

humanrights hero

Sandra Day O'Connor

By Michael S. Greco and Stephen J. Wermiel

Supreme Court justices usually leave the public stage when they retire. Not Sandra Day O'Connor.

Since leaving the bench in January 2006, the widely respected jurist has been a leading voice for judicial independence. With a strong, clear focus, O'Connor, who continues to sit on federal appeals courts, forcefully and candidly voices her views about the importance of judicial independence and headlines conferences throughout the nation to spur others to confront the issue. Her message spotlights two main points: first, urging needed reforms in states that elect judges and criticizing the influence of campaign contributions on judges; and second, warning of the great danger in the rise in legislative and voter efforts to rein in or punish judges who issue unpopular decisions. "I'm increasingly concerned about the current climate of challenge to judicial independence," she said in a 2006 San Francisco speech.

Her passion for this issue was evident in her hands-on, dedicated service from 2005 to 2007 as honorary cochair of the bipartisan American Bar Association (ABA) Commission on Civic Education and the Separation of Powers. The ABA adopted important new policies based on the commission's recommendations to protect judicial independence and revitalize civic education throughout the nation.

O'Connor has long criticized the election of state and local judges, which occurs in varying degrees in thirty-nine states. She decries, as does the ABA, the vast sums of money being spent in increasingly shocking, acrimonious, and expensive judicial elections by special interest groups intent on electing ("buying") judges who will advance their agenda. At an April 2008 conference in New York she said, "We put cash in the courtrooms, and it's just wrong."

While still on the Supreme Court, she voiced strong concern that judicial elections impair the public's opinion of courts as being fair and impartial. She joined the 5-4 majority in *Republican Party v. White*, 536 U.S. 765 (2002), hold-

ing that Minnesota restrictions on what judicial candidates could say during a campaign violated the First Amendment. However, she warned in a concurring opinion that "[e]ven if judges were able to suppress their awareness of the potential electoral consequences of their decisions and refrain from acting on it, the public's confidence in the judiciary could be undermined simply by the possibility that judges would be unable to do so."

O'Connor has voiced deep concern when criticism of judges goes beyond legitimate debate about the wisdom of decisions and shifts to what she calls "judicial intimidation" or personal attacks. In a September 2006 op-ed in the *Wall Street Journal*, she criticized a South Dakota referendum proposal intended to punish judges for "wrong" decisions. The South Dakota measure was rejected by voters. She also criticized Congress for considering legislation prohibiting federal judges from citing foreign law and legislation removing Supreme Court jurisdiction over cases involving controversial issues such as the Pledge of Allegiance. "We must be more vigilant," she wrote, "in making sure that criticism does not cross over into intimidation."

In recognition of her outspoken and strong leadership to preserve judicial independence, which is fundamental to protection of human rights, and to raise public awareness on this important topic, we salute Justice Sandra Day O'Connor as a Human Rights Hero.

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