

An Occasional Note from U.S. Programs

May 27, 2009

This week, President Obama selected Sonia Sotomayor to replace Justice David Souter, who retires from the U.S. Supreme Court at the end of June. In the past, judicial nominations have too often devolved into fights over filibusters and arguments over “judicial activism” – becoming spectacles that most Americans just tune out. Supreme Court nominations in fact offer a rare opportunity to engage in an informed debate about the role of the courts and the Constitution in our democracy. As the confirmation process gets underway, the Open Society Institute and its grantees have been working hard to lead a constructive, informative conversation that engages Americans in the nomination process and re-establishes core constitutional values.

Defending the Constitution and the Rule of Law

There have been troubling trends in Supreme Court and federal court decisions over the past three decades. Decisions have undermined due process rights, closing the courthouse doors to people seeking to enforce legal protections. Other decisions have undermined longstanding legal precedents such as *Brown v. Board of Education* that were soundly rooted in the Constitution. Still others have limited the power of Congress to enforce basic constitutional rights through legislation. For instance, legal experts are concerned that the Supreme Court is poised to strike down a key provision of the Voting Rights Act – a forty-four-year-old piece of legislation that marked one of the greatest victories of the Civil Rights Movement – on the grounds that it was an unconstitutional exercise of Congressional power.

In response to these trends, advocates around the country are now advancing an affirmative vision of the Constitution and the courts. This vision recognizes the vital role that courts play in defending fundamental rights while respecting Congress' power to make laws that protect citizens from threats to their health, safety, and dignity. The American Constitution Society is playing an important role in these efforts and has helped to publish three new books on constitutional interpretation and meaning. The Constitutional Accountability Center is educating the press, the courts, and the legal community about the Constitution's text and history to defend fundamental rights. And the National Senior Citizens Law Center is collaborating with a diverse group of partners to advance federal rights that protect people of color, senior citizens, immigrants, and low-income communities from discrimination and provide basic economic security.

During the confirmation process this summer, advocacy organizations in Washington and grassroots groups around the nation will build on these efforts to encourage a public dialogue that is informed by a commitment to the Constitution, individual rights, and equal justice under the law. The Leadership Conference on Civil Rights Education Fund is co-leading the Coalition for Constitutional Values in efforts to educate and engage the public during the nomination and confirmation process. The coalition includes more than twenty organizations such as U.S. Program grantees the National Congress of American Indians, The Bazelon Center for Mental Health Law and Policy, and National Partnership for Women and Families. In alignment with our commitment to support grassroots activism on all of our priorities in U.S. Programs, we are supporting grassroots organizing on judicial nominations. The Equal Justice Society will work with groups in California; the National Council of Jewish Women will

help to lead coalitions in Nebraska, Pennsylvania, and Ohio; and the upstart Infinity Project will push for judicial diversity in Minnesota, Iowa, the Dakotas, Nebraska, Missouri, and Arkansas.

Safeguarding Judicial Independence

Our support for organizations advocating to ensure a fair federal nominations process is part of our Transparency and Integrity Fund's larger commitment to judicial independence. U.S. Programs has long engaged in work to protect and defend the central role of courts in our constitutional democracy. OSI helped create the Justice at Stake Campaign, a national coalition of organizations committed to speaking out in defense of courts when they are attacked politically. The campaign and its members have also made the case for reforming judicial selection in the states to eliminate the corrosive effects of money on impartial justice. An open society depends on strong courts to provide vital balance in our government, to uphold the Constitution, and to rule on every case fairly and impartially based on the facts and the law. Whether in the state courts or in the United States Supreme Court, OSI is committed to a fair and impartial judiciary that believes in the Constitution's promise of due process and equal protection under the law for all Americans.

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