

TO: Interested Parties

FROM: Kellyanne Conway, President & CEO
the polling company™, inc./WomanTrend

DATE: September 21, 2010

RE: Key Findings: Statewide Survey of 507 Likely Voters in New Jersey

On behalf of The Federalist Society, the polling company™, inc./WomanTrend conducted a survey of 507 likely voters in New Jersey on their knowledge and opinions of the Supreme Court of New Jersey, judicial philosophy, and the recent nomination of Anne Murray Patterson to the Court. More information about the methodology of this survey follows at the end of this memo.

Three-in-Five Voters Admit Their Knowledge of Supreme Court of New Jersey Is Limited

Sixty-four percent of likely voters overall confessed being “just a little bit” (33%) or “not at all” (31%) familiar with the rulings and decisions of the Supreme Court of New Jersey. Thirty-four percent said they were “very” (7%) or “somewhat” (27%) acquainted with the Court’s judgments. Majorities of men, women, voters of all ages, races, regions, political party and ideological self-identifications, and religions said their knowledge was lacking.

Evidence of Evaluating the Law “As Written” Should Inform Governor’s Judicial Nominations

Given a list of seven possible factors the Governor of New Jersey could review when nominating a Justice to the Supreme Court of New Jersey, the plurality (27%) of respondents suggested he or she focus on a nominee’s “record of interpreting the law as it is written in past rulings.” A close second was “past experience as a judge” (23%), followed by “legal articles advocating for the interpretation of the law as it is written” (16%). All other criteria tested were tops registered in the single digits: a “record”; “legal articles” generally; “advocating for the incorporation of personal viewpoints and experiences in past rulings”, and; “political party.”

- “Record of interpreting the law as it is written” was notably important to self-identified moderates (34%).
- “Past experience as a judge” was of greater interest to 2009 Corzine voters than to respondents overall (26%-23%).

“Judicial Restraint” and “Judicial Activism” Are Uncommon in Everyday Parlance, Restraint Favored by 20 Points Once Both Philosophies are Defined

In a rotated fashion, respondents were asked for their familiarity with and favorability toward the concepts of “judicial activism” and “judicial restraint.” Comparable numbers of New Jersey voters were unfamiliar with each: “judicial activism” (58%) and “judicial restraint” (56%).

Voters were more certain in their opinion of each upon hearing their respective definitions.¹ They split evenly on “activism” (42% mostly negative vs. 41% mostly positive), but were four

¹ Respondents were informed: “**Judicial activism**” is a term used to describe when a judge feels that his or her role is not simply to review the law as it is written, but is instead to allow for new or evolving meaning of the law over

times more positive than negative toward “restraint” (64% vs. 16%). When asked in a separate question to choose which brand of jurisprudence they prefer for New Jersey, judicial restraint was favored over judicial activism by these likely voters by a 52%-32% margin. This is a notable change from the January 2009 survey of registered voters in which restraint was preferred over activism by a 46%-37% margin.

- **Judicial Activism:** The majority of self-identified Democrats (53%) was “mostly positive” toward the definition of activism (53%), while pluralities of self-identified Independents (47%) and majority of self-identified Republicans (58%) were “mostly negative” toward it.
- **Judicial Restraint:** Majorities of self-identified Democrats (59%), Independents (68%), and Republicans (69%) were “mostly positive” when read the description of judicial restraint.
- **Head-to-Head:** When matched up against one another, pluralities, and in some cases, majorities, of men, women, and voters of all ages and regions of the state favored judicial restraint. Self-identified Democrats preferred activism above restraint (43%-38%) while by 2-to-1 Independents and Republicans each favored restraint over activism (55%-26% and 72%-19%, respectively).

New Jersey Voters Frustrated with Senate President Sweeney’s Delay, Blame Politics More Than Principle for His Refusal to Hold a Hearing

After hearing a brief description of the judicial selection process in New Jersey, respondents were asked a series of questions about the vacancy on the Supreme Court of New Jersey. First, when told “*On May 3rd, Governor Christie nominated Anne Murray Patterson to the New Jersey Supreme Court. For more than 137 days now, Senate President Stephen Sweeney has refused to schedule a hearing for her,*” nearly three-in-five (59%) respondents said they “oppose” (including 43% “strongly”) Senate President Sweeney’s refusal to hold a confirmation hearing. Twenty-eight percent said they support it, but only 16% strongly.

- A tri-partisan consensus emerged: 51% of self-identified Democrats, 60% of Independents, and 74% of Republicans said they *oppose* the President’s postponement of a hearing for Patterson. They were joined by 52% of liberals, 58% of moderates, and 69% of conservatives.
- Majorities of men, women, and voters of all ages and regions of the state rejected the delay tactic.

In a second question about the delay, 62% of respondents disagreed and 28% agreed with Senate President Sweeney’s refusal based on his assertion that “*the seat will stay open. We’re not allowing the judiciary to be intimidated.*” Again, partisan and ideological consanguinity emerged, as pluralities of self-identified Democrats (49%) and liberals (48%), as well as

time. “**Judicial restraint**” is a term used to describe when a judge views his or her role solely as an evaluator of whether a law or lower court ruling is in line with the state constitution.

majorities of Independents (63%), Republicans (82%), moderates (65%), and conservatives (71%) disagreed.

Given the opportunity to identify the source of Senate President Sweeney’s refusal to hold a hearing, respondents were nearly three times more likely to identify “**politics**” as they were “**principle**” (50%-17%). Fifteen percent identified the **partisan difference** between Sweeney and Christie (the former being a Democrat, the latter a Republican). Pluralities, and in many cases, majorities, of voters across the demographic and political spectra pegged political motivation as Sweeney’s reason for refusing to hold a hearing.

Finally, when presented with two opposing opinions regarding the appointment of a temporary judge by the Chief Justice of the Supreme Court of New Jersey, respondents were more apt to criticize than applaud the act. Intensity of opinion was comparable, with 28% of likely voters across New Jersey *strongly* agreeing that the Chief Justice was wrong and 24% *strongly* agreeing that the Chief Justice was right.

<p>Person 1: The Chief Justice was wrong to have appointed a temporary Justice. The Governor made his nomination, and the Court should respect the role of the Executive and Legislative Branches in the process. The Court should just operate with six Justices until the Senate fulfills its obligation to hold a hearing for the nominee.</p>	<p>Person 2: The Chief Justices was right to have appointed a temporary Justice. The Court has a job to do, and the Senate’s refusal to hold a hearing should not prevent the Court from having seven Justices hearing and deciding cases.</p>
<p>49% TOTAL AGREE PERSON 1 (NET) 28% STRONGLY AGREE PERSON 1 21% SOMEWHAT AGREE PERSON 1</p>	<p>39% TOTAL AGREE PERSON 2 (NET) 15% SOMEWHAT AGREE PERSON 2 24% STRONGLY AGREE PERSON 2</p>

- Men agreed with Person 1 (wrong) over Person 2 (right) by a 20-point margin (56%-36%), and women also with Person 1, but by only a 4-point margin (44%-40%).
- A plurality of self-identified Democrats and majorities of Independents and Republicans all agreed with Person 1 (wrong) (43%, 51%, and 57%, respectively).
- Respondents who earlier said they were familiar with the Court and its rulings and decisions deemed the Chief Justice wrong by a margin of 55%-35%.

METHODOLOGY

On behalf of **The Federalist Society**, the polling company™, inc./**WomanTrend** conducted a statewide telephone survey of 507 likely voters in New Jersey.

Interviews were conducted September 17-19, 2010 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was drawn using a list of registered voters in New Jersey. Respondents were then screened to ensure that they were registered to vote. They were screened by interviewers for likeliness to participate in the November 2010 elections; likeliness to vote was based on self-reporting, and did not take into account past participation in elections as an indicator. Sampling controls were employed to ensure representative and proportional numbers of respondents were interviewed by demographic characteristics such as age, gender, race, and geographic region, as those characteristics are reported by the latest publicly available voter registration figures from the State of New Jersey and U.S. Census data.

The margin of error for the survey is + 4.34% at a 95% confidence interval, meaning that in 19 out of 20 cases, the data obtained would not differ by any more than 4.34 percentage points in either direction had the entire population of likely voters in New Jersey been surveyed. Margins of error for subgroups are higher.

For additional inquiries, please contact Kellyanne Conway, President & CEO of **the polling company™, inc./WomanTrend** or Karen Bentley Steward, Senior Research Analyst, at 202-667-6557 or [Kellyanne\(at\)pollingcompany.com](mailto:Kellyanne(at)pollingcompany.com) or [ksteward\(at\)pollingcompany.com](mailto:ksteward(at)pollingcompany.com).