



**To: Interested Parties**

**Fr: Kathryn Kolbert, President, People For the American Way**

**Re: Obama Wins Mandate on the Courts**

**Date: November 5, 2008**

Looking at yesterday's results, it's incontrovertible that the election delivered a sweeping mandate for President-elect Obama to appoint federal judges who are committed to core constitutional values: justice, equality, and opportunity for all. In the election the public rejected the efforts of the right wing to stack the federal courts with ideological jurists like Justices Scalia and Alito – often called “strict constructionists.” Rather the public selected now President-elect Obama after his repeated commitment to support compassionate judges who are faithful to the Constitution, its values, its principles and its history.

In past years, we've seen Republican candidates motivate their base with pledges to appoint judges to the bench who bring a conservative political ideology to their decisions. This year, it was progressives who were most able to rally support on judicial issues.

Throughout the primary election and into the general, Senator John McCain repeatedly focused attention on his support of George Bush's nominees to the Supreme Court, and promised to appoint similar jurists should he be elected. He's repeatedly used his record on the Courts (and his across-the-board support for President Bush's nominees) to amp up support from the conservative base.

For his part, Senator Obama spoke about the Court during the campaign with more energy than any Democratic candidate in recent memory. Lilly Ledbetter, the victim of a particularly egregious decision authored by Justice Alito, had a prime-time speaking slot at the Democratic National Convention in Denver and was also featured in a campaign ad in heavy rotation. In the Vice Presidential debate, Joe Biden, unprompted, pointed to his opposition to Robert Bork as an important milestone in his career.

When speaking directly about the Court, Obama outlined a vision for progressive justices with a far broader commitment to the Constitution's underlying principle of justice for all:

“When you look at what makes a great Supreme Court justice, it's not just the particular issue and how they rule, but it's their conception of the Court. And part of the role of the Court is that it is going to protect people who may be vulnerable in the political process: the outsider, the minority, those who are vulnerable, those who don't have a lot of clout.”

Late in the campaign, Governor Palin and other conservative activists attempted to discredit Senator Obama over comments he made on the Warren Court, pointing out how limited the Court's decisions really were. But the allegations never caught fire, and the line of attack was completely discarded.

As yesterday's results make clear, Americans are comfortable with Senator Obama's vision for the Judiciary, even when it was caricatured as extreme or outside the mainstream. At the same time, voters were uninspired by Senator McCain's frequent repetition of right-wing code words like "judicial restraint" and "strict constructionist."

In fact, the difference between the candidates' stances on the future of the Supreme Court was an important distinction in several key endorsements. In his endorsement of Senator Obama on *Meet the Press*, Colin Powell pointed to the Court, stating "I would have difficulty with two more conservative appointments to the Supreme Court, but that's what we'd be looking at in a McCain administration." Similarly, at the Democratic National Convention both Al Gore and Hillary Clinton discussed the Supreme Court as a critical reason to support Senator Obama's candidacy.

Meanwhile, dozens of newspaper and magazine editorial boards pointed to judicial appointments as a crucial issue in their endorsements of Barack Obama. *The Santa Fe New Mexican*, a key swing state paper, wrote:

"At least as important is that we can also trust him to restore the credibility of our judiciary as vacancies occur at district and appellate levels, as well as at the Supreme Court. Civil liberties in particular, and justice in general, have suffered enormously in recent years."

People For the American Way was active in promoting discussion of the Supreme Court during the campaign. Early in the primary season, People For posted a billboard in Manchester New Hampshire to commemorate the anniversary of *Roe v. Wade*. In several key Senate and presidential battleground states, we ran both television and radio ads focusing on the Court. Tens of thousands of activists signed onto our campaign to "Vote the Court" and support candidates who support fair-minded jurists.

In the next four years, there might be three or more vacancies on the Supreme Court, along with numerous vacancies on the lower federal courts. Given the results of yesterday's election, we should expect President-elect Obama and the United States Senate to nominate and confirm judges who will defend our personal freedoms and ensure that every person has equal access to justice. The American people have asked them to do just that.

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