



# Chris Christie's War on Judicial Independence

An Unprecedented Effort to Pack the State Supreme Court

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By Billy Corriher and Alex Brown February 2014

# Introduction and summary

In the wake of the New Jersey Supreme Court's recent decision granting same-sex couples the freedom to marry, social conservatives called on Gov. Chris Christie (R) to make good on his pledges to rein in a state supreme court they perceive as "activist" and "liberal."<sup>1</sup> Brian Brown, president of the National Organization for Marriage, criticized the court for "redefining our most important social institution with no regard to the wishes of voters or even elected officials."<sup>2</sup> Carrie Severino, chief counsel and policy director at the Judicial Crisis Network, dubbed the tribunal "Chris Christie's court" and referred to it as "lawless" and "out of control."<sup>3</sup> She also alleged that Christie "has completely squandered the opportunity to appoint highly qualified judges who faithfully adhere to the text and original meaning of the law."<sup>4</sup> Severino called on Christie to fulfill his campaign pledge to appoint judges who do not "legislate from the bench."<sup>5</sup> This call for action is odd, considering that it comes in the midst of Christie's years-long quest to do just that. Christie is engaged in an unprecedented effort to augment the governor's influence over the fiercely independent New Jersey Supreme Court.

Christie is the only New Jersey governor since the ratification of the state constitution in 1947 who refused to nominate a sitting state supreme court justice for tenure.<sup>6</sup> This led to a standoff with the Democratic state senate, which must confirm the governor's nominees. The seat formerly occupied by Justice John Wallace has remained vacant since May 2010,<sup>7</sup> and Chief Justice Stuart Rabner has appointed lower-court judges to temporarily fill the vacant seats. But Rabner himself is up for tenure in June 2014. Since Rabner authored the court's recent marriage equality opinion, some pundits expect that Christie will again throw a respected justice off the bench because he does not like his rulings.<sup>8</sup>

This unprecedented attempt to pack the state supreme court is the culmination of a battle over two cases decided decades ago—cases in which the New Jersey Supreme Court recognized and protected low-income residents' rights to adequate housing and education. In a series of cases, the court has interpreted

the New Jersey Constitution as requiring state and local governments to provide affordable housing and equitable education financing.<sup>9</sup> As with other constitutional rights, the high court then ensured that the state complied with its interpretation of the state constitution.

Just as many state and local governments resisted desegregation after the decision in *Brown v. Board of Education*,<sup>10</sup> New Jersey legislators at all levels of government resisted the state supreme court's calls to adequately fund education and ensure affordable housing in compliance with the state constitution.<sup>11</sup> Like federal courts in the aftermath of *Brown*, the state supreme court became more intimately involved in implementing its rulings after years of inaction and inadequate measures from legislators and governors. The court repeatedly professed its preference for legislative action,<sup>12</sup> but when the political branches failed to act in accordance with the state constitution, the court stepped in to order specific actions. The court often ordered the legislature to fix poorly funded schools or required that local governments do more to allow for affordable housing.<sup>13</sup>

Some suburbanites fiercely resisted the idea of sending their tax dollars to failing urban schools.<sup>14</sup> A blogger in the suburbs of Paterson said, "Hundreds of millions of our tax dollars have been redistributed from New Jersey's suburban and rural towns to failing school systems like Newark and Camden." He claimed the court's education jurisprudence is "one of the main reasons our income taxes are so high."<sup>15</sup> Conservatives have long charged that these court decisions tie the hands of conservative New Jersey legislators who have been looking for ways to cut the state's spending. Christie said it is not proper for the court to "determine what programs the state should and should not be funding."<sup>16</sup> He argued the court's rulings presume that the solution is to "throw more money at failing schools."<sup>17</sup> The governor was elected on a platform that included changing the ideology of the so-called activist state supreme court.

Although he now enjoys wider support, Christie relied on huge margins of victory in the New Jersey suburbs to win his first gubernatorial election.<sup>18</sup> A local commenter noted, "The suburban voters who elected Christie are fed up [with] a rising tax burden due to expanding welfare, wasteful spending on education, and ineffective social programs with little to no provable results. There will certainly be a severe reduction in these types of funds."<sup>19</sup>

Suburban voters who were tired of sending their money to poor school districts elected the gubernatorial candidate who pledged to change the state supreme court into one that would not force them to do so. In the housing context, the court's rulings required New Jersey suburbs to accommodate affordable housing, prompting a backlash—fueled by a “not in my backyard” mentality—against having low- and moderate-income people living in the suburbs.<sup>20</sup> These sentiments found a voice in Christie's anti-court rhetoric.

The standoff between the governor and state senate continues, and Christie shows no signs of relenting in his effort to pack the court with judges who will rule his way. In declining to renominate Justice Wallace, Christie claimed that the state constitution allows the political branches to review justices' records after their initial seven-year terms.<sup>21</sup> He refused, however, to name any of Justice Wallace's decisions which led him to refuse to grant tenure.<sup>22</sup>

Moreover, every governor before Christie—even a Republican governor who served as his mentor—did not view the executive appointment power in this way.<sup>23</sup> Christie's attempts to make the court more conservative run afoul of traditions that have ensured the high court's independence from the political branches of government since the ratification of the state constitution. Until now, the political branches renominated every sitting justice for tenure, regardless of whether they agreed with the justice's rulings, and maintained a partisan balance in which neither Republicans nor Democrats had more than a 4–3 majority on the court.<sup>24</sup> The tradition of partisan balance even predated the state's 1947 constitution.

Christie is trying to change all of this. He wants a conservative court that will rule in his favor and against middle-class families and poor school districts.

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