



For release: June 10, 2009 – 10:30 a.m.

Contact: Debra Greenspan, (202) 741-5573, dgreenspan@gpgdc.com

***NAMUDNO* Ruling Could Represent Paradigm Shift for Supreme Court**

New Report Documents that Conservative Attack on Voting and Other Civil Rights Laws Threatens Constitutional First Principles

Implications for Sotomayor Hearings Outlined

Washington, D.C. – Today, the Constitutional Accountability Center (CAC) released a report demonstrating that a widely-expected ruling by a conservative majority on the Supreme Court striking down a central provision of the Voting Rights Act would represent judicial activism in its most pernicious form and significantly impact the upcoming Sotomayor confirmation hearings. Entitled “The Shield of National Protection” and **co-authored by Doug Kendall and David Gans of the CAC**, the report documents how the broad power given to Congress to protect liberty, equality and the right to vote under the Civil War Amendments (the Thirteenth, Fourteenth, and Fifteenth) should remain robust today.

According to “The Shield,” the imminent decision in *Northwest Austin Municipal Utility District No. 1 (NAMUDNO) v. Holder* could represent a watershed moment. If the Justices strike down the pre-clearance mandate first included in the 1965 Voting Rights Act, such a ruling would be **one of the most stunning departures from constitutional first principles in Supreme Court history.**

The Enforcement Clause (Section 5) of the Fourteenth Amendment and its companion in the Fifteenth Amendment were enacted precisely to give Congress broad power to protect fundamental rights, including the right to vote. As the report demonstrates, this sweeping enforcement power has too often been ignored by judges more concerned with results than with upholding the Constitution. Overturning a critical portion of an iconic civil rights law (and its latest reauthorization, which passed the Senate 98-0 in 2006) would be a complete betrayal of the text of the Constitution and the intent of its framers.

For the Court to tie Congress’ hands when it comes to enforcing rights at the heart of the Fourteenth and Fifteenth Amendments would be an extravagant rewriting of basic constitutional text and principle.
– Doug Kendall and David Gans,
“The Shield of National Protection”

According to **Yale Law professor Akhil Amar**: “The American people ratified the Civil War Amendments with full understanding of the breadth of their language authorizing ‘appropriate’ federal legislation and knowing that Congress believed this language authorized transformative new federal statutes to secure the franchise and uproot all vestiges of inequality. A ruling by the Supreme Court striking down a critical part of the Voting Rights Act would represent a shocking and disturbing departure from this text and history.”

“In 2006, Congress determined that the pre-clearance provisions of the Voting Rights Act are still needed in parts of our country,” added **former Chief Judge of the D.C. Circuit Patricia M. Wald**. “This report shows

that this determination is rooted in the protective provisions of the Civil War Amendments and should not be second guessed by the Supreme Court. We are often told those who do not heed history are condemned to repeat it. This report validates that warning.”

Such a ruling would also illustrate that the conservative Justices on the Supreme Court are far from neutral arbiters, as they often portray themselves. “A ruling striking down a central provision of the Voting Rights Act would illustrate the lie in everything conservative judges have been telling us about how they interpret the law,” **CAC President Doug Kendall** said. “It would be a starkly activist decision when these judges purport to favor judicial restraint. It would fly in the face of the Constitution’s text and history.”

“The Court is in dangerous waters here,” said **David Gans, director of CAC’s Human Rights, Civil Rights, and Citizenship Program**. “Recent rulings have already betrayed constitutional text and history in curbing laws such as the Violence Against Women Act and the Americans with Disabilities Act. A ruling by the Court extending these precedents to prevent Congress from attacking racial discrimination in voting would be another big step in the wrong direction and could open up new challenges to federal statutes passed to enforce constitutional rights.”

The *NAMUDNO* ruling will come out shortly before the Senate begins confirmation hearings for Supreme Court nominee Judge Sonia Sotomayor. The story told in “The Shield” and the *NAMUDNO* ruling will form a critical backdrop for those hearings.

“If the Court makes what should be the unthinkable move of striking down a critical portion of the VRA, the *NAMUDNO* case will frame both Judge Sotomayor’s confirmation hearing and her tenure on the Court,” **CAC President Kendall** concluded. “A ruling striking down the Voting Rights Act would illustrate that the Court’s conservatives are not willing to take the text and history of the Civil War Amendments seriously and the need for Justices who will.”

To read the CAC report, please visit <http://theusconstitution.org>.

More information:

The Constitutional Accountability Center (CAC) is a think tank, law firm, and action center dedicated to fulfilling the progressive promise of our Constitution’s text and history. CAC filed a brief in *NAMUDNO v. Holder* in favor of appellees, defending the constitutionality of the VRA, which is available at <http://theusconstitution.org>.