Michigan became public, we undertook a swift review to see whether there was a role we might play and to better understand how our existing cohort of grantees were involved (or not). While we continue to monitor events, a few overarching conclusions emerged. First, as the press reports reflect, the event demonstrates how disenfranchised communities disproportionately populated by communities of color can be pushed over the edge by callous, incompetent, or racist decisions. Here, our landscape analysis showed a community profoundly lacking in the infrastructure needed to cope with the immediate crisis but also the longer-term structure that made it so vulnerable in the first place. Flint has been ignored by elected officials and largely forgotten by civil society, with its capacity decimated over time including by the decision of its longtime local funder, the Mott Foundation, to pull out of community advocacy.

A second observation is that a large number of our grantees are responding to the crisis, and, as in many of these situations, it is appropriate to canvass them and see what they are doing as a first step

in seeing whether any supplemental efforts from OSF are warranted. In this case, PICO has sent some limited funding and three national organizers to the city to assess the situation and help jump-start community activism; the Advancement Project, Center for Popular Democracy and the National People's Action have sent in staff to support local advocacy efforts, and the Center for American Progress's ThinkProgress now has two reporters on the ground. The ACLU of Michigan has played an important role for many months now on litigation efforts, and NAACP LDF, which has expertise on urban water issues from its recent litigation in Detroit, is examining the situation. The Campaign for Black Male Achievement (CBMA), beginning to hit its stride in the second year since its spin-off, convened its network and connected donors with local organizations positioned to make an impact on the ground (example: CBMA leveraged its network to help facilitate a \$500,000 gift from the rapper The Game, via his charity, the Robin Hood Project, to Avita, an artesian alkaline water company).<sup>4</sup> Given these (and other) grantee efforts, our initial conclusion is that it is premature for us to make a decision on whether more is needed, but that it is critical to remain connected with local actors making determinations about what is needed. There is one civil society group, Flint Democracy League, which is active and seems to have capacity (others are running on fumes), and we have good ties to local funders, such as the Skillman Foundation and other Detroit-based philanthropies, who are mustering assessments and starting to determine appropriate responses.

Finally, we do think it is important to focus on the deeper structures that led to the emergency, and note both that we are better positioned to draw out these connections and help reflect the causes that are not always the focus of press reports and public attention. In this case, for example, it is notable how little attention has been paid to what led to the financial distress of Flint such that it might be considered a rational decision to switch the water source in an untested manner to save \$5 million. In this regard, current and pending OSF grantees have expertise and insights about the direct link between housing and the environment. One potential approach is to draw on the expertise of grantees like the [Texas Low Income Housing Information Service](#), which [trains local youth organizers](#) and has mapped the discriminatory placement of power plants by neighborhood, or the [Fair Share Housing Center](#) (NJ), which has successfully transformed the distribution of disaster aid as part of longer-term connections between affordable housing and environmental advocacy.

We continue to monitor the situation closely to discuss possible Opportunities Fund strategies for adding resources as events unfold.

### ***Monitoring Changes and Developing Options in the Broader Funder Landscape:***

While extended discussion of funder dynamics can sometimes seem to be inside-baseball and undue navel-gazing, we note several notable issues.

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<sup>4</sup>CBMA also released *The Promise of Place: Cities Advancing Black Male Achievement*, developing a yardstick for measuring how well 50 cities—together comprising more than 30 percent of the population of black boys and men in the U.S.—are doing in supporting this population, and what steps they can take to improve.

First, we are closely monitoring the Supreme Court's upcoming decision in *Freidrichs vs. California Teachers Association*, in which the Supreme Court is widely expected to strike down as unconstitutional so-called "fair-share" dues, the fees required to be paid to unions by workers who have opted not to join the union but who nonetheless benefit from collective bargaining and grievance representation. While we obviously do not fund unions and maintain an independent perspective on a range of issues, it is also true that in a number of initiatives we find ourselves as collaborators and even co-funders as we seek policy shifts on matters ranging from criminal justice issues (e.g., Prop 47 in California) to immigration reform and minority voter engagement efforts. More broadly, though, this decision will have consequences for questions of worker voice and institutional representation in a changing economy. A number of grantees such as [National Domestic Workers Alliance](#), [Workers Lab](#), [OUR Walmart](#), and [Coworker.org](#) continue to develop new models of worker organizing with built-in revenue models to help compensate for unions' diminished capacity. As we monitor the decision, we will be mindful of how it may impact OSF's work on upcoming minimum wage and child care campaigns, the influence and capacity of the Democracy Alliance, and much else.

Second, in the upcoming year, we will expand upon initial connections we have made with Silicon Valley's new wealth to examine where we might intersect (and where we might not) with the substantial resources that are being made available there. As an initial matter, we have found subject matter overlap on issues like immigration and criminal justice reform, and have expanded our initiatives through targeted partnerships with some of those funders. At the same time, though, it is an emerging and diffuse power center whose direction remains hard to read. We have begun a six-month exploration into how OSF might engage more deeply there and identify areas of common cause with these independent and flexible funders. To help us undertake the inquiry we have contracted with Natalie Foster, a Fellow at the Institute for The Future who previously served as digital director for President Obama's Organizing for America and Rebuild the Dream. She will organize several informal conversations with stakeholders in the new tech money ecosystem over the coming months and we anticipate reporting out to the Advisory Board on the prospects of progressive interventions at our fall meeting.

Finally, we are developing partnerships within OSF with other components that have expertise and interest in developing initiatives in the United States. A particularly good example involves a recent \$1m commitment from the U.S. Reserve which Ken approved to allow the Public Health Program to build on its longstanding work on drug pricing internationally. Sensing an opportunity to spotlight and reform Big Pharma practices after now reviled hedge fund manager, Martin Shkreli, raised the price of a life-saving anti-infective drug from \$13.50 to \$750 per pill, PHP is using these supplemental resources to both fund grassroots activists capable of translating the outrage into public consciousness and key policy players to determine the viability of using the moment to drive a policy agenda during the Presidential campaign. USP colleagues, including Kima Taylor, M.D., Maggie Corser, and Bill Vandenberg, have begun to work with the Public Health Program to share knowledge, refer grantees, and discuss an upcoming NYC convening on March 7-8.

## II. USP BUDGET AND GRANT-MAKING

### ***A. Budget***

We are pleased to announce that the 2016-approved OSF budget accepted our proposal. While we made multiple refinements as noted in our last board meeting, the top-line numbers are the same as in the 2015 budget: it includes a programmatic grant-making and program development budget of \$87m with a \$20m Opportunities Fund. In addition, the approved budget includes approximately \$13m for overhead and personnel, and also includes a separate \$5m Reserve Fund for other components of OSF to access for work inside the U.S. As noted below, we are starting to see use of this Reserve Fund, as reflected in the request for funds by the Women’s Rights Program to benefit Planned Parenthood after the video attacks and in the above informed work of the Public Health Program to run a campaign about pharmaceutical prices in the aftermath of the Martin Shrekli scandal. The end of year “actuals” will be finalized later in the first quarter of 2016. An [interim variance report can be found here](#).

### ***B. GRANT-MAKING DATA***

In October, we shared a vision with the Board of increasing our impact in ways that would result in making fewer overall grants, of higher amounts, with more general support, and for longer terms, and with focused attention on identifying new voices and grantees. As the analysis detailed below shows, we are making notable progress in some areas, especially in the increase in the percentage of our funds going to general operating support and for more than one year, with further work to be done in others, particularly regarding the overall number of grants.

For purposes of providing the board with helpful data, we have separated out grant-making information for OSI-Baltimore from the rest of USP since OSI-Baltimore as a locally focused entity frequently has different strategic considerations at play (its board approves its grant-making decisions). USP made 247 grants to 213 grantees in 2015 for a total of \$70 million as of now.<sup>5</sup> OSI-Baltimore made an additional 46 grants to 39 grantees, totaling slightly more than \$4m. USP also contributed \$2 million to fund 29 fellowships, 19 for the Soros Justice Fellowship and 10 for the Baltimore Community Fellows.

**Chart 1: USP c3 Grant Making totals**

	<b>2014</b>	<b>2015</b>
<b># grants</b>	235	247
<b>\$ amounts</b>	\$85,344,252	\$70,663,288

\*Does not include Baltimore, individual grants, or c4 grant making

<sup>5</sup>The 2015 figures are still preliminary. A number of grants that are still in process will be funded from 2015 budget authority through a “management commitment process” that is expected to include approximately \$10m worth of grant-making. It is also noteworthy that these figures do not include grant-making from the Opportunities Fund nor from non-USP sources, such as OSPC.

**Chart 2: OSI-Baltimore c3 Grant Making totals**

	2014	2015
<b># grants</b>	36	56
<b>\$ amounts</b>	\$4,255,157	\$4,769,542

\*# of Baltimore grants includes fellowships; does not include opportunities fund grants. Grant making amounts include funding from the USP budget (approx. \$1.9 million) and from Baltimore’s third-party fundraising efforts (approx. \$2.8 million).

As the charts below reflect, we have significantly increased the dollars going to general operating support (GOS), increasing the amount of funds from 33% to 47%. Similarly, we increased the amount of our funding going to multi-year support from 56% to 64%. Note that these figures do not include funding to the ACLU or the DPA, which did not come through USP.

**Chart 3: USP Grant Making, Project support vs. General support**

	2014	2015
<b># Project</b>	161 (69%)	175 (71%)
<b>\$ Project</b>	\$57,109,700 (67%)	\$37,340,788 (53%)
<b># General</b>	74 (31%)	74 (29%)
<b>\$ General</b>	28,234,552 (33%)	\$33,322,500 (47%)

\*Does not include Baltimore, individual grants, or c4 grant making

**Chart 4: USP Grant Making, Single-year vs. Multi-year Grants**

	2014	2015
<b># Single-year</b>	145 (62%)	138 (56%)
<b>\$ Single-year</b>	\$37,174,152 (44%)	\$25,343,230 (36%)
<b># Multi-year</b>	90 (38%)	109 (44%)
<b>\$ Multi-year</b>	\$48,170,100 (56%)	\$45,320,058 (64%)

\*Does not include Baltimore, individual grants, or c4 grant making

A further area of focus involves the identification of new grantees. For all of USP (including Baltimore), almost a quarter of our grantees—55 of 252—last year were new to us. The average grant size to these first-time grantees was \$200,000. At least 15 of these new grantees were brought in through Request for Proposal (RFP)/Letter of Interest (LOI) processes led by the Justice Team for its Transformational Youth Justice Initiative and the Drug Policy Project’s initiative to expand “alternatives to arrest” like the Seattle-based Law Enforcement Assisted Diversion effort.

Additionally, the Emma Lazarus 2 initiative brought several new grantees into our grant making.<sup>6</sup> In the coming year, we are going to expand on these and related efforts with a concentrated push to identify and support new voices, non-traditional ideas, and emerging organizations. Historically, USP has done important work with fellowships and sought to find emerging thought and

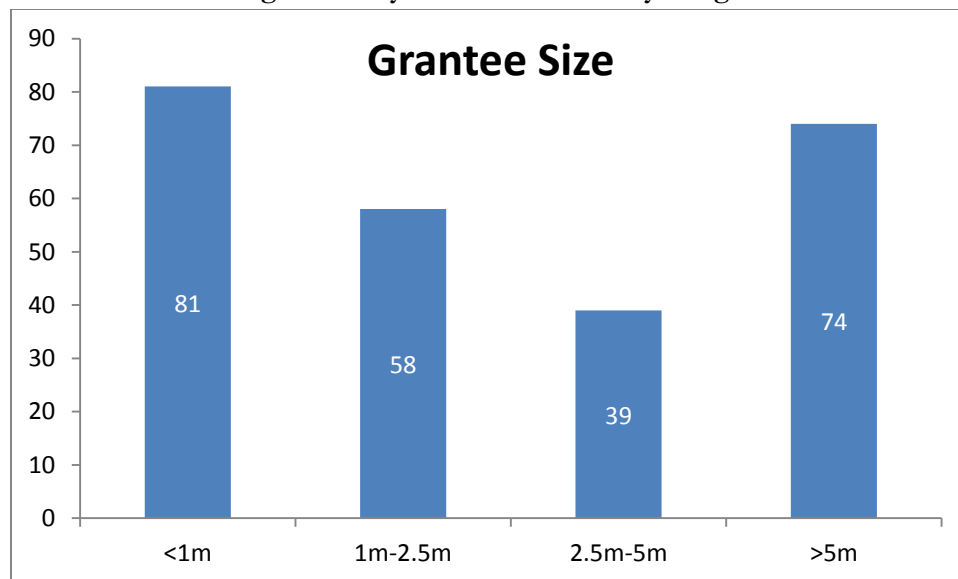
<sup>6</sup> We are using the Opportunities Fund for the Emma Lazarus 2 initiative to match funds for local collaboratives and have received a remarkable response for sites throughout the country. Emma Lazarus 2 grant making numbers are not included in this section but rather appear in the Opportunities Fund section of this memo.

organizational leaders, and this initiative is intended to make this a more central part of our work throughout.

In terms of other grant-making metrics, the overall profile of our grants in terms of size of grant and grantee organization remains relatively consistent, with roughly 2/3 of our grants (by number) and over half of our grants (by amount) in the \$50-\$400k range.

Consistent with our desired bell-curve in terms of organizational size, the majority of our grantees are either very small organizations with annual budgets less than \$1 million or large organizations with annual budgets greater than \$5 million. Our average grant size to the 81 small organizations is \$184,788 and the average grant size to the 74 large organizations is \$294,268. See chart 5 for number of grantees by budget size.

**Chart 5: Number of grantees by size as measured by budget size**



The one area where we have not made progress is in the overall number of grants we are making. As noted above, we made 247 grants (not including Baltimore) last year (and this number is likely to increase slightly once management commitments are tallied), which constitutes a slight increase from 2014 even though it still represents a decline from 2013. We are working to understand the data and dynamics at work here better. One observation is that when we enter into new areas of work, such as the beginnings of our 2020 efforts focused on selected southern states or innovative organizations responding to the new economy, typically we make more and smaller grants as we assess the fields and scope out opportunities. We are looking more deliberately into whether this trend is also affected by our efforts to reach beyond the usual suspects, especially as we seek out promising local efforts or leaders through RFPs or in response to crisis such as the killing of Freddie Gray, and, if so, whether our aspirations in terms of number of grants should be more nuanced.

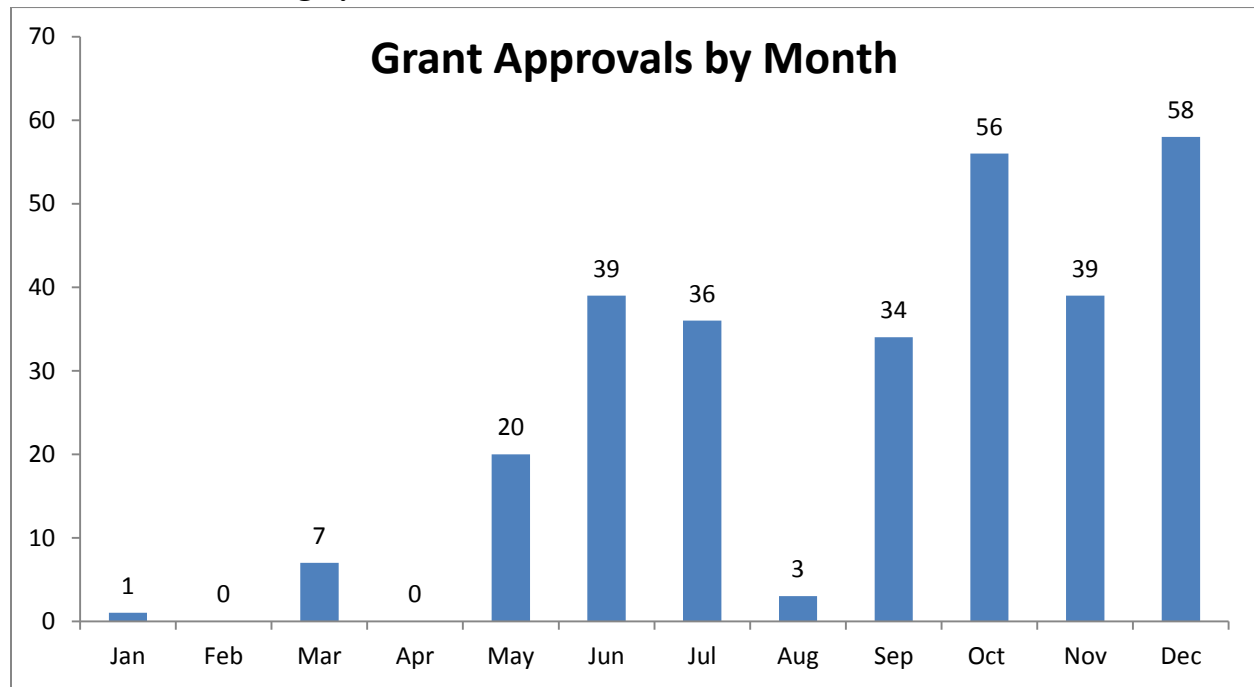
### C. Grant-Making Operations

We have worked with success to make changes in U.S. Programs such that internal bureaucracy wouldn't slow down our ability to move money to our grantees. In 2014, we successfully implemented a monthly docket system, coupled with decentralization of some grant making authority to the senior team, allowing staff many more opportunities to make grants throughout the year. In fact, we can now approve grants almost as quickly as they are proposed by Program Officers.

For us, these changes reflect the fact that the place to most successfully support our Program Officers and to fulfill our mission is in the setting of strategy, not in the approval of individual grants that are typically very far along before they come for final approval in the Director's Office. In November and December of last year, we successfully implemented a grant making blackout, enabling staff to develop 2016 work plans. In January, 2016, all program officers met one-on-one with Ken to discuss and get approval on their 2016 work plans. Of 30 submitted work plans, over half received a "green light" designation to move forward with their grant making; the others are being refined and adapted in one-on-one meetings with program officers. The insights gleaned from these conversations will inform our 2016 strategic refinement process.

In 2016, we will continue to push staff to submit grants for approval earlier in the year so that end-of-year grant making is not frenetic and rushed and so that November and December can be fully reserved for planning.

**Chart 6: Grant making by month in 2015**



#### **D. Opportunities Fund 2016**

The 2015 Opportunities Fund will be reviewed during the Board Meeting, and a separate memo is being provided separately. In the memo, we recap what we funded, explore the impact that those dollars have had, and offer suggestions and recommendations in part based on our interviews with Advisory Board members. While U.S. Programs staff has not yet formally put forward any proposals for the Advisory Board to consider for use of the 2016 U.S. Opportunities Fund, we thought it might be valuable to introduce these ideas under consideration and invite your reactions:

*White working class.* We are thinking about how best to respond to the provocation posed to the staff of U.S. Programs by Advisory Board Chair Geoff Canada on the “2016 Effect” and what it says about the “white working class” of America and the importance of understanding this group in order to advance open society. USP has existing internal capacity to explore this and in 2011, USP staff – in partnership with Jewish Funds for Justice (now known as Bend The Arc) and Nathan Cummings Foundation – funded public opinion research, expert convenings, and community engagement experiments in order to better understand the evolving anxieties and politics of the white working class. OSIFE has also explored this in a Western European context.

*ERIC voting systems.* In response to the Board’s question about what we should invest in to ensure that our communities of concern are participating in the upcoming election, we are evaluating the strategic value in funding Pew Charitable Trust's ERIC (the Electronic Registration Information Center) program to give grants to states to send out voter registration information to eligible but not-yet-registered voters. Pew is currently in talks with 15 politically diverse and populous states which have applied for the last round of grants to defray total costs of membership in ERIC. Many states want to join the center, but the biggest obstacle is getting their tight state budgets to provide the resources for their participation. Funders can assist states by contributing to the ERIC grant program, a type of scholarship to defray costs of a state’s participation. Grant awards are fixed amounts based on the number of mailings that each state is obligated to send to unregistered residents. Depending on the size of the state, grants can be as little as \$20,000 or as much as \$1 million. Currently, Pew can only accommodate grants for seven to eight of the 15 states that are interested in joining ERIC and Pew is \$1.5 million short (MacArthur, Joyce, and Anonymous have already contributed to cover the first group of states). Our participation could cover any number of the additional 7-8 states, including Project 2020 state Arizona.

As discussed above, we are also monitoring the situation in Flint actively to see where our support could help grantees and the potential for tapping into OSPC’s knowledge about leveraging federal funding streams. We also look forward to the discussion on “The 2016 Effect” to help inform our thinking about whether the issues that have risen to the fore, Islamophobia prominent among them, merit a response. Finally, we are looking to Bryan Stevenson for counsel on whether we should help localities to take best advantage of the retroactivity ruling in *Montgomery* (see above). Doing so would be an expression of USP’s growing interest in the implementation of the policy and legal victories our grantees achieve as a means of ensuring that lives are truly affected.



### III. USP People and Operations

Over 2015, we welcomed 16 staff members and said farewell to 13. At this point, all but one of our 16 program officers have been hired since Ken came to the Open Society Foundations almost four years ago. Going into 2016, our total headcount is 66, including the 16 working for OSI-Baltimore. Seven USP staff work out of the DC office. While we have had no new hires since the last board meeting, we have said goodbye to three veteran staff members. Terrance Pitts is leaving the organization to start his own consulting business and to finish his documentary, *Mario's World*, a short film that explores the impact of gun violence on men of color in Brooklyn. Tricia Rubacky has accepted a position as the vice president for development at the Center on Budget and Policy Priorities. Luisa Taveras is starting *Taveras3 Consulting and Coaching group*, a consulting firm dedicated to helping philanthropic and charitable organizations and individuals achieve optimal results and realize their organizational or personal missions. We are excited for them and wish them well in their new ventures.

We do have three open Program Officer positions within U.S. Programs, and welcome your suggestions and recommendations. They are for:

1. Justice. This position will cover our work to reduce mass incarceration and its attendant ills, challenging extreme punishment in various incarnations and promoting fairness and accountability in how justice is administered.
2. Racial narrative. This position will focus on our 21st Century racial narrative and school discipline portfolios, and work with the ongoing commitment to the Campaign for Black Male Achievement.
3. Anchors. This Program Officer will manage the anchors portfolio, and through that will handle our relationships with these grantees and who will bring deep capacity for relationships and an understanding of how organizations function.

As we consider future Program Officer hires, our consideration is informed by greater clarity on the Program Officer role that has emerged from the recent “role alignment” process that OSF as a whole has undertaken. This monumental effort to align titles, duties, and skill expectation for the more than 1600 employees in OSF in more than 40 countries resulted in clarity about PO expectations. Program Officers are now expected to come with significant field experience—a minimum of 7-10 years—in positions of increasing responsibility in whatever institutions and issue areas in which they worked. The shorthand we are using is that we are looking for people with experience and capacity to manage complex social change—and that we are open to a wide range of experiences that demonstrate these skills. We are not expecting that POs will have grant-making experience (although it is not a disqualification), believing that we can train and support skilled people in learning the considerable art involved to be an effective grant-maker. This recalibration is

consistent with the organizational move to decentralize grant-making responsibility to Program Officers upon our approval of their strategy. Other outcomes of role alignment include: clearer tracks and promotional opportunities for staff and clarification that programmatic support staff (now called Program Specialists) will in most cases not become Program Officers until they attain more experience with leadership roles in the field.

It is fair to say, however, that the manner in which the process was managed and rolled-out was subpar, causing regrettable damage to staff morale which OSF leadership at all levels is working to counter. We are working to assure much better performance on such important operations issues in the future.

On a more positive note, we held the second annual USP Grant-making Summit on January 20-22. It was a resounding success, with all of our staff engaged in skill-building workshops, sharing their strategies for the coming year, and reflecting on our grant-making strengths and areas of development. Geoff opened up the Summit, and Maya Wiley, Counsel to Mayor Bill De Blasio, provided keynote remarks offering her thoughts on “inside/outside” strategies and the challenge of progressive governance.

We are looking forward to seeing you on February 11, and to a productive year advancing open society in the United States.

## BUILDING POWERFUL ORGANIZATIONS: USP'S ANCHOR PORTFOLIO

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TO: USP Board  
FROM: Ken Zimmerman and Bill Vandenberg  
DATE: February 1, 2016

We would like to use the upcoming development of our 2017-2020 strategic plan to refine USP's approach to our "anchor" grantee portfolio. Drawing upon the orientation of George Soros and many of you about the importance of effectively identifying and supporting a select set of "hub" institutions, we start from the premise that a healthy and vibrant set of organizations that are powerful and effective in the public sphere is a critical strategic approach to fighting for open society in the United States. At the heart of the refined approach, we aim to:

- Continue to identify and fund at significant levels a select cohort of organizations that are, or could become, powerful and effective.
- Refine our approach and seek to both extend the duration of our funding to at least three years and revisit how we select and engage these grantees. We aim (1) to develop a more collaborative form of engagement, and (2) focus our funding on strengthening the organization rather than necessarily driving toward specific policy outcomes.
- Revisit the composition of our anchor portfolio to ensure that we include not only existing elite organizations but also those which are emerging and may be able to use such committed funding to become the next set of key NGOs furthering open society values.

Your reactions and comments at this point will help us in the development of our approach.

### BACKGROUND

At the outset, we want to stress that "anchor" institutions are but one strategic approach among several that are at the core of USP's efforts. In addition, we support fields in areas of specific interest (as in criminal justice reform and media policy), advance our own concepts (e.g., "alternatives to arrest" or implementation of the President's immigration executive order), take advantage of unexpected opportunities through the Opportunities Fund, and invest in emerging leaders and new ideas (such as through the Soros Justice Fellows program or in our developing work related to the social safety net in the new economy). The anchor portfolio represents a distinct approach, even though one whose value enhances (and at times complicates) many other tactics we deploy.

At its core, the portfolio presumes that a set of large, multi-dimensional, multi-tooled, and multi-issue organizations that operate at the highest and broadest levels of public policy and discourse are an indispensable element of the effort to promote open society. Certainly, our experience with the

existing anchors suggests that they have meaningfully advanced open society goals.<sup>7</sup> To name but a few, the Center for American Progress’ policy chops and insider influence have furthered Obamacare as well as independent federal courts, economic policy and immigration reform; the Advancement Project’s networking and capacity expansion has knitted together the national school discipline movement and racial justice campaigns; and the Center for Budget and Policy Priorities’ expertise and deployment on federal budget and revenue matters has led to remarkable expansions in the social safety net and prevented even greater retrenchment in a very difficult climate. While we anticipate revisiting the composition of the portfolio to some extent, our history with these groups suggests several key starting points:

- That these institutions command influence with top-level policy-makers, media elites, their peers, field actors and other significant institutional and individual actors, and frequently provide the leading edge of the “inside” strategies we pursue, particularly because their multi-issue approach facilitates networks that are more expansive than single issue groups;
- That they frequently develop or represent institutional innovations or capacities that are of value for the issues we care about and frequently advance the interests of overall fields as well as the institutions themselves<sup>8</sup>; and
- That they frequently serve as network hubs or intermediaries that can extend or serve as national connectors between local actors and federal or national policy discussions and efforts. This is reflected in the fact that we frequently provide these groups for additional project funding as opportunities emerge that require quick turn-around or we seek to leverage their capacities and influence in specific areas.

At the same time, such organizations also come with challenges, including:

- That they can become gatekeepers that can diminish the power and activism of new voices or local/grassroots leaders (although some of the existing cohort focus on expanding local activism);
- That they inevitably affect in uneven ways how constellations of NGOs operate due to their size and profile, and we monitor them with an ongoing concern about the tendency toward institutional conservatism to the extent that they need to maintain relationships with policy leaders in government or other funders; and

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<sup>7</sup>Our current anchor portfolio includes eight grantees: Advancement Project, American Constitution Society, Brennan Center for Justice, Center for American Progress/CAP Action Fund, Center for Community Change/CCC Action, Center on Budget and Policy Priorities, Leadership Conference on Civil and Human Rights/Leadership Conference Education Fund, and the NAACP. The ACLU, Drug Policy Alliance, and Planned Parenthood each have significant and high profile OSF partnerships with sizable funding – via FPR, OSP, and/or USP – that are attached to particular goals, campaigns, or projects. For those anchors with both c3 and c4 capacity, we have on occasion recommended c3 general support and referred to OSP recommendations for c4 general support.

<sup>8</sup>Examples include rapid response communications and journalism (CAP’s Think Progress), editorial board influence (Brennan), intricate federal and state budget knowledge (Center on Budget and Policy Priorities), broad-based coalition building (Leadership Conference on Civil and Human Rights), or state and local field advocacy (Center for Community Change’s partnerships with more 100 state and local organizations across the U.S.).

- That they are susceptible to institutional challenges given their size and complexity, making issues such as board governance, leadership quality, and management structures more critical.

They also add complexity to our role as grant-makers, since

- For such large organizations, our support frequently represents a smaller percentage of their overall budgets than for other organizations and we thus don't have as much post-grant-making influence or access as we do with smaller organizations<sup>9</sup>;
- Despite an effort to concentrate our grant-making to them primarily through major multi-year, general operating support grants, we inevitably get approached – and (in fairness) sometimes solicit – additional project-based support as particular issues arise or new tactics are adopted; and
- We continually confront questions that are deeply felt by many staff regarding how to determine when our support is needed by groups that are typically much better resourced (sometimes with substantial reserves) than many other grantees.

We have refined our approach to the anchor portfolio over the past several years to make multi-year, general operating funding available to all. This is consistent with our broader orientation toward such support and engaging in systematic organizational assessments before providing any grants. As the following chart demonstrates, the anchor portfolio has comprised roughly 10% of our overall programmatic grant-making budget (and 16% if the multi-year commitment to DPA is included). With the additional support of the so-called “core” grantees, organizations that have been identified to be vital to the advancement of one of USP's four goals, 30% of our budget goes to generally supporting organizations that we believe are central players in their respective arenas and where the value of our investment is largely based on how strong, powerful, effective, and sustainable they are.

There are widely varying approaches to such core organizational support in the foundation world. While we are developing a broader catalogue of what others are doing, some notable funders, such as the Sandler Foundation, effectively only do this kind of funding. Herb Sandler prides himself on fitting his entire portfolio on a single piece of paper; he focuses on high-performing organizations with high-caliber leadership that he believes can become more powerful and effective through concentrated and sustained grant-making. An example of this concerns an organization for which we also provide substantial funding, the Center on Budget and Policy Priorities, where Sandler focused on helping CBPP transform its anemic communications capacity and more effectively develop its state-based network (both matters in which we also played a significant role). More recently, the Ford Foundation [announced](#) that it will significantly redeploy its resources to provide approximately 40% of its funding to its version of anchor and core institutions, with a particular focus on expanding capacity, through a five year, \$1bn (globally) effort.

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<sup>9</sup> While OSF support often ranks as among the grantees' top funders, we do not provide a large percentage of these organizations' overall budgets. The range in recent years has typically been from 2% for larger budget anchor organizations (such as CAP) up to 15% for smaller budget anchors (such as American Constitution Society).

## USP SPENDING ON ANCHOR AND CORE GRANTEES

	2014 Total GM Budget: \$88m			2015 Total GM Budget: \$87m		
	# of Grants	Grant Amount	% of Total GM Budget	# of Grants	Grant Amount	% of Total GM Budget
<b>Anchors/General Support Only<sup>10</sup></b>	6	\$7,000,000	8%	5	\$7,500,000	8%
<b>Additional Project Support to Anchors</b>	4	\$1,285,000	1%	9	\$1,835,000	2%
<b>Core Grants</b>	21	\$8,930,000	10%	26	\$12,300,000	14%
<b>Drug Policy Alliance<sup>11</sup></b>	1	\$5,000,000	6%	1	\$5,000,000	6%
<b>% TOTAL</b>	<b>33</b>	<b>\$21,215,000</b>	<b>25%</b>	<b>42</b>	<b>\$26,635,000</b>	<b>30%</b>

### RECOMMENDATION

The anchor portfolio would contain a set of 8-12 organizations that we see as pivotal forces in our mission to promote a more open society. They should have broad, multi-issue missions, top quality leadership and effective operations, positive field leadership reputations, high level political access and influence, unique capacities to advance open society, a willingness to engage with us in greater detail and regularity than is common to other grantees, and the ability to favorably impact several of our four priority pillars at the federal, national, state, and local levels.

Given this premise, and building on conversations that I have had with several of you, we seek to refine our current approach to these investments along the following lines as part of the strategic refinement we are undertaking:

- Expect to expend between 10-20% of our grantmaking budget on the anchors and remain committed to providing general support to the grantees, at a preferred floor of at least \$750,000 per year and for three year terms;
- Revise our selection approach and assessment processes to focus more on how to support such groups to become stronger and more effective in both operations and program work, including being open to their strategic challenges and sensitive to how to help build out their roles in the broader landscape;
- Mechanically, use an approach that allows a more dynamic engagement regarding how three years of OSF funding could help them to be more transformative, powerful, and effective organizations, potentially by inviting proposals in a distinct process;

<sup>10</sup>The annual number of general operating support anchor grants is fewer than 8 because we provide multi-year funding which allows us to stagger our grant-making to these grantees. Because the process of moving grantees from an annual to multi-year cycle requires a somewhat complicated cycling, the numbers of anchor grants made fluctuates as we develop a more consistent pattern.

<sup>11</sup>We are in the fourth year of the \$50 million, 10 year commitment to DPA.

- Envision as part of this engagement identifying how such grantees would be expected to provide insights and added value to OSF, such as by regularly providing papers or feedback on core social challenges or serving as research bases for particular projects or issues;
- Modernize the portfolio by considering a small number (likely two to four) of additional organizations that are dynamic and poised for higher impact to populate an anchor pipeline and prepare to cycle out grantees on a periodic basis with tie-off funding; and
- In partnership with the Ford Foundation and Sandler Foundation, explore how to further the profile and range of support for such organizations and how to more deeply assess anchor organizational capacity and impact, while being sensitive to avoiding large funder groupthink.

## POTENTIAL SELECTION CRITERIA

While we will fully flesh out our planned approach in the coming months, we offer the following as potential selection criteria for the revised anchor portfolio. We anticipate the process will include both subjective and objective assessments and, if the organization has c4 status, inclusion of OSPC-enabled staff to review that portion of the organization’s work. For criteria, our thinking is that grantees must:

- Demonstrate clear leadership and programmatic prioritization, intensity, and impact on at least two of USP’s four goal pillars and bring special added value through their capacities and reach.
- Be large and well-established organizations that serve clear field leadership roles.
- Be able to show how three years of substantial general operating funding will be significant in furthering their abilities to be (or become) powerful and effective organizations with national impact (making clear that such impact does not need to be focused at the federal level or in Washington, D.C.).
- Be consistently high functioning—programmatically and operationally—and high impact in their work. At the same time, no organization is perfect, including our own, and we seek for the grantees to be reflective about their areas of weakness in order to help identify how OSF support could perhaps address those areas.
- Have highly effective, respected (by us and others), and reflective senior staff leadership – with a very strong president/CEO and at least two strong senior managers – that consistently strive for their organizations to excel in all aspects of their work.
- Have well-constructed, appropriately sized, and high functioning boards of directors. OSF must know and have a relationship with their board chairs and other executive committee members.
- Display a significant level of political sophistication in their inside/outside relationships.
- Be place-sensitive and not maintain an exclusively Beltway mentality. They may, in many instances, serve as hubs to some form of national networks that effectively partner and build the capacity of state and local advocates.

- Demonstrate sensitivity – in mission, priorities, operations, and advocacy – to racial justice.
- Have some unique capacity that benefits more than themselves and that serves a broader purpose to advance open society and the work of organizations within their fields.
- Be willing to draft content (policy papers or strategic insights) to advance our strategic thinking.

We look forward to your comments and questions concerning: (1) what, generally, is a desired range of support for anchors from USP’s budget? (2) to what extent do we seek to have “influence” on these grantees and what comfort level do we have for increasing our level of support for large organizations that may seek and/or require higher levels of investment? (3) to what extent should we prioritize broadening the reach of this portfolio beyond D.C. or Acela corridor groups; (4) how does the Board seek to engage with anchor grantees and their leadership?



## CAMPAIGN FINANCE JURISPRUDENCE CONCEPT PORTFOLIO REVIEW

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TO: USP Board  
FROM: Sarah Knight  
DATE: February 5, 2016

### INTRODUCTION

This U.S. Programs portfolio review is divided into the three phases that have defined USP's work to address the fundamental distortions of American democracy that result from a concerted attack on campaign finance regulation. Section I describes USP's early sporadic funding of campaign finance work, and its concerted decision to fund a variety of campaign finance field organizations in the immediate aftermath of the Supreme Court's decision in *Citizens United*; Section II discusses the pivot, two years later, from a field approach to a concept that aims to reform the increasingly narrow jurisprudence of campaign finance regulation; and Section III explores the first two years of our experience in implementing this long-term concept.

Through the Campaign Finance Jurisprudence Concept (the Concept), we seek to establish a governing interpretation of the Constitution that allows for sensible regulation of money in politics and promotes a real, inclusive democracy. The Concept has four principal strategies:

1. **Idea development and dissemination:** We work with legal scholars, attorneys, social scientists, advocates and other experts to refine and advance legal theories that would permit the protection of democratic processes from the undue influence of money in politics.
2. **Defensive and strategic litigation:** We defend current regulations and hold the line against further bad law, and lay the groundwork to draft and enact laws that will advance new legal theories that help get beyond a bribery framework for regulation.
3. **Organizing and strategic communications:** We build the public mandate for jurisprudential change, developing strategic communications and building movements that help both elites and the general public understand and support the bases for constitutional change.
4. **Working with judges (and judges to be):** We seek to build a federal judiciary that shares a constitutional vision of democracy centered on the public interest, rather than one dominated by wealthy donors. Upcoming Supreme Court and other federal court vacancies will require confirmation of new judges, providing critical opportunities to shape constitutional doctrine.

Like trends toward disenfranchising policies, political polarization, and the participation deficit, the undue influence of money in politics presents a problem we must solve in order for citizens to have any sense that their votes, policy preferences, and voices matter. As we think about how to build a vibrant, democratic, inclusive and more just society, the pernicious effects of unregulated,

untraceable money in politics affect our ability to achieve all four U.S. Programs goals,<sup>12</sup> warping the political dialogue, but moreover, warping [actual policy outcomes](#), and increasing inequality. The Concept was developed in recognition of the fact that while public and small-donor financing, disclosure, and other still-permitted changes may ameliorate the effects of big, (and big, secret) money in politics, we will not achieve real or transformational change without a legal playing field that (a) recognizes democratic values as substantial interests that can and should be weighed against the individual rights of donors, and (b) permits common sense regulation.

Throughout this review of the Concept, I will reflect on four aspects of the work, which we can discuss in more detail at the board meeting:

1. *Were we correct to envision this work as a concept, and right in our decision that OSF was best positioned to coordinate and shape this work?*
2. *Did we structure the Concept properly when we chose to engage three relatively equal partners for the core work of this Concept? Or should we have made one big bet on a purpose-built organization? How has the selection and composition of these grantee partners fulfilled or undermined our underlying assumptions?*
3. *What have we learned at this 2-year mark about funding strategic, long-term litigation plans like this one? How do we measure progress on long-term projects in meaningful ways—at the same time responding to short-term opportunities as they arise, and when they bolster the long-term work?*
4. *Do the lessons we have learned to date suggest that the jurisprudence Concept remains the best investment for our limited funds?*

## **I. Responding To A Crisis: Funding The Field To Address The Immediate Impact Of *Citizens United* (2009-2013)**

In 2010, the U.S. Supreme Court lifted the ban on unions and corporations funding “independent expenditures” in campaigns. In its 5-4 [Citizens United decision](#), the Court reasoned that because the expenditures are not coordinated with particular candidates or campaigns, they “do not give rise to corruption or the appearance of corruption.” As a result, the First Amendment prohibits their regulation.<sup>13</sup> Reaction to the *Citizens United* decision was swift and has been lasting; public opinion immediately grasped that there was something drastically wrong with not only this formulation of rights, but its potential to further erode political discourse and distort political power to the ends of the very wealthy. Today, the *Citizens United* decision remains widely [reviled by individuals across the political spectrum](#). Indeed, election law expert Rick Hasen suggests it has eclipsed *Bush v. Gore* as the most notorious and unprincipled decision of the Supreme Court’s recent history.

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<sup>12</sup> Namely, a democracy strengthened through greater inclusion, participation and accountability; a fair criminal justice system that uses punishment appropriately, does not rely on incarceration to address issues of poverty, mental illness and drug addiction, and promotes community safety and well-being; full political, economic, and civic participation of immigrants and communities of color achieved by dismantling the barriers and strengthening the conduits to opportunity; and an economy governed by policies at the local and national level that promote equitable growth and high road development.

<sup>13</sup> The *Citizens United* decision did not disturb the ban on direct contributions from corporations and unions to candidates.

Hasen refers, in part, to the backstory of the Court’s activism in taking and shaping *Citizens United*. At its original hearing, in the spring of 2009, the question presented to the Court was quite narrow: whether provisions of Bipartisan Campaign Reform Act (known as “McCain-Feingold” for its key sponsors) prohibiting unions and corporations from running television ads for or against candidates within 30 days of an election applied to the anti-Hillary Clinton documentary film aired by the nonprofit organization called Citizens United. At argument, former Solicitor General Theodore Olsen assured the Court that the case presented no new First Amendment questions. But rather than settling the relatively straightforward question the litigants had asked, the Court set aside the original argument and rewrote the question presented to call into question its prior decisions upholding McCain-Feingold and limiting the First Amendment rights of corporations (*see this Jeffrey Toobin piece* for an extraordinary background on *Citizens United*, and Chief Justice Roberts’ especially active role in the decision).

It was hardly a surprise then that the Court’s majority, led by Justice Kennedy, issued an opinion that not only said the Citizens United documentary was not covered by McCain-Feingold, but that opened the door for unlimited spending by unions and corporations, as long as it was not “coordinated” with candidates.<sup>14</sup> Kennedy’s naively limited view of corruption signaled a significant change in approach, but it expanded upon root jurisprudential problems that go back to *Buckley v. Valeo* (1976). There, the Supreme Court equated money with speech, and began to require a corruption justification for any regulation of money in politics. In identifying how corruption happens, *Buckley* made a distinction between expenditures and contributions—a distinction that has led to a game of whack-a-mole, where every new limitation results in donor innovation to avoid regulation. Between *Buckley* and *Citizens United*, corruption was interpreted broadly, capturing a wide array of behaviors that might unduly influence candidates, but that fell well short of direct bribery. With *Citizens United*, it suddenly seemed that this broader approach was under fire—and with it the existing landscape of campaign finance regulation.

USP’s funding for the campaign finance field has ebbed and flowed over time. The late 1990s saw concerted USP investment that aimed to capitalize on the pro-reform momentum to pass federal legislation. During that time, USP funded (a) institutions focused on transparency of electoral spending (e.g., the National Institute for Money in State Politics (NIMSP), the Center for Responsive Politics (CRP)), and (b) organizations working on c3 activities related to McCain-Feingold and other reforms at the state and local level (e.g., Public Campaign and the Common Cause Education Fund). The strategy also included a 1997 3-year \$600,000 project support grant to the Brennan Center to support its work as “Counsel for Democracy,” serving the whole campaign finance field, including work to assist in the research and drafting of McCain-Feingold. Once McCain-Feingold passed, funders declared victory and pulled out of the field, causing a near collapse of some organizations. Indeed, with the exception of continued support for the Brennan Center, including its efforts to defend and expand upon McCain-Feingold’s successes, and the transparency-

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<sup>14</sup> The one area that received endorsement in the otherwise thorough evisceration of regulation was disclosure. Justice Kennedy’s opinion viewed disclosure as a cure-all for any appearance of corruption that might otherwise be invoked as a justification for regulation.

related grants, USP funding for other c3 organizations petered out after passage of McCain-Feingold.

Eight years later, *Citizens United* sobered the philanthropic world. As funders were coming to terms with the decision, its impact increased considerably when, two months later, the D.C. Circuit, sitting en banc, issued a unanimous decision striking down ceilings on contributions to independent political groups that spend money directly to support or oppose federal candidates.<sup>15</sup> Suddenly, the prospect of big, secret money in elections took on new urgency. Concerned that *Citizens United* and the cases that followed would fuel an arms-race of outside spending in elections, OSF joined the MacArthur Foundation, the Ford Foundation, the Rockefeller Brothers Foundation, the Mertz-Gilmore Foundation, the Hewlett Foundation, and others in providing renewed and expanded support to the campaign finance reform field. While it was clear USP needed to provide more fulsome campaign finance reform support, it was less clear where OSF's investment would yield most benefit. As an initial foray, we provided general and project support to transparency groups NIMSP and CRP in order to further develop their datasets on election-related spending, with special emphasis on gathering and interpreting data related to independent expenditures, at the state and federal levels, respectively. We continued to provide substantial support for the Brennan Center. We also funded investigative journalism on money in politics (e.g., a 2011 grant to *Mother Jones* for a “dark money” beat), and supported the Common Cause Education Fund (a 2011 JEHT closeout grant) and Public Citizen (2011) to spur public education and nonprofit coalition work on corporate spending and corporate reform.

More money certainly meant more activity across the money in politics field, but the piecemeal approach failed to coalesce into victories that did more than chip away at corners of the problem. Discussions about possible solutions frequently ended with the conclusion that little change would be possible without change in the Court, and except for advocates proposing a constitutional amendment to “fix” *Citizens United*, no one seemed to be talking about how to solve that problem. Without fundamental changes in legal framework, reforms could be useful but not transformative. Still-legal mechanisms like public financing and disclosure could provide greater public participation and accountability, but without limits on other expenditures, they leave in place the opportunity for large donors to play outsized roles in elections--and to exercise continuing disproportionate influence over policy post-election. The prospect of federal legislation soon grew dim, flickering out entirely when the Senate changed hands in 2014. At the same time, while winning public financing, disclosure, and ethics reforms at the state and municipal levels proved to be very important for organizing efforts and field momentum, it also became clear that expanded state and local efforts would require significant (and possibly unsustainable) financial support. In addition, our support for these efforts raised questions about our consistency of approach to and support for direct democracy advocacy campaigns that, at least arguably, limit constitutional rights. Thus, USP staff continued to fine tune funding in an effort to solve problems that would go beyond merely

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<sup>15</sup> See [SpeechNow.org v. Federal Election Commission](#), 599 F.3d 686 (D.C. Cir. 2010). I note that since 2010, the composition of the D.C. Circuit has undergone a dramatic change, in part because of work on judicial nominations undertaken by grantees in USP's federal courts portfolio (see [this breathless 2013 account](#) from Newsmax).

overturning *Citizens United*. While recognizing that ruling’s popular salience, Laleh Ispahani, Tom Hilbink and others at OSF realized that *solving* the problem of money in politics in any meaningful way would mean going back to the Court’s decision in *Buckley* to address its problematic distinction between contributions and expenditures and its equation of money with speech. As part of this inquiry, Laleh and Tom organized an evaluation of the merits of the constitutional amendment efforts. The exploration quite conclusively indicated that the amendment strategy was unlikely to succeed and certain to draw substantial funds and focus away from other strategies that were more likely to have long-lasting impact.<sup>16</sup>

After a period of serious reflection, with board approval, staff undertook a concept to reform the jurisprudence of campaign finance regulation. USP had three principal strengths that positioned it to undertake the jurisprudence concept: **First**, since 2002, through its federal courts portfolio, USP has been central to the development of progressive legal infrastructure in the U.S., funding scholarship development, network building, litigation, and c3 work on federal judicial nominations to ensure the third branch reflects open society values to the maximum extent possible. These years of experience provided Tom, in particular, with the keen sense of the legal landscape, and prospects for legal change, necessary to develop the concept. **Second**, and relatedly, OSF is the rare funder that considers long-term support because of its relatively high tolerance for funding promising projects that have potentially high returns, but also horizons longer than a typical campaign cycle. **Third**, Laleh and Tom not only had a combined 10+ years of experience at OSF, but also brought to the Concept considerable pre-OSF interest and experience, with particular expertise in campaign finance reform (Laleh worked on the McCain-Feingold defense), the history of legal change (the topic of Tom’s doctoral dissertation), and the federal courts more generally. This complemented Board member Jonathan Soros’ deep knowledge of the field and links to the individual donor community, which positioned him to serve as an important internal sounding board. Their combined level of experience and dedication meant that OSF’s interactions with grantees and fellow funders drew on quite long experience and confidence. This unusual suite of strengths meant that OSF was equipped to fund in this area—an area where no other funders were prepared to go.

## II. Funding For The Long-Term: Developing The Campaign Finance Jurisprudence Concept Campaign Plan (Fall 2013-Spring 2014)

While it was understood at the time of Board approval that this would be a long-term effort, staff identified three principal grantees—the Brennan Center, the Campaign Legal Center (CLC), and Demos—that would work together to develop both long-term and short-term measures of success for the Concept’s roadmap.<sup>17</sup> All three were existing grantees, and by 2014, all three received general

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<sup>16</sup> We continue to watch these efforts with care. While organizing around the amendment has provided undeniable momentum for campaign finance reform that has had strong life and energy over the last 5 years, we share the Center for Budget and Policy Priority’s [concern about the wisdom of any constitutional convention](#), and the potentially disastrous consequences that might flow from campaigns by some in the amendment camp to encourage one.

<sup>17</sup> It is also important to consider who was not included: Tom chose not to create a larger table in order to preserve greater control over the process and the stakeholders. He did not include outlier organizations like FSFP, in part because he knew it

support for this work. While there is considerable overlap in kinds of campaign finance work the organizations undertake,<sup>18</sup> Tom developed a rough division of skill and labor among groups: Brennan would lead the work to create the intellectual agenda (legal and empirical scholarship) necessary to overturn existing precedent; CLC would lead development of the Concept’s litigation strategy;<sup>19</sup> and Demos would lead efforts to get others to understand and support the strategy for jurisprudential change, developing effective communications and organizing allies in service of the Concept. Crossing back into Brennan’s primary territory, Demos also continued to develop longer-term equality-based arguments that, while unlikely to carry the day in any near-term Court, would eventually support more fundamental social change than the corruption model promulgated under *Buckley*. Tom conceived work on judicial nominations as the Concept’s fourth pillar: understanding that the Court’s composition could change quickly, and even small changes in Supreme Court personnel could provide opportunities for swifter change—but only if campaign finance reform were to become the kind of high salience legal issue, like reproductive or voting rights, that is central in the minds of the presidents who nominate judges and the senators who confirm them.<sup>20</sup> Tom did not identify a grantee to lead this work, believing the crop of organizations advancing federal judicial nominations inadequate to the task of leading an issue-based nominations strategy (see Section III for further analysis of this strategy), and he decided that OSF would serve as lead until he could identify a partner organization. Setting the nominations question aside, this division of labor respects the greatest strengths of each organization, but only truly works if all three of our partner organizations operate as a team, in furtherance of a single goal or set of goals, rather than in furtherance of their own organizational priorities. At the same time, the model intentionally mines the friction between what one might call the more “daring” approach of Demos, and the more “technocratic” approach of the Brennan Center. The Concept relies on productive tension to advance jurisprudence, controlling the more free-wheeling impulses of Demos, pushing Brennan and CLC to consider more transformative ideas, and, in theory, generating more, different arguments than a more tightly grouped collaboration or single institution approach would.

Tom and the three principal concept grantees spent the fall of 2013 and spring of 2014 developing a strategic plan for the concept (see [Appendix A](#)). First working in isolation, and later with input from

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would drive others (namely, CLC) away from the table. He also did not include a big policy organization/think tank (like the Center for American Progress) in the mix. Finally, we have not engaged academics directly, though as I discuss in Section IV below, I may do so in the future through a fellowship or consultancy.

<sup>18</sup> All three litigate, issue policy papers and hold events. Both Brennan and Demos focus on campaign finance and voting (among other things) and consider themselves adept communications organizations, adding to their complement of activities substantial work with scholars and public intellectuals. Brennan and CLC have developed substantial expertise in drafting campaign finance laws and advising jurisdictions that are contemplating enactment of campaign finance, ethics, disclosure and accountability measures.

<sup>19</sup> CLC’s other significant contribution to the triad is its credibility with conservatives. Founding President Trevor Potter served as counsel to John McCain’s failed bid for the presidency in 2004, and Potter and others at CLC have important relationships and credibility within some conservative circles, even as campaign finance reform has become a distressingly party line issue.

<sup>20</sup> USP had funded a field of grantees for judicial nominations work since 2004. Grants to these organizations funded (and continues to fund) work on a non-issue basis, that is to say, grantees have experience working to advance general progressive nominees through the federal judicial nominations process, but had not done so with any specific case or single issue in mind.

other key organizations and individuals in the field,<sup>21</sup> early drafts of the plan included specific benchmarks for publication goals, nominees, litigation victories, and media attention. But the core jurisprudence groups were ultimately unable to settle upon specific measures that would be both inherently indicative of the Concept's progress and within the control of the groups to achieve. I think this is legitimately one of the most difficult aspects of long-term project planning, and one that becomes especially fraught when organizations feel they may be held mutually responsible for each other's acts or omissions. As a result, the final plan focused more on qualitative assessments of progress than quantitative ones. I think the plan strikes nearly the right balance for this complex project, but it does make accountability more dependent on my judgement about quality of effort. Furthermore, without a specifically designated grantee to spearhead the judicial nominations pillar of the plan, I must hold myself accountable for our progress in that arena.

The planning process also began to highlight some of the tensions among the core grantees. Brennan and CLC's more incremental approaches sometimes exist in tension with Demos' commitment to advancing more far-reaching equality principles. This is especially apparent in the idea development realm: while I view Demos' work as frequently overly optimistic about the pace of possible change in the Court and not sufficiently attentive to the existing legal framework, our decision to anoint the more pragmatic Brennan Center to lead idea development efforts almost certainly means that the scholarship critical to the Concept's success will happen at a more deliberate pace. It has proved true, however, that Demos is a useful prod to Brennan's slower inclinations—sometimes to the irritation of both groups. The agreed-upon framework left in OSF's hands the management of conflicts between organizations and approaches, providing no single grantee the authority to manage the plan or make strategic decisions that would bind the whole. While I think I have been able to broker this pluralistic approach during this early phase of the Concept, it will be much more challenging to govern if serious disagreements arise about litigation strategy (e.g., whether, for instance, it is wise to bring a particular challenge at a particular time).

I have two other concerns about the three organizations' partnership. **First**, the organizations did not start from a baseline of trust. Brennan and Demos have both competing mandates and explicitly different missions.<sup>22</sup> As noted above, Demos holds equality as its core value, which can present challenges given the Court's current corruption-based framework. While Demos' amicus efforts in campaign finance cases have been careful to couch equality principles in the guise of an expanded notion of corruption, its messaging hammers equality, and it seems to find more natural camaraderie with non-legal organizations, like the multi-sector Democracy Initiative<sup>23</sup> and Public Citizen that (a) are less constrained by the language of Supreme Court briefs, and (b) communicate with more grassroots audiences, often using a pro-amendment message to rally activists (where

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<sup>21</sup> The full list of stakeholders consulted during the strategic plan's development appear as an appendix to the strategic plan, which you can [link to here](#).

<sup>22</sup> The Brennan Center is "a nonpartisan law and policy institute that seeks to *improve our systems of democracy and justice*. We work to hold our political institutions and laws accountable to the twin American ideals of democracy and equal justice for all"; Demos is "a public policy organization working for an America where we all have an *equal say* in our democracy and an *equal chance* in our economy" (italics added).

<sup>23</sup> Comprised of CWA, Sierra Club, NAACP, AFL-CIO, Greenpeace and Common Cause members.

Brennan does not). **Second**, it is not clear that the organizations saw participation in the Concept as a clear priority within our grantmaking strategy, perhaps in part because of the general operating nature of their support.<sup>24</sup> USP has provided Brennan with multi-year general support since 2007, and it has been considered a USP “anchor” grantee since 2011. Demos also receives general support, which we deemed especially important to continue as a signal of our confidence when Heather McGhee took the helm in 2014. Because these organizations work on multiple USP priority issues and do not receive additional project support for their work on the Concept, there is little feeling among grantees that this work is an institutional priority for OSF. Further, because this is a concept, we are more involved than the grantees are used to us being, lending to the sense that this is “extra” work taken on without the promise of “extra” funding. More focused, and additional, project support for concept participants might have helped to align financial and institutional incentives, making the collaborative approach more effective and elevating the profile of the Concept’s work inside the organizations.

Once the strategic plan was complete in April 2014, the Concept approach seemed necessarily to mean that our grantmaking choices would change, becoming more and more focused on the courts, and USP staff prepared to tie off some existing money in politics grantees whose work was less concretely tied to jurisprudential change. This was balanced against recognition that continuing short-term wins are important to the momentum of the overall field, and provide important fodder for future efforts to press a future affirmative litigation agenda. Thus, we seized an opportunity to fund a national effort focused on ballot measures, and creative Public Citizen-led work to pressure federal agencies to assert themselves more forcefully in campaign finance regulation and disclosure. We also prepared to tie off one or both of NIMSP and CRP on the theory that necessary data efforts appeared to be well-funded without our support.

### III. Concept Launch: Early Lessons From Implementation And Current Challenges (2014-2015)

As we had inked the plan, a 5-4 Supreme Court majority handed down another campaign finance decision that seemed to call into question limits on campaign contributions long assumed to be constitutional, for the first time explicitly overruling a piece of the *Buckley* holding. *McCutcheon v. FEC* struck down aggregate contribution limits that restricted wealthy contributors’ ability to circumvent single candidate limits by flooding the field with donations to affiliated candidates, parties and political action committees (PACs), effectively raising the aggregate limit from \$123,200 per 2-year cycle to \$3.5 million for candidates and parties, plus virtually unlimited contributions to related PACs. A month later, a fortuitously planned Brennan Center symposium gathered scholars, activists and practitioners to discuss the case’s impact, and begin to vet strategies for a new

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<sup>24</sup> This concern applies less to CLC. CLC is the closest organization we have to a purpose-built campaign finance organization. While it is also active, and receives some additional project support from USP for, its voting rights work, CLC clearly understands its most important business to be the campaign finance work we support. Other pressures CLC faces are discussed in Section III.



jurisprudence. The symposium resulted in a dozen short articles, released in a *New York University Law Review* [online symposium](#) and a [useful summary of activities](#). In addition to this moment of scholarship, the most useful contribution of the symposium was the interaction between veteran Supreme Court litigators and activists and academics. Noting the importance of First Amendment principles to people across the political spectrum, litigator Paul Smith predicted that even with a friendlier Court, the jurisprudential evolution would likely be slow, full of face-saving reframings of doctrine rather than the abrupt changes in law seen recently in the same sex marriage arena. To some extent, this symposium raised a high bar for future convenings: it was so serendipitously timely that, when pressed for similarly useful convening ideas for 2015, the Brennan Center was reluctant to tap the participants without something similarly momentous at hand—to them, this meant another Supreme Court case or vacancy.

Instead, as envisioned in the pre-*McCutcheon* concept strategy document, 2015’s work plan focused on idea generation, largely in the form of further publications that (a) explain the most viable basic theories in play, (b) help to patch doctrinal gaps in those theories, and (c) create a vibrant and diverse array of scholarship that continues to contest the Court’s existing jurisprudence. The post-*McCutcheon* Brennan Center symposium featured an “animated controversy” over the need for more thinking around theories of “electoral integrity”<sup>25</sup> (widely viewed as lacking a clear doctrinal test) and equality theories, which have strong popular resonance and more transformative potential, but the overt use of which would require a full rethinking of *Buckley*.<sup>26</sup> Brennan took the lead on the former—viewed as particularly important because it had carried four dissenting votes in *McCutcheon*. Brennan originally anticipated that it would complete this work by late spring 2015, but the draft framework advanced to an internal team at Brennan was deemed to be unworkable, and they went back to the drawing board. The schedule then shifted to fall 2015, and has now once again moved to spring 2016. While Brennan and Demos have made progress on broader explainers of legal theories, and propose a more promising series of workshops and symposia for 2016, the lack of a workable electoral integrity model remains a notable weakness in the Concept’s work.

The inability to produce workable legal scholarship on quicker turnaround presents a real challenge for the Concept. Because the plan envisages that the theories produced would be ready (or nearly ready) for use in the litigation aspect of the Concept, and because the Roberts Court has indicated a willingness to dismantle established precedent in this area, the stakes for idea generation are so high that Brennan is, to some degree, rational in its caution. I think this yields a reticence to share legal theories until they are fully formed, impervious to criticism—making inherently time-consuming work all the more difficult to produce and evaluate within a typical grant cycle. Two other factors have contributed to the slower pace of idea generation. First, Brennan started out with Professor

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<sup>25</sup> The four dissenting justices in *McCutcheon v. Federal Election Commission* (2014) emphasized the importance of “electoral integrity” (a theory originally expounded by Yale’s Robert Post) to explain why a narrow definition of corruption is the wrong basis for a campaign finance jurisprudence. Justice Breyer explained that we care about corruption not for its own sake, but because it undermines faith in our public institutions. Thus, recognizing the government’s interest in protecting electoral integrity would put democratic function, rather than transactional bribery, at the center of the Court’s First Amendment analysis, allowing for regulations that ensure our elections pick people who answer to all Americans, not just a privileged few.

<sup>26</sup> See Brennan Center for Justice, “Conference Summary: Money in Politics 2030: Toward a New Jurisprudence,” p. 4.

Johanna Kalb (formerly of Loyola New Orleans Law School) acting as a full-time dedicated Jurisprudence Counsel, but Kalb has worked on only a part-time basis since accepting a teaching position at Yale in the fall of 2014. Second, Brennan’s remaining staff is capable, but they are also engaged in campaign finance reform battles of all stripes, from litigation to policy development, and at the federal, state and local levels. I have advocated strenuously that national groups that support and manage ballot initiatives must obtain qualified jurisprudential review of their efforts. As more reform opportunities arise in states and localities, both Brennan and CLC have seen a marked uptick in demand for their services. I view jurisprudential review as itself important to the Concept because proper drafting advice on the front end can stave off further erosion of existing campaign finance ground, but in recent months CLC and Brennan have each received 5-10 requests for review per month, oftentimes with very short turnaround times. When coupled with the loss of Kalb’s full-time attention, this new work (undertaken without the benefit of additional funding until we made a recent supplemental grant to permit CLC to hire an additional lawyer) has had the effect of distracting from focus on long-term jurisprudential change.<sup>27</sup>

Meanwhile, Demos took upon itself a messaging project, engaging Lake Associates to test the difference between equal voice rationales and corruption-based ones. Midway through this work, Demos learned that the Democracy Initiative had engaged Lake for a similar inquiry, and the two entities made the decision to combine forces (with OSF’s blessing)—an economy of scale that would also permit a larger scope of project. While there are many ways in which this was a sensible decision, it also meant that the message project quickly transformed into a joint Demos/Democracy Initiative endeavor, rather than one in service of the Concept. This may not have by itself been a problem, but it was further complicated by the array of interests the Democracy Initiative represents: primary attention was paid to Democracy Initiative constituents, which had substantially more opportunity to influence the direction of the research than Brennan and CLC. Distinctions between equal voice and corruption were stated in the starkest possible terms, and did not take into account more nuanced approaches. While the message project was always envisioned as a tool to improve communications with activists and the general public, we missed an opportunity to better determine whether and how to bring messaging in closer alignment with the more incremental language of corruption that litigators will almost certainly need to advance in order to get the Court to reconsider its very narrow approach.<sup>28</sup>

CLC has played a relatively steady role in the Concept’s first two years. Of the three primary groups, I have the fewest questions about its dedication to the strategic plan, but its ability to be forward-leaning in driving the litigation plan is limited by the same high-stakes dynamic that Brennan faces. In addition, it does not yet have the benefit of the idea generation that we hope will catch fire in the next year. CLC’s unique strength may also prove its weakness: it has strong relationships on both

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<sup>27</sup> Because this change coincided with a gap in USP staffing between Tom’s move to the Grantmaking Support Group and my arrival in late November 2014, it took us longer than it might have to ferret out the ways in which the Brennan staffing change slowed progress on the project.

<sup>28</sup> All members of the Concept core group agree that equality principles underlie concerns about corruption, and believe that strategic deployment of equality arguments in amicus briefs could help to expand the Court’s thinking, even if it continues to use a corruption lens for its jurisprudence.

sides of the aisle, and Trevor Potter has been instrumental in seeding right-wing pro-campaign finance reform efforts like [Take Back Our Republic](#). But it is not yet apparent that Tea Party advocates and liberal ones can find common policy ground that would ultimately (re)build strong, bipartisan mandate for sensible regulation. In late November 2015, we learned that there will [likely be a campaign finance case on the Supreme Court's 2016 Term docket](#). CLC will serve as lead organizer of briefs for the case. Its ability to manage that process, while also identifying areas where novel arguments or new voices can bolster the arguments of the usual suspects, will provide a test of both CLC's coalition skills and the ability of the Concept groups to work together to bring into highly productive alignment the litigation, outreach, communications and idea generation elements of the strategic plan.

The Concept's final prong is judicial nominations advocacy. Early public commitments by some presidential candidates to nominate judges who would overturn *Citizens United* jumped over steps we had anticipated having to take to educate decision makers about the importance of big money in politics as a jurisprudential concern. At the same time, I have struggled to find a sensible way to approach this work given current Senate obstruction of judicial nominees and the declining likelihood of many additional nominations as the presidential election approaches. We thought a prudent way forward might be to see if we could successfully engage campaign finance grassroots leaders to advocate for consideration of money in politics jurisprudence. We worked with OSPC, which funded the Raben Group to conduct a pilot nominations project in California.<sup>29</sup> While Raben has been successful in reaching out to Senate staff directly, they have not successfully engaged leaders in California—in part, likely a mismatch with their very DC-based skill set. I also think that the OSPC consultancy puts OSF perhaps uncomfortably close to the selection of tactics and strategies; the expense of contracting also militates in favor of short-term engagements, rather than the long-term effort to bake money in politics into the judicial nominations formula that could ultimately transform the judiciary. I continue to think it extremely important that we pay attention to vacancies on the Supreme Court (and in the particular lower federal courts, like the D.C. Circuit, that serve as feeders for it) as part of our work on this Concept. Nevertheless, in the absence of a vacancy on the Court (which might provide a situation where the Raben Group's expertise would be ideal for the Concept's goals), I think we need to reconsider this strategy. Several of our current grantees for general judicial nominations work, funded under USP's federal courts portfolio, have been advisors to the pilot, and, in consultation with OSPC's Caroline Chambers, I will gather them to conduct an autopsy at the pilot's end and to determine what, if any, judicial nominations strategy might better move the Concept forward.<sup>30</sup> In any event, our opportunities to influence this process are somewhat unknown pending 2016 electoral outcomes.

Four other aspects of the Concept's context deserve mention:

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<sup>29</sup> In consultation with the Raben Group and Concept grantees, OSPC-enabled USP staff selected California from three possible pilot states because of the presence of current and known judicial vacancies, the state's significant money in politics community, and the Raben Group's knowledge of the California senators.

<sup>30</sup> One alternative approach might be investment in the American Constitution Society's work to place its members on state judicial nominating commissions, where questions about campaign finance reform and jurisprudential philosophy of potential nominees could be considered at the earliest stages of the nominations process.

1. Relationship to George Soros' personal political giving. Mr. Soros' contributions to candidates at times make our task a bit harder, or at least more complicated. People wonder why we are leading the charge against big money in politics, and there are inevitably stories that pose Mr. Soros as the left's Koch equivalent.
2. Rising individual donor participation and Concept accountability to third parties. 2014 also saw the launch of Victory 2021, a donor- and advocate-led effort to develop a comprehensive strategy to reduce the influence of money in politics. Jonathan Soros, who is engaged both as a thinker and a significant donor in the campaign finance field, sits on the Victory 2021 executive committee, and is deeply involved in its work. The Victory 2021 plan is administered by Civitas Public Affairs and incorporates OSF's jurisprudential work as one of four pillars (the others are federal reforms, state and local initiatives, and efforts to expand the donor and activist networks for campaign finance reform measures through organizing and communications efforts). It has been extremely helpful to me to participate in its operating and executive committees, not least because it provides a unified source of cross-field information sharing, but the jurisprudence work has proved an imperfect fit with other Victory 2021 priorities—both because it is longer-term in nature (whereas other aspects of the plan are far more campaign-oriented), and because of my ongoing work to figure out how best to manage the Concept. Victory 2021 provides a parallel accountability structure for the core Concept organizations, which sometimes provides a helpful outside measure of our work, but other times feels like a round hole/square peg situation. While I think we are doing a far better job of scoping individual organization work plans for the Concept in 2016 than we did in 2015, it is challenging to set meaningful quarterly markers that are compatible with long-term focus, and that don't further distract our grantees with short-term reporting obligations. The Supreme Court case ahead should provide better opportunities to educate others in the field about the importance and nature of the jurisprudential work as applied to a concrete case; accomplishments within the Concept's more theoretical framework have been less easy to share with the larger Victory 2021 table in ways that made evident the Concept's contribution to "winning."
3. Declining foundation funding for the broader money in politics field. This summer, the MacArthur Foundation announced that it would exit the democracy field. This leaves a hole of approximately \$1 million/year in the budgets of organizations we fund under the Concept. It is possible that Ford's new direction will mean further reduction in funding to the field.<sup>31</sup> For the last 4 years, the Omidyar Network's Democracy Fund has provided substantial funding to a number of our grantees, but recently told some of them (including the Brennan Center) that they are "too liberal" to be funded in future cycles. Our 2013-14 planning assumed that these and other funders would pick up the

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<sup>31</sup> While Ford has not had a money in politics funding strategy per se, it has provided general support that some of our grantees have used to power work on campaign finance reform efforts.

slack in areas like transparency and data collection, allowing us to direct our resources to very focused jurisprudential work—assumptions that now appear to be incorrect.<sup>32</sup> We cannot fill the gaps left by these departures from the field, but we do need to protect and fund campaign finance-related work predicate to future jurisprudential change.

4. Small-dollar Concept-supportive investments. In addition to the grantees we have retained as essential to the field despite their indirect relation to the Concept, we continue to make smaller grants to organizations on a strategic basis. For instance, we made a \$25,000 grant to Free Speech for People (FSFP), which still focuses its work on advocating for a constitutional amendment, but which recently launched a so-called jurisprudence project of its own. The grant provided funding for a well-executed academic conference aimed at exploring alternate corporate law theories that would decrease the influence of corporate power in American politics and elections. This grant was intended to provide us with access to, and perhaps influence over, FSFP’s work and agenda. While it has not meant wholesale remaking of their approach, our place “inside the tent” has allowed us some additional influence over their work. In the case of Democracy 21, I view our grant as providing support for litigation undertaken in coordination with CLC’s litigation strategy and a ticket to amplification through Fred Wertheimer’s very strong media connections. I have also provided a planning grant to Theda Skocpol’s Scholar Strategy Network (SSN), which helps academics plug into policy debates. This grant will help SSN develop a program and national network of scholars, not limited to law professors, who can serve as local validators and amplifiers for our court-centered approach, in addition to advancing their own scholarship, and helping to broaden understandings of good policy and sound legal framework. Brennan is currently working with SSN to discuss rollout of its empirical agenda at SSN’s annual conference; Every Voice, which we funded for its work on state and local ballot initiatives based on strong jurisprudential review and collaboration, is also talking with SSN as it considers developing best practices for ballot initiative implementation. I will consider additional funding to SSN this summer.

#### IV. Analysis of the Concept approach

What have we achieved since launching the Concept in 2013? Do the lessons learned suggest this is the best use of funds?

Between 2012 and 2014, we saw electoral spending increase, while the number of donors decreased. Not surprisingly, since *Citizens United* and its progeny, we have seen the rise of Super PACS and 501c4 organizations—innovations that take advantage of the contours set out in these decisions. As of September 2015, [according to grantee CRP](#), they had spent more than \$25.1 million to influence

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<sup>32</sup> I have, for instance, continued funding to CRP on the theory that its data will be essential for empirical work that addresses federal elections, and that could in the future form the basis for a future Supreme Court to reconsider its past money in politics decisions. This leaves open the question of NIMSP, which has equally valuable data for state-level elections.

the 2016 elections outside the party or official campaign structure. That is an increase in spending of more than 34% since 2014, and five times as much as similar groups spent at that date in the 2012 presidential election. These innovations take advantage of a legal landscape that permits the flimsiest screen between a candidate and his or her “independent” Super PAC is sufficient, making the current corruption standard a very high hurdle indeed.<sup>33</sup> In this world, we will continue to see donor maneuvering that underscores our most basic concern: that democratic principles cannot survive where a small group of very wealthy individuals have a distorting access to and influence on politicians, policies and our political system, to the detriment of all the open society values and priority issues we serve. Those other grounds for regulating in more meaningful ways are not possible without profound changes to the understanding of the First Amendment that prevails on the Court today.

**But is a concept the best or right way to address these concerns?** While many organizations watch the Court and litigate on a responsive, and occasionally strategic, basis, I am aware of no organization or set of organizations that have developed an operational plan for transformational legal change.<sup>34</sup> Left to their own devices, I continue to believe that the broad campaign finance reform field would do some work to move the law, but that it would be unstrategic, disjointed, competitive and easily dislodged by the pressures of shorter-term work. Furthermore, with a declining field of institutional funders, we have fewer and fewer allies in multi-year—let alone long-range—commitments to fund litigation strategies. While I do not advocate that USP commit to undertake this strategy on the decades-long basis that we might need to declare total change in the courts, I do think that we need at least two more years to judge our initial efforts.

One particular challenge with the deep, long-term, and sometimes interventionist nature of work on the Concept is maintaining the balance between our participation as partner and as funder. In my year of work with the Concept, I have been struck by the (often understandable) difficulty our partners have in pushing back on the daily pressures to keep sight of the long-term game. With substantial pushing from me, the work plan for 2016 will include at least five workshops to further legal theory development and the empirical research agenda, a convening to discuss litigation planning and its ties to idea development, and a symposium on lessons of legal change that can be imported to the campaign finance question; I am certain that far less would be accomplished without our direct participation.

**Is this then the right concept structure?** Our grantee organizations collectively capture an incredible amount of campaign finance litigation experience, and they have relationships with the right key constitutional litigators and scholars to do this work. While there might have been space at the time of CLC’s creation, or when it emerged from a financial crisis in 2009, to develop a fully

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<sup>33</sup> This despite the fact, according to CRP, that “If any type of group is in vogue, it’s the “single-candidate” committee, according to FEC data. Of the 40 organizations that have spent the most so far in the 2016 cycle — a list that includes political nonprofits, super PACs and business associations — more than half are dedicated to one candidate and one race. The same is true of the top 20 biggest spenders, which includes 11 single-candidate groups.” See full article [here](#).

<sup>34</sup> To the extent that FSFP and other pro-constitutional amendment groups have created such plans, I view them as unlikely to work and naïve with regard to the risks of undertaking litigation that goes too far, too fast.

purpose-built organization to lead this Concept, it is hard to imagine now introducing a new institution to this mix given the fact that all three organizations are high functioning groups whose credentials and experience are in the heartland of the Concept. I am, however, exploring whether we should complement our grantees with a fellowship or other non-institutional partner for the critically important idea generation work. This might help to move it more quickly, absent the competing pressures of other daily work and organizational egos and bureaucracy. I suspect the right individual (likely a scholar, but possibly a practitioner) could help to develop the focus that continues to feel more elusive than I would like. Without the ties of formal affiliation, a fellow or consultant might help us better leverage the variety of approaches and interests of the existing grantees. In addition, I may shift a portion of the funding for Brennan and Demos to project support, or provide a supplemental project grant, in order to better emphasize the priorities of the Concept within our larger organizational support.

## **V. Conclusion**

The Supreme Court case that is likely to be argued in the spring of 2017 will provide a test for us to determine whether the Concept is working to spur sufficient collaboration on idea development, litigation strategy and communication to justify continued investment. While I continue to believe that the Concept is the best use of USP funds (without which this work would not be done in a concerted, strategic way), the proof will be in the ability of our grantees to use the specific crisis of the case to jumpstart activities so that we have far richer jurisprudential tools—whether in the form of majority opinions, dissents, or the beginnings of academic consensus—and a strong litigation plan moving forward.

## U.S. PROGRAMS UPDATES BY STRATEGIC GOAL

October 2015 – January 2016

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The 2015-2018 Strategy for U.S. Programs organizes our work around four goals:

1. An American democracy strengthened through greater inclusion, participation and accountability.
2. A fair criminal justice system that uses punishment appropriately; does not rely on incarceration to address issues of poverty, mental illness and drug addiction; and promotes community safety and well-being.
3. Full political, economic and civic participation of immigrants and communities of color achieved by dismantling the barriers and strengthening the conduits to opportunity.
4. An economy governed by policies at the local and national level that promote equitable growth and high-road development.

We typically accomplish this work through grant-making and our own efforts, with our grant-making arising in one of four ways: (a) support for organizations that are central to making change happen, (b) OSF-developed concepts in which we play a central role in coordinating or helping develop a core strategy, (c) opportunistic investments that respond to unexpected developments or newly identified opportunities, and (d) support for new or emerging leaders, organizations, or ideas.

What follows are notable activities and updates —not otherwise highlighted in the board meeting memos—related to these goals since the October meeting of the U.S. Programs Advisory Board.

### **Goal 1: An American Democracy Strengthened Through Greater Inclusion, Participation And Accountability**

#### *Voting Rights, Ballot Access & Redistricting*

In his final State of the Union address, President Obama spoke of making it “easier to vote,” modernizing our systems and ending “the practice of drawing our congressional districts so that politicians can pick their voters, and not the other way around.” These remarks are especially noteworthy since this year will be the first presidential election in more than 50 years in which voters will not have critical protections of the Voting Rights Act due to the Supreme Court’s decision in *Shelby County v. Holder*. In response, state mobilization groups and civil rights litigators have been coordinating efforts to prevent the dilution of minority voting strength and push for affirmative policies including automated voter registration and redistricting reform. Groups are working to ensure quality implementation of automatic/automated voter registration in Oregon and California. In North Carolina and Illinois, advocates are fighting for redistricting reform legislation and ballot initiatives, respectively.

NEO Philanthropy’s State Infrastructure Fund, with which the OSF-seeded Shelby Response Fund merged, has consciously provided general support for state-based organizations during “off years” as



well as election cycles giving groups the ability to build true voter engagement capacity. Fund staff have facilitated smarter coordination between and among litigators, state mobilizing groups, and additional actors such as labor and choice groups. OSF support remains critical as MacArthur exits its democracy funding and Ford reimagines its role in the voting rights space.

To date, Carnegie, Ford and OSF have consistently supported litigation when other funders have not. While additional resources are needed to support cases, even the threat of litigation from grantees has successfully turned back policies aimed at suppressing minority votes in the South and elsewhere. Two examples follow:

In September, Alabama officials announced [plans](#) to close 31 Department of Motor Vehicles offices in the “Black belt” (majority African-American communities), making it more difficult for eligible voters to get the identification needed to satisfy the state’s new voter ID law. Estimates show that 500,000 Alabamans lack the proper ID. Working with Greater Birmingham Ministries, the NAACP Legal Defense and Educational Fund filed a lawsuit in December challenging Alabama’s discriminatory actions. And in December, Texas’s Waller County Commissioners’ Court voted to drastically reduce the number of early voting locations in African-American communities. Six days following the vote, and after contact from community members, grantee Campaign Legal Center wrote to county officials reminding them of their obligations under the Voting Rights Act. The very next day, the county (which gained notoriety for Sandra Bland’s in-custody death) [restored the early voting sites](#).

On December 8, 2015, the U.S. Supreme Court heard oral argument in *Evenwel v. Abbott*, [the case](#) brought by conservative forces challenging the long-standing practice of counting every person when drawing electoral districts (the “one person, one vote” principle). This case could change the way state legislative districts are drawn so as to use eligible voter populations instead of total population, leaving children, non-citizen residents, people who have committed felonies and the mentally ill uncounted--a move which “risks rendering residents of this country who are ineligible, unwilling, or unable to vote as invisible or irrelevant to our system of representative democracy,” as the solicitor general’s brief in the case argues. In preparation for the argument, OSF funded opinion research by SKD Knickerbocker, coordinating with the New Venture Fund’s Supreme Court Project and lead grantees MALDEF and the Leadership Conference, to bring stakeholders together and shape influential messaging which was reflected in various outlets including a *New York Times* [editorial](#). A decision is expected as early as March.

### *Money in Politics*

The Supreme Court may soon have [a new opportunity to consider campaign finance regulation](#). In late November, the Louisiana Republican Party and Jim Bopp, a veteran opponent of campaign finance reform, brought a case challenging McCain-Feingold’s soft money ban as applied to state parties; a federal court’s finding in favor of the plaintiffs put the suit on a fast track to the high court. If successful on the merits, the case could, in the words of the federal judge who issued the opinion, “render largely meaningless ... limits on contributions to state- and local-party committees.” The case poses a critical test for how far the current Court majority will extend the

reasoning it articulated in the *Citizens United v. FEC* and *McCutcheon v. FEC* decisions. As part of US Programs' concept to reform campaign finance jurisprudence, grantees the Campaign Legal Center and the Brennan Center have been following this case (and were prepared to participate in an earlier incarnation of it). They are now working to develop coordinated amicus and communications strategies, along with Demos, Public Citizen, Free Speech for People, Democracy 21, Common Cause and others.

### Initiatives and Referenda

Since 2010, OSF, via both USP and OPSC, has conducted research and made investments in ballot initiative research and initiatives themselves on voting rights, in-state tuition for undocumented immigrants, and, of course, California's Prop 47 in 2014.

The [Ballot Initiative Strategy Center](#) ("BISC"), a grantee with both c3 and c4 capacity, has been at the center of this strategy for more than ten years, building support from labor, pro-choice, and environmental advocates in its early days to try to fend off the then conservative dominance of the I&R process. Now that progressives have turned the corner on the use of the process, at least in the 25 states that allow such citizen initiatives to be placed on the ballot, this is a rare area of success for progressive advocates and now a "shiny object" for all to behold (and attempt, although such initiatives tend to be costly). States including Arizona, California, Colorado, and Oregon have long used the I&R process to sidestep elected government, but now the practice is spreading, as this [Atlantic](#) story illustrates.

Other recent debates of note include a long-standing one on investing in state-based political infrastructure, analyzed recently in "[The Republican Party's 50-State Solution](#)," a New York Times article by Thomas Edsall, in which the author details the conservative revolution in the states and argues that progressive donors, including George Soros, do not understand the significance of the states, both as policy incubators as well as launching pads for future candidates for higher office. While this is arguable -- George Soros is a founding investor in entities like the Committee on States and America Votes, and OSF has long funded organizations like State Voices -- the comparison between conservative infrastructure (such as the American Legislative Exchange Council) and progressive infrastructure in the states is still clear in terms of impact and influence. OSF's Project 2020, as discussed in an OSPC sponsored session in October, 2015, is taking a much deeper look at this challenge, both to better understand state-level political dynamics and to invest more deeply in three "tipping point" states -- Arizona, Georgia, and North Carolina -- where our interests in demographic shifts, political participation, and policymaking climates intersect in especially compelling ways.

### Media & Technology Policy

On December 5, 2015, the U.S. Court of Appeals for the D.C. Circuit heard oral arguments in the case of *United States Telecom Association v. FCC* — the industry's challenge to the Federal Communications Commission's Net Neutrality rules. OSF grantees Free Press, New America's Open Technology Institute, and Public Knowledge intervened in the case with assistance from outside appellate counsel Kevin Russell, who defended the FCC's rules in court. While it is

impossible to predict the outcome of the case, experts believe that the most important aspect — the FCC’s decision to restore its authority and reclassify broadband under Title II of the Communications Act — [is on solid legal ground](#). The court was somewhat skeptical of the FCC’s decision to apply the same regulatory framework to mobile and wired broadband. The worst-case scenario would involve the court vacating reclassification with respect to mobile broadband. Less ominously, the judges may require the FCC to notice a new rulemaking procedure on mobile broadband. A ruling is expected this spring.

While industry challenges the FCC in court, a number of companies are testing Net Neutrality rules with new product offerings that exempt certain types of content from customers’ data caps. Many consumer advocates view this as a violation of Net Neutrality rules, and the [FCC has asked Comcast, AT&T, and T-Mobile to answer questions](#) about these practices.

In March 2016, the FCC is expected to introduce an order meant to modernize and expand Lifeline — a Universal Service Fund program that provides a discount on phone service to qualified low-income consumers — to make broadband access more affordable. OSF grantee the Media Democracy Fund is coordinating a coalition of digital rights organizations that are working together to push for an order that upholds public interest principles and expands affordable broadband access.

Finally, communities continue to challenge state laws that prevent municipalities from building their own broadband networks. In November 2015, [nearly 50 cities and counties in Colorado](#) overwhelmingly approved measures to allow their local government to decide whether to offer broadband Internet to residents. These measures passed in every jurisdiction that voted on them, including two similar ballot initiatives in Iowa and in New England. In many places the margin of victory was greater than 2:1.

### *National Security & Human Rights*

There is a laundry list of obstacles to judicial review of national security policies like torture, lethal drone killings, and detention at Guantanamo. (A [motion to dismiss](#) in the ACLU case against the psychologists behind the CIA torture program, to be argued in April, is a classic example.) As a result, most national security abuses, no matter how egregious, are almost never resolved on the merits in U.S. federal courts. This limits the creation of precedents that could prevent a return to torture and other abuses in the future. NSHR commissioned an ideas paper in late 2015 and, in January, convened a working group to test the author’s suggestions for how to obtain judicial review of national security abuses. OSCP may take the question up based on this research.

Attacks by ISIS in Paris and elsewhere have increased public [calls](#) for expanded foreign intelligence and domestic surveillance authority, but our grantees continue to push against that tide. The recent [settlement](#) in a suit led by grantee [CLEAR](#) and the ACLU marks progress in fighting blanket surveillance of New York City Muslims. The parameters of foreign signals intelligence are still largely unfettered. But they are, in part because of recent atrocities, the subject of increased public debate (as a new [surveillance bill](#) in the UK attests), [transatlantic collaboration](#), transnational

advocacy (see [amicus](#) and [comments](#) by the Center for Democracy and Technology), and domestic reviews (see [ACLU input](#) to the Privacy and Civil Liberties Oversight board.) Transatlantic coordination will be a big component of NSHR's work on foreign intelligence surveillance this year, in continued partnership with the Information Program.

Rising concerns about the global reach of ISIS have taken a toll on [public perceptions](#) of American Muslims, causing the field to focus more on rapid responses to hate crimes and xenophobic rhetoric than on long-term policy concerns for the first time since 9/11. Given the current climate, this dynamic will likely continue and grow in 2016. NSHR's core set of grantees – Muslim Advocates, Sikh Coalition, South Asian Americans Leading Together, and National Network of Arab American Communities – is well prepared for rapid response work. This worsening climate has also led to increased coordination amongst donors, including a donor affinity group that we are actively working to cultivate and organize in 2016.

### *Open Places Initiative*

Espacios Abiertos, Open Buffalo and Partners for Progress San Diego made significant headway in the first two years of the Open Places Initiative, and thus we have decided to continue to support each site with a grant of \$2 million dollars over two years. All sites are moving from the planning stage—where they focused on developing infrastructure, testing hypotheses, and revising and sharpening their strategic focus—to full implementation of their substantive and civic capacity goals. In early 2016, each site will complete the important step of identifying clear benchmarks and indicators for success and will deepen its efforts to integrate substantive work on priority issues and the civic capacities it is developing so that they strengthen and reinforce one another.

Open Buffalo reached an agreement with Common Council to apply a moratorium on sale of city-owned property pending further analysis and the development of policy to prevent gentrification; the site also graduated 25 leaders from its [Emerging Leaders Program](#). [Espacios Abiertos](#) started a Legal Defense Fund to strategically support under resourced communities in legal battles, and supported and helped to develop a network of media groups that worked together to win two access to information lawsuits. [Partners for Progress San Diego](#) influenced [the Justice Department's assessment of the San Diego Police Department](#), pushing to include community recommendations regarding racial profiling; the group has also coordinated strong working relationships with the Labor Commissioner and county District Attorney.

Working in a network with a variety of partners, the sites have had to consider their leadership role and effective divisions of labor and often complicated dynamics, but they feel that the new vision and mission they are bringing to the respective regions are welcomed by many and are gaining support and strength. An assessment firm is helping each site to collect data that will help them to evaluate its impact and make necessary adjustments to its approach.

The 2016 elections will be consequential in all three sites, but San Diego's election may have national implications. Mayor Kevin Faulconer of San Diego, [who some are calling the great urban hope of the Republican Party](#), is expected to win re-election without any real opposition and is gaining

national attention (as evidenced by his prime speaking slot at the Republican National Committee in the winter of 2015). San Diego County elections and ballot initiatives will also be significant, including a [ballot initiative in June 2016 to keep or repeal the minimum wage hike](#) that was passed last year, largely by the education and advocacy efforts of our grantee and its partners.

Puerto Rico has the most at stake, with elections on all levels in 2016, as most municipal and “state” positions are contested every four years; the [current governor will not seek re-election](#). The U.S. Supreme Court agreed to hear a case in 2016 related to [Puerto Rico’s authority to restructure its debt](#), and the justices are arguments in a case in January 2016 that has the potential to affect the [island’s political status](#).

Despite a convening at OSF of Puerto Rican and national funders in November 2014 to encourage more investment in the island, there remains very little interest from national funders to invest in Puerto Rico. However, US Programs has provided additional support to the fiscal agent for Espacios Abiertos—the Center for a New Economy, an independent think tank—to enable it to work with Joseph Stiglitz and others to develop a long-term economic development plan. Simultaneously, US Programs has undertaken extensive explorations to determine how OSF can help address the immediate needs of the island, including contracting with a communications firm to help broaden the spectrum of voices calling for resolution of the debt crisis. OSPC has provided some complementary support.

The elections will not be as significant in Buffalo, but the growing economic opportunities and fight for equity dominate the regional narrative. In November, Governor Cuomo and Mayor Brown of Buffalo jointly announced that Buffalo is [raising the minimum wage for public sector workers to \\$15 per hour](#), a development that our grantee and its partners in the region help to bring about. The [extension on the solar Investment Tax Credit through 2019](#) at the end of 2015 was another critical moment. The credit will buffer the solar industry in the United States, thus leading to more jobs and potentially more development in Buffalo, the home of SolarCity.

## **Goal 2: A Fair Criminal Justice System That Uses Punishment Appropriately; Does Not Rely on Incarceration to Address Issues of Poverty, Mental Illness and Drug Addiction; and Promotes Community Safety and Well-Being**

### *Drug Policy*

There is [growing bipartisan interest](#) in access to addiction treatment and drug policy, driven in part by the increased attention to the abuse of prescription drugs and the [rise in heroin use](#) in rural America. Grantees have sought to capitalize on the heightened interest, pushing to improve access to services and to change the way we view and treat people who use drugs. Jessica Nickel, former chief of staff to Republican Senator Rob Portman of Ohio, and current lobbyist for Illinois-based Treatment Alternatives for Safe Communities (TASC), a US Programs grantee, worked with other grantees, including the National Council for Behavioral Health, to put together the [New Hampshire Presidential Forum](#) on Addiction and the Heroin Epidemic. Attendees included Republicans Chris Christie, John Kasich and Carly Fiorina, and Democrat Martin O’Malley. This forum helped prompt

other Republican and Democratic candidates to talk about their views on addiction. We are mindful of the increased attention to the problem of opioid addiction overdoses among white rural as well as middle- and upper-class populations, and are working to make sure this new "energy" does not take resources and services away from or further stigmatize other people who use drugs or who use drugs other than opioids. Included as part of the December 2015 budget deal was a provision allowing [federal funding](#) for key aspects of syringe exchange programs. The provision allows for federal funding for all aspects except for the actual syringes. While this is not a complete win, the fact that the measure was introduced and supported by Republicans reflected an important step forward—a step made possible in part by long-running efforts to influence GOP attitudes on these issues by such grantees as the Harm Reduction Coalition. Another indication of this trend: progress in the drive to extend Medicaid coverage to more jail populations. Indiana [passed a first-of-its-kind law](#) requiring jails to enroll eligible individuals. While this was an unfunded mandate with no roadmap for counties to actually implement, the state is working out how to create a system for seamless enrollment at scale, building on our grant to TASC and an anticipated grant to a local enrollment entity.

US Programs [continues its effort to promote health-based responses](#) to those struggling with drug misuse. [Grants have now been completed](#) to the seven sites selected by the Drug Policy Project to develop plans for arrest and booking diversion programs as alternatives to punitive drug policies: Atlanta, GA; Bangor, ME; Camden, NJ; Fayetteville, NC; Los Angeles, CA; Milwaukee, WI; and Philadelphia, PA. In December, OSI-Baltimore announced a grant to bring a similar initiative there as well, launching with [a front-page story in the Baltimore Sun](#) and an [op-ed](#) by staffers Scott Nolen and Tara Huffman.

Also in December, OSI-Baltimore's Drug Addiction Treatment and the Criminal and Juvenile Justice teams hosted the Gloucester, Massachusetts and Arlington, Massachusetts police chiefs to discuss their innovative programs to [divert individuals with addiction issues out of the criminal justice program](#) without arresting them. They met with the Baltimore Police Commissioner Kevin Davis and Baltimore Health Commissioner Dr. Leanna Wen, among others, and spoke at a public [Talking About Addiction forum](#) in the evening, along with OSI-Baltimore's Scott Nolen and Law Enforcement Against Prohibition director Neill Franklin. Dr. Wen subsequently [talked about her meeting](#) with the police chiefs when testifying before Congress. And the Maryland Governor's Heroin and Opioid Emergency Task Force released its final report. An OSI-Baltimore grantee was appointed to this task force and several other grantees helped shape the report by attending the town halls and testifying on issues related to their expertise.

### *Death Penalty*

Support for the death penalty continued to decline in the U.S. in 2015, and developments at both the federal and state level have given funders and advocates hope for continued momentum in the abolition movement in the year ahead.

Nebraska became the 19<sup>th</sup> state to abolish the death penalty since it was reinstated 40 years ago, but the 2015 vote to repeal capital punishment [remains contested](#); the governor's veto of the measure

was overridden, but pro-death penalty forces succeeded in gathering enough signatures to place a referendum to reinstate capital punishment on the ballot this fall, postponing repeal. The OSF-supported 8<sup>th</sup> Amendment Project, which is coordinating the national effort to abolish the death penalty, regards upholding the repeal as a key priority crucial to their nationwide campaign. There is a solid team in the state, but the estimated costs of the battle are high—\$6-7 million—in large part because the repeal effort is being driven by Gov. Ricketts, former CEO of Ameritrade, who has the capacity to fund the work from his personal fortune. We are exploring the merits of an investment here.

In California, meanwhile, opponents of the death penalty [have put repeal up for a vote again](#), after narrowly losing a bid to abolish it in a 2012 referendum. At the same time, pro-death penalty advocates in that state have also drafted a ballot measure that would provide new deadlines intended to expedite the appeals process. There is a split among field leaders as the wisdom of a new vote at this time. While California has the largest death row in the nation (750 inmates), the state has not executed anyone since 2006, and pending legal issues related to its lethal injection protocol and Gov. Brown's ambivalence toward capital punishment makes it highly unlikely that there will be another execution in the state within the next 2-3 years. Some advocates recognize that a ballot initiative victory would have a significant impact, given the size of the state's death row, others stress a loss would undermine the campaign's ability to count California among the states in which there is a de facto moratorium. We remain inclined not to participate here.

At the federal level, the U.S. Supreme Court, in one of its first [decisions](#) of the New Year, struck down an aspect of [Florida's death penalty system](#), finding that in that state—home to the second-largest death row in the country—jurors do not have a sufficient role in deciding whether defendants should be put to death. It remains to be seen whether the decision will apply retroactively, and to what degree the case will open the door for further discrediting of the practice in Florida.

### *Federal Sentencing Reform*

There continues to be significant attention to growing bipartisan support for criminal justice reform. Reformers still hold out hope for passage of significant legislation with [broad support](#), both in Congress and among [advocacy groups](#). Overall, the bill focuses on politically safe issues—long sentences for nonviolent drug offenses that are now widely unpopular, as well as reentry support. Still, passage is not assured. Among challenges, efforts to include mens rea reform—the criminal intent requirement in criminal law—have caused a split within the coalition. Some conservatives and business groups want to insert a provision that critics, including the Obama administration, say would make it much harder to go after corporate polluters by forcing prosecutors to prove intent. If enacted, the legislation would build on other successful federal reforms, including the ruling by the Federal Sentencing Commission that reduced the potential punishment for future drug offenders last year and then made that change retroactive, leading to the early release of 6,000 people from federal prisons last fall.

Another challenge arose in mid-January, when authorities in Ohio alleged that one such man released early brutally murdered his wife and two young children. The news led some on the right to [call for an end](#) to the program. This turn of events will test the strength and will of the conservative voices within the bipartisan coalition to continue to support reforms.

Since last fall, a coalition in California, including grantee Californians for Safety and Justice, has been working intensely to craft a ballot initiative that would eliminate prosecutor authority to transfer juveniles into the adult justice system and expand parole review for young adults. In December it formally submitted an initiative to the California Attorney General's office for the 2016 ballot and began engaging in discussions with numerous stakeholders to seek support for the measure. The initiative was amended in late January to include broader parole reforms, and California Governor Jerry Brown has announced his [full support](#) for the amended 2016 ballot initiative. In addition to eliminating prosecutor authority to transfer juveniles into the adult criminal justice system, the measure authorizes parole consideration for nonviolent prisoners who complete the full sentence of their primary offense, and allows prisoners to earn credits for good behavior, education and rehabilitation. Literally thousands of individuals would be eligible for reduced sentences and release if the initiative passes.

Also in late January, Oklahomans for Criminal Justice Reform announced a [ballot initiative campaign](#) to pursue more effective policies that reduce the prison population and redirect the savings to address the root causes of crime – and help low-level offenders turn their lives around. Similar to California's successful Prop. 47 effort, the ballot initiative reclassifies certain low-level offenses — like drug possession and low-level property offenses — as misdemeanors instead of felonies, triggering cost savings from decreased incarceration costs, and then investing those savings into rehabilitation programs to treat mental health conditions and drug addiction, and in education and job training to help individuals turn their lives around, find employment, and avoid going back to prison. The campaign is backed by respected leaders from across the state including faith leaders, business leaders, policy experts, treatment and rehabilitation providers, and many others.

#### *Baltimore Police*

On November 10, OSI-Baltimore [announced](#) a \$50,000 grant from our [Baltimore Justice Fund](#), launched in response to the death of Freddie Gray and the subsequent uprising, to support Baltimore Action Legal Team's community education, legal observation and representation, and bail support services to advance police reform and accountability. This brought the total amount of grants from the Baltimore Justice Fund to \$337,500. At this point, we have decided to stop soliciting donations to the Fund and to incorporate its mission into our regular work.

On January 30, 2016, OSI-Baltimore convened more than 60 advocates, activists and attorneys for a day-long forum to help local groups in Baltimore identify provisions and approaches that could increase the effectiveness of the consent decree that will result from the ongoing Department of Justice pattern and practice investigation into the Baltimore Police Department. US Programs staff as well as attorneys, consent decree monitors and activists from Cincinnati, Cleveland, Ferguson,



New Orleans, New York, and Seattle joined local groups to share lessons learned and best practices from their respective jurisdictions, including provisions to ensure community participation in monitoring the consent decree. The convening will inform OSI-Baltimore's strategy to advance policing reforms in Baltimore.

### **Goal 3: Full Political, Economic and Civic Participation of Communities of Color and Immigrants**

#### *Immigration*

Global and domestic events continued to impact the immigrant rights field. Members of [Congress](#) and [state](#) and [local](#) jurisdictions responded swiftly to the terrorist attacks in Paris in November, leading to proposals to restrict and reject resettlement of refugees from Iraq and Syria in the U.S. Following the San Bernardino shootings in December by a U.S. citizen and his Pakistani spouse, there were additional proposals to limit the immigration of foreign nationals from specific Muslim countries, including restrictions on the [visa waiver program](#). US Programs' Reserve Fund request, already in pipeline since the Syrian refugee crisis erupted last summer, received tentative approval. This request, which includes both c3 and c4 components, will provide communications capacity and advocacy support to refugee groups. It will also bolster immigrant rights groups' ability to respond to anti-Muslim and anti-refugee rhetoric, which has been prominent in the race for the Republican 2016 presidential nomination.

As many governors and state legislatures took up restrictive measures meant to limit or bar the flow of Syrian refugees, USP grantee [Faith in Public Life](#) mobilized its faith leaders to take a strong stand, using moral framing and religious references. A faith-based communications and strategy organization, the group is a core grantee for USP and has built an impressive coalition of 30,000 progressive Christian (Protestant, Catholic) and Jewish clergy that it engages and mobilizes on tax and budget priorities, combatting Islamophobia, advancing LGBTQ equality, and achieving immigrant justice, among others. It delivered thousands of petition signatures – from clergy – to seven conservative governors who had said “no” to resettlement. In the very religious state of Georgia alone, 1,200 clergy members are part of FPL's network and over 100 priests, rabbis, and pastors were part of sustained and strategic advocacy and media efforts to call out Governor Nathan Deal for his [un-Christian-like response](#) to the refugee crisis, among the most aggressively anti-refugee in the nation. In early January, following a legal ruling, the [governor rescinded his order](#) to bar refugees from coming to Georgia or receiving public benefits.

Additionally, during the last quarter of 2015, there was an [uptick](#) in migrants fleeing violence from Central America's [Northern Triangle](#). The Obama administration had established family detention facilities for the Central American mothers and children after the 2014 surge, but, in a case led by grantees, a federal judge chided the Department of Homeland Security (DHS) for [detaining children](#) in violation of a 1997 settlement agreement and ordered that it provide alternatives to detention. Subsequently, the administration announced it was opening new [shelters](#) and [campsites](#) to house the children, including the new surge of unaccompanied minors crossing the southwest border. Around

the holidays, DHS also started conducting raids to target Central American families who have not been granted asylum. Citing due process violations, grantees [American Immigration Council and Catholic Legal Immigration Network \(CLINIC\)](#) were able to successfully obtain stays of removal for 12 families – 33 mothers and children – who were among the 121 families rounded up in a three-state raid. Moreover, in contrast to last summer, grantees are increasingly referring to these mothers and children as [asylum-seekers and refugees](#), analogizing this migration to that of Syrian refugees.

Meanwhile, the effects of the San Francisco shooting of a woman by an undocumented immigrant in July continue to reverberate, threatening hard-won gains by immigration advocates in creating “sanctuary cities”—the more than 300 communities around the country that have limited cooperation between local law enforcement and the federal Immigration and Customs Enforcement (ICE). Notably, North Carolina’s recently passed [HB 318](#), an “anti-sanctuary city” law that also prevents police and government agencies from accepting identification from foreign governments, is likely to lead to additional copycat laws in other states. A number of grantees have also been working to defend their successes in maintaining community trust policies across the country. In mid-December, grantees from all over the country convened in New York for the [National Immigrant Integration Conference](#) to discuss rights and freedoms for immigrants, naturalization, economic justice, education, and administrative relief. Influencers, such as Democratic presidential primary candidates Hillary Clinton and Bernie Sanders, New York City Mayor Bill de Blasio and U.S. Rep. Luis Guterierrez of Illinois, spoke to thousands of advocates on the urgency of immigration reform and the need to stop using harsh immigration policies to break up families.

### *Emma Lazarus II*

President Obama’s 2014 executive actions on immigration were placed on hold under a national injunction, pending the Supreme Court’s review of [U.S. v. Texas](#); oral arguments are slated for April, and the ruling, by term’s end in June, will determine whether the programs can move ahead. This case is sure to be the most high profile and consequential Supreme Court case decided on immigration in decades. Our expenditures of \$8.6m in 2015 under the Emma Lazarus II program were not only designed to prepare the field to implement a large-scale legalization program, but also built up the capacity of the field to help undocumented immigrants improve their immigration status based on relief available now, incentivized new local funding and funder collaboratives, created new and better ways of assisting immigrants at scale, and allowed US Programs to gain a new understanding about the strengths and weaknesses of the immigration field’s ability to execute a large-scale implementation program.

Looking ahead, the Emma Lazarus II Fund anticipates a shift in strategy for 2016. A victory at the Supreme Court would validate the President’s executive authority to use its discretion to help large swaths of the undocumented. A loss would threaten the President’s authority and also put the original DACA program in jeopardy. For these reasons and others, multiple grantees and experts advise that there is nothing more important for the immigrant rights movement than winning [U.S. v. Texas](#). The key groups are planning a [mini-campaign](#) that we hope to support combining legal, communications and field strategies to build pressure for a positive decision. We also know that if

the Court gives the programs a green light, there will be a very short application window before the November election, and before the Administration changes hands. A significant number of applications must be approved before the new President takes office in order to make it politically untenable to retract the programs. Our investments must be narrowly tailored to boost grantees' abilities and capacity to meet that challenge. Our grantees and partners also must be prepared to blunt the impact of a negative decision, and channel the frustration and anger productively.

### School Discipline

Grantees leveraged several high-profile incidents at the local level to further school discipline reform efforts nationally. Equality consultant Spitfire Communications released a school discipline rapid response toolkit, which grantees used in the days surrounding high-profile incidents in [South Carolina](#) and [Texas](#) reflecting disproportionately harsh discipline of students of color.

Asian American and Pacific Islander leaders from over [50 organizations](#) joined members of [Congress](#) for the December 2015 release of [AAPIs Behind Bars: Exposing the School to Prison to Deportation Pipeline](#), a project of grantee the Four Freedoms Fund. Leaders used the report, which profiled local data, to highlight the often-overlooked link between disparate school-discipline policies and AAPI communities. This work helped to expand the coalition of communities recognized by those on Capitol Hill as a constituency of influence.

In January, grantee Communities for Just Schools Fund (formerly the Just and Fair Schools Fund) joined forces with the [Executives' Alliance to Expand Opportunities for Boys and Men of Color](#) to advise its school discipline collective action table.

### Baltimore Schools

OSI-Baltimore continued our momentum on school police reform by partnering with the NAACP Legal Defense and Educational Fund in several ways, notably by helping to draft a request to the Department of Justice that the patterns and practice investigation of the police force be extended to school police as well as making a FOIA request for arrest data. The OSI-funded Coalition to Reform School Discipline has pushed forward a critical agenda to reform arrest practices that too often criminalize student behavior, thus thrusting young people into the school to prison pipeline. Also, in collaboration with the Family League, OSI launched the School Climate Collaborative consisting of over 50 organizations that prioritize the development of welcoming school climates as a prerequisite to student achievement and success.

Working with the quasi-governmental Family League, OSI-Baltimore launched the School Climate Collaborative, consisting of over 50 organizations that place a priority on the development of welcoming school climates as a prerequisite to student achievement and success. Education Program Director Karen Webber has shared the Baltimore experience and approach for New York City policymakers and practitioners at a meeting organized by Atlantic Philanthropies; she is actively participating in the development of the Center for Positive School Climates at the University of Maryland that the office has launched to serve as a clearinghouse for best practices and to train. As

the new Baltimore City school administration does not have as strong a commitment to school discipline reform as the last administration, the office is playing an active role to protect against any weakening of the policies now in place.

### Racial Narrative

Much of our 2015 racial narrative work focused on the role of “othering” and implicit bias as a vehicle for limiting opportunities for immigrants and communities of color. As defined by grantee the [Haas Institute for a Fair and Inclusive Society](#), “othering is a set of common processes that engender marginality and persistent inequality across any of the full range of human differences.” Societies use these distinctions to justify unequal treatment that ranges from discrimination to genocide. The [act of “othering” dehumanizes an individual or group](#), making it possible to rationalize unjust and otherwise objectionable treatment of those outside the group. [Implicit bias](#), the more familiar term in the U.S. racial narrative context, impacts everyday interactions, which reinforce or exacerbate already existing inequalities within and across systems. As such, implicit bias is a form of othering that motivates the micro-aggressions and disparate treatment of an outsider group.

We sponsored the [Haas Institute’s Othering and Belonging Conference](#), which provided a space for grantees to connect with state and local government officials and develop strategy. The conference featured organizers from the Movement for Black Lives and included speakers such as author Naomi Klein (“The Shock Doctrine”), New York Times columnist Charles Blow, National Domestic Workers Alliance Director Ai-jen Poo and University of Southern California sociology professor Manuel Pastor. The Institute [shared its conference findings](#) and provided training for funders this November with its report, [“Implicit Bias and Philanthropic Effectiveness.”](#)

Grantee [Race Forward](#) continued to [uplift incidents of implicit bias](#) in the media and provide advocacy tools for grantees working at the intersection of [racism and xenophobia](#) through its news site, Colorlines, which averages about a half a million unique visitors per month. Colorlines presented [extensive coverage](#) of the uptick in Islamophobia, the [Movement for Black Lives and police reform](#), and the [ongoing role of media](#) in reinforcing stereotypes and inequality. We saw this reporting amplified on social media by grantees and in the [mainstream press](#).

[Color of Change](#), a 1.3 million-member online advocacy organization that was formed to build the advocacy power of the Black community following Hurricane Katrina, was the subject of a complimentary feature in the *Stanford Social Innovation Review* (Winter 2016). The so-called “field report,” entitled [“Civil Rights Goes Digital,”](#) spotlights Color of Change’s high impact leadership, its use of digital tools to build membership and activism (often for rapid response related to tragic events like Sandra Bland’s death in July, 2015), and its successful corporate campaigns (including one, post-Trayvon Martin killing, to force dozens of corporations to discontinue their memberships in ALEC).

The Campaign for Black Male Achievement and other grantees challenged communities of color to [initiate reform](#) efforts and identify [opportunities at the local level](#). In an attempt to address gaps in the field, this January, grantee Communities for Just Schools Fund (formerly the Just and Fair Schools Fund), helped launch [Grantmakers for Girls of Color](#) as an online resource for funders working to increase opportunities for girls of color.

### *Election 2016*

Leaders of #BlackLivesMatter and The Movement for Black Lives worked to [influence candidate platforms](#) during the 2016 primary season. This came alongside the recent acknowledgement by political strategists that [African-American voters](#) may be much more pivotal to the 2016 general election than previously forecasted.

Latino politics and political participation is roiling at both ends of the spectrum, with Marco Rubio and Ted Cruz at (or near) the top of the Republican presidential primary and progressives grappling with how best to “electoralize” the rising Latino vote and the failure of comprehensive immigration reform. While Cruz and Rubio take ever more conservative positions, on immigration and otherwise, in order to appeal to conservative caucus goers and primary voters, the Koch brothers have smartly invested millions in [the LIBRE Initiative](#), an impressive effort to provide community services (ESL classes, tax preparation assistance, cultural celebrations) to Latinos in battleground states, all the while persuading people to being open to broader messages about [“economic freedom” and the failings of government](#).

Despite substantial media coverage and a donor briefing hosted by OSF’s Project 2020 last spring, LIBRE has taken many progressives by surprise, particularly in states like Arizona, Florida, and Nevada, where it has also invested in political advertising in support of conservative candidates. From our vantage point at OSF, what LIBRE is doing is not out of the ordinary, in fact, progressives have been doing the same for much longer: providing social services, celebrating culture, and encouraging political participation. What is different about LIBRE is that the organizational ecosystem for Latinos in a conservative context is much smaller; therefore the LIBRE approach of integrating the service provision with a broader, sophisticated political engagement effort – with Koch support as the icing on the cake – makes for a much more streamlined model. Progressives are, of course, quite sectioned off, with direct service providers receiving governmental funding and thus staying out of political engagement.

Nonetheless, despite [fierce conservative attacks on Latino voting rights](#), efforts do abound for progressive engagement of Latinos, via attempts to register voters, provide them with voting information and protection, and build organizations and outreach efforts to inspire participation that matches the growing population numbers. Unfortunately, these efforts, too, suffer from the turf battles that have plagued progressive advancement for decades. A recent [Buzzfeed article](#) spotlighted an apparently rogue Democracy Alliance staffer operating in secrecy as he attempted to start a new Latino political organization and perhaps syphon off DA donors to support it (and not existing Latino organizations, which have [already criticized the DA](#) for underinvestment in Latino

groups and infrastructure). The staffer apparently acted on his own, without giving any heads up to DA President Gara LaMarche, and the story produced ill will for the DA and made progressive Latino advocates – from NCLR to America’s Voice, and beyond – look petty and competitive as they squabbled over already limited funds. The [Latino Victory Project](#), a new effort to recruit progressive Latino donors and candidates (supported in part by George Soros, an early investor), was at the center of the story and now seeks to help the DA dig out of this deep hole.

#### **Goal 4: An Economy Governed by Policies at the Local and National Level that Promote Equitable Growth and High-Road Development**

##### *Opportunity Housing and Access to Credit*

This quarter saw two important legal actions challenging transportation infrastructure decisions that isolated communities of color from economic opportunity. In December, grantee the NAACP LDF, with the ACLU of Maryland and others, [filed a complaint](#) with the U.S. Department of Transportation against the state of Maryland for discriminating against African-American communities by canceling Baltimore’s Red Line light rail project. The funds for the project, which would have connected African-American neighborhoods to areas of the city with greater opportunity, will instead be used for transportation projects that will disproportionately benefit white communities. This is only the latest in a long history of projects that distributed resources similarly.

Also in December, grantees including the Texas Low Income Housing Information Service and the Lawyers Committee for Civil Rights Under Law [settled](#) a \$20 million civil rights complaint filed with the Federal Highway Administration against the City of Corpus Christi, which has “[national ramifications about racial segregation, transportation, concentrated housing, the discrimination of pollution and more.](#)” The settlement will mitigate the effects of a planned bridge that will further isolate the predominantly African-American and Latino neighborhood of Hillcrest.

After an eventful summer that included the announcement of a federal fair housing regulation and a [major Supreme Court victory](#), OSF staff are working closely with the Ford Foundation and leading organizations in the field to craft a plan for supporting successful implementation of the new regulation.

##### *Balanced Budget Amendment*

The longtime conservative push for a Constitutional convention continues to pick up momentum. In August 2015, USP Anchor grantee the [Center on Budget and Policy Priorities](#) (CBPP) received \$500,000 from the Opportunities Fund in order to counter the [American Legislative Exchange Council’s](#) aggressive 2015-2016 [push for a Constitutional Convention](#) (“ConCon”) and federal Balanced Budget Amendment to the U.S. Constitution. The grant was made in the summer in order to enable fall 2015 preparation for a [Constitutional Convention resolution onslaught in state legislative sessions](#) that begin in January 2016. Since then, CBPP has been hard at work, partnering closely with anchor grantee the [American Constitution Society](#) and [Common Cause](#). CBPP convened a national coalition of 100+ labor (i.e. AFSCME, AFL, NEA), state-based groups (i.e.

State Innovation Exchange and State Priorities Partnership affiliates), and local organizations representing the civil and human rights, veteran, disability, and faith communities. Coalition partners meet bi-weekly under the direction of CBPP senior staff and a project coordinator, secured using OSF grant funds.

While the grant is currently underway and we cannot speak to final outcomes since state legislative sessions are just underway, our investment has proven timely. ALEC recently re-affirmed the Constitutional Convention as a top priority for 2016, and is ramping up efforts by sending staff to key states, identifying constitutional scholars to endorse the idea, and engaging presidential candidates, including Ted Cruz and Marco Rubio, who have both [voiced public support](#). Additionally, in early January, Texas Gov. Abbott announced nine constitutional amendments that would require a Constitutional Convention if two-thirds of the states concur. Beyond the Balanced Budget Amendment, Governor Abbott's proposed amendments are heavily in a state's rights vein, including overriding U.S. Supreme Court decisions with two-thirds of states agreeing and suing in federal court when federal officials "overstep their bounds," among others.

OSF support enabled re-granting to groups in eight high-priority states: Nebraska, Oklahoma, Louisiana, West Virginia, Virginia, and Idaho (where there is the highest chance of a Constitutional Convention resolution passing), and Maryland and Delaware, where groups are proactively calling on states to rescind active resolutions that occurred in the past. This enabled the formation of eight-state strategic alliances that are coordinating local advocacy, communication, and coalition-building efforts to educate lawmakers, influence editorial boards of local news outlets, and identify messengers. Both Common Cause and labor partners will be providing modest c(3) and c(4) re-grants to state partners identified by the coalition, but no other lead funders have come to the table. Without OSF support, this work would not have been possible.

#### *Economic Advancement in the New Economy*

The dividends of USP's two-year learning inquiry into the "future of work" continue to pay off, with a well-attended and reviewed December, 2015 [symposium at the U.S. Department of Labor](#) that OSF co-conceived and funded drawing 400 academic, advocacy, business, government, labor, and philanthropic representatives to spotlight issues of how worker protections are largely written for the workers of decades in the past, not present. DOL's deeper, and sharper, recognition of – and engagement in – the changing nature of work was noted as a promising sign by one expert, Steven Berkenfeld, a managing director at Barclays and an OSF Future of Work advisory council member. DOL also recently announced long overdue efforts to update its data on the contingent workforce and has heightened its focus on the portability of benefits. Labor Secretary Tom Perez gave the keynote and USP's future of work team shared this [visual summary of the two-year inquiry](#) with attendees.

**Minutes of the Meeting of the U.S. Programs Board  
of the Open Society Institute  
October 1-2, 2015**

A meeting of the U.S. Programs (“USP”) Board (the “Board”) of the Open Society Institute (“OSI”) was held at the offices of OSI in New York, New York on October 1 and 2, 2015. There were present Board members: Yochai Benkler, Deepak Bhargava, Rosa Brooks, Geoffrey Canada, Steve Coll, Eli Pariser, Alexander Soros, Jonathan Soros, Andy Stern, Bryan Stevenson and Christopher Stone.

Attending portions of the meeting by invitation were: Melody Barnes, Rebecca Carson, Maria Cattai, Vera Franz, Leslie Gross-Davis, Eric Halperin, Damon Hewitt, Laleh Ispahani, Suzanne James, Diana Morris, Lenny Noisette, Andrea Batista Schlesinger, Charis Shafer, Herbert Sturz, Bill Vandenberg, Chancellor Williams, and Ken Zimmerman. Guests invited to present were: Margaret Egan, Tara Huffman, Mike Jacobson, Ai-Jen Poo, Nuria Ortiz, Mike Soto, and Zephyr Teachout.

Geoffrey (“Geoff”) Canada welcomed the Board members and the previous US Programs Board meeting minutes were approved unanimously.

Executive Director Ken Zimmerman then reported on the state of USP and introduced a few issues not discussed in the Board book such as grant-making and striking a balance between long-term strategies and responding to current opportunities. With reference to criminal justice reform, he discussed examples of successful government partnerships and strategic versus opportunistic paths for combating residential racial segregation. He likewise pointed out similar examples in reproductive health and immigration reform. He then gave an update on the budget and delineated how the work of USP work lines up thematically with the global work of the Open Society Foundations. The Board then elaborated on the idea of global thematic integration within the Open Society Foundations.

Andrea Batista Schlesinger then framed the topic of USP and Public Sector Governance. The Board discussed the issue, bringing up topics such as: the importance of firsthand knowledge of the inner functioning of government; ascertaining what barriers exist and locating sites of intervention; the macro-environment; and the importance of timing and relationship-building. Also discussed were theories of change, the distance between legislation and practice, building collective impact strategies, and the importance of the network’s involvement. Other issues that arose were the unique ability of the network to pursue mutually exclusive strategies, what learning can be done from failure, engagement with countervailing interests, and the importance of knowledge building on the issue. The Board also noted the value of adversarial views.

Ken Zimmerman then introduced the topic of Immigration: Updates on White House Executive Action and remaining frontiers of U.S. immigration policy and welcomed Cecilia Munoz, White



House Domestic Policy Council, via phone. The Board discussed the issue of migration from a European perspective and noted the global aspects of the crisis. Cecilia remarked on the escalation of the crisis, the impact of executive action, the shaping of dialogue following Supreme Court cases, and the rise of the welcoming movement. The Board remarked on the evolving stance of Europe on the acceptance of migrant populations and on the absence of a similar shift in the United States. The Board posed questions on funding obstacles and assisting U.S. allies in resettlement. Deepak Bhargarva proposed investigation on robust drivers of immigration. Rebecca Carson, Project Director of the Emma Lazarus II Fund in USP, further discussed service capacity and maximizing the benefits of the Deferred Action for Childhood Arrivals (“DACA”).

After the break, Eric Halperin introduced Ai-Jen Poo, Founder and Director, National Domestic Workers Alliance. Ai-Jen Poo discussed the role of domestic workers in society and her background linking caregivers with work opportunities through technology and also incentivizing employers to adhere to certain principles. The Board discussed the role of philanthropy in spurring innovation, universal basic income, and portable benefits.

After the break, Diana Morris framed the topic of Activities in Puerto Rico and introduced Mike Soto, Center for a New Economy, and Nuria Ortiz, Espacios Abiertos. Mike Soto noted the need for a long-term plan for Puerto Rico while Nuria Ortiz noted the fruitful participation of communities in a police reform group. The Board queried the guests about the Puerto Rican economy and the possible ramifications of government indebtedness. The Board commented on the perception of the crisis, the possibility of declaring bankruptcy, strategies for civic engagement, INET involvement, as well as the engagement of the Roosevelt Institute and other partners.

General Counsel, Gail Scovell, then presented materials on conflict of interest and the role of the advisory board. She made specific reference to the Advisory Board Manual and Principals of Governance. She also presented the four basic functions of the advisory board: reviewing program strategies, discussing the state of the field, guidance on select grants, and portfolio review.

Next, Ken Zimmerman provided context for the topic of Universal Basic Income. He introduced Rosa Brooks and Andy Stern. They opened the discussion on the possible elimination of extreme poverty through the means of a universal basic income. Andy Stern noted the plausible scenario of large scale unemployment. The Board raised questions about logistics and how INET might play a role. The Board discussed the potential impact on work, international implications, the role of philanthropy in the debate, and the notion of developing a watching brief.

Next, Ken Zimmerman gave introductory remarks about the portfolio review process. He introduced Laleh Ispahani, Director of Democracy Initiatives, USP, who in turn introduced the presenter, Chancellor Williams, Program Officer, USP. Chancellor Williams discussed the merits and drawbacks of a field-based approach, including the importance of engaging diverse constituencies and the value of funding organizations that support field infrastructure. He noted that the media

policy field matured greatly between 2010 and 2014, when the FCC voted in favor of strong net neutrality rules. Jonathan Soros, USP Board member, observed the difficulty of assessing the specific value of OSF funding and of generalizing lessons from the net neutrality win. He also flagged the impact of major corporate players on the field, from telecoms who opposed net neutrality to internet innovators who supported it. Zephyr Teachout, Professor of the Fordham University School of Law, characterized net neutrality's success as an extraordinary funding achievement, one that was brought about by a very well-coordinated field and its ability to effectively frame net neutrality for diverse constituencies. The Board took up a discussion on field versus campaign efforts.

On day two, Diana Morris introduced the topic of Developments in Criminal Justice Reform and in turn introduced Tara Andrews Huffman, Director of the Criminal and Juvenile Justice Program at OSI-Baltimore, who discussed how OSI Baltimore grantees are well poised on issues such as police reform and removing barriers to employment. The Board had questions regarding the engagements of those in the Black Lives Matter movement, about the involvement of Fellows, and tensions between the movement and organized philanthropy, including OSI Baltimore. Diana Morris noted the heavy involvement of Fellows and the decrease in prison population.

Next, Lenny Noisette introduced the topic of Rikers Island and Herb Sturz who framed the conversation in a national context. Mike Jacobson and Meg Egan, Institute for State and Local Governance at CUNY, furthered the discussion on decreasing the incarcerated population. Meg Egan detailed strategies including reducing court processing time, default pre-trial release, and moving populations off Rikers Island. She remarked that the changes proposed fail to shift the culture within the Department of Corrections. The Board commented on the failure of New York to be a model for reform. The Board inquired about bail funds, which prevailing research have shown to be ineffective, and about what effect the number of available judges has on court processing efficiency.

After that, Ken Zimmerman prefaced the Black Lives Matter discussion with a video summary of local movement leader observations. Discussants Geoff Canada, Deepak Bhargava and Eli Pariser remarked on the philanthropic relationship to movements, the potential of participants for fatigue, infrastructure development within movements, creating partnerships between activists internationally, creating a leadership pipeline, and what supportable exist organizations in the space. The Board discussed political objectives, the unpredictable nature of activist movements, and strategies for developing the capacity for leadership.

Then, Ken Zimmerman gave an update on the Opportunities Fund. The Board discussed issues of interest such as minimum wage increase, income inequality, and technology. Geoff Canada adjourned the meeting and the Executive Session commenced.

