

THE LEGAL



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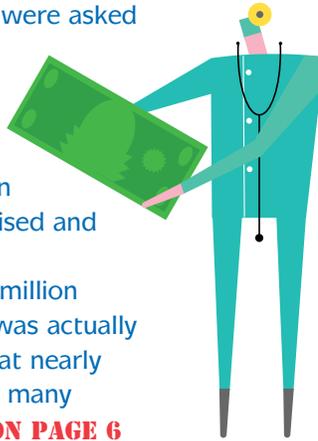
Working Toward Healthcare For All

by Jodi L. Miller

During a 2008 presidential debate, the candidates were asked if healthcare is a right, a privilege or a responsibility. Then Senator Barack Obama answered, "I think it should be a right for every American." Once elected, the president stood by that notion, signing the Patient Protection and Affordable Care Act into law on March 23, 2010. The merits of the law have been praised and maligned ever since.

According to the U.S. Census Bureau, in 2011, 48 million Americans did not have health insurance. That figure was actually down from 2010 estimates, which put the uninsured at nearly 50 million. One explanation for the decrease was that many

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Protecting Judicial Fairness— Can an Elected Judge Be Impartial?

by Phyllis Raybin Emert



The United States has three branches of government—the executive branch, the legislative branch and the judicial branch. The Founding Fathers intended the judicial branch of government to be independent in order to render unbiased decisions, and the due process clauses contained in the Fifth and 14th Amendments to the U.S. Constitution guarantee that impartiality.

But, can impartiality be guaranteed if judges are elected? Or, will judges feel indebted to big money donors that

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Any Given Sunday—A Possible Concussion?

by Barbara Sheehan

Even as professional football grows in popularity, the National Football League (NFL) is facing a legal challenge that has them playing defense. More than 4,000 former players are suing the NFL, claiming the league did not adequately protect them against the dangers of concussions. As a result, these former players say they are now facing serious health issues.

According to the complaint, "The NFL, like the sport of boxing, was aware of the health risks associated with repetitive blows producing sub-concussive and concussive results and the fact that some members of the NFL player population were at significant risk of developing long-term brain damage and cognitive decline as a result."



What is a concussion?

One of the challenges at the heart of the NFL controversy involves identifying and diagnosing a concussion. As described by the Sports Concussion Institute (SCI), the "adult brain is a three pound organ that basically floats inside the skull. It is surrounded by cerebral spinal fluid, which acts as a shock absorber for minor impacts. When the brain moves rapidly inside the skull, a concussion has technically occurred. One common scenario that can lead to a concussion is a direct blow to the head or a whiplash effect to the body."

According to SCI, football is the most common sport for concussion risks in males. Men who play football,

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at ant level, have a 75 percent chance of sustaining a concussion.

Diagnosing a concussion is not always easy. Symptoms can include dizziness, headaches, nausea, difficulty with concentration or memory and confusion or irritability.

Sometimes these symptoms don't appear right away. In fact, according to SCI, an estimated 47 percent of athletes do not report feeling any symptoms after a concussive blow. That's why many sports teams now caution, "When in doubt, sit it out." In other words, if you're not sure whether or not you have suffered a concussion, don't play.

"It is imperative," according to SCI, "that a person fully recover from one concussion before risking a subsequent one. Failing to do so adequately can lead to additional neurologic damage."

NFL suicides

Shining a bright spotlight on the NFL controversy were the suicides of three well-known former football players. Dave Duerson, who played for 11 seasons, first for the Chicago Bears in the 1980s (and later for the New York Giants and the Phoenix Cardinals), killed himself in February 2011 at the age of 50. Duerson reportedly suffered from depression and other brain-related issues. During his career, Duerson suffered at least 10 concussions. According to reports, before he died Duerson sent a text message to his family saying he wanted his brain to be used for research.

In April 2012, Ray Easterling, who played eight seasons for the Atlanta Falcons in the 1970s, took his life at the age of 62. According

to newspaper accounts, Easterling started showing signs of depression and dementia 10 years after he retired from the NFL.

Finally, in May 2012, Junior Seau, who played 20 seasons with the San Diego Chargers, the Miami Dolphins and the New England Patriots, killed himself at the age of 43. In newspaper accounts, his family reported that Seau suffered from behavioral mood swings,

irrationality, forgetfulness, insomnia and depression.

Besides their love of football, all three players had one other thing in common. They were all diagnosed **posthumously** with a brain disease known as chronic traumatic encephalopathy (CTE). CTE is a **degenerative** brain disease that is associated with memory loss, confusion, impaired judgment, impulse control problems, aggression, depression, and eventually, progressive dementia.

The families of all three players are represented in the lawsuits against the NFL.

Studying the brain

Research scientists at Boston University studied brain tissue from 85 people, who, when they were alive, had a history of repeated head trauma. The subjects were military veterans and former boxers, football and hockey players. The study, funded in part by the NFL, found that 68 of those brains had CTE, and of those, 33 were former NFL football players. In December 2012, the findings of the study were published in Oxford University's medical journal, *Brain*, and also presented at the International Consensus Conference on Concussion



in Sport in Zurich. Ann McKee, who was the lead neuropathologist on the project, received skepticism from medical experts attending the conference. They claimed the study was skewed and did not take into account other reasons, besides playing football, for the diagnosis of CTE.

After the criticism, McKee said, "I agree we don't know how big a problem this is, we don't know what all the risks are. There's a lot we don't know, but I think we know enough to know that this is a problem."

While CTE can only be confirmed conclusively after death, researchers at UCLA were able to perform brain scans on five living former NFL players in January 2013. In all five cases, they found evidence of tau, an abnormal protein that strangles brain cells, in the areas of the brain that control memory and emotions. The buildup of tau is what causes CTE, and the findings in the living NFL players were consistent with the brains in the BU study that were conclusively diagnosed with CTE.

Dr. Gary W. Small, the study's lead author and a professor of psychiatry and bio-behavioral sciences at UCLA, told ESPN, "The findings are preliminary—we only had five players—but if they hold up in future studies, this may be an opportunity to identify CTE before players have symptoms so we can develop preventative treatment."

In addition to these specific CTE studies, another study, conducted by the National Institute for Occupational Safety and Health, a division of the Centers for Disease Control, highlighted the link between football and neurodegenerative diseases. In September 2012, the medical journal *Neurology*, published the study of 3,500 retired pro football players and found that these individuals were three times more likely than the general population to suffer from neurodegenerative

diseases such as Alzheimer's and Parkinson's.

Did the NFL know?

Undoubtedly, the stories of Duerson, Easterling and Seau are tragic. Whether their suicides were related to CTE is up for debate. Still, it is hard to deny the link between neurological problems and football.

"When it comes to suicide and chronic traumatic encephalopathy, it is possible that in some individuals the combination of CTE-related symptoms of poor impulse control, depression and cognitive impairment may indeed lead to suicide," Dr. Robert Stern, co-director of the Boston University research group, told *The New York Times*. "However, we can never clearly point to any

cause-and-effect relationship in any one case."

For the purposes of the NFL lawsuit, the real question is: How much did the NFL know about the risks, and how much of that was shared with the players? Did the NFL knowingly withhold information about the long-term dangers of concussions, as **plaintiffs** contend? And if so, could that information have impacted safety protocols?

According to nflconcussionlitigation.com, as of February 2013, there are 214 lawsuits against the NFL, with 4,127 named former football players as plaintiffs, including 236 former New York Jets and 239 former New York Giants. Including the

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Teddy Roosevelt Saves Football

Since 1869, when Rutgers played Princeton in the first college football game, violence has been ingrained in the sport—and back then it was played with no helmets. The birth of professional football would come more than 20 years later in 1892, when the Allegheny Athletic Association paid William (Pudge) Heffelfinger \$500 to play for them against the Pittsburgh Athletic Club.

While the current lawsuits against the National Football League have highlighted the violence of the sport, it is not the first time the game has come under fire. At the turn of the 20th century, many called for football's demise because of its brutality.

In 1905, then President Theodore Roosevelt, whose son played football for Harvard University, successfully led a campaign to save the game and revamp the rules to alleviate some of the physical risks to players.

According to *The Chicago Tribune*, the 1904 football season saw 18 deaths and 159 serious injuries. The 1905 season was even worse, with 19 deaths and 137 serious injuries. Most of these player deaths were at prep schools. Following the 1905 season, Columbia, Northwestern and Duke universities dropped football from their sports rosters.

President Roosevelt encouraged school leaders to come together and push for radical rule changes. An intercollegiate conference was formed, which would later become the NCAA. Some of the changes that were instituted included legalizing the forward pass, abolishment of mass formations and doubling of the first-down distance to 10 yards, to be gained in three downs. These changes would also find their way into professional football. As a result, in the 1906 and 1907 seasons, injuries and fatalities in the sport went down. When fatalities increased again in 1909, restrictions on the forward pass were further diminished.

Interestingly, wearing helmets was not mandatory in college football until 1939. The NFL made wearing helmets mandatory in 1943.

helped with their elections? That is the question that has been debated since Mississippi became the first state to elect all of its judges in 1832.

At the federal level, the president of the United States appoints judges to the bench. The U.S. Senate must then approve those nominees. At the state level, it is a different story and the system for selecting a judge varies greatly from state to state. According to the National Center for State Courts (NCSC), 39 states elect at least some of their judges and 87 percent of all state court judges face elections of some sort in their career. It is estimated that every year 100 million cases are heard in state and local trial courts. The NCSC asserts that state court judges handle 97 percent of cases heard in the United States.

Selecting judges

According to the American Judicature Society, a **nonpartisan** organization that seeks to maintain the independence and integrity of the courts, there are five basic methods of judicial selection being used throughout the 50 states, with no two states using exactly the same method. Those methods are: gubernatorial appointment, legislative appointment, merit selection, and either **partisan** or nonpartisan contested elections.

With the merit selection option, a nominating commission made up of legal experts evaluates judicial applicants. The commission then recommends three to five candidates to the governor, who appoints one candidate to the bench. With contested elections, the citizens of the state elect judges. In a partisan election, the candidate has the endorsement of his or her political party and that affiliation is listed on the ballot. In a nonpartisan election, a candidate's party affiliation is not listed on the ballot. Judges in some states also face what is called retention elections. That is where a judge, who has been either appointed or elected, serves for a certain number of years (which varies from state to state) and runs unopposed. Voters then vote "yes" to keep the judge in office or "no" to have that judge removed.

In New Jersey, the governor chooses all judges in the state, with the approval of the state senate. Judges come up for reappointment after seven years, and if they are again selected by the governor and confirmed by the senate, they can serve until the age of 70. New Jersey, along with California and Maine, are the only states that use the gubernatorial appointment method for judicial selection.

An independent judiciary?

The original 13 colonies all had an appointment method of judicial selection, either by the legislature or the governor. By the time the Civil War began in 1861, 24 of the 34 states were electing all or some judges.

With partisan elections came corruption and bias, essentially turning judicial candidates into

politicians who needed to raise money for costly election campaigns. The selection process was reformed with nonpartisan elections, to keep judges independent of party politics but still accountable to the people. A subsequent reform was the retention election, which became more common after 1940 when Missouri became the first state to adopt them.

Even retention elections have been criticized, however, since various groups can spend money and defeat judges with whom they disagree. For example, in Iowa three state supreme court justices lost their retention elections after several out-of-state organizations, including the National Organization for Marriage and the American Family Association, launched a \$1 million removal campaign to defeat the judges. The three justices were part of a 2010 unanimous decision to legalize same-sex marriage in the state.

"What is so disturbing about this is that it really might cause judges in the future to be less willing to protect minorities out of fear that they might be voted out of office," Erwin Chemerinsky, the dean of the University of California, Irvine, School of Law, told *The New York Times*. "Something like this really does chill other judges."

Caperton v. Massey

If a judge has a conflict of interest in a case, for example, knowing one of the parties personally or a particular bias, such as a prejudice against certain groups of people, he or she is supposed to **recuse** him or herself and let another judge hear the case. Either party in a case may make a motion to force the judge to recuse himself if that party believes there is a conflict of interest or bias. In 2009, the U.S. Supreme Court decided *Caperton v. Massey*, which has become the standard for judicial recusal. In a 5-4 decision, the High Court held "that it was unconstitutional for a state supreme court justice to hear a case involving the financial interests of a major backer of the judge's election campaign."

The dispute in *Caperton v. Massey* began in 1998 between two West Virginia coal companies, Harman Coal and Massey Energy Company. Hugh Caperton, president of Harman Coal, sued Massey Energy for using dishonest business practices. The case went to trial and in 2002, a jury awarded Harman \$50 million. In 2004, Don Blankenship, the Chief Operating Officer of Massey, contributed about three million dollars to the campaign of a lawyer named Brent Benjamin, who was opposing sitting Justice Warren McGraw on the West Virginia Supreme Court. Blankenship's contributions amounted to about 60 percent of all money raised by Benjamin, who defeated McGraw. Meanwhile, Blankenship **appealed** the verdict against Massey Energy and the case eventually went before the West Virginia Supreme Court.

Caperton, the plaintiff, called for Justice Benjamin to recuse himself because Blankenship, the defendant, contributed the lion's share to Benjamin's election campaign, believing there was an obvious bias in favor of Massey Energy. Justice Benjamin refused to recuse himself even after three separate requests to do so. As a result, he was the deciding vote in a reversal of the \$50 million verdict against Massey. Caperton appealed to the U.S. Supreme Court.

In the majority opinion for the Court, Justice Anthony Kennedy wrote, "the Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" Justice Kennedy noted that judges should avoid "even the appearance of partiality." The Court concluded that the case was so extreme regarding campaign contributions during the election that Caperton's due process rights were violated and **remanded** the case back to the West Virginia Supreme Court.

Power to the people

In his article, "In Defense of Judicial Elections (Sort of)" for the American Bar Association publication *Litigation*, attorney Martin J. Siegel wrote, "I view judicial elections rather like an eccentric uncle. His flaws are all too apparent, but you feel vaguely obligated to speak up for him all the same." Siegel ran for a seat on an intermediate appellate court in Texas. He lost his election but gained an appreciation for the election process. "One virtue of judicial elections I did not credit sufficiently," he wrote, "is that they expose judges to the real people who fill their jury and witness boxes."

In remarks at a conference on judicial elections, Justice Joseph Lambert, the chief justice of Kentucky, said, "By running for office judicial candidates have an opportunity to learn what real people are doing on a daily basis and learn what they are thinking. Lawyers, as a practical matter, and judges are perhaps not entirely in touch with the real world at all times and so it gives them an opportunity to have a certain level of contact with real folks."

Evidence, however, suggests that citizens are not well informed about the judicial candidates they elect. According to a fact sheet published by the Institute for the Advancement of the American Legal System, an organization affiliated with the University of Denver, "In most states that elect judges, voters are provided with little objective information about a candidate's potential to be a fair, impartial and effective judge. Instead, voters are

often treated to attack ads that are misleading and highly sensationalized."

Big money, big money

In *Citizens United v. Federal Election Commission*, the U.S. Supreme Court essentially eliminated federal campaign finance restrictions on donations made by both American or foreign corporations or organizations such as labor unions to political campaigns. In a 5-4 decision, the Court held that corporations had first amendment freedom of speech rights like individuals. The Court concluded that large contributions from corporations and other organizations do not cause corruption or its appearance, but the identities and source of the donations are required in election campaigns.

The U.S. Supreme Court is the highest court in the land. Before any case can go to the highest court, it must go through the necessary channels in state courts, appellate courts, ultimately reaching a state's highest court, usually the state supreme court, sometimes called the court of last resort. That is why impartiality at state levels is so important, because not every case can go to the U.S. Supreme Court. According to Judgepedia, an online encyclopedia about America's courts sponsored by the Lucy Burns Institute, there are 338 state supreme court justices across the 50 states—65 chosen in partisan elections and 105 chosen in nonpartisan elections.

The money spent on judicial election campaigns is staggering. According to the Brennan Center for Justice, an organization affiliated with New York University School of Law, \$206 million was raised for state judicial elections in the period from 2000 to 2009, more than double the \$83 million raised in the 1990s. In 2012, according to the Brennan Center, \$29.7 million was spent on 51,000 television ads in state supreme court elections alone. That total broke the previous record of \$24.4 million spent in 2004.

In fact, according to an article in *The New Republic*, it was in 2004 that the "costliest judicial election ever" occurred—the election for a seat on the Illinois Supreme Court. In that contest, the candidates, Lloyd Karmeier and Gordon Maag, spent more than \$9 million; almost double the previous national record. Karmeier won the election and was helped by donations of more than \$350,000 from State Farm Insurance employees, along with another one million dollars from other groups affiliated with the insurance giant. Coincidentally, State Farm happened to be appealing a \$450 million damage award against them to the state supreme court. The plaintiffs in the case asked for Justice Karmeier to recuse himself, but



young adults gained access to health insurance because the Affordable Care Act allowed them to remain on their parents' plans until the age of 26. While many of the Act's measures do not go into effect until 2014, that part of the Act was activated in 2010. Another reason for the decrease in the uninsured is because in 2011 more people became eligible for government-funded programs, such as Medicare and Medicaid.

Studies have shown that people who don't have health insurance go without medical care, often putting off needed medical procedures or not seeking medical attention until it is too late. The Urban Institute, a nonpartisan research group that analyzes economic and social policy, estimated that in 2006, 22,000 adults between the ages of 25 and 64 died because they did not have health insurance.

What the new law provides

Some popular parts of the Affordable Care Act (ACA), sometimes called Obamacare by its detractors, have already gone into effect as of 2010. In addition to the extended coverage for young adults mentioned above, insurers can no longer deny coverage to children with pre-existing conditions, and the Act also bans insurers from imposing limits on how much they will pay for an individual's care over his or her lifetime. Denying an adult coverage for a pre-existing condition is also part of the Act, but will not go into effect until 2014.

The part of the 2,409-page law that many conservatives took issue with is the requirement that all Americans have health insurance; meaning if you do not receive health insurance from your employer, you would need to purchase your own. Anyone refusing to purchase health insurance would be required to pay a penalty, called a "shared responsibility payment." This part of the Act goes into effect in 2014, but penalties would not kick in until people pay their 2015 taxes.

For those people who would fall into the category of having to purchase their own health insurance, there are several exemptions, and according to the Kaiser Family Foundation, a nonpartisan leader in health policy analysis, "almost nine in 10 non-elderly people would either satisfy the mandate automatically because they already are insured or be exempt from it." According to Census Bureau statistics for 2011, 55 percent of Americans were covered by employer-sponsored health insurance, while 9.8 percent directly purchased their own health insurance.

Another portion of the ACA that many states did not like is the expansion of Medicaid, which

is funded jointly by the federal government and state governments. The expansion would increase the eligibility for Medicaid benefits, requiring that participating states cover all people under the age of 65 with household incomes at or below \$14,856 for an individual and \$30,657 for a family of four. If states don't agree to the Medicaid expansion, then the federal government would rescind all existing Medicaid funds.

Mandating healthcare

The day President Obama signed the Affordable Care Act into law, the state of Florida filed a lawsuit in a federal district court challenging its constitutionality. Florida would be joined by 25 other states. New Jersey was one of 12 states that took no position on the litigation.

The states argued that Congress could not force people to purchase anything on the free marketplace. Court filings stated, "If Congress has the power not just to regulate commercial suppliers and those who voluntarily enter the market, but to compel demand as well, then we have truly entered a brave new world."

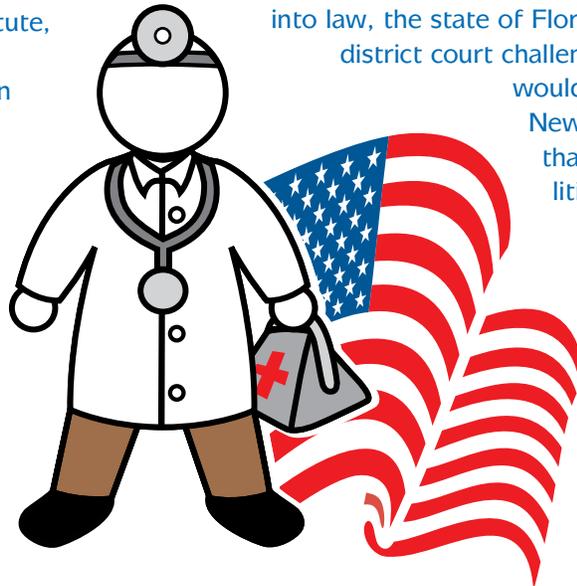
Arguing for the Obama administration, Solicitor General Donald B. Verrilli Jr. defended the ACA as a constitutional exercise of congressional power under the commerce clause of the U.S. Constitution. The commerce clause gives power to Congress to regulate interstate commerce. The argument is that Congress needed to regulate the purchase of health insurance in order to keep costs down for all Americans, whether insured or uninsured.

The U.S. Supreme Court eventually agreed to decide the constitutionality of two major provisions of the ACA—the individual mandate and the expansion of Medicaid.

Court decides

In June 2012, the U.S. Supreme Court voted 5 to 4 to uphold the Affordable Care Act. The mandate, however, was not upheld by the commerce clause, but by Congress' tax power. In the Court's majority opinion, Chief Justice John Roberts Jr. wrote, "The federal government does not have the power to order people to buy health insurance. The federal government does have the power to impose a tax on those without health insurance."

In other words, the "shared responsibility payment," in the Court's opinion, is a tax and that is something Congress frequently imposes. For example, cigarettes are taxed heavily to encourage people to stop smoking.



Justice Roberts wrote, “Upholding the individual mandate under the Taxing Clause thus does not recognize any new federal power. It determines that Congress has used an existing one.”

In his dissent, Justice Anthony M. Kennedy criticized Justice Roberts’ reasoning. “The act requires the purchase of health insurance and punishes violation of that mandate with a penalty,” Justice Kennedy wrote. “But what Congress called a ‘penalty,’ the Court calls a tax. What Congress called a ‘requirement,’ the Court calls an option....In short, the court imposes a tax when Congress deliberately rejected a tax.”

As for the expansion of Medicaid, the Court found that to be “unconstitutionally coercive and Congress could not make all of a state’s existing Medicaid funds contingent upon the state’s compliance with the ACA Medicaid expansion.”

Where things stand today

After the Court’s decision, President Obama said, “The highest court in the land has now spoken. We will continue to implement this law. And we’ll work together to improve on it where we can. But what we won’t do, what the country can’t afford to do is refight the political battles of two years ago or go back to the way things were. With today’s announcement it is time for us to move forward.”

Senate Republicans are not on board with that. In March 2013, they forced a vote to defund the Affordable Care Act, marking the 35th time congressional Republicans have attempted to do so. As with past efforts, this attempt failed 45 to 52. Fights over the Act’s implementation will likely continue for years to come, no doubt making their way to the courts again. 🗳️

Protecting Judicial Fairness CONTINUED FROM PAGE 5

he declined and ended up casting the deciding vote in State Farm’s favor, saving the company nearly a billion dollars.

Calling for reform

According to a 2007 report from the Annenberg Public Policy Center, 69 percent of the public believes that having to raise money for elections affects judges’ rulings.

In light of the U.S. Supreme Court decisions of *Citizens United* as well as *Caperton v. Massey*, many states have considered various methods of reform to protect the impartiality of the judiciary. Tennessee passed, what *The New York Times* described as “a new rule prohibiting judges from hearing cases when campaign spending by lawyers or litigants raises a reasonable question of their impartiality.” The new law would require a judge to step aside or if the recusal is denied, to put in writing why he or she can be impartial in the case. The final word on recusal would be determined by a different, more objective judge.

Recently, three former Pennsylvania governors have expressed their support for the state to move toward the judicial merit selection method and two state senators have introduced a bill that would do that on the appellate, superior and supreme court levels. Pennsylvania is one of six states (Alabama, Illinois, Louisiana, Ohio and Texas are

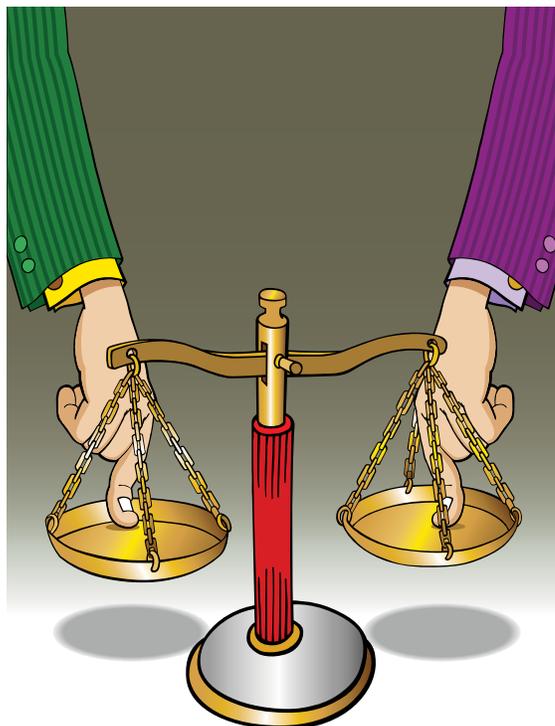
the other five) that currently select judges at all levels of government via partisan elections.

“The third branch of government...was set up to be an independent body,” former Governor Tom Ridge told *The Pennsylvania Record*. “It’s not about people’s opinion, it’s about the qualifications, the temperament, upholding the rule of law.”

According to the American Judicature Society, 24 states currently employ some form of the merit selection process in selecting their judges. The Society supports this method of judicial selection and former U.S. Supreme Court Justice Sandra Day O’Connor has put her support behind merit selection as well. Justice O’Connor is working with the Institute for the Advancement of the American Legal System to promote the O’Connor Judicial Selection Initiative, which promotes merit selection.

Information put out by the Initiative cited a report published by the U.S. Chamber’s Institute for Legal Reform, which stated that the five states ranking lowest on judges’ impartiality (Montana, Alabama, Louisiana, Mississippi and West Virginia) elect all of their judges—in either partisan or nonpartisan elections.

“What the people need and want at the end of the day is a fair and impartial judiciary, one that’s qualified, fair and impartial,” Justice O’Connor told *The American Bar Association Journal*. “It is much more difficult to achieve that by using popular campaign-funded elections.” 🗳️



players' spouses and children, there are more than 5,500 plaintiffs in these cases.

A hearing is scheduled in a Philadelphia federal court for April 9, 2013. The **defendants** in the case, including the NFL, have asked for the cases to be dismissed because their attorneys argue that this is a labor dispute, which is governed by the NFL's collective bargaining agreement. The plaintiffs argue that the issue is not a labor dispute but something that the courts need to resolve. U.S. Eastern District Judge Anita Brody will decide whether the cases should go forward.

NFL takes precautions

In a statement, the League said, "The NFL has long made player safety a priority and continues to do so. Any allegation that the NFL sought to mislead players has no merit. It stands in contrast to the league's many actions to better protect players and advance the science and medical understanding of the management and treatment of concussions."

In addition to partially funding the Boston University study, the NFL has also donated \$30 million to the National Institutes of Health for the purpose of brain injury research.

As for current players, the NFL has implemented new protocols to protect them. Starting with the 2013 season, all players will be required to wear full padding, including thigh and knee pads, as part of the standard uniform. The League is also cracking down on helmet-to-helmet hits to reduce the incidents of concussions and players are removed from games if they exhibit concussion warning signs.

Still, NFL teams sometimes make controversial decisions to keep players in games after hard hits. When one

team allowed its quarterback to rejoin play after he suffered a concussion, the League instituted a policy where an independent trainer needs to observe games looking for possible head injuries.

The future of football

According to the Sports & Fitness Industry Association, from 2007 to 2011, participation in tackle football was down 35 percent among kids aged six to 12. Some people believe this is a result of the evidence regarding concussions. Even some professional football players, including former quarterback Kurt Warner, have revealed that they would rather their sons not play football.

In an op-ed piece titled "The Impending Death of Pro Football," which appeared in *The Atlantic*, editor Ta-Nehisi Coates wrote, "You tell a parent that their kid has a five percent chance of developing crippling brain damage through playing a sport, and you will see the end of Pop Warner and probably the end of high school football. Colleges will likely follow."

Legislators have already taken steps to make football safer for young players. To govern middle and high school football, most states (35 in all), including New Jersey, have similar laws to Washington's Zachary Lystedt Law, passed in 2009. The law states that a licensed medical professional must evaluate players suspected of sustaining a concussion before the player can return to the game. Pop Warner Football passed a similar rule in 2010. The NFL is advocating for all states to adopt such laws to protect young players.

Zachary Lystedt was 13 years old when he sustained a concussion during a middle school football game in 2006. After returning to play, he collapsed and later suffered brain damage. While Lystedt survived after brain surgery, his recovery has been slow. By 2012, when he received his high school diploma, he was still only able to take a few steps.

Message to young players

Anthony R. Caruso, a sports and entertainment lawyer in Ocean, NJ, doesn't think the end of football is near. What often happens in cases such as these, Caruso says, is that courts get involved until they see

that significant changes are being drafted to ensure that players will be better protected moving forward.

One good thing to come from all of this is that players today are benefitting from improvements in equipment and added safety awareness, notes Caruso, whose son plays football for Boston College. He emphasized that it is especially important for young athletes and their parents to be educated about concussion risks and protocols. Young players need to know, Caruso says, that it's okay to raise your hand and say, "Coach, I don't feel well, I have a headache." 



appealed — when a decision from a lower court is reviewed by a higher court.

defendant — in a legal case, the person accused of civil wrongdoing or a criminal act.

degenerative — progressively worsening.

nonpartisan — not adhering to any established political group or party.

partisan — someone who supports a particular political party or cause with great devotion.

plaintiff — person or persons bringing a civil lawsuit against another person or entity.

posthumously — after a person's death.

recuse — (in terms of a judge) excuse oneself from hearing a case because of a conflict of interest.

remand — to send a case back to a lower court.