

THE TRANSITION

Critical Moment for Liberal Law Group

Their man won. Congress is blue. How much sway will the American Constitution Society hold?

BY JEFF JEFFREY

The American Constitution Society for Law and Policy just hit the ideological jackpot.

Barack Obama is about to take the oath of office, Democrats have won wide majorities in Congress, and some of ACS's most prominent members are potentially in line for top administration jobs.

The group's executive director, Lisa Brown, is on leave to serve in the Obama transition (she's helping head up the agency review team, which is compiling information about federal agencies to help appointees get started on day one). Board member Ronald Klain of O'Melveny & Myers is Vice President-elect Joseph Biden's new chief of staff. Another board member, Covington & Burling's Eric Holder Jr., is said to be on the short list for attorney general and is also advising on the transition. And MetLife litigation counsel Teresa Wynn Roseborough, also on the board, is a possible solicitor general.

Seven years after its founding, ACS appears on the brink of the kind of power that's largely been associated with the organization's conservative doppelganger, the Federalist Society, whose membership was very nearly a résumé requirement for Bush administration lawyers. What's not clear is whether ACS will lose steam after Obama takes office—or whether it will follow the Federalist Society's template and hang on to become a multi-generation idea machine for progressive lawyers.

"Trying to be serious about ideas is different than



INSIDE WOMAN: Lisa Brown, executive director of the American Constitution Society, is on leave to help Barack Obama. She is heading up the president-elect's agency review team.

the usual nuts and bolts of trying to get something done," says Eugene Meyer, president of the Federalist Society. "They need to be an organization that puts ideas on the table and then whatever happens to them happens. The left doesn't really have something like that right now."

For its part, ACS says it sees no significant changes ahead in the organization. "We will continue to work as we have in the past, by promoting and facilitating discussion and debate of ideas that hopefully have

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an impact on policy,” says ACS Deputy Director David Lyle.

Of course, it may be easier to get those ideas heard with friends in high places.

GROWING UP WITH MEMBERS

ACS took shape back in 2001—and has grown quickly. Membership now totals 13,000 and stretches to 165 student and 30 lawyer chapters. It still has ground to make up on the Federalist Society: The conservative group says it has 40,000 members, 200 law school chapters, and 60 professional chapters. But the conservative organization also had a 20-year head start, and the Bush years proved a fertile time for recruiting progressives to ACS.

What the Obama administration may give the organization is the ability to start matching the Federalist Society in jurists and lawyers in key government positions. The society’s ideological clout has increased over the years as members have taken top legal jobs in successive Republican administrations. “You’ve got to respect how successful they’ve been,” ACS’s Brown told *Legal Times* in 2007. “They grew up with their members.” (Brown didn’t return requests for comment for this article.)

Many top ACS administrators actively supported Obama throughout the campaign, with some serving as personal advisers to the candidate. Those relationships could make the organization a natural place for Obama to turn to when he needs progressive talent. “Washington runs on ideology but also on personal relationships,” says Paul Smith, a Jenner & Block partner who chairs the ACS board. “The reality is that there are lots of ACS people out there who are interested in what the Obama administration wants to do and would be willing to serve.”

Serving inside the administration is just one piece of the puzzle. In October, ACS issued two dozen white papers designed as a progressive legal template for the next president. Among the topics: “What Would Jackson Do? Some Old Advice for the New Attorney General” (by former AG Janet Reno and Kellogg, Huber, Hansen, Todd, Evans & Figel partner Geoffrey Klineberg); “Reforming the State Secrets Privilege”; “The White House: Off Limits to Historians?”

Former New York Gov. Mario Cuomo, an ACS adviser, says one area where ACS discussions may be truly influential is if Obama has to make a Supreme Court nomination.

“With two wars going on, one question that needs an immediate answer from the Court is who has the power to make wars. The Court has said it is not going to decide the constitutionality of who has the power to declare war because it involves a dispute between the president and the Congress—it’s a political question. Well, what is a political question? That’s where having a lawyer in office who is willing to listen to subtle, nuanced ideas is important,” Cuomo says.

Keeping the ideas churning will be the trick to longevity, says the Federalist Society’s Meyer. “The assumption in Washington is that the closer you are to power, the more influence you have. That’s not entirely true. At the end of the day, power is the second-to-last word in the affairs of Washington. Ideas are the last word.”

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