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Sandra Day O'Connor defends John Roberts' healthcare ruling

By Jamie Goldberg
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WASHINGTON — Attacks on Chief Justice John G. Roberts Jr. as a traitor to conservative ideals for voting to uphold most of President Obama's healthcare law reflect a lack of knowledge about how the American justice system works, retired Supreme Court Justice Sandra Day O'Connor said.

"It's unfortunate because I think comments like that demonstrate only too well a lack of understanding that some of our citizens have about the role of the judicial branch," O'Connor said at a Senate Judiciary Committee hearing Wednesday in response to a question from Chairman Patrick J. Leahy (D-Vt).

Roberts' deciding vote provoked a backlash from conservatives, who had expected the appointee of Republican President George W. Bush to side with the conservatives on the court.

O'Connor said judges were not beholden to the president who appointed them, but to the Constitution — a concept she has promoted in her retirement by advocating for better civics education and judicial independence.

Sen. Charles E. Grassley (R-Iowa) asked O'Connor whether a president — in an apparent reference to comments by President Obama — would threaten judicial independence by saying, while the high court was still considering the case, that overturning the healthcare law would be "unprecedented."

"I think we have not tended in this country to speak out at some higher political level, either at the state level or the national level, about a decision in a pending case," O'Connor said. "I guess it could happen, but it's not what we expect, and it's not ideal."

In 2006, after stepping down from the court, she launched iCivics, an online education program that uses games to teach middle school students about the three branches of government. She has also advocated for states to adopt the federal system of appointing judges.

"Many states have popularly elected judges and the result of that has been the need for candidates to raise money for their elections campaigns, and I think that has a corrupting influence on the selection of judges," O'Connor said.

O'Connor, 82, has continued to hear cases as a visiting judge in federal district courts and courts of appeals, served on a commission that studied the Iraq war, and taught at the University of Arizona.

"I've never known someone with her degree of energy, passion and intelligence," said Deborah Merritt, a professor at Ohio State University's Moritz College of Law, who clerked for O'Connor during her first Supreme Court term.

Although other former justices have been active in their retirement, O'Connor's advocacy has been unusual, said Lee Epstein, a law professor at USC who specializes in judicial politics.

In the wake of *Citizens United vs. Federal Election Commission*, the Supreme Court decision that opened the door to unlimited corporate political spending, O'Connor warned that the decision could allow wealthy donors to exert influence on judicial elections.

O'Connor has drawn criticism for her advocacy, which some have seen as unethical for a judge who continues to hear cases. In 2010, O'Connor supported a campaign in Nevada to replace a system of electing judges. After her

voice was used, without her permission, on a robocall to voters that accidentally launched in the middle of the night, O'Connor issued an apology.

O'Connor grew up on a ranch in Arizona, where she had to use a rifle, herd cattle and ride a horse before she turned 14. She was appointed by President Reagan as a justice in 1981, becoming the first woman on the Supreme Court, and stepped down in 2006 to care for her husband, John O'Connor, who died of Alzheimer's disease three years later.

When asked about O'Connor's retirement, Merritt laughed.

"Justice O'Connor will never retire," she said.