

Legal Organization May Become Influential Beyond Its Dreams

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The American Constitution Society for Law and Policy was founded seven years ago to counter a growing right-leaning legal philosophy that has reshaped the American legal landscape on issues from the reach of federal regulation to the separation of church and state. Now, as President-elect [Barack Obama](#) assembles his administration, the little-known legal organization stands on the brink of influence it once could only imagine.

[Eric H. Holder Jr.](#), an ACS board member, has been nominated to be attorney general. Executive Director Lisa Brown has been tapped to be [White House](#) staff secretary, a key slot that involves reviewing all documents that go before the president. Board member Teresa Wynn Roseborough has been prominently mentioned as a possibility for several jobs in the Obama administration, including solicitor general.

"What that means is that the organization's core function of developing and promulgating legal ideas and social policy will have a more receptive audience than it has had in the past eight years," said [Paul M. Smith](#), a District lawyer who is chairman of the ACS board.

It is a remarkable turn for an organization born in the frustration that liberal legal thinkers shared over the Supreme Court's role in deciding [George W. Bush's](#) contested victory over Vice President Gore in 2000. Many of them saw in the high court's decision a need to counteract the growing influence of the conservative legal movement with a movement of their own.

"Over the past generation, the conservative movement has engineered a transformative revolution in our nation's jurisprudence," said [Indiana University](#) law professor Dawn Johnsen, an ACS board member who is working in the Obama transition. "Now a generation later, they have successfully changed the terms of legal debate and are moving America toward their radical end. The time is ripe to reverse this alarming trend."

[Georgetown Law School](#) professor Peter J. Rubin, who served as counsel to Gore in the legal battle over the 2000 election, founded the group in 2001. Rubin brought together a roster of prominent lawyers in an effort to foster new avenues of progressive legal thought. The group now claims 13,000 members in 195 chapters -- including 165 at the nation's law schools and 30 professional chapters.

New presidents frequently turn to research organizations for ideas and personnel, but until recently most of those organizations been conservative-leaning ones such as the [Heritage Foundation](#) and the [American Enterprise Institute](#). But the [Center for American Progress](#), headed by Obama's transition co-chair [John D. Podesta](#), has emerged as a Democratic government in waiting, and now, with the Constitution Society, Democratic presidents have a source of legal thinking.

ACS officials say their organization is modeled on the [Federalist Society](#), a conservative legal group that has seeded Republican administrations and the federal bench with its members. The group has helped foster a network of conservative lawyers and judges while popularizing methods of legal analysis rooted in the idea that the Constitution has a fixed and knowable meaning, rather than an evolving meaning that should adapt to contemporary times. That view has given the federal courts a decidedly conservative tilt, ACS members argue -- something that Federalist Society officials call evidence of the strength of their ideas.

"I think ideas are often underrated in Washington," said Federalist Society President Eugene B. Meyer. "People think it's all about power, but at the end of the day, ideas are very important."

ACS members agree. And they would like nothing more than to duplicate the Federalist Society's influence. Last month, the organization published a series of policy briefs designed to be a legal road map for the next administration. Among its suggestions are that the [Justice Department](#) re-energize civil rights enforcement, try terrorism suspects in civilian courts and appoint federal judges who have a broader range of life experiences .

Cyrus Mehri, a partner in the District law firm Mehri & Skalet who has been supportive of ACS, pointed to a survey his firm conducted showing that no one with a background in public interest law has been appointed to the federal appeals courts since 1981. Also, the survey found, not one federal appeals court judge has substantial experience as an in-house counsel for a labor union. Meanwhile, 45 percent have previously worked as state or federal prosecutors or attorneys general.

Mehri, who specializes in labor law, argued that disparity skews what happens at trial: A study by two Cornell University Law School professors found that plaintiffs who brought job discrimination cases to district court won 15 percent of the time, compared with 51 percent for non-job-related cases. Even when they win, plaintiffs in employment discrimination cases are reversed on appeal 41 percent of the time, the study found, five times the rate of employer victories.

"That's not blind justice," Mehri said. "That is hostility toward the little guy."

While it is clear that ACS will achieve a new level of influence in the Obama administration, it remains to be seen how persuasive Obama will find any specific suggestions. On the campaign trail, his view of the law was often elusive. He has talked about the importance of judges having broad experience. But he has also praised the Supreme Court decision striking down the District of Columbia's handgun ban, a ruling that many progressive lawyers did not like. Obama also disagreed with the court's decision that the death penalty may not be applied to child rapists, a case in which the court's most conservative members dissented.