



SHARON BROWNE

A Legal Services Corporation Nominee with a Track Record in Conflict with the LSC Mission of Equal Justice for Poor Americans

Senate Minority Leader Mitch McConnell (R-KY) proposed that Sharon Browne, a senior attorney at the Pacific Legal Foundation (“PLF”), be nominated to fill a vacancy on the Legal Services Corporation (“LSC”) Board of Directors. On December 17, 2009, President Obama sent that nomination to the Senate for confirmation or rejection.

Browne is not qualified to serve on the LSC Board, given the decades-long legal efforts by Browne and PLF aimed at de-funding legal services for the poor and in opposition to the principle of equal justice that is at the core of LSC’s mission.

Now More Than Ever, LSC Needs Committed Leadership to Ensure Equal Justice

Established by Congress in 1974, LSC operates as an independent 501(c)(3) nonprofit corporation that promotes equal access to justice and provides grants for high-quality civil legal assistance to low-income Americans.¹

According to LSC, “three out of four clients are women—many of whom are struggling to keep their children safe and their families together. Overall, the clients are the most vulnerable among us and are as diverse as our nation, encompassing all races, ethnic groups and ages, including the working poor, veterans, homeowners and renters facing foreclosure or evictions, families with children, farmers, people with disabilities, victims of domestic violence, the elderly and victims of natural disasters.”²

Effective and committed leadership of LSC is particularly important in these times of economic crisis. Fifty percent of eligible potential clients requesting assistance from LSC grantees were turned away for lack of adequate program resources, according to LSC’s 2009 Justice Gap Report.³

Sharon Browne Does Not Meet the Qualifications Established by Congress

LSC is governed by an 11-member board appointed by the President and confirmed by the Senate. By law, no more than 6 board members may be of the same political party. In recent years, the out-of-power party has sent the President names from which to choose the remaining 5 members. Senate Minority Leader Mitch McConnell recently recommended Ms. Browne, along with Charles Keckler and Victor B. Maddox, to President Obama, who nominated them to the LSC Board.

¹ Legal Services Corporation Act, Pub. L. No. 93-355, § 2, 88 Stat. 378 (1974).

² See <http://www.lsc.gov/about/lsc.php>.

³ LSC 2009 Report, Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans, available at http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

The Senate Health Education Labor and Pensions (“HELP”) Committee will consider Browne’s nomination. The Committee can choose whether or not to hold a hearing to discuss the merits of her nomination and decide whether to send it to the floor. The American Bar Association is also conducting a comprehensive review of her record, the results of which will be provided to HELP Committee members to assist their decision making process.

When Congress established LSC, the Senate committee that developed the legislation wrote: “The Committee expects that, in exercising its advice and consent function [including voting on proposed nominees], the Senate will want to review the nominations on the basis of the following primary criteria: (1) a Board membership which is adequately representative of the organized bar, legal education, legal services attorneys, the client community, and organizations involved in the development of legal assistance for the poor; (2) the selection of persons who are committed to the Corporation’s freedom from political control; and (3) the assurance that the Board members understand and are fully committed to the role of legal assistance attorneys and support the underlying principle of this legislation that it is in the national interest that the poor have full access under law to comprehensive and effective legal services.”⁴

Sharon Browne does not meet any of those three criteria. She would not contribute to making the board representative of those who provide, use, and support legal services. She would not bring a commitment to keeping partisan politics out of the LSC’s work. Nor is she fully committed to equal justice for the poor.

To the contrary, Browne and PLF have a long track record of involvement in highly partisan and politicized efforts to deny equal access to justice. An examination of each of their records demonstrates why the Senate should reject this nomination as well.

Sharon Browne and PLF: Leading Opponents of Equal Justice

PLF, with funding from Pittsburgh billionaire Richard Mellon Scaife,⁵ Exxon Mobil,⁶ Coors family members,⁷ and other corporate special interests, has spearheaded efforts to dismantle our nation’s civil rights, consumer, and environmental laws over the past 35 years.

For instance, PLF has attempted to cut off the second largest source of funding for legal services, the Interest on Lawyers Trust Accounts (“IOLTA”) program. This program, supported by the American Bar Association, state and local bar associations, and established by law in all 50 states, funds legal services with interest generated from business activity, particularly real estate transactions, without costing clients or taxpayers a dime. In 1998 and 2003, PLF joined litigation seeking to de-fund legal services by declaring the IOLTA program unconstitutional.⁸ In 1997, a PLF attorney attacked LSC because it involves “government grant money,” saying that “we believe no tax money should be used for cause-oriented litigation.”⁹

The PLF has also challenged fair housing practices, including governmental requirements that builders provide low-income housing as part of development projects.¹⁰ Yet, LSC spends a large part of its resources

⁴ See S. Rep. 93-495, 93rd. Cong., 1st. Sess. 10 (Nov. 9, 1973).

⁵ Ira Chinoy, Robert G. Kaiser, *Decades Of Contributions To Conservatism*, WASH. POST, May 02, 1999, at A25.

⁶ See <http://www.exxonsecrets.org/html/orgfactsheet.php?id=60>.

⁷ See <http://www.castlerockfoundation.org/recipients.cfm>.

⁸ Brief for Pacific Legal Foundation as *Amici Curiae* supporting Respondents, *Phillips v. Wash. Legal Found.*, 524 U.S. 156 (1998) (No. 96-1578); Brief for Pacific Legal Foundation as *Amici Curiae* supporting Petitioners, *Wash. Legal Found. v. Legal Found. of Wash.*, 536 U.S. 903 (2002) (No. 01-1325).

⁹ James S. Burling, *Pacific Legal Foundation Backs All Landowners’ Rights*, PALM BEACH POST, July 26, 1997, at 9A.

¹⁰ See, e.g., *Mead v. City of Coatai*, 2008 U.S. Dist. LEXIS 94238 (N.D.Ca 2008); *Florida Home Builders Ass’n v. City of Tallahassee*, 2009 Fla. App. LEXIS 6647 (2009).

advocating on behalf of the very people who need the low-income housing that PLF tried to block. In fact, more than 25 percent of LSC cases address fair housing concerns—including the resolution of landlord-tenant disputes, helping homeowners prevent foreclosures or renegotiate their loans, and helping people maintain federal housing subsidies when appropriate.¹¹

Browne has long been involved in highly politicized efforts to roll back access to equal justice. In 1992, Browne was one in a group of plaintiffs who filed a lawsuit, *Brosterhous v. State Bar of California*,¹² challenging the State Bar’s use of attorneys’ dues money to advocate for providing adequate legal services for the poor in the legislature. The case is of more than theoretical significance, given that the State Bar was then one of the most important supporters of legal services in California. By the time Sacramento Superior Court Judge Morrison England, Jr., issued an order siding with the plaintiffs in the case in 1999, Browne had removed herself as a plaintiff and become one of the attorneys representing the group on behalf of PLF.¹³ A PLF spokesperson told reporters that England’s decision protected the right of PLF supporters and other attorneys not to contribute to “activities of those with whom they disagree.”¹⁴ It should be obvious that the Senate should not approve the nomination of someone to the Legal Services board who disagrees with the LSC’s mission in the first place.

In the *Brosterhous* case, Browne successfully objected to the State Bar’s use of attorneys’ dues to support such proposals in the legislature as ensuring full disclosure to consumers and loan recipients, protecting victims’ rights, and guaranteeing access for disabled people to vote in elections in the state.¹⁵ She also successfully objected to the State Bar’s sponsorship of a survey of gender bias conducted by the State Bar’s Women in the Law Committee, a mentoring program for minority law students, and a mentoring program for young parolees.¹⁶

Browne made her name, however, through her work on California’s Proposition 209, a ballot initiative that, upon its approval in 1996, prohibited the state from considering past discrimination “of any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”¹⁷

In 2002, concerns were raised about the stark gender-gap in higher education hiring and how Proposition 209 had harmed progress towards equitable employment practices. Specifically, at the University of California, women comprised nearly half of all applicants for faculty appointments, yet totaled only 29% of new faculty hires—even though they earned 44% of the doctoral degrees. Browne credited the statistical disparity to qualifications. “It’s not a very persuasive argument,” she said. “If these are not the most qualified women, they should not be given preference because of gender.”¹⁸

Browne also compared government contracting and racial discrimination to a “racial spoils system.”¹⁹ She said that “[t]here is, in 2009, simply no reason for contracting programs to grant preferences based on skin color.” Statistical studies Congress uses to support proactive remedial policies are, according to Browne,

¹¹ See *supra* note 2.

¹² Third Amended Complaint, *Brosterhous v. State Bar of California*, No. 527974 (Cal. Sup. Ct. Apr. 29, 1997).

¹³ *Brosterhous v. State Bar of California*, No. 95AS03901 (Cal. Sup. Ct. Aug. 17, 1999).

¹⁴ Business Wire, *California State Bar Improperly Spent Mandatory Dues on Lobbying Activities, Judge Rules: A Victory for Free Speech, Says Pacific Legal Foundation*, Sacramento Bee (Aug. 18, 1999).

¹⁵ *Supra* note 2.

¹⁶ *Supra* note 1.

¹⁷ CAL. CONST. art. 1, §31.

¹⁸ Kevin Yamamura, *Auditor: UC Still Hires Too Few Female Teachers; A Gender Gap Shown Last Year Has Yet to be Fixed*, SACRAMENTO BEE, Mar. 12, 2002, at A4.

¹⁹ Sharon Browne and Roger Clegg, *Election Day Brought Conservative Victory Against Racial Preference*, HumanEvents.com, Mar. 9, 2009.

“concoct[ed].”²⁰ Each serves as merely “another phony study to prove that disparity equals discrimination equals justification for reverse discrimination [discrimination against whites].”²¹ To this effect, Browne also supported California’s Proposition 54, which would have prevented public agencies in the nation’s most diverse state from gathering data on race and ethnicity.²²

Browne also has advocated eliminating Section 5 of the Voting Rights Act, one of our nation’s most vital civil rights laws protecting minorities against disenfranchisement.²³ She recently told the Federalist Society that, although Section 5 is “the heart of the Voting Rights Act,” the election of our nation’s first African American president should be used to justify eliminating the law’s key protections.²⁴

Moreover, Browne has demonstrated an ingrained hostility to immigrants’ rights, championing California’s Proposition 227, which banned bilingual education in public schools, and Proposition 187, which prohibited illegal immigrants from accessing California’s social services, health care, and public education systems. Regarding Proposition 227, she said that “[t]he time has come to implement the solution for a system that has been a shameful disservice to our state’s English-learning students.”²⁵

Finally, PLF-affiliated individuals have been considered for positions on LSC’s board in the past, and have been rejected. In 1981, President Reagan considered nominating a co-founder of the PLF, Ronald Zumbrun, to the LSC board.²⁶ The public was outraged and demanded an alternative.²⁷ Zumbrun was never officially nominated. Undeterred by the stiff public opposition to Zumbrun, Reagan nonetheless nominated William F. Harvey, a PLF advisory board member, and Marc Sandstrom, a PLF vice chairperson, to the board.²⁸ Both nominations immediately floundered. At their Senate confirmation hearing, they were “sharply attacked,”²⁹ and their nominations were subsequently withdrawn.

The Senate Should Reject the Nomination of Sharon Browne

Today, at a time when far too many legal assistance needs go unmet due to rising poverty levels and a shortage of resources, the Legal Services Corporation must be guided by board members who, as the Senate has said, are “fully committed to the role of legal assistance attorneys and support the underlying principle of this legislation that it is in the national interest that the poor have full access under law to comprehensive and effective legal services.”

Sharon Browne does not meet that test. The Senate should reject her nomination and ask the Republican leadership to propose to President Obama another nominee who does.

²⁰ *Id.*

²¹ *Id.*

²² Cheryl Devall, *California Initiative Would Prevent Public Agencies from Compiling Racial Data*, Marketplace Morning Report Oct. 6, 2003.

²³ Brief for Pacific Legal Foundation as *Amici Curiae* supporting Appellants, *Northwest Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504 (2009) (No. 08-322).

²⁴ Sharon Browne, Federalist Society Podcast (June 16, 2009) (*available at* <http://community.pacificlegal.org/Page.aspx?pid=930>.)

²⁵ Ellen Sorokin, *English Program Reviewed for Bias; Bilingual Groups Spurn Immersion*, WASH. TIMES, Mar. 26, 2002, at A06.

²⁶ Stuart Taylor Jr., *Coast Lawyer Reported as Legal Aid Choice*, N.Y. TIMES, Nov. 8, 1981, at p. 29.

²⁷ Leon Lindsay, *Legal service for poor faces shaky future*, CHRISTIAN SCIENCE MONITOR, Dec. 18, 1981, at 13 (calling Zumbrun an “old California adversary of public legal aid.”).

²⁸ Myron Struck, *White House Has Had Problems Getting Some Nominees Approved*, WASH. POST, Oct. 11, 1983, at A13.

²⁹ PR Newswire, Apr. 26, 1982.