

CONSERVATIVE ACTION PROJECT

The Conservative Action Project, chaired by former Attorney General Edwin Meese, is designed to facilitate conservative leaders working together on behalf of common goals. Participants include the CEO's of over 100 organizations representing all major elements of the conservative movement—economic, social and national security.

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Tony Perkins, President, Family Research Council
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Grover Norquist, President, Americans for Tax Reform
Kay Daly, President for a Fair Judiciary
Colin Hanna, President, Let Freedom Ring
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Gary Aldrich, Chairman of CNP Action Inc, & President, Liberty Central
David McIntosh, former Member of Congress, Indiana
Karen Kerrigan, President, Small Business & Entrepreneurship Council
Bob McEwen, former Member of Congress, Ohio
James Miller, III, former Reagan Budget Director
Alfred Regnery, Publisher, American Spectator
Tom Winter, Editor-in-Chief, Human Events
Curt Levey, Executive Director, Committee for Justice
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(All organizations listed are for identification purposes only)

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MEMO FOR THE MOVEMENT

John J. “Jack” McConnell of Rhode Island Unfit for a Lifetime Appointment to Federal Judiciary

RE: John J. “Jack” McConnell’s nomination to the District Court for the District of Rhode Island. The Senate Committee on the Judiciary narrowly voted 11-7 to send this controversial nomination to the full Senate. *McConnell fails to meet the qualifications for the high office to which he has been nominated, and his record demonstrates that he would decide cases on the basis of his politics and personal agenda instead of the Constitution. **We believe that this is one of those extraordinary circumstances where the President should be informed that his nominee is not qualified. “Extraordinary Circumstances” is the standard agreed to by the bipartisan Gang of 14 for when it is permissible to block a confirmation vote against judicial nominees. The Senate should apply it now to stop the McConnell nomination.***

ISSUE: In 2009, Senators Reed and Whitehouse recommended John J. “Jack” McConnell to serve on the U.S. District Court for the District of Rhode Island. Both Senators (and many other members of the Senate who will be voting on his nomination) have received large financial contributions from McConnell and from the prominent personal injury plaintiffs’ law firm he has been associated with for over two decades: Motley Rice. On March 10, 2010, President Obama nominated McConnell to the bench. The Senate declined to act on McConnell’s nomination and twice returned it to the President. Nonetheless, President Obama re-nominated McConnell on January 5, 2011. He and his law firm’s substantial federal campaign contributions to Democratic Members of Congress, President Obama and party war chests should raise significant concerns.

McConnell is unqualified for a lifetime judicial appointment. His past statements as well as actions he has taken as a personal injury lawyer strongly suggest his future rulings from the bench will be driven by improper empathy and he will almost certainly put his personal views and political agenda ahead of the law and the Constitution.

- **McConnell is unqualified to serve on the federal bench.** His low rating from the American Bar Association (ABA) and controversial background raises serious questions as to why he was nominated. The ABA has given Mr. McConnell a less than average rating of “substantial majority qualified, minority unqualified.” He is one of only four of 63 current judicial nominees to receive this lackluster rating, which almost necessarily means he generated negative comments from judges before whom he has appeared and from other lawyers who know him. For a practicing lawyer with 25 years of experience to obtain such a low rating speaks poorly of his legal abilities and suggests that his nomination is not about merit but is instead about being a highly-connected personal injury plaintiffs’ lawyer (and former state treasurer for the Rhode Island Democratic Party). [March 12, 2010 Providence Journal]

- **McConnell’s view of law falls outside of the mainstream and indicates that he is incapable of being fair and impartial and would legislate from the bench.** He has publicly written and endorsed his support for “an active government” that should not “stand on the sidelines” when it comes to pursuing his vision of a just result. [January 7, 2003 *Providence Journal*]. He said of himself that “I am an emotional person about injustice at any level—personal, societal, global” and that there are wrongs that need to be righted, and that’s how I see the law.” [March 7, 2005 *Providence Journal*]. Indeed, in highly questionable tort litigation that he brought as private contingency fee counsel on behalf of the State of Rhode Island (under then State Attorney General Sheldon Whitehouse) against paint manufacturers, he was openly disrespectful—in an August 19, 2008 *Providence Journal*-- of that state’s Supreme Court after it unanimously (4-0 decision) rejected his legal arguments because he exceeded the bounds of well-settled law.
- **McConnell’s deferred compensation arrangement with Motley Rice would present a possible conflict of interest if confirmed to the bench.** As a result of his involvement in the master tobacco settlement, McConnell is scheduled to receive approximately \$3 million per year in deferred compensation through 2024. It is difficult to see how McConnell could render impartial judgments in matters involving plaintiffs’ firms while simultaneously receiving millions of dollars in annual compensation from Motley Rice, one of the nation’s most notorious personal injury firms.
- **McConnell’s close involvement with Planned Parenthood and EMILY’s List would cloud his objectivity on abortion related cases.** Jack McConnell discloses in his public questionnaire that he was director of Planned Parenthood of Rhode Island from 1997 until 2001 (the RI organization has since merged with the Connecticut branch). Additionally, Jack McConnell made multiple donations to EMILY’s List, a group whose sole purpose is to support pro-choice Democratic female candidates. According to OpenSecrets, Jack McConnell made a \$1,000 donation to EMILY’s List in 2008 and another \$1,000 donation in 2005.
- **McConnell’s history of making public statements attacking specific businesses will make it impossible for many parties to perceive him as impartial, and his confirmation to the bench will inevitably attract enterprising personal injury attorneys to the steps of the Rhode Island federal court.** McConnell’s past statements against certain paint companies raise serious questions about his ability to be an impartial jurist – especially if that very defendant finds itself in McConnell’s courtroom. When asked by *The Columbus Post Dispatch* in 2006 about the possibility of future lead paint litigation, he said, “Based on history, I have absolutely no confidence that Sherwin-Williams and other companies will do the right thing. The only time is when they’re sued and forced to by a jury.” [December 1, 2006 *Columbus Dispatch*]. The Rhode Island federal district court is a small court, with only two other trial judges (and one judge with senior status). If McConnell becomes one of only three district judges in Rhode Island, his courthouse will become a “tort mecca” or “magnet jurisdiction” for plaintiffs’ lawyers looking for a big pay day.

- **McConnell’s failed lead paint lawsuit in Rhode Island was frivolous and riddled with controversy.** In 1999, Jack McConnell convinced then-State Attorney General Sheldon Whitehouse to hire him and Motley Rice on a contingency fee basis to sue companies that once made lead paint and possibly sold that paint in Rhode Island. The case was brought on the theory that the sale of lead paint constitutes a “public nuisance”. If successful, the case was expected to result in billions of dollars in judgments against paint companies. Under the terms of the agreement between AG Whitehouse and Motley Rice, a substantial amount of money (16.7 percent of recoveries) would have gone to the law firm and McConnell. [June 20, 2003 Providence Journal] But after nine years and at the cost of millions of dollars for defendants, plaintiffs and the state court system, the Rhode Island Supreme Court unanimously ruled for the defendants. To be sure, courts in other states where McConnell and Motley Rice brought similar lawsuits have rejected McConnell’s attempts to hold paint companies liable for the harms caused by poor upkeep of aging buildings and without any evidence that those companies actually manufactured any of the paint in question.
- **McConnell and his firm secured the lucrative contingency fee contract with State AG Whitehouse under circumstances that reek of pay to play.** Indeed, an April 24, 2009 *Wall Street Journal* editorial raised these very issues. It questioned the timing of the 1999 contingency fee contract with Motley Rice’s contribution activity during the 2000 election cycle – activity that cemented Motley Rice (a South Carolina firm) as the top political contributor in the entire State of Rhode Island.
- **McConnell is an extreme partisan with a long track record of buying influence (including what appears to be a lifetime appointment to the federal bench):** Among the nearly 1,500 nominees to U.S. courts since 1988, McConnell is the most prolific contributor to federal campaigns. [April 1, 2011 Providence Journal] He and his partners at Motley Rice have, according to publicly available records, made over **\$720,000** in federal campaign contributions. Over half of this amount represents direct contributions to elect U.S. Democratic Senators, many of whom will vote on his nomination. (A breakdown of McConnell’s direct contribution to current Senators is below). Additionally, McConnell and his wife contributed \$31,028 to President Obama’s Victory Fund, \$50,000 to his Presidential Inaugural Committee, and \$6,000 to former White House Chief of Staff Rahm Emanuel.

But while he was generous in giving to politically powerful candidates for public office, it appears that he overlooked regular working people. In May 2003, McConnell admitted to the *Providence Journal* that he had no record of providing workers compensation insurance (as required by Rhode Island law) to 10 to 12 campaign workers when he served as chairman and treasurer of Myth York’s gubernatorial election bid. [May 24, 2003 Providence Journal]

McConnell’s Contributions to Sitting U.S. Senators	Contributions to Senators who can vote on his Nomination	Contributions to Senate Judiciary Committee Members
Maria Cantwell	\$4,200	

Bob Casey	\$500	
Kent Conrad	\$500	
Al Franken	\$2,000	\$2,000
John Kerry	\$6,000	
Patty Murray	\$3,000	
Bill Nelson	\$3,000	
Jack Reed	\$15,530	
Harry Reid	\$3,900	
Charles Schumer	\$3,000	\$1,000
Jeanne Shaheen	\$500	
Debbie Stabenow	\$3,000	
Mark Udall	\$3,000	
Tom Udall	\$3,000	
Sheldon Whitehouse	\$12,600	\$12,600
Ron Wyden	<u>\$1,000</u>	
	\$64,730	\$15,600

- McConnell provided inconsistent and misleading answers to questions raised by the Senate Judiciary Committee concerning a pending lawsuit over serious allegations that raise issues as to his candor and ethics.** A paint manufacturer has sued the Motley Rice firm (including unidentified defendants) in Ohio to recover confidential company records that were allegedly stolen by the Motley Rice firm. Motley Rice has refused to return these documents and the litigation is currently pending. Although McConnell initially told

Senators that he had “no involvement” with the suit and “would not say [he] was familiar with the documents in any fashion,” he offered contradictory testimony during a later deposition. He admitted he was the first Motley Rice lawyer to review the documents, that he drafted public opinion piece using information from the documents, and that he signed a court brief that both incorporated information from the documents and attached portions as an exhibit. McConnell’s answers to the Senate were misleading and lacked the candor rightly expected of judicial nominees.

**FOR ADDITIONAL INFORMATION ON THE NOMINATION OF JOHN
McCONNELL TO THE FEDERAL DISTRICT COURT IN RHODE ISLAND PLEASE
VISIT THESE WEBSITES:**

<http://committeeforjustice.blogspot.com/2011/05/reid-files-cloture-on-nominee-signaling.html>

<http://online.wsj.com/article/SB10001424052748704758904576188622831174978.html>

<http://blogs.wsj.com/law/2011/03/31/rhode-island-judicial-nominee-takes-on-more-partisan-fire/?KEYWORDS=John+McConnell>

<http://www.scribd.com/doc/52002068/Statement-of-Chuck-Grassley-Re-John-J-McConnell-Jr-Nomination-3-31-2011>

<http://www.washingtontimes.com/news/2011/mar/30/lead-balloon/>

<http://newsblog.projo.com/2010/05/us-chamber-group-opposes-mccon.html>

<http://netrightdaily.com/2010/06/radical-judicial-nominee-jack-mcconnells-disturbing-acorn-connections/#ixzz0pinXIRoT>

<http://www.washingtontimes.com/news/2010/may/13/the-siren-song-of-a-would-be-judge/>

http://www.gop.com/index.php/briefing/comments/payback_jack

http://www.law.com/jsp/article.jsp?id=1202462771489&Chamber_of_Commerce_Intensifies_Campaign_Against_Federal_Judicial_Nominee

http://www.oceanstatepolicy.org/pr6.17.2010_mcc.html

http://www.projo.com/news/content/JUDICIAL_NOMINATIONS_04-14-09_DAE1A14_v16.3786c43.html

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