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Organization Trends

God-like Judges?

A legal group that is sure it's better than you

By Fred Lucas

Summary: *The American Bar Association and the trial lawyers' trade group (the American Association for Justice) are well known as bastions of the Left. But a little-known group that exists to puff up attorneys' prestige shouldn't be overlooked, especially as its members are raised to judgeships across the land.*

Who is "the best of us, the brightest of us, the most fair and compassionate of us"? Well, if you're a trial lawyer who needs federal judges to earn your daily bread, the answer is of course: *federal judges*. This quotation comes from a white paper edited for the American College of Trial Lawyers by William J. Kayatta Jr., who was a trial lawyer but now, thanks to a recent Senate confirmation, is serving his fellow trial lawyers as a judge for the First Circuit Court of Appeals.

Kayatta remains a member of the board of regents for the American College of Trial Lawyers (ACTL), which places judges on pedestals, holding them up as philosopher-kings.

President Barack Obama's nomination of Kayatta to the circuit covering the Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico was disconcerting to the Family Research Council, which opposed his confirmation. "He is a big advocate of giving judges more power," FRC Senior Vice President Tom McClusky said in an interview.

Judicial supremacist William J. Kayatta Jr., a member of the board of regents of the American College of Trial Lawyers, is a federal judge on the First Circuit Court of Appeals.

"He just wants to set himself up as an example of judges being above the rest of the branches of government, that he should be an example of that. He wants to give them raises and other things. He wants to take away any accountability within the judicial system."

The characterization is a fair one. But it's not based solely on Kayatta, who has a less radi-

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cal record than many other Obama nominees. The ACTL has long advocated for higher compensation for judges and against judicial elections at the state level. It portrays the criticism of judges as an intimidation tactic that undermines judicial independence—at least on the issues the trial lawyers are concerned about.

Not Afraid to Call Themselves Trial Lawyers

Based in Irvine, California, the ACTL should not be confused with the American Association for Justice (AAJ)—a group formerly known as the Association of Trial Lawyers of America (ATLA)—which is a lobbyist organization for personal injury attorneys that changed its name because "trial lawyer" is about as popular a term as "bureaucrat" or "corporate fat cat."

Compared to AAJ, or the now-politicized American Bar Association, the American College of Trial Lawyers is more of a stealth organization (the January 2005 *Organization Trends* profiles the ABA; the January 2003 issue profiles ATLA). As an elite legal organization of attorneys from the United States and Canada, it emphasizes its public mission of maintaining and improving standards and ethics among trial lawyers. Founded in 1950, it does not lobby, but rather presents itself as a professional think tank, giving various members the title of "fellow" and "senior fellow," and having a academic-sounding "board of regents." It has 35 standing committees and 61 state and provincial chapters. Shortly after its creation, the organization established a Code of Trial Conduct, later updated as the Code of Pretrial and Trial Conduct.

In the landscape of professional organizations that lean left, the ACTL does not top the list in terms of radicalism. To its credit it has remained focused mostly on legal matters and generally avoided the appearance of partisanship.

"The College has never limited the term 'trial lawyers'—as so many do—to plaintiffs' personal injury lawyers," said Chilton Davis Varner, the 62nd president of the college in a message posted on the group's website. "Instead, our membership is composed of civil lawyers, criminal lawyers, plaintiffs' lawyers, defendants' lawyers, public interest lawyers and state and federal prosecutors and public defenders."

Membership in the ACTL is by invitation only; to be eligible, attorneys must have been in trial practice for at least 15 years. "The College looks for lawyers who are considered by other lawyers and judges to be the best in their states or provinces, lawyers whose ethical and moral standards are the highest, and lawyers who share the intangible quality of collegiality."

The group counts every member of the U.S. and Canadian supreme courts as honorary members. Among its past presidents are Lewis Powell, who went on to serve on the U.S. Supreme Court after his nomination by President Richard Nixon, and Griffin Bell, who later served as U.S. Attorney General under President Jimmy Carter.

Where it has taken a lead is in defending judges and in seeking to define judicial independence, not in a classical constitutional way but by raising judges' pay and shielding them from criticism.

For decades now, the activists of the Left have used the courts to implement the parts of their agenda that can't be enacted through the ballot box and legislatures. Regardless of whether the ACTL intends to lean left, its praise of the sanctity of judges takes on an ideological significance because courts have long been the Left's favorite venue for radical social change. That has been true with abortion, criminal justice, same-sex marriage, affirmative action, and other controversial issues.

Kayatta is not the only member of this organization that Obama has selected to carry out his agenda. Obama also nominated ACTL fellow Mary Jo White to be chairman of the Securities and Exchange Commission in January. Confirmed by the U.S. Senate in April, White has been a member of the organization's Task Force on United States Sentencing Guidelines.

At the start of his first term, Obama nominee Lanny Breuer, an ACTL fellow, was confirmed as Assistant Attorney General for the Criminal Division of the Department of Justice. Obama also nominated Roy B. Dalton, an ACTL fellow, to the U.S. District Court for the Middle District of Florida. The Senate confirmed Dalton in May 2011.

Editor: Matthew Vadum

Publisher: Terrence Scanlon

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Address:
1513 16th Street, N.W.
Washington, DC 20036-1480

Phone: (202) 483-6900
Long-Distance: (800) 459-3950

E-mail Address:
mvadum@capitalresearch.org

Web Site:
http://www.capitalresearch.org

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Simply the Best

Arguing to increase the pay of judges—or any other civil servant—is not an entirely unreasonable public policy position. What's out of the mainstream would be to argue that somehow the Constitution requires a raise for a class of government employees to ensure that they stand above regular Americans.

In March 2007, Kayatta was vice chairman of the ACTL Judicial Compensation Ad Hoc Committee when it released its report titled, "Judicial Compensation: Our Federal Judges Must Be Fairly Paid."

Responding to questions posed by the Senate Judiciary Committee during his confirmation process, Kayatta said the report "was prepared by a committee of which I was the vice-chair, and I participated in editing this publication."

The 2007 ad hoc committee report is fairly creative in its constitutional interpretation: "A case can be made that the Constitution *requires* a raise in judicial compensation to ameliorate the diminution which has occurred over time as the result of inflation."

"When the Constitution was adopted, the Founding Fathers provided that the President was entitled to compensation which can be neither increased nor decreased during the term of office, while judges were guaranteed there would be no diminution of compensation; there was no ban on increases in judicial compensation, because it was contemplated that there might have to be increases."

McClusky, of the Family Research Council, took issue with this assertion in a letter to senators in January urging them to oppose the nomination. "The Constitution provides that judicial salaries not be diminished but makes no provision for their increase," McClusky wrote. "Any action taken from the bench to raise judicial salaries is unconstitutional and would rightly be seen as a self-interested usurpation of legislative power."

ACTL didn't seek a cost-of-living pay hike. They wanted to double the current pay for judges. "We believe that our federal judges ought to paid at least as much as English judges; so we propose a 100% raise from current compensation. At that, our judges will arguably still be underpaid for the service they provide our society, but it is a start."

The 2007 report on compensation concedes the point that judges are still paid better than most people, but then again, judges are not most working Americans. "At the same time, it must be conceded that a federal district judge's current salary—$165,200—is a substantial sum to average Americans, the vast majority of whom earn substantially less," the report confessed.

"But the point is that judges are not supposed to be average. They should be the best of us, the brightest of us, the most fair and compassionate of us. The Founding Fathers knew and contemplated that good judges would be a rare commodity, entitled to the special emoluments of their stature."

The ACTL paper clearly missed the notion of a "co-equal" branch of government in making what could almost pass as a parody of an argument for judicial supremacy.

The report states, "Judges and members of Congress are equally important to our system of government, but it was never contemplated that judges and Congressmen be equated. The Constitution contemplated that Congress would be composed of citizen-statesmen, who would lend their insights and talents to government for limited periods of time and return to the private sector. Judges in contrast, were and still are expected to serve for life."

The report even rejects the Ethics Reform Act of 1989 that linked judicial salaries to congressional and executive branch salaries. This 1989 law "prohibits any provision increasing the pay rates of Members of Congress, certain legislative positions, judges, justices, certain other judicial personnel, and Executive Schedule positions from taking effect before the beginning of the Congress after the Congress during which such provision was enacted."

Taking an internationalist stance, the ACTL judicial compensation report pointed out that British and Canadian judges earn more than U.S. judges and said, "The current system of linking judicial salaries to Congressional salaries makes little sense. If federal judicial salaries are to be linked to a benchmark, it should be to the salaries of their counterparts in other countries."

A separate 2006 report from the ACTL even said the independent judiciary is jeopardized without enough pay:

"The failure adequately to fund a court system, whether through neglect or from deliberate starvation by those who control the purse strings, is also a major potential threat to judicial independence. Indeed, at least one state legislature is thought to have transparently under-funded its court system, apparently in part because of unhappiness with a particular decision."

No Voting

A few years later, another ACTL report seemed to lift judges above the accountability of other government officials. Currently, 39 states hold some form of judicial election or retentions.

In October 2011, the ACTL released its "White Paper on Judicial Elections" which concluded, "The College believes that contested judicial elections, including retention elections, create an unacceptable risk that improper and deleterious influences of money and politics will be brought to bear upon the selection and retention of judges. The College therefore opposes contested elections of judges in all instances."

"There may have been a time when arguments could be mounted in favor of judicial elections as distinct from other types of political races," the report also says. But "that time has now passed, owing to the threats to the independence and impartiality of our judiciary posed by this combination of judicial rulings and political trends—compounded by minimal curricular attention accorded to civics education that, if given, would teach that judges are often charged with protecting the rights of the unpopular and are not simply another sort of elected politicians. Other methods of selection of judges are doubtless far from perfect in many instances, but they are substantially less subject to the corrupting influences of money and partisan politics than any form of contested election of judges."

Richard Samp, chief counsel at the Washington Legal Foundation, disagrees: "Systems of judicial selection that claim to pick judges based solely on merit are always euphemisms for a process that picks only activist and liberal judges. While elections aren't the only way to hold judges accountable, it's wrong to remove all democratic accountability from judicial selection and retention, whether that involves elections, or nominations by presidents and governors followed by legislative confirmation."

The ACTL report focuses heavily on the 2010 retention election of the Iowa Supreme Court justices who ruled in favor of same-sex marriage in the state. "In the wake of these developments, three Supreme Court justices in Iowa were ousted in 2010 after interest groups, most from out of state, spent nearly a million dollars to unseat them owing to the court's unanimous ruling in a 2009 gay marriage case," the 2011 white paper said.

"Other such efforts were mounted but failed. Still, the tendency is clear and is likely only to get worse. The efforts of both parties to the collective bargaining dispute in Wisconsin to pack the state court with candidates favorable to their respective positions is reflective of many such efforts underway at present."

The FRC's McClusky says this argument clearly misses the point of accountability for judges. "Tellingly, nowhere in the paper does it address the risks of an unaccountable judiciary and the proper remedies for reigning in radical and activist judges," McClusky said in the letter to the Senate.

McClusky added that this dispute is closely related to the George Soros-funded effort to push "merit selection" for judges. The Soros-financed group Justice at Stake is pushing states to change their laws or constitutions in ways that would not only end judicial elections, but also take judicial selection away from elected representatives. Traditional ways of selecting judges would be replaced by an autonomous commission composed primarily of representatives from trial lawyer associations. Lest there be any question whether this kind of "merit selection" would in fact be deeply political, Justice at Stake has also been supported by such left-wing groups as People for the American Way Foundation (the group that invented "borking" of non-leftist judicial nominees in the 1980s), the American Bar Association Fund for Justice and Education, the League of Women Voters, and Planned Parenthood Federation of America.

To see ACTL's subtle but powerful bias, a bias that destroys the pretense that the group wants to protect the judiciary from any political or ideological influence, compare ACTL's response to two judicial elections last year.

First, there's the November 2012 judicial retention election for three Florida state Supreme Court justices: R. Fred Lewis, Barbara Pariente, and Peggy Quince. The justices were criticized by the conservative group Americans for Prosperity and the Florida GOP, largely because of a 2010 ruling against a proposed amendment to the state constitution aimed at combating Obamacare.

Lewis, Pariente, and Quince were all appointed to the court in the 1990s by Gov. Lawton Chiles, a Democrat, and they survived the public vote. David P. Ackerman, president of the Florida branch of the American College of Trial Lawyers, sided with the Democratic appointees, intoning piously that "a fair and impartial judiciary is essential to our democracy."

"We support the merit selection and retention of judges based upon their integrity and competence and not based on any one decision they have made in a particular case, political party or ideology," Ackerman added.

Now compare another 2012 judicial election. Unions in Michigan made a huge push to knock off two Republican-appointed state Supreme Court Justices, Stephen Markman and Brian Zahra, in a high profile and expensive campaign aimed at derailing reforms enacted under Gov. Rick Snyder (R). State employee unions, powerhouses of Democrat

party partisanship, had sued over the policies, and Michigan's high court had ruled against the unions.

After the judicial election votes were counted, Democrat Bridget McCormack picked up a vacant seat on the Michigan Supreme Court, but the two Republicans held their seats, leaving Republican appointees with a 4-to-3 advantage. Stateline.org described it as the most expensive judicial race in the United States, costing about $10 million. So of course ACTL, scourge of judicial elections, must have weighed in with outrage, one would think.

But one would be wrong. When Justices Markman and Zahra, two Republican believers in judicial restraint, came under fire in Michigan, enduring millions of dollars' worth of campaigning that aimed to influence the state judiciary, the American College of Trial Lawyers was nowhere to be found. ACTL appears to have issued no official statements on the horrors of labor unions attempting to destroy judicial independence in Michigan.

And that tells us everything we need to know about ACTL's own partisan bias and lack of independence.

Finances

Although the most prominent activist groups tend to be classified under the Internal Revenue Code as 501(c)(3) educational groups or 501(c)(4) social welfare/lobbying groups, the American College of Trial Lawyers is organized under section 501(c)(6) of the tax code.

Section 501(c)(6) governs business leagues, including real estate boards and chambers of commerce. Such groups are similar to 501(c)(4) nonprofits in that both have more freedom to engage in political activities than 501(c)(3) nonprofits have, and contributions to both 501(c)(4) and 501(c)(6) groups are not tax deductible.

ACTL had total revenue of $4,929,380 in the year ending June 30, 2011, according to its most recent publicly available IRS tax return. Most of its money comes from membership dues, meetings, and investment incomes. No grants to ACTL appear in philanthropy databases. Its executive director, Dennis J. Maggi, is paid $211,780 annually.

The College also has a sister foundation. The tax-exempt status of the Foundation of the American College of Trial Lawyers Inc., founded in 1966, was automatically revoked by the IRS on June 9, 2011 for failure to file a Form 990 for three consecutive years.

But although the College allowed its original foundation to fade away, it created the oddly named Foundation II of the American College of Trial Lawyers Inc. That 501(c)(3) organization has received little in the way of support from the philanthropy community. The August A. Rendigs Jr. Foundation of Cincinnati has given the foundation $175,000 since 2000. The Hess Foundation Inc. of Roseland, New Jersey, gave the ACTL Foundation $15,000 in 2008.

Origins

ACTL was founded in California in 1950 by the now-deceased trial lawyer and judge Emil Gumpert. He earned his footnote in the history books by ruling, long before Bill Clinton's legal troubles, that a sitting U.S. President could be sued while still in office. As a judge of the Superior Court of California in Los Angeles, in 1962 Gumpert allowed a state-level lawsuit to proceed against President John F. Kennedy for his indirect role in a traffic accident. (*New York Times*, June 26, 1994)

It all began during a train ride on April 5, 1950, according to a documentary video on the College's website. Gumpert and another trial lawyer headed to Los Angeles for a California Bar Association committee meeting shared a Pullman compartment overnight.

Trial lawyer Phyllis Cooper related that Gumpert had awakened his colleague in the middle of the night with the idea of founding the club. "You know there's an American College of Surgeons," Gumpert said, according to Cooper. "Why don't we have an American College of Trial Lawyers?"

And out of this sense of professional envy, the American College of Trial Lawyers was born. The group grew over time as College leaders recruited those they considered to be the best trial lawyers in each state. ACTL began with 20 members—called fellows—in 1950. By the next year the figure had risen to 100.

The College quickly grew in prestige. Chief Justice of the United States Earl Warren addressed its first annual meeting held at the Waldorf-Astoria Hotel in New York City. At the end of 1953 there were 300 fellows in 27 states, plus the District of Columbia and the Canadian province of Ontario. By the end of its first decade, the College had 1,000 fellows representing 42 states, the District of Columbia, and the Canadian provinces of Ontario and British Columbia. In 2000, the College had more than 5,000 fellows.

For many years the College held its annual meetings in conjunction with those of the American Bar Association, but that became impractical over time as both organizations grew.

Among those serving as president of ACTL over the years were Albert E. Jenner, Jr., assistant counsel to the Warren Commission (1958-9); Samuel P. Sears, the Army's chief counsel at the Army-McCarthy hearings (1959-60); Leon Jaworski, the second special prosecutor during the Watergate scandal (1962-3); and Griffin Bell, U.S. attorney general under President Jimmy Carter (1985-6).

Accountability through 'other judges'

In 2009, then-ACTL president Joan Lukey equated violent threats to individual judges with attacks on judicial independence. But though any threat of violence is indefensible, it seems unlikely judges face a greater inherent threat than a President, governor, member of Congress, or a state legislator, all of whom make decisions that will upset some kook fringe element of society. Further, would anyone say that threats made against a member of Congress undermine the independence of the legislative branch?

"Here in Massachusetts the defining moment for us was the Goodrich decision in which a divided Supreme Judicial Court concluded that the ban on gay marriage was a violation of the Massachusetts constitution," Lukey said.

"It was a decision where you can absolutely understand how people would have different points of view—and as long as I am president I will never speak to what my personal point of view is, because that's irrelevant. What is important is that the judge or judges who make that kind of controversial decision should not be under siege," Lukey continued. "There were death threats following that decision. That's not acceptable, and it made me focus on how important the concept of independence of the judiciary actually is. Most judges take huge pay cuts and work with limited resources. For them to be subjected to the kind of battering that our Chief Justice took and that judges took in the Terry Schiavo case is simply inappropriate and wrong, regardless of one's personal views of any given case."

Terry Schiavo's case caught national attention in 2005 and some members of Congress called for the impeachment of judges in the matter who allowed her feeding tube to be pulled. In the view of the ACTL, this went too far, as did the congressional criticism of federal judges after the 2002 Pledge of Allegiance case. "If, in response to an unpopular decision, Congress were to threaten the ruling judge with impeachment proceedings, it would go too far. The Constitution permits impeachment only in cases of 'treason, bribery or other high crimes and misdemeanors,'" said a 2006 ACTL report titled, "Judicial Independence: A Cornerstone of Democracy Which Must Be Defended."

"A single unpopular or even blatantly erroneous opinion—indeed even a series of such questionable opinions—does not constitute an impeachable offense: Federal judges should not and cannot be impeached for judicial decision making, even if a decision is an erroneous one," the report added.

The report even assesses citizen initiatives against state judges. "There is nothing constitutionally impermissible about a group of citizens attempting, by lawful means, to turn their Constitution inside out, but ballot initiatives of this sort are an attack of epic proportion on judicial independence," the report insists. "They turn the constitutional right to petition the government into a threat to judicial independence."

The Washington Legal Foundation's Richard Samp sees the matter differently. "There's nothing wrong with criticizing judges when you think they're making a mistake in the important work they perform. You should speak out, and unless you start an impeachment drive, it's hard to see how you're undermining a judge just by criticizing the judge's work. Judges and lawyers get to criticize their peers. Why shouldn't citizens have the same privilege?"

It's not that ACTL is opposed to accountability for judges. The trade group just wants to make sure that accountability comes only from other judges, not Congress or voters. "Judicial independence does not imply the absence of judicial accountability," claimed a 2006 ACTL report. "Appellate courts can reverse erroneous lower court decisions on appeal," the report continued. "Collectively, other judges can discipline their peers through enforcement of ethical standards and administrative rules. Judges are in that sense accountable to one another."

Again, the organization has not taken overt political positions. But considering all of the handwringing over supposed attacks on judicial independence—including complaints against state judicial elections and criticisms

from Congress—ACTL's silence was deafening after President Obama launched a full-fledged attack on the Supreme Court during his 2010 State of the Union address.

Why?

The answer would seem to be that ACTL is deeply troubled when judges are hammered for decisions on gay marriage, abortion, or the phrase "under God" in schools—issues generally associated with conservatives. So the situation is entirely different when Obama blasted the Supreme Court, seated in front of him, in the 2010 State of the Union. Specifically, he attacked the high court's decision in the Citizens United free speech case. That's a judicial decision ACTL implicitly disapproved of in its white paper opposing judicial elections.

Obama's harsh and unprecedented attack on the Supreme Court justices, who were forced to sit stone-faced while the President's party members leapt to their feet and hooted their derision, led Justice Alito to mouth the words, "not true."

Later, Obama scolded the Supreme Court from the Rose Garden after the oral arguments over Obamacare, arguments that led many observers to suspect that the high court would strike the law down. Despite these two outrageous attempts to intimidate the court by the most powerful man in the nation, there is no record ACTL ever expressed grave concern about such presidential pressure endangering judicicial independence.

Trial Lawyers and National Security

The organization's grave concerns followed a similar partisan pattern regarding the Bush and Obama administrations' efforts in the war on terrorism. During the George W. Bush administration, ACTL provided recommendations on how the government should handle military tribunals.

"The procedures depart in significant ways from rules that govern trials in U.S. civilian and military courts and international tribunals, and some of these procedural differences affect the fundamental rights of persons who may be tried by military commissions and the fundamental fairness of the proceedings," said the group's 2003 Report on Military Commissions for the Trial of Terrorists. "Whether the Order and Procedures are justified by the extraordinary circumstances that gave rise to them, trial lawyers in the United States should voice their concerns in the public debate and stand ready to assist in trials before the military commissions, when and if they occur."

The report's many suggestions seemed to make the rights of the accused terrorist paramount, even as the report claimed to aim for balance. The suggestions included:

* Clarifying that confidential communications between the accused and his counsel are protected by the attorney-client privilege and are neither discoverable nor admissible at trial;
* Directing the commission to exclude evidence of statements by the accused made in response to physical force or the threat thereof;
* Requiring that any limitations on procuring the attendance of witnesses be applied equally to the prosecution and the defense;
* Adopting a procedure for capital sentencing that includes an eligibility determination and a weighing of aggravating and mitigating circumstances of an offense and offender;
* Requiring the military commissions to issue findings of fact and conclusions of law.

A voice of the liberal establishment, the late *New York Times* columnist Anthony Lewis, was invited to speak to the organization at a 2005 conference, where he warned about the Bush administration's anti-terror stance. "If we abandon our commitment to law, we will have given terrorism a great victory," Lewis told the group. "We, and above all you as lawyers, must challenge the notion that it is a weakness to respect the law. To the contrary, the law is our strength and our redeemer."

To be sure, ACTL did not lambaste the Bush administration's anti-terror policies as loudly as some groups. But for a supposedly non-ideological group, its silence on similar Obama administration policies is telling.

The group doesn't clamor for the political spotlight and is typically covert in pushing its politics. But ACTL clearly has political weight to throw around, as is evident from Obama's many appointments of its members. Above all, its lofty view of the role of judges powerfully reinforces the Left's goal of transforming society through judicial fiat, the public be damned.

Fred Lucas is the White House correspondent for CNSNews.com and author of The Right Frequency: The Story of the Talk Radio Giants Who Shook Up the Political and Media Establishment, *by History Publishing Company.*

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BrieflyNoted

In the wake of the Boston Marathon terrorist bombing of April 15, a new 501(c)(3) charity, **The One Fund Boston**, was created at the request of Boston Mayor **Thomas M. Menino** and Massachusetts Gov. **Deval Patrick**. The new charity's Victim Relief Fund will be used to assist families of the victims who were killed and the victims who were most seriously affected by the bombing and its aftermath. At press time The One Fund Boston had raised $30.4 million in donations.

President **Obama**'s controversial **Organizing for Action** advocacy group has already broken its pledge to "not directly lobby elected officials on behalf of the policies it supports" and to refrain from hiring "lobbyists to do so." OfA has registered as a lobbying group in New York State in order to press for stricter election finance laws, the Washington Free Beacon news website reports. Executive director **Jon Carson** said the push was aimed at giving "New Yorkers the campaign finance system they want and deserve." OfA chief of staff **Grant Campbell** told state ethics officials in March that his group "will exceed the $5,000 threshold for lobbying." OfA grew out of the president's re-election campaign and was previously called Organizing for America.

IRS officials refused to award tax-exempt status to two pro-life organizations—**Coalition for Life of Iowa** and Texas-based **Christian Voices for Life**—because they oppose abortion and protest the political heavyweight group **Planned Parenthood**, reports the *Washington Examiner*. An IRS agent said the agency would not approve the tax exemption for the Iowa group unless its board members signed a statement that "under perjury of the law, they [would] not picket/protest or organize groups to picket or protest outside of Planned Parenthood," according to the **Thomas More Society**, a nonprofit public interest law firm. The Texas group "was subjected to repeated and lengthy unconstitutional requests for information about the viewpoint and content of its educational communications, volunteer prayer vigils, and other protected activities," the law firm said.

MoveOn is urging the **New York Times** and other big media outlets to stop calling illegal aliens *illegal aliens* because it hurts feelings. The group launched a petition against "ethnic or racial stereotypes" and is urging the press to use the word "undocumented" instead of "illegal" when referring to people present and working in the U.S. who have no right to be here or to be working here. The petition lamely opines, "It is never too late to stand on the right side of history." The **Associated Press** already caved in to pressure from the left-wing language police. In April it changed its stylebook entry on the term "illegal immigrant." The entry now includes this sentence: "Except in direct quotes essential to the story, use *illegal* only to refer to an action, not a person: *illegal immigration*, but not *illegal immigrant*."

Think Progress, a blog run by the left-wing **Center for American Progress Action Fund**, is whining about the comparatively miniscule cost of keeping Congress open during votes to repeal the fiscal train wreck known as Obamacare. "The current Congress is on track to be the most unproductive since the 1940s, but still has time to hold votes that won't result in actual legislative change," moans the blog—as if having a "productive" Congress, meaning one that constantly manufactures costly new programs, is desirable. According to an estimate the blog cites, the total cost of all of House Republicans' 37 votes since 2011 to repeal or partially repeal Obamacare is about $55 million. "There are many other priorities lawmakers could focus on instead and better ways to spend taxpayer dollars.… At a time when lawmakers have implemented $85 billion in across-the-board cuts on top of $1.5 trillion in spending cuts over the next decade, no dollar can be spared." Of course, all of the taxpayer resources used up in considering expensive, government-expanding legislation supported by the Left would dwarf a piddling $55 million.