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Women's Law Project

January 25, 2010

The Honorable Tom Harkin
Chairman
Committee on Health, Education, Labor and Pensions
428 Senate Dirksen Office Building
Washington, D.C. 20510

The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor and Pensions
428 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Chairman Harkin and Senator Enzi:

We are writing to urge the Senate Health, Education, Labor, and Pensions ("HELP") Committee to reject the nomination of Sharon Browne to the Board of Directors of the Legal Services Corporation ("LSC").

Ms. Browne should not be placed in a position to help determine the future of legal services for poor Americans. She and the Pacific Legal Foundation ("PLF"), her employer, have engaged in litigation aimed at defunding those very services and legal efforts opposing the principle of equal justice—the core of LSC's mission.

When Congress established the LSC, it set forth that members of the board shall be (1) 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) committed to the Corporation's freedom from political control; and (3) fully dedicated to the role of legal assistance attorneys and support the underlying principle that the poor have full access under law to comprehensive and effective legal services.

Sharon Browne does not meet any of these 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. And, she has not demonstrated support for 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 to the constituencies LSC serves.

In addition to her career as a PLF attorney, Sharon Browne has personally acted to undermine access to justice. In 1992, Browne was one in a group of plaintiffs who filed a lawsuit, *Brosterhous v. State Bar of California*, 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 the judge 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. 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." 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 1998 and 2003, PLF joined litigation seeking to defund legal services by declaring the Interest on Lawyers Trust Accounts ("IOLTA") program unconstitutional. IOLTA is the second largest source of funding for legal services. This program, supported by the American Bar Association and state and local bar associations and established by law in all 50 states, funds legal services with interest generated from lawyer trust accounts, without costing clients or taxpayers a dime.

Ms. Browne has also been involved in highly politicized efforts to roll back progress our nation has made in securing equal justice:

- She made her name through advocacy on behalf of California's Proposition 209, a ballot initiative that, upon its approval in 1996, prohibited the state from considering past discrimination in the operation of public employment, public education, or public contracting.
- 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. Ms. Browne credited the statistical disparity to qualifications: "If these are not the most qualified women, they should not be given preference because of gender."
- Ms. Browne also compared government contracting and racial discrimination to a "racial spoils system." 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 Ms. Browne, "concoct[ed]." Each serves as merely "another phony study to prove that disparity equals discrimination equals justification for reverse discrimination [discrimination against whites]." To this effect, Ms. 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.
- Ms. Browne has advocated eliminating Section 5 of the Voting Rights Act, one of our nation's most vital civil rights laws protecting minorities against disenfranchisement. 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.
- Ms. Browne has demonstrated 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."

PLF's historic hostility toward the constituencies LSC serves has affected the ability of other PLF affiliated nominees to serve on the LSC board. When President Reagan wanted to add a co-founder of the PLF, Ronald Zumbun, to the LSC board in 1981, the public was outraged and demanded an alternative. Zumbun's nomination stalled and President Reagan chose not to officially nominate him in the face of public pressure. Two other attorneys associated with PLF were, however, nominated: Marc Sandstrom, PLF foundation vice chairman, and William F. Harvey, who served on a PLF advisory board. President Reagan later withdrew the formal nominations.¹

In view of the nation's economic crisis, it is more important than ever that LSC have committed leadership to ensure equal justice for all. As it is, 50 percent of eligible potential clients requesting assistance from LSC grantees are turned away for lack of adequate program resources, according to LSC's 2009 Justice Gap Report. 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."

The Senate HELP Committee should reject Sharon Browne's nomination. The Republican leadership could then propose to President Obama a nominee who supports the Legal Services Corporation's mission.

Sincerely,

Alliance for Justice

American Association for Justice

American Association of University Women (AAUW)

Asian American Justice Center

Asian American Legal Defense and Education Fund

Asian Pacific American Legal Resource Center

Bazelon Center for Mental Health Law

California Rural Legal Assistance Foundation

California Coalition for Civil Rights

Californians for Legal Aid

CLASP

Clearinghouse on Women's Issues

COLAGE

¹ Reagan had already given both men recess appointments to the board; Sandstrom served briefly although Harvey stayed longer and served as chair.

Consumer Action

CREDO

D.C. Consortium of Legal Services Providers

Defending Dissent Foundation

Disability Rights Legal Center

Disability Rights New Mexico

Empire Justice Center

Equal Justice Center

Equal Justice Society

Equal Rights Advocates

Friends of Farmworkers, Inc.

Harvey Milk LGBT Democratic Club

Housing and Economic Rights Advocates

Housing Rights, Inc.

Lambda Legal

Legal Momentum

Jobs With Justice

La Raza Centro Legal

Law Students for Reproductive Justice

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Lawyers' Committee for Civil Rights Under Law

League of United Latin American Citizens

Maurice & Jane Sugar Law Center for Economic and Social Justice

Mexican American Legal Defense and Educational Fund (MALDEF)

Mountain State Justice, Inc.

NAACP Legal Defense Fund

National Bar Association

National Capital Area Union Retirees

National Association of Consumer Advocates (NACA)

National Center for Law and Economic Justice

National Center for Lesbian Rights

National Center for Youth Law

National Council of Jewish Women (NCJW)

National Consumer Law Center (on behalf of its low income clients)

National Council of La Raza

National Council of Women's Organizations

National Fair Housing Alliance

National Housing Law Project

National Law Center on Homelessness & Poverty

National LGBT Bar Association

National Legal Aid and Defender Association

National Lawyers Guild

National Partnership for Women & Families

National Senior Citizens Law Center

North Carolina Justice Center

OMB Watch

People For the American Way

PowerPAC.org

Public Advocates Inc

Public Interest Law Center of Philadelphia

Public Justice Center

Sargent Shriver National Center on Poverty Law

Support Center for Child Advocates

Tenants Together

Texas Civil Rights Project

UAW Local 2325 - Association of Legal Aid Attorneys

United Legal Workers of Chicago NOLSW/UAW 2320

U.S. Women's Chamber of Commerce

Virginia Organizing Project

Washington Legal Clinic for the Homeless

Women's Employment Rights Clinic - Golden Gate University School of Law

Women's Law Project

Women's Research & Education Institute

9to5, National Association of Working Women

cc:

Senator Christopher Dodd
Senator Barbara A. Mikulski
Senator Jeff Bingaman
Senator Patty Murray
Senator Jack Reed
Senator Bernard Sanders
Senator Sherrod Brown
Senator Robert P. Casey, Jr.
Senator Kay Hagan
Senator Jeff Merkley
Senator Al Franken
Senator Michael Bennet

Senator Judd Gregg
Senator Lamar Alexander
Senator Richard Burr
Senator Johnny Isakson
Senator John McCain
Senator Orrin G. Hatch
Senator Lisa Murkowski
Senator Tom Coburn
Senator Pat Roberts

