

O'Connor retirement triggers drive for rightward shift on US Supreme Court

Barry Grey
2 July 2005

The retirement of Supreme Court Justice Sandra Day O'Connor, announced Friday, sets in motion a confirmation process for her successor that will be more or less contentious, depending on how far to the right President George Bush moves in choosing as a candidate to replace her. Bush made a brief appearance in which he praised O'Connor, but did not announce his nominee.

White House spokesmen later told the press Bush would not name his choice until after he returned from the G-8 summit of major industrial nations, to be held next week in Scotland. But whichever reactionary Bush nominates, the confirmation process is certain to result in a further shift of the court as a whole to the right.

O'Connor, 75, who served on the court for 24 years, sent a brief note to Bush Friday morning advising that she was stepping down, adding that her retirement would take effect when her replacement had been confirmed by the US Senate.

The announcement was immediately followed by panegyrics to O'Connor, who was described by Democratic and Republican leaders alike as a stalwart defender of liberty and democracy. No one mentioned her vote in *Bush v. Gore*, the 2000 case where she lined up with the far-right faction on the US Supreme Court and her fellow "swing" justice Anthony Kennedy to install George W. Bush in the White House on the basis of the suppression of votes.

In the infamous 5-4 decision that hijacked the election for the Republicans, the high court majority overturned the ruling of the Florida Supreme Court, halted the counting of votes in Florida, and handed the presidency to George W. Bush, who had lost the popular vote to the Democratic candidate Al Gore.

The silence of Democratic figures such as Massachusetts Senator Edward Kennedy and Senate

Minority Leader Harry Reid on O'Connor's role in stealing the 2000 election already establishes the cowardly role the Democratic Party will play in the debate over O'Connor's replacement.

Although rumors of O'Connor's impending retirement had been circulating for months, the announcement came as something of a surprise within official political and media circles, where attention had been focused on Chief Justice William Rehnquist, who is suffering from thyroid cancer. Rehnquist could still announce his own retirement at any time.

In some ways, O'Connor's retirement is more politically charged than the anticipated retirement of the chief justice, because it stands to shift the political balance on the high court in a more dramatic way. Rehnquist is one of three ultra-right justices—the other two being Antonin Scalia and Clarence Thomas—who usually vote as a bloc to promote the anti-democratic agenda of the Republican right. O'Connor, herself a conservative Republican and former state senator in Arizona, more often than not lined up with the far-right troika. But on certain issues, including such obsessions of the Christian right as abortion, government sponsorship of religion and affirmative action, she adopted a more moderate stance, often voting with the court's liberal wing.

As a result, O'Connor, who was elevated to the Supreme Court by Ronald Reagan, earned the enmity of the right-wing base of the Republican Party. Bush, who has increasingly tied his administration to these elements, is now in a position to nominate a justice committed to overturning the 1973 *Roe v. Wade* decision legalizing abortion and rubber-stamping other aspects of his administration's assault on democratic rights.

The Republican right's campaign for a replacement

who will decisively shift the court in the direction of their agenda is already underway. Interviewed Friday on CNN, Robert Bork, who is on record denouncing the Declaration of Independence for its assertion of human equality, and whose 1987 nomination to the high court was scuttled by Democratic opposition in the Senate, harshly criticized O'Connor for being an "activist" judge. This term is used by the right wing to describe judges who retain some degree of allegiance to the Bill of Rights and other democratic principles.

For their part, the Democrats pleaded with Bush to nominate another so-called "moderate" to replace O'Connor, on the grounds that choosing a radical opponent of abortion rights would "divide rather than unite" the country. Reid said, "It is vital that she be replaced by someone like her, someone who embodies the fundamental American values of freedom, equality and fairness."

Kennedy called O'Connor "a mainstream conservative" and "a wise judge who served the nation and the Constitution well." Democratic consultant Joe Lockhart, former press secretary to Bill Clinton, said, "If President Bush uses the model created by Reagan and Clinton, there is no inevitability of a big fight. But if he chooses to go it alone, it increases the likelihood that this will get caught up in partisan back-and-forth."

The Democratic Party of today is far less able or willing to wage a serious fight than it was at the time of Bork's nomination 18 years ago. It has, in the intervening period, abandoned its residual ties to liberal reformism and any genuine defense of democratic rights.

Already in 1991, only four years after the Bork nomination, the Democrats supplied the necessary votes in the Senate to confirm Clarence Thomas, a right-wing ideologue who immediately joined the faction of Rehnquist and Scalia.

The Democrats have the votes to block the confirmation of a Bush nominee by means of a filibuster, since their caucus accounts for 45 of the 100 members of the Senate, and it takes 60 votes to invoke cloture and end debate. However, in a deal worked out in May between seven Senate Democrats and seven Senate Republicans, the Democrats agreed to forgo the use of a filibuster to block Bush's judicial nominations except under "extraordinary circumstances," in return for an agreement that the Republican majority would

not move to abolish the right to filibuster presidential nominations. This deal paved the way for the elevation of a number of far-right judges to the federal appellate courts.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact