

# Supreme Court of New Jersey

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C-863 September Term 2009  
65,803

COMMITTEE TO RECALL  
ROBERT MENENDEZ FROM THE  
OFFICE OF U.S. SENATOR,

*Plaintiff-Respondent,*

vs.

NINA MITCHELL WELLS, ESQ.,  
SECRETARY OF STATE, and  
ROBERT F. GILES, DIRECTOR  
OF THE DIVISION OF  
ELECTIONS,

*Defendants-Respondents,*

and

UNITED STATES SENATOR  
ROBERT MENENDEZ,

*Indispensable Party-Petitioner.*

CIVIL ACTION

ON PETITION FOR  
CERTIFICATION FOR REVIEW  
OF FINAL JUDGMENT OF THE  
SUPERIOR COURT OF NEW JERSEY,  
APPELLATE DIVISION

DOCKET NO. A-2254-09T1

ENTERED: MARCH 16, 2010

Sat Below:

HON. EDWIN H. STERN, P.J.A.D.  
HON. RONALD B. GRAVES,  
HON. JACK M. SABATINO,  
J.J.A.D.

## **MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE OF CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND, ET AL.**

The applicants, Conservative Legal Defense and Education Fund, *et al.*, through their undersigned counsel, pursuant to Rules Governing the Courts of the State of New Jersey 1:13-9, hereby move this Court for leave to appear as *amici curiae* and to submit a brief in support of the plaintiff-respondent in this case.

## **Identity of the Applicants**

**Conservative Legal Defense and Education Fund** ("CLDEF") ([www.cldef.org](http://www.cldef.org)) was incorporated in the District of Columbia and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code ("IRC").

**Institute on the Constitution** ([www.iotconline.com](http://www.iotconline.com)) is an educational effort sponsored by the Law Office of Peroutka and Peroutka of Pasadena, Maryland.

**U.S. Justice Foundation** (<http://usjf.net/>) was incorporated in California, and is exempt from federal income tax under IRC section 501(c)(3).

**Gun Owners Foundation** ("GOF") ([www.gunowners.com](http://www.gunowners.com)) was incorporated in Virginia and is exempt from federal income tax under IRC section 501(c)(3).

**Gun Owners of America, Inc.** ("GOA") ([www.gunowners.org](http://www.gunowners.org)) was incorporated in California and is exempt from federal income tax under IRC section 501(c)(4).

**Vision to America** is a Division of Christian Worldview Communications, LLC, dedicated to promoting conservative values and restoring our Founding Fathers' vision for America as a Christian republic.

**The Lincoln Institute for Research and Education** ([www.lincolnreview.com](http://www.lincolnreview.com)) was incorporated in the District of

Columbia and is exempt from federal income tax under IRC section 501(c)(3).

**Public Advocate** ([www.publicadvocate.org](http://www.publicadvocate.org)) was incorporated in the Commonwealth of Virginia and is exempt from federal income tax under IRC section 501(c)(4).

**U.S. Border Control** ("USBC") ([www.usbc.org](http://www.usbc.org)) was incorporated in Virginia and is exempt from federal income tax under IRC section 501(c)(4).

**U.S. Border Control Foundation** ("USBCF") ([www.usbcf.org](http://www.usbcf.org)) was incorporated in Virginia and is exempt from federal income tax under IRC section 501(c)(3).

**American Coalition for Competitive Trade** ([www.aftd.org](http://www.aftd.org)) was incorporated in Virginia and is exempt from federal income tax under IRC section 501(c)(3).

The **Constitution Party National Committee** ([www.cp.org](http://www.cp.org)) was incorporated in Virginia and is a national political party committee registered with the Federal Election Commission.

### **Issues Intended to Be Addressed**

Applicants CLDEF, *et al.*, would like to submit a brief *amicus curiae* addressing the following issues: (i) whether the power to recall senators is reserved to the people by the Tenth and Seventeenth Amendments of the U.S. Constitution; (ii) whether New Jersey's recall law is not otherwise prohibited by the Article I, sections 3, 4, or 5, or by the Seventeenth Amendment;

and (iii) whether New Jersey's recall law is foreclosed by the U.S. Supreme Court decision in U.S. Term Limits v. Thornton.

### **Nature of the Public Interest**

Applicants, who are involved with public education on important issues, recognize that this case is of importance to the people of New Jersey as it relates to their ability to recall a U.S. Senator elected from their state who they believe to be making decisions which do not reflect their best interests. Furthermore, this case is of interest to the entire country, and the decision herein could have an impact on whether other states permit their citizens to recall their Senators. It is a case involving the correct interpretation of the U.S. Constitution, and presents an issue of vital importance to America.

### **Nature of the Applicant's Special Interest**

Each of the applicants was established, *inter alia*, for educational purposes related to participation in the public policy process, which purposes include programs to conduct research, and to inform and educate the public, on important issues of national concern, the accurate construction of state and federal constitutions and statutes, including those related to federal elections. Most of these organizations previously have filed *amicus curiae* briefs in other litigation.

The applicants believe that their perspective on the issues in this case will be of assistance to the Court in deciding the

issue presented. They anticipate that their *amicus curiae* brief, while generally supporting plaintiff-respondent's argument, will emphasize the issues identified above.

**Conclusion**

For the foregoing reasons, CLDEF, *et al.*, hereby request the Court to permit their participation in this proceeding.

Respectfully submitted,

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May 10, 2010