



1015 15TH STREET N.W | SUITE 1100 | WASHINGTON, DC 20002
(202) 216-9309 | WWW.JUDICIALACTIONGROUP.COM

Patricia Ann Millett
Nominee to the U.S. Circuit Court for D.C. Circuit

Millett's Record Confirms the Concern that She Would Use the Judiciary to Legislate from the Bench

Summary of Contents:

- **Millett Lobbied for Confirmation of Several of Obama's Most Activist Nominations.**
- **Millett Argues that the Question of Gay Marriage Should Not Turn on the Text of the Constitution but on Some Malleable Theory of "Fundamental Fairness."**
- **Millett's Public Comments About President Bush's Nominations, Specifically Justice Alito, Reflect Poorly on Her Judicial Temperament.**
- **Millett Suggested that the Supreme Court Should Have a Certain "Look" and that Gender Should Play a Role in the Selection of Justices.**
- **Millett Through Her Membership in Faith & Politics Institute Furthers the Judicially Created Fiction of a First Amendment that Demands a "Separation of Church and State."**
- **Millett Fails to Apply the Text of the First Amendment By Calling the Christian Legal Society an "Exclusionary Group" for its Requirement that Members of the Christian Group be Christians.**

Millett Lobbied for Confirmation of Several of Obama's Most Activist Nominations. Millett signed onto a total of six letters to the Senate Judiciary Committee supporting nominations; five of those letters were in support of judicial nominations and the sixth letter was in favor of the controversial nomination of Donald Verrilli as Solicitor General.¹ Of the five letters supporting judicial nominees, four were of highly controversial nominees: Caitlin Halligan, Edward DuMont, Elena Kagan and Sonia Sotomayor. Millett has written no letters supporting moderate or mainstream judicial nominations. Her support for far-left activist judicial nominees is indicative of her preferences for judges and indicative of her own judicial philosophy.

Millett Argues that the Question of Gay Marriage Should Not Turn on the Text of the Constitution but on Some Malleable Theory of "Fundamental Fairness." In an MSNBC television interview about gay marriage cases at the Supreme Court, Millett stated: "The heart of that question is whether – [sic] not the fundamental question of the right to same sex marriage – but whether the federal government can define marriage in a certain way as between one man and one woman. Historically that's always been the job of the states to decide what marriage is – to define it – and so that really is the federal government

¹ See Millett's Answers to the "Questionnaire for Judicial Nominees" of the Senate Judiciary Committee at page 10; available at: <http://www.judiciary.senate.gov/nominations/113thCongressJudicialNominations/upload/Millett-Senate-Questionnaire-Final.pdf> (last visited on September 4, 2013).

stepping somewhere where it hasn't before. And then what they've done under that statute is say that people can't have thousands of federal benefits. *You know the case before the Supreme Court involves a woman who had to pay three hundred and sixty-three thousand dollars in estate taxes she wouldn't have had to pay just because the person she was married to was the same gender as herself. That's just a fundamental fairness question before the court but it's limited to that one federal statute.*"²

Millett's Public Comments About President Bush's Nominations, Specifically Justice Alito, Reflect Poorly on Her Judicial Temperament. Millett stated: "There was a lot of upset over the failure to put a woman on to replace Justice Sandra Day O'Connor [referring to nomination of Justice Samuel Alito] and ... it would be extraordinary to have no women on the Supreme Court in this day and age. But even to only have one is I think a sorry statement about the appointment process thus far where it's gotten us in the last eight years [referring to Bush administration]."³

Millett Suggested that the Supreme Court Should Have a Certain "look" and that Gender Should Play a Role in the Selection of Justices. Millett argued: "So I think the pressure to have a Supreme Court that looks – in many ways, and gender is just one way – but in many ways is reflective of the public it serves will require that a woman get serious consideration"⁴

Millett Through Her Membership in Faith & Politics Institute Furthers the Judicially Created Fiction of a First Amendment that Demands a "Separation of Church and State." One of the stated commitments of the Faith & Politics Institute is "To *uphold the separation of church and state* while strengthening the influence of reflective leadership in American public life."⁵ This so-called "separation of church and state" is not written in the Constitution, but was judicially written over the Constitution by Justice Hugo Black in the infamous 1947 case of *Everson v. Board of Education*.⁶ Rather than advocate for a false and dis-credited re-write of the First Amendment, Faith & Politics Institute and Millett would do well to follow the actual words and intent of the Constitution.

Millett Fails to Apply the Text of the First Amendment By Calling the Christian Legal Society an "Exclusionary Group" Because of its Rule that Members of the Christian Group be Christians. In

² *Supreme Court to Hear Same-Sex Marriage Cases*, Weekends with Alex Witt, MSNBC, Dec. 8, 2012 (emphasis added). Video available at: <http://video.ca.msn.com/watch/video/inside-scotus-doma/17yyi1spd> (last visited Sept. 9, 2013).

³ Millett, Patricia, Interview by J. Craig Williams and Robert Ambrogi, *Legal Talk Network*, 2009, <http://legaltalknetwork.com/podcasts/lawyer-2-lawyer/2009/02/justice-ruth-bader-ginsburg/> (see 13:14 mark) (last visited Sept. 9, 2013).

⁴ Millett, Patricia, Interview by J. Craig Williams and Robert Ambrogi, *Legal Talk Network*, 2009, <http://legaltalknetwork.com/podcasts/lawyer-2-lawyer/2009/02/justice-ruth-bader-ginsburg/> (see 13:14 mark) (last visited Sept. 9, 2013).

⁵ Available at http://faithandpolitics.org/about-us/mission_values/ (emphasis added) (last visited June 18, 2013).

⁶ 330 U.S. 1 (1947).

Christian Legal Society v. Martinez,⁷ the Supreme Court sided with the Univ. of California, Hastings College of Law against the Christian Legal Society (“CLS”). In short, CLS sought to limit membership to Christians. The law school banned CLS as a registered group because CLS did not allow non-Christians to be members. In her law review article, Millett wrote approvingly of the majority opinion against CLS and stated: “In his concurrence, Justice Kennedy conceded that, in a limited forum, a policy used to limit participants may ‘make[] it difficult for certain groups to express their views in a manner essential to their message.’ However, if the purpose of creating the forum is to foster community involvement, a policy requiring groups to accept all comers bolsters that purpose; ***a policy allowing exclusionary groups diminishes it.***”⁸ Moreover, Millett insisted that the University’s policy denying approval to CLS was “due decent respect.”⁹

⁷ *Christian Legal Society v. Martinez*, 561 U.S. ___, 130 S.Ct. 2971 (2010).

⁸ Patricia Ann Millett, Kevin R. Amer, Jonathan H. Eisenman, & Josh N. Friedman, “*Mixed Signals: The Roberts Court and Free Speech in the 2009 Term*,” 5 *Charleston L. Rev.* at 26 (2010). Available at: <http://cdn.akingump.com/images/content/4/9/v2/4902/10-25-2010-CLR-P.Millet.pdf> (last visited June 19, 2013) (internal citations omitted).

⁹ Patricia Ann Millett, Kevin R. Amer, Jonathan H. Eisenman, & Josh N. Friedman, “*Mixed Signals: The Roberts Court and Free Speech in the 2009 Term*,” 5 *Charleston L. Rev.* at 26-27 (2010). Millett wrote: “Therefore, the Court ‘approach[ed] [its] task with special caution, mindful that Hastings’ decisions about the character of its student-group program are due decent respect.” Available at: <http://cdn.akingump.com/images/content/4/9/v2/4902/10-25-2010-CLR-P.Millet.pdf> (last visited June 19, 2013).