

## EXECUTIVE SESSION

ignore the obvious. The current health care system is unsustainable for families and for small businesses. Fewer and fewer businesses are offering health insurance protection. More people are finding themselves without health insurance protection.

In fact, in Illinois 15 percent of the population has no insurance at all. During the course of any given year, one out of three Illinoisans have no health insurance coverage at least some time during that year. That is unacceptable. People without health insurance coverage are one diagnosis or one accident away from bankruptcy. We know more and more people are going into bankruptcy court because of health care and medical bills they cannot pay. For those who stand here and say "Don't touch it; leave it alone," it is unsustainable. It is a system headed toward disaster.

Who wants to keep the current health care system? It is the people who are making the most money in the system, the health insurance companies. They have been profitable, when many other parts of the economy have not. They are now sponsoring activities and advertisements and all sorts of things at town meetings to try to create resistance to change in health care. That is not good. It is not a constructive dialog. To think that these town meetings that are supposed to take place for a healthy, honest dialog back home have now turned into political theater. Some groups have Web sites that instruct people about how to disrupt a town meeting and embarrass a Senator or Congressman. I know that when I go to town meetings, people may disagree and be emotional, and that is OK. To think they have a coordinated effort to disrupt a town meeting. Who wants that? That is not constructive.

Let's move forward with an honest, constructive, bipartisan dialog. Three Republicans are doing that now. If we do that, we can reach a bipartisan compromise that I and the President would like to see by September. Let us come back with resolve in September to make sure there is real health care reform that brings stability to the costs that businesses and Americans pay, stability to coverage so you don't lose your health insurance because of a pre-existing condition, changing a job, caps and limits on your policy, with quality access to preventive care, wellness care, and the quality care that every American deserves.

We can do that with patient-centered health insurance reform, and we can get it done in a bipartisan fashion in September when we return.

I yield the floor.

## CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

## NOMINATION OF SONIA SOTOMAYOR TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The bill clerk read the nomination of Sonia Sotomayor, of New York, to be an Associate Justice of the Supreme Court of the United States.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 2 p.m. will be equally divided in 1-hour alternating blocks of time, with the Republicans controlling the first hour.

The Senator from South Carolina.

Mr. DEMINT. Madam President, I do want to talk about the President's nominee to the Supreme Court, but first I wish to give a couple of comments in response to the Senator about health care because if the record be known to Americans, the preponderance of health reform legislation that has been presented over the last 5 years in the Senate has come from Republicans. The Democrats have consistently blocked any reform that would make health insurance more affordable and available to Americans. Their goal appears to be not patient-centered care but government-controlled care.

If we look back a few years, the President, along with all the Democrats, voted against interstate competition among insurance companies. It is hard to say they are not on the side of insurance companies when they vote to prevent a national market, a national competitive market that people all over the country could buy policies that are more affordable and perhaps match their needs much better than the ones they can get in their own States.

Today Americans can only buy health insurance in the States where they live. That means a few insurance companies can dominate the market. This is something we have tried to change, we have introduced, and the President has voted against it.

We have also proposed tax fairness for Americans who do not get their health insurance at work. The other side seldom discusses the fact that when you get your insurance at work, you get pretty big tax breaks. The companies that provide that health insurance do not have to pay taxes on it. They can deduct it. It is a business expense. And the employees do not have to pay income tax on the benefits. It is an equivalent benefit over \$3,000.

The bills we Republicans have introduced will give health care vouchers to every American. Every family would get \$5,000 a year to buy health insurance if they do not get their health insurance at work. Every individual would get \$2,000.

In addition, there would be some lawsuit abuse reform and some block grants to States to make sure people who are uninsurable, who have pre-existing conditions, can buy affordable insurance.

The Heritage Foundation says one of the Republican plans would have 22 million Americans insured within 5 years. They are plans that work. But, unfortunately, the other side will not even discuss plans that do not have more government control involved with them.

What we can do is make what is working work better. We do not need to replace it with what is not working. One of the reasons health insurance is more expensive today—a third more expensive—is that the government programs of Medicare and Medicaid do not pay their fair share, and those costs are shifted on to employers and individuals who have private insurance.

We do not need to expand the part that is broken in health care. We certainly do not need to expand a cash-for-clunkers type of health care system for America.

I am here today to talk about the President's nominee to the Supreme Court, Sonia Sotomayor. I commend my Republican colleagues, particularly Senator JEFF SESSIONS, for conducting a very respectful and civil hearing process for the nominee. This is something we have not seen in a number of years here. They were respectful toward her. Even those who disagree with her judicial philosophy showed courtesy and respect during the hearings, and it is something I very much appreciate.

Our goal through this process has not been to block this nomination and to stop her from going to the Supreme Court. The votes have never been there to do that. What we have been trying to show is a pattern by the Obama administration and the Democratic majority of moving toward more and more government control in all areas of our lives. We see it in the stimulus plan, that instead of leaving money in the private sector, we take it away and spend it on programs such as turtle tunnels and other kinds of wasteful spending all across the country—government spending.

We are trying to manage the private economy. We see it in cash for clunkers where we create an economic earmark for one sliver of our economy. At the same time, in this health care legislation, we are talking about adding taxes to the small businesses that create 70 percent of the jobs in this country.

We are benefiting a few at the expense of many. This is economic central planning. It is a concept that has failed throughout history. Yet we are trying again.

What we see in the President's nominee to the Supreme Court is this belief that our Constitution is inadequate, that we need to have judges on our courts, Justices on the Supreme Court, who add to it.

The President has said that our Constitution is a charter of negative liberties. It tells the government what it cannot do, but it does not tell us what we have to do. The whole point of the Constitution is to limit what we can do. But the President considers it inadequate, and he is nominating people to the courts who will be activists, who will expand what the Federal Government does and make arbitrary decisions rather than those based on the Constitution.

Unfortunately, I do rise today in opposition to the confirmation of Judge Sonia Sotomayor to the U.S. Supreme Court. I met with her personally, and I watched the hearings. I believe she is a very smart and gracious person with an inspiring personal story. But I also found her evasive and contradictory in her answers.

On several issues ranging from judicial temperament to her infamous "wise Latina" speeches, Judge Sotomayor experienced what we call confirmation conversion on many of her issues and simply walked away from a lot of her past statements and positions.

Now seeing her willingness to tell us what we want to hear, neither her testimony nor her long record on the judicial bench can give the American people any confidence that she will rule according to the clear language and intent of the Constitution.

Let me talk for a second about the Constitution versus precedent. I am very concerned with Judge Sotomayor's repeated efforts to deflect questions by stating she relied on precedent to guide her decisions. I understand circuit court judges are guided and even bound by Supreme Court precedent, but precedent is not the same thing as the Constitution, particularly on the Supreme Court. A judicial confirmation process that puts the constitutional interpretation outside the bounds of discussion is a waste of time.

On issue after issue during her hearings, Judge Sotomayor, rather than giving her own opinion, simply offered the opinions of many other judges. We have no idea what she thinks. In one sense, this is fitting. The Congress routinely passes legislation that none of us reads or understands. So perhaps it is consistent for us to nominate and confirm a Justice when we do not understand what she actually believes.

Judge Sotomayor may be very learned in constitutional law, but we rarely heard her actually mention the Constitution itself. This is a big problem for our judiciary and our system of checks and balances.

In 1825, Thomas Jefferson said that the Federal judiciary was at first considered as the most harmless and helpless of all its organs. But it has proved that the power of declaring what is law has allowed it to slyly, and without alarm, sap away the foundations of the Constitution.

What concerns me, as Jefferson observed, is that there are many con-

fusing and contradictory precedents that can be used by judges to justify whatever decision they want to make. Without the Constitution as the fixed standard, court decisions become very arbitrary, and we are ruled by the opinions of Justices rather than the rule of law.

When the law is unmoored from the Constitution, it becomes like the old schoolroom game of telephone. Some may remember it. One student says something to her neighbor and on and on across the room until the secret reaches the other side of the class. What do you know—the final message no longer even resembles the original. That is how precedent has worked in our court system. Every time the Supreme Court bases a decision on a precedent rather than on the underlying Constitution, the original intent of the Founders is lost and becomes distorted.

There is nothing stopping a determined judge from finding a precedent that suits whatever they want to decide in any case before the Court. Nor apparently is there anything that will stop Judge Sotomayor from unmooring her decisions, not only from the Constitution but from precedent itself, as she did in the Ricci racial discrimination case and with regard to the fundamental right of citizens to own firearms.

In the Ricci case, she claimed she was following precedent, but her own colleagues on the circuit court refuted her claim.

On the second amendment, she disregarded the Supreme Court's Heller decision and still refuses to acknowledge the right to bear arms for every American, that it is a fundamental right.

Decisions such as these, understandably, undermine the credibility of our judicial system. Americans are led to suspect that some judges are more interested in their particular outcomes rather than objectivity.

Let me conclude. Judge Sotomayor is obviously a talented jurist, but I believe her when she says that she chooses her words very carefully. And her words, both in her testimony and throughout her career, undermine her claims to objective and impartial justice.

I realize my view is the minority view here, and if Judge Sotomayor is confirmed, she will have my best wishes on a long and distinguished career. Given the available evidence, however, I cannot support her confirmation, nor the judicial philosophy that she will carry with her to the Supreme Court.

Madam President, I yield the floor. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HATCH. Madam President, on Tuesday I explained some of the reasons I cannot support the nomination of Judge Sonia Sotomayor to replace Justice David Souter, and I will mention a few others here today. These are important points. Her record simply creates too many conflicts with principles about the judiciary in which I deeply believe. I wish President Obama had chosen a Hispanic nominee whom all Senators could support.

During the debate this week, many of my Democratic friends have spent time reading Judge Sotomayor's resume rather than reviewing her record. Nearly every speaker on the other side has repeated the talking point that she has more Federal judicial experience than any Supreme Court nominee in a century. I believe she does, and I respect her for it. But Justice Samuel Alito had only 1 less year of Federal judicial experience and actually had 5 more years on the U.S. court of appeals when he was nominated. He, too, had been a prosecutor and he, too, had received a unanimous "well qualified" rating from the ABA. Yet 19 current Democratic Senators voted to filibuster his nomination, including the current President, and 35 voted against confirmation.

Other Senators emphasize the importance of appointing someone with Judge Sotomayor's inspiring life story and ethnic heritage. Once again, I do not disagree. She has an inspiring life story and a great ethnic heritage. Yet she is being treated with far more dignity and respect than was Miguel Estrada, a highly qualified Hispanic nominee with an inspiring life story, who everybody knows is one of the best attorneys in the country. The Senate, for example, will actually vote on Judge Sotomayor's nomination today. In 2003, for the first time in American history, this body was prevented from voting at all on the Estrada nomination, even though he had majority support. Senators and grassroots groups, including Hispanic organizations that today say a good resume, rich life story, and ethnic heritage make a compelling confirmation case for Judge Sotomayor, opposed even holding an up-or-down vote for Mr. Estrada. The treatment of Miguel Estrada was unfair and disgraceful toward the nominee and damaging to the traditions and practice of this body.

My Democratic colleagues want people to believe the concerns about the Sotomayor nomination are limited to one speech and one case. Some of them have said as much. At the same time, they say our review should be limited to only certain parts of the nominee's record. As I have done with past nominees, however, I examined Judge Sotomayor's entire record for insight into her judicial philosophy.

In addition to the controversial speeches I discussed on Tuesday, Judge Sotomayor gave a speech at Suffolk University Law School which was later published in that school's law review.

She embraced the idea that the law is indefinite, impermanent, and experimental. She rejected what she called "the public myth that law can be certain and stable." She said that judges may, in their decisions, develop novel approaches and legal frameworks that push the law in new directions.

Judge Sotomayor's speeches and articles, then, present something of a perfect judicial storm in which her views of judging meet her views of the law. Combine partiality and subjectivity in judging with uncertainty and instability in the law, and the result is an activist judicial philosophy that I cannot support and that the American people reject.

My Democratic colleagues will no doubt quickly say Judge Sotomayor's cases do not reflect that judicial philosophy. But remember that appeals court judges are bound by Supreme Court precedent. On the Supreme Court, Justice Sotomayor will help fashion the precedents that today bind Judge Sotomayor. That makes the rest of her views—expressed, I might add, while she has been a sitting judge—much more relevant to her future on the Supreme Court than to her current position on the appeals court.

Nonetheless, Judge Sotomayor has made plenty of troubling decisions on the appeals court. On Tuesday, for example, I discussed the case of *Didden v. Village of Port Chester*, in which Judge Sotomayor refused to give a man his day in court whose property was taken and given to a developer. She came to the bizarre conclusion that Mr. Didden should have sued before his property was even taken.

In *Kelo v. City of New London*, the Supreme Court held that general economic development can constitute the public use that the fifth amendment says justifies the taking of private property.

We hear a lot these days that judges should appreciate how their decisions should affect people. When the Court in *Kelo* greatly expanded the government's power to take private property, the *San Francisco Chronicle* no less said that the decision might turn the American dream of home ownership on its head. And one *Washington Post* headline after the decision read: "Court Ruling Leaves Poor at Greatest Risk." This decision was devastating not only for the right to private property in general but for individual homeowners in particular.

The decision in *Kelo* was issued after the briefing and argument in *Didden* but before Judge Sotomayor had issued her decision. Even though *Kelo* was a hallmark—or should I say landmark—decision that dramatically changed the law of takings, she did not ask for a re-briefing or a reargument. Instead, it took her more than a year to issue a cursory, four-paragraph opinion that not only made it easier for the government to take property but also severely limited the ability of property owners to challenge the taking of their property in court.

Other Senators and I have already discussed Judge Sotomayor's troubling decisions regarding the second amendment right to keep and bear arms. She has applied the wrong legal standard to conclude that the second amendment does not keep State and local government from restricting the right to bear arms, and she has gratuitously held that the right to bear arms is so insignificant that virtually any reason is sufficient to justify a weapons restriction. No Federal judge in America has expressed a more narrow, cramped, and limited view of the right to bear arms.

My friends on the other side of the aisle have made some creative attempts to downplay these troubling decisions. Perhaps the most curious is the claim that the second amendment right to keep and bear arms was created by the Supreme Court. On the other hand, I am baffled why this should bother those who believe in a flexible and shape-shifting Constitution. The Supreme Court, after all, makes up rights all the time—the right to abortion comes immediately to mind—without a peep from most of my Democratic friends on the other side of the aisle.

But the Senator who offered this strange theory should simply read the Constitution. The right to keep and bear arms is right there, right in the Constitution, in black and white. Perhaps he is instead referring to the Supreme Court's recognition last year that the right to bear arms is an individual rather than a collective right. Perhaps that is why he believes the Supreme Court created these rights. But the second amendment said that the right to bear arms is the right of "the people."

The fourth amendment says the same thing about the right against unreasonable searches and seizures. It, too, is a right "of the people." Does any Senator doubt that the fourth amendment protects an individual right? Does a Senator who believes that the Supreme Court made up the individual right to bear arms believe that the Supreme Court made up the individual right to be free from unreasonable government searches?

When I chaired the Judiciary Subcommittee on the Constitution in 1982, we published a report on the second amendment right to keep and bear arms. It thoroughly examined the long and rich history of this right, which predates the Constitution itself. Thus, anybody can see why I am very concerned about this. We went to the bother of really writing about it back in 1982.

As the Supreme Court has recognized, it was a fundamental individual right of Englishmen at the time of America's founding, which the second amendment merely codified. Justice Joseph Story, in his classic "Commentaries on the Constitution," called this right "the palladium of the liberties of the republic." Our report showed definitively that the right to

bear arms is indeed both fundamental and individual. The Supreme Court may have taken a long time to recognize this constitutional fact, but it made up nothing in doing so.

Madam President, I commend to my colleagues the subcommittee report to which I have referred.

Madam President, finally, let me describe one other matter which arose during the hearing which I found very troubling. And before I say that, 8 of the 10 cases of Judge Sotomayor, heard by the Supreme Court, were reversed. On the ninth one, she was seriously criticized for her approach to the law, and that was a 5-to-4 decision. These are matters that bother a lot of people. I have mentioned a whole raft of other cases and a whole raft of other issues in my prior remarks here, so I will refer back to those remarks.

Prior to her judicial service, Judge Sotomayor was closely associated with the Puerto Rican Legal Defense and Education Fund, a respected civil rights organization. From 1980 to 1992, Judge Sotomayor held at least 11 different leadership positions with the fund, including serving as a member of both its board of directors and executive committee and as both a member and chairman of its litigation committee. In a 1992 profile, the *New York Times* described Judge Sotomayor as a top policymaker with the fund. Other articles and profiles in the *Times* and *Associated Press* say that she met frequently with the legal staff, reviewed the status of pending cases and briefed the board about those cases, and was an involved and ardent supporter of the fund's legal efforts. These descriptions relied upon and quoted lawyers with whom she worked at the fund. Minutes from the fund's litigation committee specifically describe Judge Sotomayor reviewing the fund's litigation strategy and cases.

At the hearing, I asked Judge Sotomayor whether she had been aware of the friend-of-the-court briefs—the *amicus curiae* briefs—that the fund filed in several high-profile Supreme Court abortion cases. I just wanted to know what the truth was. I asked her about that because those briefs made arguments that can only be described as extreme, even by some who are in the pro-abortion movement. The fund, for example, compared the previous refusal to pay for abortions with taxpayer Medicaid funds to oppression of Blacks symbolized by the Supreme Court's infamous *Dred Scott* decision. The fund opposed any and all abortion restrictions, including laws requiring that parents be informed before their young daughters have an abortion. The fund even argued that the first amendment right to freely exercise religion somehow undermines parental notification laws.

When I asked Judge Sotomayor about these briefs and arguments, I made absolutely clear in my prefaced remarks that I was asking only about whether she knew about and agreed

with them at the time the briefs were filed. I was not asking her even about her current views, let alone any position or approach she might take in the future. Judge Sotomayor told me that at the time she did not know the fund was filing those briefs or making those arguments. At times, she used what appeared to be the prepared talking point that she had not "reviewed the briefs."

But in answering my question, she went much further than that and said:

Obviously, [the Fund] was involved in litigation, so I knew generally they were filing briefs. But I wouldn't know until after the fact that the brief was actually filed.

To be clear, Judge Sotomayor said she never knew until after a brief had already been filed what arguments were made in the brief or even that it had been filed at all. I was shocked at this response and frankly found this claim very difficult to believe. How can a leader at a legal defense fund, who is actively working with the legal staff, supervising the staff, directing some of the years, briefing a board about pending cases, and an involved supporter of the fund's legal efforts, be completely out of the loop about the briefs it has filed and the arguments the fund is making? Did her discussions with the legal team about the pending cases skip these high-profile Supreme Court cases? I have to tell you, I doubt it. Did she brief the board about everything but these abortion briefs? I doubt it.

The six abortion cases in which the Fund filed briefs were among the most visible cases on the Supreme Court docket. The 1989 case of *Webster v. Reproductive Health Services*, for example, attracted a record 78 different friend-of-the-court briefs, evidence that it was one of the most anticipated cases in decades. Virtually everyone in the public interest legal world, especially at civil rights groups, had it at the top of their watch list. And yet Judge Sotomayor would have us believe that, despite her leadership positions and active involvement with the Fund's cases and legal strategy, she was completely unaware that the Fund filed a brief in *Webster* until after the fact. In other words, she knew no more than an outsider reading the newspaper about the Fund's briefs and arguments in high-profile Supreme Court cases about hot-button social issues. I find that simply implausible.

When I met with Hispanic leaders and groups during the confirmation process, their common message was that Senators should treat Judge Sotomayor seriously and respectfully. I believe we have done that. But they also insisted that our confirmation decision should be based on the merits, not on race. It was disturbing to hear, therefore, that some of these same groups appeared yesterday with the chairman of the Democratic Senatorial Campaign Committee warning about political repercussions of voting against a Hispanic nominee. I ask unanimous consent that a column published yesterday in *Politico* by former

Florida House Speaker Marco Rubio addressing this issue be printed in the RECORD following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Let me once again return to where I began. One of America's oldest state constitutions opens by asserting what it identifies as essential and unquestionable rights and principles. In their charter, the people of Rhode Island State:

In the words of the Father of his Country, we declare that the basis of our political system is the right of the people to make and alter their constitutions of government; but that the constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all.

The Constitution belongs to the people. The people established it, and only the people can change it. This essential and unquestionable principle would be a farce if the people could change the words, but judges could change the meaning of those words. Judges would still control the Constitution, and their oath to support and defend it would really be an oath to support and defend themselves. America needs judges who are guided and controlled not by subjective empathy that they find inside themselves, but by objective law that they find outside themselves.

I take a generous approach to the confirmation process. I believe that the Senate owes some deference to a President's qualified nominees and that qualifications for judicial service include not only legal experience but, more importantly, judicial philosophy. A judicial nominee must understand and be committed to the proper role and power of judges in our system of government. Evidence for a nominee's judicial philosophy must come from her entire record.

I hope that on the Supreme Court, Judge Sotomayor will take an objective, modest, and restrained approach to interpreting and applying written law. I hope that she actively defends her impartiality against subjective influences such as personal sympathies and prejudices. I hope that she sees the Constitution, both its words and its meaning, as something that she must follow rather than something she can change at will.

I hope she will do all of that. I hope she proves me wrong in my negative vote against her.

Because the record does not convince me she holds those views today, I cannot support her appointment to the Supreme Court.

Finally, I refer those who are interested back to my remarks on Tuesday because I covered a number of other cases there that are equally important, but I believe, since I covered them there, I did not have to go through them here.

I am very concerned about this nomination. I feel very bad that I have to vote negatively. It is not what I wanted to do when this process started, but I believe I am doing the honorable and

right thing, even though I feel bad about it. As I have said, I like Judge Sotomayor. I like her family, I like her life story. I am hoping she will listen to some of the things we have said on the floor, and I do wish her the best once she is confirmed.

I yield the floor.

EXHIBIT 1

[From *Politico*, Aug. 5, 2009]

NOT ANTI-HISPANIC TO OPPOSE SOTOMAYOR

(By Marco Rubio)

Sonia Sotomayor's nomination to the Supreme Court was a truly historic moment in our nation's history. As an accomplished jurist who rose from humble roots, she is an inspiration to all who share her Hispanic heritage and all Americans who believe hard work is key to success.

Since that moment, however, I have considered it vital to ensure that the historic nature of her nomination did not interfere with the Senate's constitutional duty of evaluating it and having a proper debate about the judiciary's proper function in America. After all, the lifetime nature of her appointment brandishes the post with enduring influence on the nation's affairs long after the nominating president vacates office. Whereas voters hold senators accountable every six years, this is the nation's only chance to evaluate Sotomayor before sending her to the Supreme Court for life.

During the recent Judiciary Committee hearings, it became clear that I could not in good conscience support Sotomayor's confirmation and would vote against it if I were in the Senate today. I reached this conclusion on the basis of a fair and thorough analysis.

As a whole, Sotomayor's record reflects a view that judges can and should inject personal experiences and biases into what should be the objective interpretation and application of the law. While her comments about the "better conclusions" a "wise Latina woman" would bring to the bench are universally known, I have more specific concerns about her case history and testimony regarding the Second Amendment at the state level, eminent domain takings and the so-called constitutional right to privacy that resulted in the *Roe v. Wade* decision. Together, these and other cases point to a nominee who would bring an activist approach to the highest court in the land.

Some have said my opposition to Sotomayor's confirmation and that of Republican senators would incense Hispanic-American voters. Right on cue, many are now attempting to brand Republicans as anti-Hispanic. It should be clear, however, that our opposition to her judicial philosophy is in no way a wholesale opposition to Hispanics.

I believe the greatest disservice we could offer the Hispanic community and the nation as a whole is to avoid a serious, principled discussion about the role of the judiciary. I reject the notion that judges should be representative of their sex, race or class. For these reasons, the suggestion that senators who have fundamental concerns about Sotomayor's judicial philosophy should not dare oppose her for fear of being branded anti-Hispanic is disappointing.

The true measure of our nation's progress on issues of race and ethnicity is the freedom of people of conscience to disagree with one another based on sound philosophical reasoning, without fear of being negatively branded because the person they oppose is of a different background or skin color.

Reasonable people can disagree, and, in fact, many do in this case. This competition

of ideas is healthy when properly centered on policy and philosophy, as it has been. The debate is only poisoned when the color of one's skin becomes a political football. Unfortunately, some of Sotomayor's supporters have injected race into the discussion, indicating that a vote against her is a vote against Hispanics, even though I have not heard one utterance from any senator opposing her that reflects a hostility toward Sotomayor personally or to her roots.

In evaluating judicial nominees, what matters most is determining what kind of judges they will be. And nominees who share Sotomayor's view that their role is to make law rather than interpret it are individuals I cannot support and would urge others not to, as well.

As Florida's first Hispanic speaker of the House, I too blazed a trail that has been a great source of pride for my community, particularly for those of my parents' and grandparents' generations. My experience, like Sotomayor's, is a testament to the boundless promise that exists in our great land, where the son of a bartender and housekeeper who came from Cuba without even a grasp of the English language could rise to such heights.

Those of us of Hispanic descent don't expect special treatment, only the same treatment and same opportunities afforded to all Americans. I believe it would be wrong to apply a higher or lower standard to Sotomayor than the one applied to other Supreme Court nominees.

In the final analysis, we are not worthy of Hispanics' trust or the support of any other Americans if we abandon our principles or cease articulating our philosophical disagreements on the role of the judiciary. I would rather lose an election than diminish the rights afforded by the Constitution. By consenting to a judge whose record demonstrates an inclination to set policy from the bench, we would be undermining our governing document.

Mr. HATCH. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SESSIONS. Madam President, there are a number of letters from people and groups who have given great thought to this nomination and who have written to oppose it.

I ask unanimous consent to have some of these letters printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FIDELIS,  
Chicago, IL, July 10, 2009.

Re Judge Sonia Sotomayor and abortion.

Hon. PATRICK J. LEAHY,  
Hon. JEFF SESSIONS,  
Hon. DIANNE FEINSTEIN,  
Hon. JOHN CORNYN,  
Hon. TOM COBURN,  
Hon. RON WYDEN,  
Hon. RUSSELL D. FEINGOLD,  
Hon. SHELDON WHITEHOUSE,  
Hon. BENJAMIN L. CARDIN,  
Hon. AMY KLOBUCHAR,  
Hon. EDWARD E. KAUFMAN,  
Hon. RICHARD J. DURBIN,

Hon. CHARLES E. GRASSLEY,  
Hon. LINDSEY GRAHAM,  
Hon. HERB KOHL,  
Hon. ORRIN G. HATCH,  
Hon. JON KYL,  
Hon. ARLEN SPECTER,  
Hon. CHARLES E. SCHUMER,  
U.S. Senate  
Washington, DC.

DEAR SENATOR: During the confirmation hearing of Judge Sonia Sotomayor, I urge you on behalf of thousands of Fidelis members and the American public to carefully question her about her judicial philosophy and her approach to abortion-related issues. During the period leading up to her hearing, Sotomayor has repeatedly made apparent her view that a judge's personal feelings and experiences should play a prominent role in her application of the law.

Our organization is concerned that this approach will lead Judge Sotomayor, if she is confirmed to the Supreme Court, to favor an interpretation of the Constitution that is even more protective of abortion rights than *Roe v. Wade*. Such a drastic reinterpretation of the Constitution, which would establish abortion as a fundamental right, would frustrate the will of the vast majority of Americans who oppose an unlimited right to abortion and undermine the legitimacy of the Constitution.

Judge Sotomayor offered a glimpse of her disposition toward these important issues in her recent conversation with Senator Jim DeMint during which she expressed that she had never thought about whether an unborn child has constitutional rights. This statement indicates that Judge Sotomayor does not share the values of a majority of Americans and that her decisions on the Supreme Court will fail to protect the rights of unborn children.

Although Judge Sotomayor has never directly addressed abortion-related questions while on the bench, her association with the Puerto Rican Legal Defense and Education Fund (PRLDEF), a radical organization that has supported an unlimited right to abortion, indicates that she shares the organization's views on these issues. Judge Sotomayor served on the PRLDEF's board of directors between 1980 and 1992. During this period, the PRLDEF filed several amicus briefs in prominent abortion cases.

These briefs repeatedly emphasized that the PRLDEF opposes any effort to limit the rights recognized by *Roe v. Wade*, arguing that abortion is a fundamental right and that the Constitution requires strict scrutiny of limitations on the ability to obtain an abortion. We believe that, if Judge Sotomayor is given a position on the Supreme Court, her decisions when confronted with these important questions will align with the radical views expressed in PRLDEF's amicus briefs.

In fact, these briefs indicate that Judge Sotomayor may favor even more expansive abortion rights than Justice Souter, whose support for abortion has been qualified by his willingness to permit reasonable state and federal regulations. Souter has indicated his approach by supporting regulations of federal funding for abortion counseling in *Rust v. Sullivan* and by voting to uphold state consent laws in *Planned Parenthood v. Casey*. The PRLDEF's briefs supported striking down both of these regulations as unconstitutional.

We ask that you please carefully question Judge Sotomayor during her confirmation hearing about these issues, which implicate important values shared by a majority of the American public and threaten to diminish the legitimacy of the Constitution.

Sincerely,

BRIAN BURCH,  
President.

NATIONAL RIFLE ASSOCIATION OF  
AMERICA, INSTITUTE FOR LEGISLA-  
TIVE ACTION,

Fairfax, VA, July 7, 2009.

Hon. PATRICK J. LEAHY,  
Chairman, U.S. Senate Committee on the Judiciary,  
Washington, DC.

Hon. JEFF SESSIONS,  
Ranking Member, U.S. Senate Committee on the Judiciary,  
Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: I am writing to express the National Rifle Association's very serious concerns about the nomination of Judge Sonia Sotomayor to the Supreme Court of the United States.

We are particularly dismayed about the U.S. Court of Appeals for the Second Circuit's recent decision in the case of *Maloney v. Cuomo*, which involved the application of the Second Amendment as a limit on state law, via incorporation of the Second Amendment through the Fourteenth Amendment's Due Process Clause. Judge Sotomayor was on the panel that decided this case in a brief—and in our opinion, clearly incorrect—per curiam opinion.

The *Maloney* panel claimed that “it is settled law . . . that the Second Amendment applies only to limitations the federal government seeks to impose on this right.” It based this ruling on the 1886 case of *Presser v. Illinois*, decided long before the development of the Supreme Court's modern incorporation doctrine. But as the Court made clear last year in *District of Columbia v. Heller*, post-Civil War cases such as *Presser* “did not engage in the sort of Fourteenth Amendment inquiry required by our later cases.”

Further, *Presser* (along with *United States v. Cruikshank*) only stands for the concept that the guarantees in the Bill of Rights do not apply directly to the States. As we have seen throughout the Supreme Court's Twentieth Century jurisprudence, most of the Bill of Rights has been incorporated against the States through the Fourteenth Amendment's Due Process Clause. Thus, the failure of the *Maloney* panel to engage in a proper due process analysis of the Second Amendment is extremely troubling, to say the least.

The Second Circuit's decision (as well as the Seventh Circuit's similarly flawed reasoning in *Nat'l Rifle Ass'n of Am., Inc. v. City of Chicago*) is at odds with the Ninth Circuit's decision in *Nordyke v. King*, which did engage in a full Fourteenth Amendment analysis (again, as required by the Supreme Court in *Heller*). The Ninth Circuit held that while the Second Amendment does not apply to the states directly or through the Privileges or Immunities Clause, modern Fourteenth Amendment cases do require its incorporation through the Due Process Clause. This stark circuit split makes it highly likely that the Supreme Court will take up one or more of these cases in the immediate future, perhaps as soon as next term.

In addition, Judge Sotomayor was a member of the panel in the case of *United States v. Sanchez-Villar*, where (in a summary opinion) the Second Circuit dismissed a Second Amendment challenge to New York State's pistol licensing law. That panel, in a terse footnote, cited a previous Second Circuit case to claim that “the right to possess a gun is clearly not a fundamental right.” Since the precedent cited for that point is no longer valid in the wake of *Heller*, Judge Sotomayor should be asked whether she would take the same position today.

The cases in which Judge Sotomayor has participated have been dismissive of the Second Amendment and have troubling implications for future cases that are certain to come before the Court. Therefore, we believe that America's eighty million gun owners

have good reason to worry about her views. We look forward to a full airing of her past decisions and judicial philosophy at the upcoming committee hearings, and urge you and all committee members to engage in the most serious questioning possible on these critical issues.

Out of respect for the confirmation process, the NRA has not announced an official position on Judge Sotomayor's confirmation. However, should her answers regarding the Second Amendment at the upcoming hearings be hostile or evasive, we will have no choice but to oppose her nomination to the Court.

Finally, we would caution you against lending any credence to the endorsement of Judge Sotomayor's nomination by organizations that falsely claim to represent gun owners, while promoting an anti-gun agenda. These front groups' actions give them no credibility to speak on this nomination.

Thank you for your attention to our concerns. Should you have any questions or wish to discuss further, please do not hesitate to call on me personally.

Sincerely,

CHRIS W. COX,  
*Executive Director.*

JULY 7, 2009.

DEAR SENATORS: As Americans who have dedicated themselves to protecting the Second Amendment right of U.S. citizens to keep and bear arms, we urge you not to confirm Judge Sonia Sotomayor as the next associate justice of the United States Supreme Court.

It is extremely important that a Supreme Court justice understand and appreciate the origin and meaning of the Second Amendment, a constitutional guarantee permanently enshrined in the Bill of Rights. Judge Sotomayor's record on the Second Amendment causes us grave concern over her treatment of this enumerated constitutional right.

Last year, the Supreme Court decided the landmark case *District of Columbia v. Heller*, holding that the Second Amendment guarantees to all law-abiding, responsible citizens the individual right to keep and bear arms, particularly for self-defense. Following *Heller*, the Supreme Court is almost certain to decide next year whether the Second Amendment applies to states and local governments, as it does to the federal government (see *NRA v. Chicago* and *McDonald v. Chicago*.)

While on the Second Circuit, Judge Sotomayor revealed her views on the right to keep and bear arms in *Maloney v. Cuomo*, a case decided after *Heller*, yet holding that the Second Amendment is not a fundamental right, that it does not apply to the states, and that if an object is "designed primarily as a weapon" that is a sufficient basis for total prohibition even within the home. Earlier in a 2004 case, *United States v. Sanchez-Villar*, Sotomayor and two colleagues perfunctorily dismissed a Second Amendment claim holding that "the right to possess a gun is clearly not a fundamental right." Imagine if such a view were expressed about other fundamental rights guaranteed by the Bill of Rights, such as the First, Fourth and Fifth Amendments.

Surprisingly, *Heller* was a 5-4 decision, with some justices arguing that the Second Amendment does not apply to private citizens or that if it does, even a total gun ban could be upheld if a "legitimate governmental interest" could be found. The dissenting justices also found D.C.'s absolute ban on handguns within the home to be a "reasonable" restriction. If this had been the majority view, then any gun ban could be upheld, and the Second Amendment would be meaningless.

The Second Amendment survives today by a single vote in the Supreme Court. Both its application to the states and whether there will be a meaningfully strict standard of review remain to be decided by the High Court. Judge Sotomayor has already revealed her views on these issues and we believe they are contrary to the intent and purposes of the Second Amendment and Bill of Rights. As Second Amendment leaders deeply concerned about preserving all fundamental rights for current and future generations of Americans, we strongly oppose this nominee, and urge the Senate not to confirm Judge Sotomayor.

Sincerely,

Sandra S. Froman, Esq., Former President, National Rifle Association of America, NRA Board of Directors and Executive Council; Landis Aden, President, Arizona State Rifle & Pistol Association; Scott L. Bach, Esq., President, Association of New Jersey Rifle and Pistol Clubs; The Honorable Bob Barr, Former Congressman, 7th District of Georgia, NRA Board of Directors; Ken Blackwell, Senior Fellow, Family Research Council, NRA Board of Directors; Rep. Jennifer R. Coffey, NREMT-I, Representative, New Hampshire State House of Representatives, Representative, New Hampshire General Court, Director and National Coordinator, Second Amendment Sisters, Inc., Advisor, New Hampshire Pro-Gun Advisory Council; Robert K. Corbin, Esq., Former Attorney General, State of Arizona, Former President of NRA and current member of NRA Executive Council; Jim Dark, Former Executive Director, Texas State Rifle Association, NRA Board of Directors.

Alan M. Gottlieb, Chairman, Citizens Committee for the Right to Keep and Bear Arms; Tom Gresham, Host of "Gun Talk," Nationally syndicated radio talk show; Gene Hoffman, Jr., Chairman, The Calguns Foundation, Susan Howard, NRA Board of Directors; Tom King, President, New York State Rifle and Pistol Association, NRA Board of Directors; John T. Lee, President, The Pennsylvania Rifle and Pistol Association; Owen P. Buz Mills, President, Gunsite Academy, Inc., NRA Board of Directors; Evan F. Nappen, Esq., Corporate Counsel and Director, Pro-Gun New Hampshire, Inc.

Grover G. Norquist, President, Americans for Tax Reform, NRA Board of Directors; Sheriff Jay Printz, Retired Sheriff and Coroner, Ravalli County, Montana, Successful plaintiff in U.S. Supreme Court case *Printz vs. U.S.*, NRA Board of Directors; Todd J. Rathner, President, T. Jeffrey Safari Company, NRA Board of Directors; Wayne Anthony Ross, Esq., President, Alaska Gun Collectors Association, Former Attorney General, State of Alaska, NRA Board of Directors; Don Saba, Ph.D., Sierra Bioresearch, NRA Board of Directors; Robert E. Sanders, Esq., Former Assistant Director (Law Enforcement), Bureau of Alcohol, Tobacco and Firearms, NRA Board of Directors; Jon A. Standridge, Brigadier General (USA Ret.); Joseph P. Tartaro, President, Second Amendment Foundation; Jim Wallace, Executive Director, Gun Owners' Action League.

NATIONAL RIGHT TO LIFE  
COMMITTEE, INC.,

Washington, DC, July 27, 2009.

Hon. HARRY REID,  
*Majority Leader, U.S. Senate, The Capitol,*  
*Washington, DC.*

Hon. MITCH MCCONNELL,  
*Republican Leader, U.S. Senate, The Capitol,*  
*Washington, DC.*

DEAR LEADER REID AND LEADER MCCONNELL: On behalf of the National Right to Life Committee (NRLC), the federation of right-to-life organizations in all 50 states, we write to express the opposition of our organization to the confirmation of Judge Sonia Sotomayor as an associate justice of the United States Supreme Court.

As a judge, Ms. Sotomayor has encountered little in the way of abortion-related litigation, either at the district court or the court of appeals. In the single ruling that she authored that bore directly on an abortion-related federal policy, *Center for Reproductive Law and Policy v. Bush*, the result was unambiguously governed by the precedents of the U.S. Supreme Court and the Second Circuit. Yet, there are many troubling indications that Ms. Sotomayor believes that it is the proper role of the U.S. Supreme Court to construct and enforce constitutional doctrines on social policy questions, even where the text and history of the Constitution provide no basis for removing an issue from the realm of lawmaking by the duly elected representatives of the people.

Legal abortion on demand was imposed by seven Supreme Court justices in *Roe v. Wade*. *Roe* was an exercise in judicial legislation, aptly branded "an exercise of raw judicial power" by dissenting Justice Byron White. The ruling lacked any real basis in the text of the Constitution, and imposed a policy that was completely at odds with the intent of the lawmakers who crafted and ratified the Fourteenth Amendment.

The evidence indicates that Ms. Sotomayor approves of the *Roe* ruling and approves of the type of judicial activism that produced it. For a period of 12 years (1980-1992), prior to becoming a judge, Ms. Sotomayor served on the governing board of the Puerto Rican Legal Defense and Education Fund (PRLDEF), and for part of that time she was the chair of the PRLDEF Litigation Committee. During her tenure on the board, the PRLDEF was actively involved in litigation that attempted to persuade the Supreme Court to expand the judge-created "right to abortion," often beyond what the Court was willing to embrace. During this period, the fund joined briefs at the U.S. Supreme Court in six abortion-related cases. These briefs urged the Court to regard abortion as a "fundamental right" (a right on the level of freedom of speech), to apply the strictest standard of scrutiny when reviewing abortion-regulated laws, and thereby to nullify informed consent requirements (including those involving ultrasound), waiting periods, parental notification requirements, restrictions on taxpayer funding of abortion, and even record keeping requirements. The PRLDEF's own "statement of interest" in three of these cases said that the PRLDEF "opposes any efforts to overturn or in any way restrict the rights recognized in *Roe v. Wade*."

During her recent confirmation hearings, Ms. Sotomayor suggested that she was only aware of this litigation activity in the most general terms, and had no responsibility for or awareness of the substance of the briefs. Frankly, this testimony was not very believable. Ms. Sotomayor was a Yale Law School graduate who, according to many accounts, is exceedingly—even excessively—detail oriented on the legal matters in which she is involved. More believable is what the New York Times reported on May 29, 2009, after



interviewing various parties who were directly involved in the PRLDEF litigation activity during this period: "Ms. Sotomayor stood out, frequently meeting with the legal staff to review the status of cases, several former members said. . . . The board monitored all litigation undertaken by the fund's lawyers, and a number of those lawyers said Ms. Sotomayor was an involved and ardent supporter of their various legal efforts during her time with the group."

If confirmed to the U.S. Supreme Court, Ms. Sotomayor will no longer be constrained by the precedents of that Court, including the precedents in which the Court upheld laws requiring notification of a parent before performing an abortion on a minor, requiring a pre-abortion waiting period, barring public funding of abortion, and—by a single vote, in 2007—banning partial-birth abortion. Nor, it appears, will she feel greatly constrained by the text and history of the Constitution, in which *Roe v. Wade* and its progeny find no support.

Because the available evidence strongly suggests that once on the Supreme Court, Sonia Sotomayor will seek to nullify abortion-related laws adopted through the normal legislative processes of our democracy, consistent with the extreme legal theories with which she was associated before being appointed to the federal bench, National Right to Life urges all senators to vote against her confirmation to the Supreme Court.

Respectfully,

DAVID N. O'STEEN, PH.D.,  
*Executive Director,*  
DOUGLAS JOHNSON,  
*Legislative Director.*

JULY 13, 2009.

DEAR CHAIRMAN PATRICK LEAHY AND SENATE JUDICIARY RANKING MEMBER JEFF SESSIONS: On behalf of FRC Action (FRCA), the legislative arm of the Family Research Council, and the families we represent, I write to you today with serious reservations regarding the nomination of Sonia Sotomayor to the United States Supreme Court.

The Senate Judiciary Committee has the important role of properly vetting any nominee to ensure that the nominee has the requisite competence, temperament, character, knowledge of the law and experience to make a good jurist. The nominee must be committed to making decisions based on the law and the facts of each case. Personal ideological predispositions toward certain results must be set aside, and the nominee must have the ability to faithfully uphold the Constitution recognizing that it is the supreme law and source of authority for all American law, including judicial precedents. A review of Ms. Sotomayor's record shows she is lacking in many of these qualities.

Senators on the committee need to have Ms. Sotomayor address what exactly she meant by some of her more controversial statements, why she tried to suppress her ruling in the Connecticut firefighters' discrimination case and her seeming disregard for U.S. judicial sovereignty. Ms. Sotomayor should also describe the extent of her role in the anti-life work at the Puerto Rican Legal Defense and Education Fund (PRLDEF).

From 1980 to 1992, Judge Sotomayor was an active governing board member of the PRLDEF where she helped to shape the group's controversial legal policy. Just one example of work done while she was there is the brief for *Webster v. Reproductive Health Services*, written in 1989, in which the organization called the right to abortion "precious." Ms. Sotomayor's troubled history as a jurist, an activist and as an attorney have surfaced numerous other concerns on sanc-

tity of life issues, on sovereignty matters, marriage questions and more that makes us question her fitness to serve on our nation's highest court.

Barring significant revelations at her Senate confirmation hearing that change our assessment of her judicial philosophy, Family Research Council Action must stand in opposition to Judge Sotomayor's confirmation. The available evidence reveals Judge Sotomayor to be a judicial activist who does not have a proper understanding of the limited role of judges and the judiciary in our constitutional system.

Sincerely,

THOMAS MCCLUSKY,  
*Senior Vice President,*  
*FRC Action.*

JULY 13, 2009.

AS HEARINGS BEGIN, WOMEN'S COALITION FOR JUSTICE QUESTIONS SOTOMAYOR'S ABILITY TO BE IMPARTIAL

WASHINGTON, DC.—Members of the Women's Coalition for Justice released the following statements in response to today's first Senate confirmation hearing for Supreme Court Nominee Judge Sonia Sotomayor.

Genevieve Wood, Vice President of Strategic Initiatives, The Heritage Foundation, stated, "I am troubled by Judge Sotomayor's rejection of Justice O'Connor's favored adage that a wise old man would reach the same conclusion as a wise old woman. It is deeply offensive that she has suggested that the sexes and ethnicities 'have basic differences in logic and reasoning,' and even more offensive that she believes it is somehow patriotic to indulge in gender or ethnic biases. Her statements raise grave concerns about whether she can truly be impartial and the current defense that she simply endorses including different perspectives doesn't hold water. The Senators must ask challenging questions to determine whether she believes that a wise woman can reach the same conclusion as a wise man, or whether she intends to bring bias, as she has suggested, even to most cases."

Marjorie Dannenfelser, President of the Susan B. Anthony List, stated, "Women are best protected by the rule of law—and blind justice. Their rights are most endangered when personal preference, ideology or painful personal history inform judgment. Susan B. Anthony and her early feminist compatriots fought for a human rights standard sustained only through blind justice. When evidence of personal preference appears in any Supreme Court nominee's judgment, it should give all women pause. Sonia Sotomayor's record of support for judicial activism and her work for the pro-abortion Puerto Rican Legal Defense Fund offer little comfort that she will be a friend to the unborn on the Supreme Court. Given what we know about Sonia Sotomayor's own judicial philosophy, including her support of policymaking from the bench, senators have just cause to reject her appointment to the United States Supreme Court."

Connie Mackey, Senior Vice President for FRCAction remarked, "I reject the admonition of Senator Chuck Schumer that opposing the nomination of Sonia Sotomayor will cause the Republican Party to lose women's vote permanently. I believe his crystal ball is cloudy when it comes to women in America. Women think independently and most women will see that Sonia Sotomayor is a judicial activist who will use the courts to make policy reflective of her own personal judgments as opposed to ruling based upon the tenets put forth by the Constitution. Her career as an activist is well-documented and disqualifies her from taking the 9th seat on the United States Supreme Court."

Wendy Wright, President of Concerned Women for America Legislative Action Committee stated, "Sonia Sotomayor's record reveals she lacks the primary characteristic required of a judge—impartiality. She has used her position as a judge to deny equal justice to people based on their ethnicity. She worked with organizations that aggressively fought against common-sense regulations on abortion. Her flippant dismissal of cases and unwillingness to provide Constitutional reasoning for her decisions exposes her arrogance, disrespect for our judicial system and the people whose lives are dramatically impacted by her decisions. Through her work as a judge and in organizations, she has denied people equal opportunity to make a living because of the color of their skin, preborn babies their right to live, and women the right not to be exploited by abortionists. After giving her the benefit of the doubt, her record of giving preferences to certain classes of people and denying equal justice to others obliges Concerned Women for America Legislative Action Committee to oppose her nomination to the U.S. Supreme Court. Sonia Sotomayor has disqualified herself from the U.S. Supreme Court. Senators need to set aside their party loyalty and do their Constitutional duty to uphold equal justice for all by opposing Sonia Sotomayor's nomination."

Charmaine Yoest, President and CEO of Americans United for Life remarked, "It's important for the American people to understand that the confirmation of Judge Sonia Sotomayor to the Supreme Court will dramatically shift the dynamics of the Court. Her record of activism in support of a radical pro-abortion agenda is clear and documented. This is a judge with a record significantly worse than Judge Souter's. We are asking the Senate Judiciary Committee to seriously consider the consequences of confirming a Supreme Court justice whose radical record shows she would rule against all common-sense legal protections for the unborn, including parental notification, informed consent and bans on partial-birth abortion. The American people will not tolerate a nominee who is outside the mainstream of American public opinion."

THE ETHICS & RELIGIOUS LIBERTY  
COMMISSION OF THE SOUTHERN  
BAPTIST CONVENTION,

Nashville, TN, July 14, 2009.

Hon. PATRICK J. LEAHY,  
*Chairman, Senate Judiciary Committee,*  
*U.S. Senate, Washington, DC.*

Hon. JEFF SESSIONS,  
*Ranking Member, Senate Judiciary Committee,*  
*U.S. Senate, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: This week, the Senate Judiciary committee begins its confirmation hearings for Judge Sonia Sotomayor. We are deeply troubled by many aspects of Judge Sotomayor's record. While we could identify a number of factors that concern us, we describe below those that are the most troubling.

Judge Sotomayor does not appear to share the pro-life values of nearly all Southern Baptists and of most Americans. Recent polling reveals that the majority of Americans are pro-life. Her lack of rulings on major sanctity of life issues makes it more difficult to determine how she would rule on sanctity issues, but her association with the Puerto Rican Legal Defense and Education Fund raises serious questions about her commitment to pro-life values. She served on the Board of this organization, including as Vice President and Chair of the litigation committee. During that time, the Fund filed briefs in at least six prominent court cases in support of abortion rights.

While Judge Sotomayor has ruled favorably on abortion-related cases at times, we note that her rulings on race-related issues reveal a much more ideologically rigid attitude toward race. Her ruling in *Ricci v. DeStefano* is indefensible. We support full racial equality, and therefore support efforts that create equal opportunity for all races. However, we oppose policies that discriminate against some races in order to achieve a predetermined racial outcome. Racial discrimination is wrong in any circumstance.

We are also disturbed by Judge Sotomayor's lack of respect for private property rights. Her ruling in *Didden v. Village of Port Chester* demonstrates a willingness to ignore the Constitution's Fifth Amendment protection of private property. While the *Kelo* case was certainly precedential in her panel's ruling, the Supreme Court stated in their majority opinion that municipalities could not take private property under "the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit." Judge Sotomayor was either unaware of this qualification or chose to ignore it.

Judge Sotomayor has often ruled very responsibly, but the rate at which she has been overruled by the U.S. Supreme Court reveals that she should not be in a position where her decisions cannot be subjected to review. She is out of the mainstream of the American public and too often of the very Court for which she is being considered. We urge you to do all you can to bring out all the facts about Judge Sotomayor during her confirmation hearings, and if these troubling issues remain, to vote against her confirmation.

Sincerely,

RICHARD D. LAND,  
President.

THE ETHICS & RELIGIOUS LIBERTY  
COMMISSION OF THE SOUTHERN  
BAPTIST CONVENTION,  
Nashville, TN, July 28, 2009.

Hon. PATRICK J. LEAHY,  
Chairman, Senate Judiciary Committee,  
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: This week, the Senate Judiciary Committee is scheduled to vote on the confirmation of Judge Sonia Sotomayor as our nation's newest Supreme Court Justice. As you recall, we raised a number of concerns about her record that we believed required examination during her hearings.

We watched the hearings and listened to Judge Sotomayor's answers to some very probing questions, but we are not convinced that she is an appropriate candidate for the United States Supreme Court. We urge therefore that you vote against her confirmation.

While we appreciated Judge Sotomayor's affirmation of the centrality of the U.S. Constitution in rulings, we believe her record demonstrates an inconsistent application of that standard at best. The following cases remain determinative for us. In *Owkey v. Molinari* she showed no regard for the 1st Amendment guarantee of speech or religious expression. In *Maloney v. Cuomo* she weakened the 2nd Amendment's guarantee of the individual's right to bear arms. In *Didden v. Village of Port Chester* she failed to uphold the 5th Amendment's protection of personal property. In *Ricci v. DeStefano* she violated the 14th Amendment's guarantee of equal protection.

Additionally, we are deeply concerned about Judge Sotomayor's failure to adequately address her 12 year involvement with the Puerto Rican Legal Defense and Education Fund. We believe she was more involved with the group's active efforts to promote a pro-abortion agenda than she admitted.

Finally, her numerous reversals by the U.S. Supreme Court reveal that Judge Sotomayor does not have the grasp of the fine points of Constitutional law required of a member of the Supreme Court. She needs someone to pass final judgment on her decisions. No such oversight would be possible if she were to join the Court of last resort.

We regret that we must oppose the nomination of Judge Sotomayor. She is obviously very gifted. Her personal story as well is the kind of story that compels respect and appreciation. We applaud her for her commitment and dedication. Nevertheless, we do not believe Judge Sotomayor meets the requirements for this extremely important position in our nation. We therefore urge you to vote against her confirmation.

Thank you for your service to our nation. We pray God's guidance and wisdom for you as you make the decisions that affect life for hundreds of millions of people.

Sincerely,

RICHARD D. LAND,  
President.

AMERICAN ASSOCIATION  
OF CHRISTIAN SCHOOLS,  
East Ridge, TN, July 15, 2009.

Hon. PATRICK J. LEAHY,  
U.S. Senate,  
Washington, DC

DEAR SENATOR LEAHY: The American Association of Christian Schools strongly urges you to oppose the confirmation of Judge Sonia Sotomayor to the United States Supreme Court, based on her inability to judge without respect of persons and her misinterpretation of the rule of law and the United States Constitution.

As President Obama sought a possible nominee, he consistently used the term "empathy" to describe the character of his first Supreme Court Justice nominee. When he nominated Judge Sonia Sotomayor, he based the criteria of a U.S. Supreme Court Justice on superficial elements rather than on character which demonstrates an actual understanding of the rule of law and original intent of the judicial system established by our Founding Fathers. She has continually met his standards of "empathy," proving through her actions and words her desire to exercise empathy from the bench. According to Judge Sotomayor, to "ignore . . . our differences as women and men of color [is to] do a disservice both to the law and society." She further believes her "experience will affect the facts that [I] choose to see as a judge."

We are concerned that the element of "empathy" in the highest Court of the land will redefine and replace the longstanding aspect of impartiality under the law. It seems that the standard of law should no longer solely lie on the Constitution, but also on the hearts of justices.

Other concerns are based on Judge Sotomayor's interpretation on the right to life. She recently expressed that she has never thought about the rights of the unborn. We find this tragic. Whether a person supports abortion or opposes it, a U.S. Supreme Court Justice should be extremely familiar with the rights that every American is endowed, including life.

While Judge Sotomayor may have more experience than any other Supreme Court Justice currently sitting on the bench, the Administration and many members of the Senate are impatiently rushing her through the process without properly and adequately researching and critiquing her credentials and past decisions that come with that experience. It is essential that every Senator is given the time and resources to fully examine Judge Sotomayor's past decisions and present understanding of the rule of law.

Qualifications and credentials are a necessity when filling the bench, but an ability to carry out the duties of a Supreme Court Justice and meet the standards by which they are held to, is of equal importance. Understanding the rights which we are endowed by our Creator and interpreting the law as our founding fathers originally intended is essential. Just as Lady Justice holds the scales to depict her impartiality and a blindfold to cover her eyes from the spheres that try to influence her, her wisdom lies in the ability to pursue the law and to demand nothing less. She is un-influenced, she is impartial.

We urge you to oppose this nominee, as we believe that she will cause not only harm to the judicial system and the principles of law on which our country was founded, but she also poses a threat to every American who does not receive her "empathy."

Sincerely,

KEITH WIEBE,  
President.

JULY 14, 2009.

DEAR SENATOR: On behalf of the Susan B. Anthony List (SBA List), and our 260,000 members and pro-life activists across the country, I write to encourage you to oppose the nomination of Judge Sonia Sotomayor to the United States Supreme Court.

Women are best protected by the rule of law—and blind justice. Their rights are most endangered when personal preference, ideology or painful personal history inform judgment. Susan B. Anthony and her early feminist compatriots fought for a human rights standard sustained only through blind justice. When evidence of personal preference appears in any Supreme Court nominee's judgment, it should give all women pause.

Sonia Sotomayor's record of support for judicial activism and her work for the pro-abortion Puerto Rican Legal Defense Fund offer little comfort that she will be a friend to the unborn on the Supreme Court.

While Sotomayor served as a board member of the Puerto Rican Legal Defense Fund, the group filed six briefs with the court advocating for unmitigated abortion on-demand. Multiple accounts tell us that the board closely monitored the fund's work, and that Sotomayor was "an involved and ardent supporter of their various legal efforts." (New York Times, May 28, 2009)

The briefs in question advocate a philosophy that rejects any legal restrictions on abortion. This position disregards both the broad public support for such restrictions and the fact that such laws save lives. For example when the government restricts funding for abortion on-demand, we see fewer abortions. Even abortion advocates recognize this reality. The Guttmacher Institute recently issued a report showing that when public funding is not available, 1-in-4 Medicaid-eligible women do not have abortions. That means approximately 25% of babies whose mothers receive government subsidized health care likely survive due to laws like the Hyde Amendment. Sotomayor's record indicates she would not uphold such commonsense restrictions.

Women facing unplanned pregnancies deserve woman-centered solutions to help both mother and child, not abortion on-demand, which pits mother against child in the most tragic of circumstances. They deserve Supreme Court Justices who will uphold the Right to Life.

Given what we know about Sonia Sotomayor's own judicial philosophy, including her support of policymaking from the bench, you have just cause to reject her appointment to the United States Supreme Court.

Sincerely,

MARJORIE DANNENFELSER,  
President, Susan B. Anthony List.



Mr. SESSIONS. Those letters were from Fidelis, Defending Life, Faith and Family, outlining their opposition; a letter from the National Rifle Association; a letter from the National Right to Life Committee; a letter from FRCAction; the Women's Coalition for Justice; the SBA List, the Susan B. Anthony List; the American Association of Christian Schools; and the Ethics and Religious Liberty Commission of the Southern Baptist Convention. Those were one group of letters.

In addition, there are letters from the National Rifle Association, as I mentioned earlier. They have not often, if ever, weighed in on a judicial nomination. But this case, this nomination was so close to one of the most critical issues facing the country today. That is, whether the second amendment applies to States.

If the second amendment does not apply to States, then States and cities can completely ban guns within their jurisdiction.

Judge Sotomayor earlier this year, after the Heller decision, in the first case of its kind after the Supreme Court's decision in Heller, concluded the second amendment does not apply to the States.

She concluded in her very brief opinion that the second amendment does not apply to the States; they could eliminate firearms. She concluded it was settled law that this was the case when the Supreme Court in Heller—and as the ninth circuit concluded, which held differently—explicitly left open this question.

So I think any person who cares about the second amendment and the right to keep and bear arms has to be very troubled that the nominee, earlier this year, concluded that it does not apply and it is settled law, when the Supreme Court had opened it up, as the ninth circuit said.

If it is not reversed, her opinion is not reversed, then cities and counties will be able to restrict firearm possession completely.

Sandra Froman, who is the former president of the National Rifle Association, a Harvard law graduate herself, wrote that:

Surprisingly, Heller was a 5-4 decision, with some justices arguing that the Second Amendment does not apply to private citizens or that if it does, even a total gun ban would be upheld if a "legitimate governmental interest" could be found.

She goes on to say:

The Second Amendment survives today by a single vote in the Supreme Court.

Heller was a 5-to-4 decision.

Both its application to the States and whether there will be a meaningfully strict standard of review remain to be decided by the High Court.

I have offered that letter and other letters that we have received into the RECORD. I also printed in the RECORD a series of op-eds I have written on the way I believe an analysis of a nominee should be conducted and what are the important principles.

Mr. President, I would like to express my appreciation to my staff whose assistance throughout this process was critical to the fair hearing that Judge Sotomayor received. The Senate Judiciary Committee held a hearing for Judge Sotomayor more quickly than it had for the last three Supreme Court nominees, despite the fact that she has been touted as having the most extensive legal record of any recent Supreme Court nominee. As such, my staff went to great efforts to prepare for the hearing on her nomination.

Our team was led by chief counsel for the Supreme Court nomination Elisebeth Cook; staff director Brian Benczkowski; chief counsel William Smith; deputy staff director Matt Miner; and general counsel Joe Matal. Their knowledge of the issues and wise counsel proved invaluable during this confirmation process.

In addition, I am grateful to our Supreme Court team, including counsels Ted Lehman, Seth Wood, Ashok Pinto, Ryan Nelson, and Isaac Fong; law clerks Chris Mills, Matt Kuhn, Anne Mackin, and Andrew English; and intern Jamie Sunderland.

I would like to acknowledge and extend my gratitude to the dedicated and talented members of my permanent staff who worked tirelessly on this nomination, all the while handling the regular legislative business and other nominations that came before the Judiciary Committee: counsels Danielle Brucchieri, Bradley Hayes, Nathan Hallford, and Phil Zimmerly; professional staff member Lauren Pastarnack; and staff assistants Sarah Thompson and Andrew Bennion.

I would be remiss if I failed to mention the important work done every day by my communications director Stephen Boyd, press secretaries Sarah Haley and Stephen Miller, and press assistant Andrew Logan.

The people I have mentioned bore the bulk of the workload, laboring tirelessly night after night, day after day, and nonstop through the weekends. They deserve our recognition as a tribute to their hard work, professionalism, and dedication to public service.

I also would like to acknowledge the great help we received from the Republican majority leader and his staff: John Abegg, Josh Holmes, and Webber Steinhoff; as well as the invaluable contributions of Republican Policy Committee counsel Mark Patton.

Finally, my thanks to the Judiciary Committee's chief clerk, Roslyne Turner and her assistant, Erin O'Neill.

All of these fine staff members contributed to this process and we would not have been able to conduct such a fair and thorough hearing without their hard work and their professionalism. To each of them, I extend my heartfelt thanks.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. RISCH. I rise today, fellow Senators, to discuss the current nomina-

tion that is under consideration by the Senate for the U.S. Supreme Court seat.

Like every Member of this body, I take this responsibility seriously. The Constitution of the United States gives each one of the 100 Members of this body the solemn duty to participate in this under what has been called the advice and consent provisions.

Obviously, there are two parts here. First "advice" and the second "consent." The first part, the advice that the President seeks, is not under the control of any Member here but is under the control of the President. He did not seek my advice on this, which is not surprising.

But, secondly, I am required to exercise my constitutional duty to express either consent or the withholding of consent. I appear here this morning to explain the conclusion I have reached in that regard.

This is a serious constitutional duty. I think every Member here takes it seriously. I think as we do exercise this constitutional duty, it is incumbent upon each one of us to create, in our own mind, a path forward and a criteria, if you would, as to how to reach a conclusion concerning that consent.

I think all of us come at it from a different point of view. Some of us have had some experience in that regard. Although I have not had experience here in this body with a U.S. Supreme Court appointment, I had the opportunity at the State level, since I have served as Governor and had to appoint judges, to determine if, in my mind, a path forward, if you would, or a way, a method, in which we would reach that conclusion as to the appropriateness of a person, their qualifications to serve in a judicial capacity. I have done that.

In addition to that, I think all of us look to other people who have exercised this responsibility and looked for the type of matrix they used to reach the conclusion. I have also done that. I have chosen someone to emulate as far as how I would reach a conclusion as to whether I would grant the consent or withhold the consent.

That person whom I have chosen to emulate is a person who actually chose a matrix that is similar to mine; that is, when we do this, we judge who the person is, and what that person stands for—the "who" and the "what."

Like the person I have chosen to emulate, my focus is not on the "who," my focus is on the "what." What does this person stand for? Because it is, indeed, at the end of the day, the "what" that will guide that person when that person, when the nominee, makes decisions in their capacity as a U.S. Supreme Court Justice.

I met with the nominee. I have read her opinions. I have read a lot that has been written about the nominee, and weighed those using the matrix I have chosen, and that person I chose to emulate chose to reach a conclusion as to whether to grant the consent or to withhold the consent.

I think this is a decision that no one should reach lightly but should reach based upon weighing the factors that they have chosen. When it comes to the “who,” I find the nominee that the President has put forward to be a person who is engaging, who is very wise, who has had clearly the experience to fill this position. I have no difficulty with that at all. I am honored that she would spend the considerable time she made available for me to meet with her and discuss with her the various issues that are important to the great State of Idaho.

At the end of the day, I have to move from the “who” to the “what.” And in that regard, I want to talk about now who I chose to emulate when it comes to making this decision. The person I chose to emulate is a person who currently serves as the President of the United States.

He came to this body and had the opportunity to do just what I have done; that is, to go through this exercise to determine the “who” and the “what” when it comes to the appointment and the qualifications to serve as a Justice of the U.S. Supreme Court.

Then-Senator Obama went through this exact same exercise. At the end of the day, when he voted on two of the nominees, two of the Supreme Court nominees, he determined that based upon his weighing of the nominees, he could not, in good conscience, vote for the nominees because—not because of the “who” part of the equation but because of the “what does this person stand for” part of the equation.

He did that based upon his vision of what he wanted to see in America. I did likewise. He concluded that when he withheld his consent on those two, that person did not meet his view of what the vision for America was. I have reached the same conclusion on this nominee.

In all good conscience, I must withhold the consent. My fellow Senators, I will withhold my consent based not on the “who” but on the “what” on this nomination. I will vote no.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Madam President, what is the parliamentary situation?

The ACTING PRESIDENT pro tempore. The majority controls the next 60 minutes with respect to the nomination of Judge Sotomayor.

Mr. LEAHY. Madam President, I thank the many Senators who took part yesterday in the historic debate over the nomination of Judge Sonia Sotomayor to the Supreme Court. In fact, the distinguished Presiding Officer was one who introduced her to the Judiciary Committee and also spoke eloquently in the Chamber yesterday. I am hopeful that today will not only conclude the debate, but we will then vote on her confirmation and vote favorably.

Senator KLOBUCHAR, the senior Senator from Minnesota, a very active

member of the Judiciary Committee, led a group of five women Senators in a powerful opening hour of debate yesterday. The distinguished Presiding Officer was one of them, and it also included Senators SHAHEEN, STABENOW, and MURRAY. Their speeches were very moving. Several Judiciary Committee Senators gave strong speeches of support for Judge Sotomayor’s nomination, including Senator SCHUMER, Senator SPECTER and Senator CARDIN. Senator FRANKEN, the newest Member of the Senate and newest member of the Judiciary Committee, gave his first Senate speech. Most of us follow the tradition of waiting for our first Senate speech to make sure it is on a matter of some moment. In his case, it was as momentous a matter as one could pick, the nomination of a Supreme Court Justice. Senator FRANKEN eloquently spoke on her behalf.

We heard from Senator LAUTENBERG; Senator DODD, my neighbor in the Senate, both in the row I sit and also in my Senate office, and a good friend. Senators BAUCUS, MERKLEY, AKAKA, LIEBERMAN, CASEY, WYDEN, and BENNET all spoke for her.

Statements of support for Judge Sotomayor yesterday came from both sides of the aisle. On the Republican side, Senator MARTINEZ, who has been a strong supporter of Judge Sotomayor, gave a particularly moving speech. Senator BOND, a former Governor, former attorney general, and one who has appointed judges, joined him in announcing his intent to vote for this well-qualified nominee. My neighbors from New England, Senators COLLINS and SNOWE, also spoke in favor of her nomination.

The troubling thing yesterday was to hear some critics of hers making unfounded insinuations about the integrity and character of this outstanding nominee. That is wrong. She is a judge of unimpeachable character and integrity. These critics have also chosen to ignore her extensive record of judicial modesty and restraint from 17 years on the Federal bench. Instead they have focused on and mischaracterized her rulings in a handful, out of more than 3,600, of cases. That is interesting, out of 3,600 cases, they could find only a tiny handful to criticize, and they can criticize those only by mischaracterizing them.

Let me go to one area in particular. Some Republican Senators have twisted Judge Sotomayor’s participation in a unanimous Second Circuit decision that applied a 123-year-old U.S. Supreme Court precedent to reject a challenge to a New York State law of restriction on chukka sticks, a martial arts device. What she was doing was following the precedent of the Supreme Court; again, one of the reasons why it was a unanimous decision of the Second Circuit. Some have trumped up a straw man by ignoring the facts of Judge Sotomayor’s decision. It is easy to come to a conclusion if you ignore the facts and the law and just go to

your conclusion. Of course, that doesn’t make it right. They ignored the facts of her decision. They ignored the developing state of second amendment law, and they ignored Judge Sotomayor’s testimony during her confirmation hearing, recognizing the individual right to bear arms that is guaranteed by the second amendment.

In fact, in joining the per curiam decision in *Maloney v. Cuomo*, Judge Sotomayor followed and applied the holding of the Supreme Court that the second amendment provides individuals with the right to keep and bear arms. When the Supreme Court handed down its decision in *District of Columbia v. Heller* last year, I applauded the Court for affirming what so many Americans already believe. The second amendment protects an individual’s right to own a firearm. The *Heller* decision reaffirmed and strengthened our Bill of Rights. Vermont has some of the least restrictive gun laws in the country. In fact, most would say they have the least restrictive gun laws. One does not need a permit to carry a concealed firearm in Vermont, if they don’t have a felony conviction. But Vermonters are trusted to conduct themselves responsibly and safely, and we do.

I am a native Vermonter. I have lived there all my life. I find Vermonters do conduct themselves safely and responsibly. Similar to many Vermonters, I grew up with firearms. I have enormous respect and appreciation for the freedoms the second amendment protects. In fact, I own many firearms. Similar to other rights protected by our Bill of Rights, the second amendment right to keep and bear arms is one I cherish. Fortunately, I live in a rural area in Vermont. I can set up targets and use my backyard as an impromptu pistol range and often do.

The Supreme Court’s decision in *Heller* recognized that the second amendment guarantees an individual the right to keep and bear arms against Federal restrictions. So before we go off using talking points and ignore what she did or ignore what she said, I thought it might be good to kind of spoil the rhetoric by actually going to the facts.

The facts are these. At her confirmation hearing, Judge Sotomayor repeatedly affirmed her view of the second amendment guarantees as set forth in the *Heller* decision. This seems to be ignored by some who criticize her. In fact, I asked a question on it because it is important to me as a Vermonter, as a Senator and certainly as chairman of the Judiciary Committee. In response to my question, she testified:

I understand how important the right to bear arms is to many, many Americans. In fact, one of my godchildren is a member of the NRA, and I have friends who hunt. I understand the individual right fully that the Supreme Court recognized in *Heller*.

Judge Sotomayor reaffirmed that statement in answers to questions from Senators KYL, COBURN, and FEINGOLD.

Judge Sotomayor testified in response to a question from Senator KYL:

The decision of the Court in *Heller* . . . recognized an individual right to bear arms as applied to the Federal Government.

Judge Sotomayor testified in response to Senator COBURN:

In the Supreme Court's decision in *Heller*, it recognized an individual's right to bear arms as a right guaranteed by the Second Amendment.

In response to Senator FEINGOLD, Judge Sotomayor testified about *Heller*:

[T]he Supreme Court did hold that there is . . . an individual right to bear arms, and . . . I fully accept that.

Judge Sotomayor participated on a Second Circuit panel in a case called *Maloney v. Cuomo* that was decided earlier this year in which the unanimous panel—let me emphasize, the unanimous panel—recognized the Supreme Court decision in *Heller* that the personal right to bear arms is guaranteed by the second amendment against Federal law restrictions.

Justice Scalia, arguably the most conservative Justice on the U.S. Supreme Court, said in his opinion in the *Heller* case that the *Heller* case expressly left unresolved and explicitly reserved as a separate question whether the second amendment guarantee applies to the States and laws adopted by the States, whether the State of Vermont or any other State. In doing so, the Court left in place a series of Supreme Court holdings from 1876 to 1894 that the second amendment does not apply to the States.

I mention this because there are those who want Justices to not be activists but to be traditionalists. Going back to 1876 to 1894 recognizes a tradition of this country. The question posed to Judge Sotomayor and the Second Circuit in *Maloney* involved a challenge by a criminal defendant to a New York State law restriction on a martial arts device called nunchucks or chukka sticks, not firearms. Indeed, in that case the appellant had pleaded guilty to disorderly conduct, agreed to the destruction of the nunchucks as part of the plea, and the charge of possession of the nunchucks in violation of New York law had been dismissed. The Second Circuit considered the case on appeal from a denial of a subsequent declaratory judgment case.

In declining to overrule the trial judge—the trial judge would not set aside the State law against nunchucks—the Second Circuit panel emphasized that its decision was dictated by Supreme Court precedent, holding that: “Where, as here, a Supreme Court precedent has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to the Supreme Court the prerogative of overruling its own decisions.” Had the Second Circuit acted otherwise, it would have been seen as judicial activism and an unwillingness

to adhere to Supreme Court precedent. That is something that every single Member of this Chamber has said judges should do, follow Supreme Court precedent.

Now Judge Sotomayor is criticized for doing what a Circuit Court of Appeals judge is supposed to do; that is, follow the precedent of the Supreme Court. She seems to be caught in a Hobson's choice. Had she violated that rule, had they acted otherwise, had they refused to follow Supreme Court precedent, I am sure she would be attacked as being a judicial activist. Come on. Let's be fair. When we have had nominees by Republican Presidents, we have heard over and over again how Republicans want these people because they follow precedent. Here, some Republicans are attacking Judge Sotomayor because she did follow precedent, because she did do what a Court of Appeals judge is supposed to do.

In fact, the approach taken by the Second Circuit decision in *Maloney* was adopted by some of the most respected, very conservative jurists in the country. Judges Easterbrook and Posner, both renowned conservatives, people whom I hear quoted by the Republican side over and over again, serve on the Seventh Circuit. They agreed with the Second Circuit panel. This may sound like it is getting into the weeds, but what I am saying is, judges of all stripes ruled the same way. In *National Rifle Association v. City of Chicago*, they cited the Second Circuit in *Maloney*. Judges Easterbrook and Posner refused to ignore the direction of the Supreme Court to implement Supreme Court holdings, even if the reasoning in later opinions undermines their rationale and, instead, “leave to [the Supreme Court] the prerogative of overruling its own decisions.”

What I am saying is, conservative judges, liberal judges, and moderate judges such as Judge Sotomayor all came to the same conclusion: You have to follow precedent. It may sound like I am doing a tutorial for a law school class, but I thought rather than having the rhetoric, let's go to the facts and let's go to the law. Because both the facts and the law are irrefutable.

If Republican Senators wish to criticize, let them criticize Justice Scalia for the Supreme Court's decision in *Heller* to limit its application against Federal Government restrictions and expressly reserve for another Supreme Court decision whether to incorporate the Second Amendment right against the States. Judges Easterbrook, Posner and Bauer of the Seventh Circuit and Judges Pooler, Sotomayor and Katzmann of the Second Circuit all followed Justice Scalia and the holdings of Supreme Court precedent.

Petitions for certiorari have been filed in both *Maloney* and *National Rifle Association* and are currently pending before the Supreme Court. A third, related decision by a panel of the

Ninth Circuit is being reconsidered en banc by that Court of Appeals. Republican Senators insisted during the Roberts and Alito hearings that a Supreme Court nominee must avoid making predictions about how she might rule in a case that is likely to come before the Supreme Court. Yet Republican Senators have now reversed their approach to demand that Judge Sotomayor ignore these standards and commit to how she intends to rule on these cases and this issue if confirmed.

Recognizing that she would be unable to say how she would rule, I asked Judge Sotomayor whether she would approach these matters with an open mind and she assured us that she would. I do not see how any fair observer could regard her testimony as hostile to the Second Amendment personal right to bear arms, a right she has embraced and recognizes.

The question of incorporation of the Second Amendment of the Bill of Rights against the States is not merely likely to come before the Court; petitions to decide it are currently pending before the Supreme Court. There are well-recognized limits to how much a judicial nominee can say during her confirmation hearings. Nominees do not answer questions about cases or issues pending before the Supreme Court. It is striking that many of those who today criticize Judge Sotomayor's adherence to these limits strongly defended them just a few years ago, when a Republican President was doing the nominating.

A 2005 Senate Republican Policy Committee Report commissioned by Senator KYL concluded that “the preservation of an independent judiciary” depends on a nominee's ability to avoid signaling how she will rule on upcoming cases. According to this report:

It is inappropriate for any nominee to give any signal as to how he or she might rule on any issue that could come before the court, even if the issue is not presented in a currently pending case. If these novel “prejudgment demands” were tolerated, the judicial confirmation process would be radically transformed.

Senator KYL's Republican Policy Committee Report raised concerns that “no judge can be fair and impartial if burdened by political commitments that Senators try to extract during confirmation hearings” and concluded that “nothing less than judicial independence and the preservation of a proper separation of powers is at stake.”

Senators SESSIONS, CORNYN, GRASSLEY, COBURN and HATCH referred to these restrictions on a nominee's ability to answer questions during the Senate's consideration of President Bush's Supreme Court nominees. During the Senate's consideration of the Roberts nomination, Senator SESSIONS said:

Judges apply the facts to the legal requirements of the situation, and only then make a decision. [Judge Roberts] refused to make opinions on cases that may come before him. Of course, he should not make opinions on that . . . He should not be up there making opinions on the cases. That is so obvious.

At that time, Senator CORNYN shared their view and strongly defended Republican nominees who refused to discuss legal issues that might arise in the future. He said:

It undermines a nominee's ability to remain impartial once he or she becomes a judge if he or she has already taken positions on issues that might come before him or her on the bench. . . . In other words, just because some Members may ask these questions does not mean the President's nominee should answer them. In accordance with long tradition and norms of the Senate in the confirmation process, they should not answer them.

At the beginning of confirmation hearings for John Roberts, Senator GRASSLEY said: "The fact is that no Senator has a right to insist on his or her own issue-by-issue philosophy or seek commitments from nominees on specific litmus-test questions likely to come before that Court."

Senator COBURN criticized those Senators whom he said planned to vote against the Roberts nomination for his failure to state positions on specific issues: "The real reason they will be voting against John Roberts is because he would not give a definite answer on two or three of the social issues today that face us. He is absolutely right not to give a definite answer because that says he prejudices, that he has made up his mind ahead of time."

In 2005, Senator HATCH noted the ethical restrictions on a nominee's ability to answer questions and said:

I have said Senators on the Judiciary Committee can ask any question they want, no matter how stupid the question may be. . . . But the judge does not have to answer those questions. In fact, under the Canons of Judicial Ethics, judges should not be opining or answering questions about issues that may possibly come before them in the future.

Both Judge Roberts and Judge Alito followed their advice and did not answer questions with any specificity about cases that could come before the Supreme Court. Judge Roberts testified during his hearing: "I think I should stay away from discussions of particular issues that are likely to come before the Court." During his hearing, Judge Alito testified:

I think it's important to draw a distinction between issues that could realistically come up before the courts and issues that . . . are still very much in play . . . that's where I feel that I must draw a line, because no issues that could realistically come up, it would be improper for me to express a view, and I would not reach a conclusion regarding any issue like that before going through the whole judicial process that I described.

I asked Judge Sotomayor during her hearing whether, if not bound by Second Circuit or Supreme Court precedent, on whether second amendment rights should be considered "fundamental rights," she would keep an open mind in evaluating that legal question. Her response to me was straightforward. She said:

You asked me whether I have an open mind on that question. Absolutely.

She said:

I would not prejudge any question that came before me if I was a Justice on the Supreme Court.

She could not have gone any further without prejudging the question Justice Scalia's opinion in *Heller* left open, one that is currently pending before the Supreme Court.

In response to a question from Senator COBURN, Judge Sotomayor testified: "In the Supreme Court's decision in *Heller*, it recognized an individual's right to bear arms as a right guaranteed by the Second Amendment. . . . The *Maloney* case presented a different question. That was whether that individual right would limit the activities that States would do to limit the regulation of firearms." Judge Sotomayor also told Senator COBURN at the hearing: "I can assure your constituents that I have a completely open mind on this question. I do not close my mind to the fact and the understanding that there were developments after the Supreme Court's rulings on incorporation that will apply to this question or be considered."

In response to a question from Senator SESSIONS on how she would come down on the question of incorporation of the Second Amendment, Judge Sotomayor testified: "I have not prejudged the question that the Supreme Court left open in *Heller* . . . of whether this right should be incorporated against the States or not." She also answered Senator SESSIONS' questions about the panel decision in *Maloney*:

Well, when the Court looks at that issue, it will decide if it incorporated or not. And it will determine by applying the test that it has subsequent to its old precedent, whether or not it is fundamental and hence, incorporated. But the *Maloney* decision was not addressing the merits of that question. It was addressing what precedent said on that issue.

The only other case in which Judge Sotomayor was involved as an appellate judge involving a Second Amendment contention was a case in which an illegal alien was convicted of distribution and possession with intent to distribute approximately 1.2 kilograms of "crack" cocaine and of illegal possession of a firearm while an illegal alien. In that case, *United States v. Sanchez-Villar*, decided in 2004—before the Supreme Court's decision in *Heller*—involved an attempt to overturn a jury conviction. The defendant in that case claimed he had received ineffective assistance from his lawyer because his possession of the firearm in New York did not provide probable cause for seizure and arrest was rejected by a unanimous panel of the Second Circuit. The Second Circuit unanimously rejected this claim. In so doing, the panel quoted in a footnote to language from an earlier Second Circuit decision decided before *Heller* or *Maloney*. This is not unlike a number of cases in which Judge Sotomayor has upheld police actions when undertaken in good faith.

So I am disappointed by recent news accounts that the National Rifle Association has decided to "score" the vote

on confirming Judge Sotomayor to the Supreme Court. They did this in response to pressure from the Republican leader. In fact, this is the first time in the history of the NRA that it has "scored" a Supreme Court confirmation vote. The irony of this is, if she had been nominated by a Republican President, they would all be supporting her with her record.

Madam President, I ask unanimous consent to have printed in the RECORD, at the conclusion of my statement, a copy of the July 24 letter from four members of the Congressional Hispanic Caucus, who have consistently earned high ratings from the NRA, to the NRA's executive vice president and executive director.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LEAHY. Congressmen JOE BACA, SOLOMON ORTIZ, SILVESTRE REYES, and JOHN SALAZAR wrote:

[W]e are disappointed by the NRA's opposition to the nomination of Judge Sonia Sotomayor to the U.S. Supreme Court. It is not merited by either Judge Sotomayor's record or hearing testimony.

In their letter, they point out that at her hearing Judge Sotomayor "emphasized that she has an 'open mind' on the question of incorporation and 'has not prejudged' the issue."

In fact, they said:

Judge Sotomayor has said more than either of the two previous Supreme Court nominees about the Second Amendment—specifically, she said that it confers an individual right, as recognized by the Supreme Court in its *Heller* decision.

The letter continues: "Even more troubling, it appears you are holding Judge Sotomayor to a different standard than you held Judges Roberts and Alito when they were nominated to the Court, or for that matter, any previous nominee to the Court. The double standard you have set for Judge Sotomayor is a disservice to all members of the NRA, particularly those who are Hispanic" and that "we are mystified as to why the NRA is characterizing Judge Sotomayor as hostile to the rights of gun owners and evaluating Judge Sotomayor by a different standard than that to which you have held previous Supreme Court nominees."

I think it is a double standard. When Justices Roberts and Alito were nominated by a Republican President, Republicans did not have this standard. When this woman was nominated by a Democratic President, suddenly they change the standard. All I am saying is, they ought to follow the same standards they followed when President Bush nominated the two men he did now, when President Obama has nominated this woman to the Supreme Court.

Madam President, I ask unanimous consent to have printed in the RECORD letters of support for Judge Sotomayor from a large number of prosecutors, including the National District Attorneys Association.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL BLACK  
PROSECUTORS ASSOCIATION,  
Chicago, IL, July 9, 2009.

Senator PATRICK J. LEAHY,  
Chairman, Senate Judiciary Committee, Russell  
Senate Office Bldg., Washington DC.

Senator JEFF SESSIONS,  
Ranking Member, Senate Judiciary Committee,  
Russell Senate Office Bldg., Washington  
DC.

DEAR SENATORS LEAHY AND SESSIONS: On behalf of the National Black Prosecutors Association, representing local, state and Federal African American prosecutors, it is my pleasure to endorse the nomination of Judge Sonia Sotomayor to the position of Associate Justice of the United States Supreme Court. It is noteworthy to mention that she will be this nation's third female and first Latina United States Supreme Court Justice. I highlight Justice Sotomayor's gender and ethnicity only to point out that it is shocking that in its 220 year history, the United States Supreme Court has previously had only two female justices, and never a Hispanic justice. It is well overdue that qualified female nominees of varying ethnicities be seriously considered for service on the United States Supreme Court.

Despite the adversity of being diagnosed with Type I diabetes and shortly thereafter losing her father at the age of nine, Judge Sotomayor was a scholastic achiever throughout her elementary and high school years. While at Princeton University, she fought for increased opportunities for Puerto Rican students and to diversify the University's faculty and curriculum. After graduating summa cum laude, she entered Yale Law School, where she became the editor of the Yale Law Journal.

We applaud Judge Sotomayor's distinguished career in public service, which began with her service as a Manhattan Assistant District Attorney. As a trial attorney, Judge Sotomayor honed her skills, gaining firsthand experience with the real world of crime, pursuing justice for the victims of violent crimes. She was firm but fair as a United States District Court Judge, exhibiting a great respect and understanding of the United States Constitution and its application in the twenty-first century. The opinions she has authored since becoming a judge on the Court of Appeals in 1997 clearly show that she respects the law and hews close to precedent. Judge Sotomayor's opinions are marked by a clear recitation of the facts and lengthy recitation of the law that she believed to be applicable to the case. In short, Judge Sotomayor's opinions are akin to a road map; one can easily discern where she started in her analysis, where she ended up, and how she got there. This is all one can ask from an impartial jurist; not that you will always agree with the conclusion of a justice, but that issues, arguments and parties will receive a fair hearing, and the final determination can be easily tracked and understood.

Judge Sonia Sotomayor's background, life experiences, and accomplishments despite the odds are compelling to say the least. Her intellect, respect for the law and ability to be impartial more importantly would mean that this country would have a Supreme Court Justice that would, without hesitation, examine issues and reach conclusions based on an interpretation of the law and constitutional principles. This country needs a Justice is sensitive to the law's impact on everyday life.

Sincerely,

CARMEN M. LINEBERGER,  
President.

JULY 2, 2009.

Hon. PATRICK J. LEAHY,  
Chairman, U.S. Senate Committee on the Judiciary,  
Dirksen Senate Office Building, Wash-  
ington, DC.

Hon. JEFF SESSIONS,  
Ranking Member, U.S. Senate Committee on the  
Judiciary, Dirksen Senate Office Building,  
Washington, DC.

DEAR SENATORS: As former colleagues of the Honorable Sonia Sotomayor during her years as a prosecutor in the Office of the New York County District Attorney, we write to express our wholehearted support for her nomination to the United States Supreme Court.

We served together during some of the most difficult years in our City's history. Crime was soaring, a general sense of disorder prevailed in the streets, and the popular attitude was that increasing violence was inevitable. It was in this setting that Sonia decided to start her career, not in a judge's chambers or at a high-powered law firm, but rather in the halls of New York's Criminal Courts, as an assistant district attorney.

She began as a "rookie" in 1979, working long hours prosecuting an enormous caseload of misdemeanors before judges managing overwhelming dockets. Sonia so distinguished herself in this challenging assignment that she was among the very first in her starting class to be selected to handle felonies. She prosecuted a wide variety of felony cases, including serving as co-counsel at a notorious murder trial. She developed a specialty in the investigation and prosecution of child pornography cases. Throughout all of this, she impressed us as one who was singularly determined in fighting crime and violence. For Sonia, service as a prosecutor was a way to bring order to the streets of a City she dearly loves. At the same time, she had an abiding sense of justice that spoke of the traditions of an Office headed by Thomas Dewey, Frank Hogan and Robert Morgenthau.

Few of us can forget her careful and painstaking jury selection. As diligently as she prepared her cases, she also readied her juries to evaluate the evidence and apply the facts to the law as they were instructed by the judge. As any trial lawyer knows, this is no easy task. Sonia emphasized that it is both a privilege and a duty to sit on a case, and jurors must do so without bias or prejudice.

We are proud to have served with Sonia Sotomayor. She solemnly adheres to the rule of law and believes that it should be applied equally and fairly to all Americans. As a group, we have different world views and political affiliations, but our support for Sonia is entirely non-partisan. And the fact that so many of us have remained friends with Sonia over three decades speaks well, we think, of her warmth and collegiality.

We urge all Senators to approve Sonia's nomination, as our country will be better off with Judge Sotomayor sitting on our nation's highest court.

Thank you for your consideration.

Sincerely,

Steven M. Rabinowitz, Marc J. Citrin,  
John W. Fried, Thomas Demakis,  
Rubie A. Mages, John Lenoir, Ted  
Poretz, Mike Cherkasky, Joseph  
Ortego, Steven Fishner.

Irving Hirsch, Jerry Neugarten, Fred  
Biesecker, Annette Sanderson, Jackie  
Hilly, Jessica DeGrazia, Maureen  
Barden, Deborah Veach, Vivian Berger,  
Maurice Mathis.

Susan Gliner, Elizabeth Lederer, Frank  
Munoz, Isabelle Kirshner, Richard  
Girgenti, Peter Kougasian, Nancy  
Gray, Jason Dolin, William Tendy,  
Patrice M. Davis.

Jose Diaz, Scott Sherman, Peter  
Zimroth, James Warwick, Stephen L.  
Dreyfuss, Consuelo Fernandez, Jeff  
Schlanger, Richard H. Girgenti, John  
Moscow, Eugene Porcarco, Kim H.  
Townsend.

NATIONAL DISTRICT ATTORNEYS  
ASSOCIATION,  
Alexandria, VA, June 8, 2009.

Hon. PATRICK LEAHY,  
Chairman,

Hon. JEFF SESSIONS,  
Ranking Member,  
Senate Committee on the Judiciary, Wash-  
ington, DC.

DEAR SENATOR LEAHY AND RANKING MEM-  
BER SESSIONS: On behalf of the National Dis-  
trict Attorneys Association, the oldest and  
largest organization representing America's  
state and local prosecutors, we offer our full  
support for the nomination of the Honorable  
Sonia Sotomayor to become the next Asso-  
ciate Justice of the United States Supreme  
Court.

Because state and local prosecutors handle  
95 percent of the criminal prosecutions na-  
tionally, rulings by the Supreme Court have  
far-reaching, serious impacts upon criminal  
cases in state courthouses across the coun-  
try. As former prosecutors yourselves, you  
have a unique appreciation of our concerns.

We practice where the law is truly tested:  
not in the deliberative atmosphere of an ap-  
pellate courtroom, but on the streets where  
police must make split-second choices in  
dangerous situations and in trial court sit-  
uations that sometimes give prosecutors and  
police only a moment to analyze and react.  
It is important to the National District At-  
torneys Association, and to the tens of thou-  
sands of prosecutors we represent, that the  
next Supreme Court justice be well steeped  
in the law and its practical applications.

I have had the opportunity to review the  
judicial record of Judge Sotomayor, particu-  
larly in areas important to prosecutors such  
as criminal and constitutional law. Through  
her rulings, Judge Sotomayor reveals a deep  
understanding of the law. As a prosecutor, I  
find her to employ a thoughtful analysis of  
legal precedent and the rule of law and apply  
that law to the specific facts of each case.

Just as important as her sophisticated  
knowledge of the law, as a former prosecutor  
and trial court judge Judge Sotomayor dis-  
plays an understanding of the impact of  
those laws on law enforcement, victims and  
defendants. In interviews with prosecutors  
who served with Judge Sotomayor in the  
Manhattan District Attorney's office, Judge  
Sotomayor has often been described as a  
"tough and fearless" prosecutor. She vigor-  
ously and effectively prosecuted child por-  
nographers, murderers, burglars and many  
other "street crimes" in the heart of New  
York City. She worked closely with law en-  
forcement, deconstructed complex crimes,  
interviewed witnesses and investigated  
crime scenes. That kind of legal experience,  
combined with her 17 years on the federal  
bench, provide Judge Sotomayor with unique  
and unprecedented qualifications to be on  
the Supreme Court.

Judge Sotomayor's depth of experience  
with all aspects of the law—as a prosecutor,  
a private litigator, a District Court Judge  
and as a Federal Judge—has made her into  
an exemplary judge and an outstanding  
nominee to serve on our nation's highest  
court. She possesses wisdom, intelligence  
and a real world training that would bring  
important insight to Supreme Court de-  
cisions. The National District Attorneys Asso-  
ciation believes that Judge Sotomayor would  
be a welcome addition to the Supreme Court.

We are happy to offer our full support for  
Judge Sotomayor's nomination to serve as a

Supreme Court Associate Justice and encourage her swift nomination by the Senate.

Sincerely,

JOSEPH I. CASSILLY,  
President.

JULY 10, 2009.

Hon. PATRICK LEAHY,  
Chairman, Committee on the Judiciary,  
U.S. Senate, Washington, DC.

Hon. JEFF SESSIONS,  
Ranking Minority Member,  
Committee on the Judiciary,  
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: On behalf of the Association of Prosecuting Attorneys (APA), we offer our support to the Honorable Sonia Sotomayor's nomination to become the next Associate Justice of the United States Supreme Court. APA is a national "think tank" that represents all prosecutors and provides additional resources such as training and technical assistance in an effort to develop proactive innovative prosecutorial practices that prevent crime, ensures equal justice and makes our communities safer.

Judge Sotomayor's proven record as a prosecutor, private litigator, District Court Judge and Federal Appellate Judge has shown her dedication to the law, equality of justice and ensuring safer communities. Her distinguished tenure as a Federal District Court Judge would bring additional insight about the trial process to the Supreme Court.

Judge Sotomayor, with her trial experience as both a trial judge and prosecutor, would bring practical experience to the highest court in the land. Therefore, the APA fully supports Judge Sotomayor's nomination to the Supreme Court and we urge her confirmation.

Respectfully submitted,

GLENN F. IVEY,  
Chairman of the  
Board of Directors,  
Association of Prosecuting Attorneys.

DAVID R. LABAHN,  
President and CEO,  
Association of Prosecuting Attorneys.

Mr. LEAHY. Madam President, I ask unanimous consent to have printed in the RECORD letters of support for Judge Sotomayor from a broad cross section of law enforcement agencies, including the National Association of Police Organizations, the National Sheriffs' Association, and the Sheriff of the Los Angeles County Sheriff's Department.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION  
OF POLICE ORGANIZATIONS, INC.,  
Alexandria, VA, June 5, 2009.

Re Endorsement of Judge Sonia Sotomayor for the United States Supreme Court.

Hon. PATRICK LEAHY,  
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. JEFF SESSIONS,  
Ranking Member, Committee on the Judiciary,  
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: On behalf of the National Association of Police Organizations (NAPO), representing more than 241,000 law enforcement officers throughout the United States, I am writing to advise you of our endorsement of the nomination of Judge Sonia Sotomayor for the United States Supreme Court.

Throughout her distinguished career spanning three decades, Judge Sotomayor has worked at almost every level of our judicial system, giving her a depth of experience and knowledge that will be valuable on our nation's highest court. After five years as the Assistant District Attorney in Manhattan, she went into private practice in 1984 to become a corporate litigator. In 1991, she began her career as a federal judge with her nomination to the United States District Court by President Bush. In 1992, she was promoted to the United States Appeals Court for the Second Circuit by President Clinton, where she has served for the past eleven years.

Through her years of trial experience as an Assistant District Attorney, Judge Sotomayor gained an understanding of what law enforcement officers go through day to day in their jobs. Her familiarity with criminal procedure and qualified immunity are evident in the rulings and findings she has issued during her seventeen year career as a federal judge. Judge Sotomayor has shown that as a jurist she has a keen awareness of the real-world implications of judicial rulings, an important aspect when it comes to evaluating the actions of law enforcement officers and to keeping officers and the communities they serve safe.

As a Supreme Court Justice, NAPO believes Judge Sotomayor's extensive experience in the judicial system and the knowledge she has gained as a prosecutor and judge will serve our nation well. Therefore, we urge you to confirm the nomination of Judge Sonia Sotomayor for the United States Supreme Court. If you have any questions, please feel free to contact me, or NAPO's Executive Director, Bill Johnson.

Sincerely,

THOMAS J. NEE,  
President.

NATIONAL SHERIFFS' ASSOCIATION,  
Alexandria, VA, June 8, 2009.

Hon. PATRICK J. LEAHY,  
Chair,  
Hon. JEFF SESSIONS,  
Ranking Member,  
Senate Judiciary Committee,  
Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: On behalf of the National Sheriffs' Association, we are writing to express our support for the nomination of Sonia Sotomayor to be the Associate Justice of the United States Supreme Court.

As you know, in most jurisdictions, sheriffs have several responsibilities in the criminal justice system including law enforcement and the administration of our jails. Because of the sheriff's role in enforcing the law and administering the jails, there are many occasions where the sheriffs duties are directly impacted by the actions of the United States Supreme Court. Sheriffs across the country can recite examples in our communities, where criminals have gone free because of technicalities. In many cases, an overriding problem for law enforcement throughout the United States has been the courts—on the federal, state and local level.

Because of the critical role that the court plays in our criminal justice system, the National Sheriffs' Association is urging the Senate to confirm Judge Sotomayor who we believe has the qualifications, judicial philosophy and commitment to interpreting the Constitution with an abiding sense of fairness and justice.

Judge Sonia Sotomayor's real world experience as a prosecutor who pursued justice for victims of violent crimes as well as a federal judge at both the district and circuit court levels with an unassailable integrity make her an ideal nominee to serve on the Supreme Court. We believe her judicial phi-

losophy in criminal justice to be sound and support her common sense approach in reviewing criminal cases.

As one of the largest law enforcement organizations in the nation, the National Sheriffs' Association is calling on the United States Senate to approve Sonia Sotomayor to be the next Associate Justice of United States Supreme Court.

Respectfully,

SHERIFF DAVID A. GOAD,  
President.  
AARON D. KENNARD,  
Executive Director.

COUNTY OF LOS ANGELES,  
SHERIFF'S DEPARTMENT HEADQUARTERS,  
Monterey Park, CA, July 7, 2009.  
Reconfirmation of Judge Sonia Sotomayor to the United States Supreme Court.

Hon. PATRICK LEAHY,  
Chairman, Senate Committee on the Judiciary,  
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: As Sheriff of the Los Angeles County Sheriff's Department, which is the largest Sheriff's Department in the country in one of the most diverse counties in the world, I support the confirmation of Judge Sonia Sotomayor as a United States Supreme Court Associate Justice and, respectfully, urge your Committee to support her nomination.

As you know, Judge Sotomayor has had the gamut of legal experience beginning with her legal education from Yale University. Judge Sotomayor's work as an Assistant District Attorney for the New York County District Attorney's Office and her work in private practice, led to her nomination by President George H.W. Bush to the United States District Court for the Southern District of New York, for which she was confirmed by the United States Senate. She served in that capacity until President Bill Clinton nominated her to the United States Court of Appeals for the Second Circuit, followed by her second Senate confirmation.

Judge Sotomayor possesses all the traits important for service on the United States Supreme Court. Her educational background, diverse legal experience, and personal story have all contributed to her current success and will continue to positively shape her future on the United States Supreme Court.

Judge Sotomayor is an excellent nominee for Associate Supreme Court Justice. I am confident that confirmation of her nomination would be a great step forward for our Supreme Court and our Country. Thank you for your service to our Country and making these critical decisions that profoundly impact our Democracy. Should you have any questions, do not hesitate to contact me.

Sincerely,

LEROY D. BACA,  
Sheriff.

NATIONAL LATINO  
PEACE OFFICERS ASSOCIATION,  
Santa Ana, CA, May 26, 2009.  
Re Honorable Sonia Sotomayor.

President BARACK OBAMA,  
The White House,  
Washington, DC.

DEAR MR. PRESIDENT: I am writing on behalf of the men and women of the National Latino Peace Officers Association (NLPOA) to unanimously support the appointment of the Honorable Sonia Sotomayor, Judge with the United States Court of Appeals for the Second District, as the next Justice of the Supreme Court of the United States.

The NLPOA supports Judge Sonia Sotomayor because she has a long and distinguished career on the federal bench as well as having the depth and breadth of legal experience of all levels of the judicial system. She brings a lifelong commitment to



equality, justice, and opportunity, and has earned the respect of all her colleagues being in one of the most demanding appeals circuits in America; the Second Circuit.

She brings excellent credentials to this position, with a Juris Doctorate from Yale Law and completing her undergraduate work at Princeton, graduating *summa cum laude*. With over 30 years experience in handling a wide range of substantial civil and criminal cases, Judge Sotomayor has a distinguished record of professional accomplishments as judge, prosecutor, and community leader.

The NLPOA enthusiastically supports Judge Sonia Sotomayor as the next Supreme Court Justice of the United States of America.

If you have a need for additional information please feel free to contact me.

Respectfully,

ART ACEVEDO,  
National President.

NEW YORK STATE LAW ENFORCEMENT COUNCIL

The New York State Law Enforcement Council congratulates President Obama on his nomination of Judge Sonia Sotomayor to the United States Supreme Court. Judge Sotomayor is well known to us from her career as a prosecutor and as a federal judge. She is an extremely able jurist and an exceptional individual. The interests of the nation will be well served when she assumes her seat on the Supreme Court.

WASHINGTON, DC,  
June 8, 2009.

Hon. PATRICK LEAHY, Chairman,  
Hon. JEFF SESSIONS, Ranking Member,  
Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATORS LEAHY AND SESSIONS, I am writing in support of President Obama's nomination of Judge Sonia Sotomayor to serve as associate justice of the Supreme Court of the United States. I believe that Judge Sotomayor's inspiring life story, and especially her experience as a prosecutor in New York City, where I spent most of my career, demonstrate a strength of character that will serve her well on our nation's highest court.

Judge Sotomayor grew up in a housing project in the South Bronx. I patrolled the streets of the South Bronx in the 1970s and know what a tough environment that was. I did not have the privilege of working with Assistant District Attorney Sotomayor, but recently I have spoken to several of my colleagues who did work with her, and they give her nothing but rave reviews. They were impressed with her intelligence, her strong work ethic, and her fierce determination to prosecute criminals, and they use words like "salt of the earth" to describe her.

I believe it is important to note that in the questionnaire that she filled out for the Judiciary Committee, Judge Sotomayor included several criminal cases from her years as a prosecutor in a list of the 10 litigated matters in her career that she considers "most significant." These include the case of the so-called "Tarzan murderer," as well as a child pornography case that Ms. Sotomayor pursued relentlessly when others seemed to consider it a low priority.

Like many others, I have been inspired by Judge Sotomayor's personal story. Through hard work and determination, she earned degrees from Princeton and the Yale Law School. After getting her law degree, she could have cashed in at a blue-chip law firm, but she chose instead to take a low-paid position in the Manhattan District Attorney's office, where she gained priceless real-world experience that cannot help but inform her judgment as she decides criminal cases that come before her.

Sonia Sotomayor went out of her way to stand shoulder to shoulder with those of us in public safety at a time when New York City needed strong, tough, and fair prosecutors. I am confident that she will continue to bring honor to herself, and now to the Supreme Court, when she is confirmed for this critically important position.

Thank you for your consideration.

Sincerely,

JOHN F. TIMONEY,  
Chief of Police, Miami, Florida,  
President, Police Executive Research Forum.

Mr. LEAHY. I urge each Senator to vote his or her own conscience in connection with this historic nomination.

EXHIBIT 1

CONGRESS OF THE UNITED STATES,  
Washington, DC, July 24, 2009.

WAYNE LAPIERRE,  
Executive Vice President, National Rifle Association of America, Fairfax, VA.

CHRIS COX,  
Executive Director, National Rifle Association of America, Fairfax, VA.

DEAR MESSRS. LAPIERRE AND COX: As Members of Congress whose strong support for the rights of gun owners has earned us consistently high ratings from the NRA, we are disappointed by the NRA's opposition to the nomination of Judge Sonia Sotomayor to the U.S. Supreme Court. It is not merited by either Judge Sotomayor's judicial record or hearing testimony. Even more troubling, it appears that you are holding Judge Sotomayor to a different standard than you held Judges Roberts and Alito when they were nominated to the Court, or for that matter, any previous nominee to the Court. The double standard you have set for Judge Sotomayor is a disservice to all members of the NRA, particularly those who are Hispanic.

We support the confirmation of Judge Sotomayor. She is eminently qualified by her experience as a prosecutor, district judge and 12 years on the Second Circuit Court of Appeals. Her judicial record is one marked by modesty and restraint, prompting the New York Times to write that her "judicial opinions are marked by diligence, depth and unflashy competence" and are "models of modern judicial craftsmanship, which prizes careful attention to the facts in the record and a methodical application of layers of legal principles." (Adam Liptak, "Nominee's Rulings Are Exhaustive But Often Narrow," May 26, 2009). And we believe that the historic act of putting the first Hispanic Justice on the Court, particularly one so well qualified for the job, is an important step for our country.

Judge Sotomayor has said more than either of the two previous Supreme Court nominees about the Second Amendment—specifically, she said that it confers an individual right, as recognized by the Supreme Court in its *Heller* decision. Judge Sotomayor was then asked repeatedly to discuss her position on incorporation, even though there is now a circuit split on the issue and there are petitions pending asking the Supreme Court to take the issue. Judges are prohibited by ABA rules from commenting on pending cases, making it inappropriate for Judge Sotomayor to state a definitive view. Nonetheless, at the hearing on her nomination, she emphasized that she has an "open mind" on the question of incorporation and has "not prejudged" the issue.

Conversely, when now-Chief Justice Roberts testified at his confirmation hearing facing a similar circuit split prior to the *Heller* decision on the issue of the individual right to bear arms, he declined to discuss the issue at all, saying only: "That's sort of the issue that's likely to come before the Su-

preme Court when you have conflicting views." And now-Justice Alito was not even asked a question about the subject. Yet the NRA voiced no opposition to these candidates who were less forthcoming on issues of importance to us.

Your letter cites two cases as evidence that Judge Sotomayor is hostile to the Second Amendment. Your analysis of those cases is either mistaken or deliberately misleading.

United States v. Sanchez-Villar, on which Judge Sotomayor was a member of the panel, was decided in 2004, four years before the Supreme Court's landmark decision in *District of Columbia v. Heller*. That decision was consistent not just with 2nd Circuit precedent, but with the weight of authority at the time; in 2004, every circuit but the Fifth that had considered the question had similarly concluded that the Second Amendment did not protect an individual right. Your letter fails to mention either fact.

Your characterization of *Maloney v. Cuomo* is similarly erroneous. First, *Maloney* did not involve firearms at all. The degree to which it was not considered an important case at the time can be gleaned from the fact that no outside entity or organization, including the NRA, filed an amicus brief in that case, in contrast to the multiple amici filed in *National Rifle Association v. City of Chicago*.

Second, the *Maloney* court did not reject the concept of incorporation; it recognized the prerogative of the Supreme Court, which in *Heller* explicitly did not overrule prior precedent on incorporation. The panel wrote, "[w]here, as here, a Supreme Court precedent has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to the Supreme Court the prerogative of overruling its own decisions."

Two of the most renowned conservative jurists in the country, Judges Posner and Easterbrook of the Seventh Circuit Court of Appeals, recently endorsed the Second Circuit panel opinion in *Maloney*. In *National Rifle Association v. City of Chicago*, Judge Easterbrook's opinion explicitly stated that the court "agree[d] with *Maloney*."

Even Mr. Maloney himself said the decision in this case was appropriate: "I did not expect to win . . . it was clear to me that they had a very solid basis for saying that the Second Amendment is not incorporated and that essentially they are powerless to do anything about it, they had a defensible position there." Mike Pesca, "High Court May Review Personal Weapons Ruling," NPR Legals Affairs, June 1, 2009.

In conclusion, we are mystified as to why the NRA is characterizing Judge Sotomayor as hostile to the rights of gun owners and evaluating Judge Sotomayor by a different standard than that to which you have held previous Supreme Court nominees. We are concerned that your opposition will alienate Hispanic NRA members and dismayed that you may unnecessarily force some well-intentioned Senators to choose between disappointing the NRA or infuriating their Hispanic constituents. We hope that you will reconsider your position on Judge Sotomayor.

Sincerely,

JOE BACA,  
SILVESTRE REYES,  
SOLOMON P. ORTIZ,  
JOHN T. SALAZAR.

Mr. LEAHY. Madam President, I see Senator LINCOLN on the floor, one of my most distinguished colleagues, and I yield to her.

The ACTING PRESIDENT pro tempore. The Senator from Arkansas.

Mrs. LINCOLN. Madam President, I thank the chairman of the Judiciary Committee. He is a good and trusted friend, and I appreciate all the hard work he and all of our colleagues on the Judiciary Committee have done and all the efforts they have put into this nomination and hearing process.

I rise today to discuss what I think is one of the most consequential and long-lasting decisions in the duties a Senator can perform under the Constitution—the confirmation of a U.S. Supreme Court Justice. It is a rare practice, so rare, in fact, that my consideration of the nomination of Judge Sonia Sotomayor will mark only the third Supreme Court nomination I will have considered since I was first elected to the Senate in 1998.

Even though the President today making this Supreme Court nomination has changed from the previous two nominees, as the chairman of the Judiciary Committee has mentioned, my standards and the standards of any of us for evaluating a nominee have not changed, nor should they have changed.

I believe the people of Arkansas, our great State, and certainly our Nation deserve a Supreme Court Justice who is able to interpret and apply the rule of law fairly without political favor or bias. Ensuring that a nominee meets this standard is an obligation I have sworn to uphold as a Senator and, moreover, is the standard I expect for a lifetime appointment to our Nation's highest Court.

In making my decision about Judge Sotomayor, I have taken a number of factors into account in evaluating her qualifications for serving on our Nation's highest Court.

First among these are the opinions of my constituents in my home State of Arkansas, including those in the legal community. I have heard from a number of Arkansans who have expressed strong support for Judge Sonia Sotomayor, emphasizing her unique background, impressive resume, and solid judicial record.

I also gained a lot of insight when we met at length in June. I was able to learn firsthand about who she is as a person, her temperament, and her unique life experiences—all of which I believe will help give her the ability to give every litigant who comes before the Supreme Court a fair shake.

Arkansans can readily identify with her because Judge Sotomayor is no stranger to hard work. She was born in New York, and is the daughter of parents who came to the United States from Puerto Rico. After her father died, when she was young, Judge Sotomayor was raised by her mother, a nurse, a hard-working woman with tremendous values. She went on to become valedictorian of her high school, a member of Phi Beta Kappa at Princeton, and editor of the Law Review at Yale Law School.

She has a breadth of professional experience, having served as an assistant

district attorney and in private practice before beginning her 17 years serving as a Federal judge. She has a long history, and, again, one that starts with hard work and dedication to hard work.

Arkansas is known for its ability to grow self-made Americans, and those are Americans who are no strangers to hard work. They understand what is involved in putting into who you are, and what you are trying to become, and what it is you want to achieve on behalf of others.

Judge Sotomayor even told me in our personal meeting that she had entered her practice in real estate and business law because she had a great appreciation for business and the industries of this great country and she wanted to increase her knowledge of corporate law and broaden her experience.

Moreover, I was impressed during our meeting with her eagerness to learn more about Arkansas and her attentiveness to what issues were most important to my constituents in my home State of Arkansas.

The Senate Judiciary Committee hearings also provided me with an opportunity to learn about her record and judicial philosophy. I was able to monitor the hearings and watch her performance under intense scrutiny and pressure, and I was impressed with her knowledge, her composure, and her candor.

Given the weight of this decision and the responsibilities I have to my constituents and my country, I have carefully examined the information available about Judge Sotomayor's nomination and am ready to announce I will support Judge Sonia Sotomayor for the U.S. Supreme Court.

I have confidence, as she made clear through the committee hearings, that she understands a judge's obligation is first and foremost a "fidelity to the law."

As the chairman of the Judiciary Committee mentioned earlier, I was raised as an avid duck hunter and a gun owner. Gun ownership is a unique part of my State's heritage. I was pleased to hear Judge Sotomayor made a promise before the Senate Judiciary Committee to have an open mind on the issue of the second amendment and to understand what it means in terms of our rights as American citizens.

In response to questioning, Judge Sotomayor expressed caution in declaring how she would rule on an unsettled constitutional issue likely to come before the Supreme Court before hearing the arguments and studying the opinions before her. I would have been concerned about a nominee who had already made up their mind about an unsettled legal issue that is likely to come before the Court. Her responsibility is to not come in there prejudging or predetermined in her decisions, but to come to the Court with an open mind.

Based on her substantial record, serving on two courts, I am satisfied Judge

Sotomayor will give future cases involving the second amendment and the rights of Americans to own firearms for recreation and self-protection a very fair hearing. I am also satisfied that her past rulings on these issues follow precedent and fall within the judicial mainstream.

And I think Senator SESSIONS mentioned some of that in his comments in terms of being judicial mainstream.

Overall, I appreciated Judge Sotomayor's approach to the judiciary hearings and her willingness to respond to questions from Senators on both sides of the aisle on many important topics.

Based on her answers, I believe Judge Sotomayor cares more about following the law and maintaining the respect for the judiciary than she does about politics and ideology.

As Judge Sotomayor stated:

The task of a judge is not to make law. It is to apply the law.

Finally, I have again searched my conscience and reflected on my principles as a Senator for the people of the great State of Arkansas, using my experiences as a legislator both here and in the House of Representatives and also as a farmer's daughter, my experience as a wife, a mother, a neighbor, to evaluate a decision of such great weight.

It has become apparent to me Judge Sotomayor does meet the test to serve in our Nation's highest Court. I base this conclusion on the respect and support she has earned from those in my home State, colleagues on both sides of the aisle who know her well, on the evidence and the record from her own comments and those of her colleagues, that she has had an abiding respect for the Court's decisions, and that she understands the value of continuity in our law.

We also see the support from industry representatives, such as the Chamber of Commerce, as well as labor organizations. The Senate Judiciary Committee received a letter of support for Judge Sotomayor's nomination from the U.S. Chamber of Commerce, the world's largest business federation, representing businesses and organizations of every size, sector, and region.

The U.S. Chamber wrote, in their letter:

Pursuant to our long-standing endorsement policy, the Chamber evaluated Judge Sotomayor's record from the standpoint of legal scholarship, judicial temperament, and an understanding of business and economic issues. Based on the Chamber's evaluation of her judicial record, Judge Sotomayor is well-qualified to serve as an Associate Justice of the U.S. Supreme Court.

Her extensive experience both as a commercial litigator and as a trial judge would provide the U.S. Supreme Court with a much needed perspective on the issues that business litigants face. Consistent with her Senate testimony, the Chamber expects Judge Sotomayor to engage in fair and evenhanded application of the laws affecting American businesses.

Madam President, I ask unanimous consent that the letter to the Senate

Judiciary Committee from the Chamber of Commerce be printed in the RECORD.

There being no objection, the material was ordered to be printed in the Record, as follows:

CHAMBER OF COMMERCE  
OF THE UNITED STATES OF AMERICA,  
Washington, DC, July 23, 2009.

Hon. PATRICK J. LEAHY,

*Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.*

Hon. JEFF SESSIONS,

*Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, announced today its support of the nomination of Judge Sonia Sotomayor to serve on the U.S. Supreme Court. The Chamber urges members of the Senate Judiciary Committee to vote in favor of reporting Judge Sotomayor's nomination for consideration by the full Senate.

Pursuant to our long-standing endorsement policy, the Chamber evaluated Judge Sotomayor's record from the standpoint of legal scholarship, judicial temperament, and an understanding of business and economic issues. Based on the Chamber's evaluation of her judicial record, Judge Sotomayor is well-qualified to serve as an Associate Justice of the U.S. Supreme Court. Her extensive experience both as a commercial litigator and as a trial judge would provide the U.S. Supreme Court with a much needed perspective on the issues that business litigants face. Consistent with her Senate testimony, the Chamber expects Judge Sotomayor to engage in fair and evenhanded application of the laws affecting American businesses.

The Chamber urges your support of Judge Sonia Sotomayor as Associate Justice of the United States.

Sincerely,

R. BRUCE JOSTEN,  
*Executive Vice President,  
Government Affairs.*

Mrs. LINCOLN. Madam President, I do believe Judge Sotomayor will make an excellent Supreme Court Justice and she will give all who come before the Court on which she is poised to serve a fair hearing and the attention and respect they deserve. So in this very important decision that each of us as Senators must make, I am proud to be able to support her nomination.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Madam President, once again, the Senate is being called upon to do its constitutional duty to consider a nomination to the U.S. Supreme Court. Positions on the Supreme Court are hugely significant given their lifetime tenures and the impact of the Court's decisions on the lives of Americans. Our votes on Supreme Court nominees are among the most significant that we cast.

I commend Chairman LEAHY for the extraordinarily thorough and fair hearings the Judiciary Committee held on this nomination. It has given us a very extensive record upon which we can base our judgment. I have reviewed the nominee's qualifications, temperament, and background to determine if

she is likely to bring to the Court an ideology that distorts her legal judgment or brings into question her open-mindedness. I believe it is clear that Judge Sotomayor satisfies the essential requirements of open-mindedness and judicial temperament, and her decisions as a judge fall well within the mainstream of our jurisprudence.

Judge Sotomayor's judicial career has received bipartisan support. She was nominated first to the district court in the Southern District of New York by President George H.W. Bush. The Senate confirmed her nomination. President Clinton nominated Judge Sotomayor to be a circuit court judge, and the Senate overwhelmingly confirmed her nomination to that position.

The American Bar Association Standing Committee evaluated Judge Sotomayor and interviewed more than 500 judges, lawyers, law professors, and community representatives from across the United States. They analyzed Judge Sotomayor's opinions, speeches, and other writings. They read reports of Reading Groups comprised of recognized experts in the substantive areas of the law that they reviewed, and they conducted an in-depth personal interview of the nominee. In the words of the committee:

The Standing Committee's investigation of a nominee for the United States Supreme Court is based upon the premise that the nominee must possess exceptional professional qualifications. The significance, range, and complexity and nation-wide impact of issues that such a nominee will confront on the Court demands no less.

After that extensive investigation, the American Bar Association gave Judge Sotomayor their highest rating unanimously, rating her "well qualified."

Some colleagues have expressed concern over the differences in language and ideas they thought they observed in Judge Sotomayor while sitting as a judge in the courtroom and as a citizen outside the courtroom. For example, one colleague put it this way during Judge Sotomayor's confirmation hearing:

I want to ask your assistance this morning to try to help us reconcile two pictures that I think have emerged during the course of this hearing. One is, of course, as Senator SCHUMER and others have talked about, your lengthy tenure on the Federal bench as a trial judge and court of appeals judge. And then there's the other picture that has emerged that—from your speeches and your other writings.

Our colleague went on to say the following:

I actually agree that your judicial record strikes me as pretty much in the mainstream of judicial decision-making by district court judges and by court of appeals judges on the Federal bench.

And he said in conclusion then:

I guess part of what we need to do is to reconcile those—

Referring to the two different pictures he had.

Let's assume for a moment there is a difference between Judge Sotomayor's

rulings in the courtroom and those personal views she expressed outside of the courtroom. If so, aren't we looking for people who can apply the law on the bench, even if he or she has a different personal opinion? At the end of the day, we want our judges to leave their personal views outside of the courtroom. That is the essence of an impartial judiciary. In other words, Judge Sotomayor has demonstrated the very trait that she is accused by some of lacking: the ability to leave her personal opinions at the courthouse door.

The Congressional Research Service has analyzed Judge Sotomayor's record and has concluded the following:

Perhaps the most consistent characteristic of Judge Sotomayor's approach as an appellate judge has been an adherence to the doctrine of stare decisis (i.e. the upholding of past judicial precedents). Other characteristics appear to include what many would describe as a careful application of particular facts at issue in a case and a dislike for situations in which the court might be seen as overstepping its judicial role.

Well, that is the opposite of an activist judge imposing her views despite the law.

We all have personal views and sympathies. Some judges, regrettably, can't lay those aside when making their judicial calls. Judge Sotomayor has proven in her judicial career that she can, while faithfully applying the principles of the U.S. Constitution.

So today, once again, the U.S. Senate is being called upon to do its constitutional duty and consider a nomination to the U.S. Supreme Court. Positions on the Supreme Court are hugely significant given their lifetime tenures and the impact of the Court's decisions on the lives of Americans. Our votes on Supreme Court nominees are among the most significant that we cast.

Article II, section 2 of the Constitution simply provides that: "[The President] shall nominate, and by and with the Advice and Consent of the Senate shall appoint . . . Judges of the Supreme Court . . . Without specific constitutional guidance, each senator must determine what qualities he or she thinks a Supreme Court Justice should have, and what scope of inquiry is necessary to determine if the prospective nominee has these qualities.

This will be the twelfth Supreme Court nomination on which I will have voted. Each time, I have reviewed the nominee's qualifications, temperament and background to determine if the nominee is likely to bring to the court an ideology that distorts his or her legal judgment or brings into question his or her open-mindedness. I believe that Judge Sotomayor satisfies the essential requirements of open-mindedness and judicial temperament and her decisions as a judge fell well within the mainstream of our jurisprudence.

Judge Sotomayor graduated as valedictorian of her class at Blessed Sacrament and at Cardinal Spellman High School in New York. She continued to excel at Princeton University, graduating summa cum laude, and Phi Beta

Kappa. She was a corecipient of the M. Taylor Pyne Prize, the highest honor Princeton awards to an undergraduate. At Yale Law School, Judge Sotomayor served as an editor of the Yale Law Journal.

In her 30-year legal career, Judge Sotomayor has been a Federal circuit and trial court judge, a civil commercial litigator in private practice, and a State prosecutor. She served as an assistant district attorney in the New York County District Attorney's Office and later worked in private practice.

Judge Sotomayor's judicial career has received bipartisan support. During the 102nd Congress, President George H.W. Bush nominated Judge Sotomayor to be a district judge on the Southern District of New York. On August 11, 1992, the Senate confirmed her nomination.

During the 105th Congress, President Bill Clinton nominated Judge Sotomayor to be a circuit judge on the United States Court of Appeals for the Second Circuit. On October 2, 1998, the Senate confirmed her nomination by a vote of 67–29.

On May 26, 2009, President Obama nominated Judge Sotomayor to be Associate Justice of the Supreme Court to fill the seat left vacant by the departure of Justice David Souter. Recently, the American Bar Association Standing Committee evaluated Judge Sotomayor and interviewed more than 500 judges, lawyers, law professors and community representatives from across the United States; they analyzed Judge Sotomayor's opinions, speeches and other writings; read reports of reading groups comprised of recognized experts in the substantive areas of the law that they reviewed; and conducted an in-depth personal interview of the nominee. In the words of the committee:

The Standing Committee's investigation of a nominee for the United States Supreme Court is based upon the premise that the nominee must possess exceptional professional qualifications. The significance, range, complexity and nation-wide impact of issues that such a nominee will confront on the Court demands no less.

After that extensive investigation, the American Bar Association gave Judge Sotomayor their highest rating, unanimously rating her "well qualified."

Some colleagues have expressed concern over the differences in language and ideas they observed in Judge Sotomayor while sitting as a judge in the courtroom, and as a citizen outside of the courtroom. For example, one colleague put it this way during Judge Sotomayor's confirmation hearing,

I want to ask your assistance this morning to try to help us reconcile two pictures that I think have emerged during the course of this hearing. One is, of course, as Senator SCHUMER and others have talked about, your lengthy tenure on the federal bench as a trial judge and court of appeals judge.

And then there's the other picture that has emerged that—from your speeches and your other writings.

He further stated,

You know, I actually agree that your judicial record strikes me as pretty much in the mainstream of—of judicial decision making by district court judges and by court of appeals judges on the federal bench. And while I think what is creating this cognitive dissonance for many of us and for many of my constituents who I've been hearing from is that you appear to be a different person almost in your speeches and in some of the comments that you've made. So I guess part of what we need to do is to try to reconcile those.

Assume there is a difference between Judge Sotomayor's rulings in the courtroom, and those personal views she expressed outside of the courtroom. If so, aren't we looking for people who can apply the law on the bench, even if he or she has a different personal opinion? At the end of the day, we want our judges to leave their personal views outside of the courtroom. That is the essence of an impartial judiciary.

Senator GRAHAM pointed that out when he said,

Her speeches, [while troubling], have to be looked at in terms of her record. When we look at this 17-year record we will find someone who has not carried out that speech.

In other words, Judge Sotomayor has demonstrated the trait she is accused by some of lacking: the ability to leave her personal opinions at the courthouse door. She has an extensive judicial record and we have had the opportunity to review that record. The Congressional Research Service analyzed Judge Sotomayor's record and concluded:

Perhaps the most consistent characteristic of Judge Sotomayor's approach as an appellate judge has been an adherence to the doctrine of stare decisis (i.e., the upholding of past judicial precedents). Other characteristics appear to include what many would describe as a careful application of particular facts at issue in a case and a dislike for situations in which the court might be seen as overstepping its judicial role.

That is the opposite of an activist jurist imposing her views despite the law. During her confirmation hearing, Judge Sotomayor was asked about the role of the courts numerous times. Her response makes clear that she adheres to the responsibilities of a judge:

... look at my decisions for 17 years and note that, in every one of them, I have done what I say that I so firmly believe in. I prove my fidelity to the law, the fact that I do not permit personal views, sympathies or prejudices to influence the outcome of cases, rejecting the challenges of numerous plaintiffs with undisputably sympathetic claims, but ruling the way I have on the basis of law rejecting those claims. . . .

We all have personal views and sympathies. Some judges regrettably can't lay those aside. Judge Sotomayor has proven in her judicial career that she can, while faithfully applying the principles of the U.S. Constitution.

For these reasons, I will vote to confirm Judge Sotomayor to the Supreme Court.

Madam President, I ask unanimous consent that letters received by the Judiciary Committee from the AFL–CIO

and from AFSCME be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN FEDERATION OF LABOR  
AND CONGRESS OF INDUSTRIAL OR-  
GANIZATIONS,

Washington, DC, July 24, 2009.

DEAR SENATOR: On behalf of the AFL–CIO, I am writing to urge you to support the swift confirmation of Judge Sonia Sotomayor as our next Supreme Court Justice.

Judge Sotomayor fully acknowledges the real world consequences of judicial rulings, and throughout her career has demonstrated her understanding of the impact of the law on working families. She has also consistently interpreted our labor laws in the manner in which they were intended.

Judge Sotomayor has recognized that persecution for union activity can be a basis for granting asylum in this country. She has enforced the rights of workers to be free from all types of discrimination, to be paid correct wages, and to receive the health benefits to which they are entitled. In the baseball strike of 1995, Judge Sotomayor recognized that baseball owners had forced the strike by engaging in unlawful conduct and she issued an injunction that saved baseball.

Throughout her nomination hearing before the Senate Judiciary Committee, Judge Sotomayor demonstrated that she is a stellar jurist with a commitment to uphold the constitutional rights of all.

Judge Sonia Sotomayor would bring more federal judicial experience to the Supreme Court than any justice in the last 100 years. We urge the Senate to confirm her nomination to the Supreme Court.

Sincerely,

WILLIAM SAMUEL,  
Director,  
Government Affairs Department.

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOY-  
EES, AFL–CIO,

Washington, DC, July 21, 2009.

MEMBERS OF THE COMMITTEE ON JUDICIARY,  
U.S. Senate, Washington, DC.

DEAR SENATOR: On behalf of the 1.6 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing to urge you to vote yes when the Senate Judiciary Committee considers the nomination of Judge Sonia Sotomayor to the U.S. Supreme Court. We believe that she conducted herself with distinction during her confirmation hearing and that she should be confirmed as the next U.S. Supreme Court Justice.

Judge Sotomayor was impressive during her confirmation hearing, demonstrating that she is well-qualified to serve on the high court. Her successful appearance before the Judiciary Committee is no surprise when you consider her strong educational and professional background. She was valedictorian of her high school class, won a scholarship to Princeton and earned her law degree at Yale University where she served as editor of the Yale Law Review. Judge Sotomayor has served with distinction as a litigator, prosecutor, trial court and U.S. appellate judge and brings more federal judicial experience than any of the current members of the Supreme Court and than any Justice in the last century prior to their nomination to the high court.

As an organization representing working men and women, we obviously are interested in a judicial nominee's record on issues impacting the lives of working families. Judge Sotomayor has been consistent in her interpretation of labor laws and has worked to

preserve the rights of workers to receive fair pay, health benefits and to be free of workplace discrimination. She has proven that she is well within the mainstream with her views of the Constitution.

Judge Sotomayor's nomination marks a milestone, making her the first Hispanic and the first woman of color to be nominated to the high court, thereby fulfilling President Obama's promise to add diversity to the Supreme Court.

We strongly support the nomination of Judge Sonia Sotomayor to the U.S. Supreme Court and urge you to vote yes to confirm her.

Sincerely,

CHARLES M. LOVELESS,  
*Director of Legislation.*

Mr. LEVIN. Madam President, I yield the floor and note the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Madam President, the Judiciary Committee has received several letters and statements of support from organizations dedicated to advancing civil and women's legal rights, including LatinoJustice PRLDEF, the Alliance for Justice, and the National Women's Law Center. I ask unanimous consent that these letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LATINOJUSTICE, PRLDEF.

FORMER LATINOJUSTICE PRLDEF BOARD MEMBER JUDGE SONIA SOTOMAYOR NOMINATED TO THE U.S. SUPREME COURT

We congratulate former board member and present Federal Appeals Court Judge Sonia Sotomayor in being nominated to the U.S. Supreme Court.

The LatinoJustice PRLDEF family rejoices and congratulates President Obama for making the historic decision to nominate the first Latina to the Supreme Court. The president has not only chosen a well-qualified and respected judge who will be a great asset to the court and our nation—but with his first opportunity to nominate a Supreme Court Justice, the president brings the Hispanic community into the exclusive chambers of the highest court in the land.

"Sonia is a member of our family and spent more than a decade providing leadership to our organization, said Cesar Perales, LatinoJustice PRLDEF President and General Counsel. "We profited firsthand from her probing mind as well as her thoughtfulness beyond her extraordinary intellect. She is a most practical person who found solutions to complex issues."

Judge Sotomayor's nomination comes at a time when the Hispanic community is at the heart of a number of highly politicized issues and attacks on our civil liberties. LatinoJustice PRLDEF recently has fought battles against anti-immigration ordinances, a rash of hate crimes against Latinos and attempts to police the use of Spanish.

As the second largest and fastest growing population in America, with a large pool of qualified individuals to choose from, it was wholly appropriate for the president to nominate a Hispanic.

Although Judge Sotomayor has a stellar judicial record, many of her supporters are

expecting a fight from the right and from conservatives.

"We are prepared to engage those who would unfairly tarnish her reputation," Perales said. "The nation needs to know that LatinoJustice PRLDEF will come to her defense."

The Latino community will be looking to the Senate to proceed with the confirmation process in a fair and timely manner.

We expect that senators from both parties should treat Judge Sotomayor with the respect she deserves, examine her record thoughtfully, and perform their constitutional duty without undue delay or obstruction.

LatinoJustice PRLDEF has organized a Task Force made up of exemplary lawyers and academics to conduct a review of the nominee's published papers and decisions.

ALLIANCE FOR JUSTICE,  
*Washington, DC, July 9, 2009.*

Hon. PATRICK J. LEAHY,  
*Chairman, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC.*

Hon. JEFF SESSIONS,  
*Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: The Alliance for Justice endorses Judge Sonia Sotomayor's nomination to the Supreme Court. Alliance for Justice ("AFJ") is a national association of over 80 organizations dedicated to advancing justice and democracy. For 30 years we have been leaders in the fight for a more equitable society on behalf of a broad constituency of environmental, consumer, civil and women's rights, children's, senior citizens' and other groups. We believe all Americans have the right to secure justice in the courts and to have our voices heard when government makes decisions affecting our lives.

Judge Sotomayor has a record of academic and professional excellence, and we commend President Obama for choosing a brilliant and fair-minded jurist to serve on our nation's highest court. There is no question that Judge Sotomayor is eminently qualified to serve on the Supreme Court. Her rise from modest circumstances to become a graduate of Princeton University and Yale Law School speaks well of her intellect, character, and dedication. Her extensive career as a criminal and commercial litigator and her seventeen years on the bench as trial and appellate judge round out her sterling credentials.

Importantly, if confirmed, Judge Sotomayor will bring the perspective provided by being the only sitting justice to have served as a trial court judge. It will be enormously valuable to the Supreme Court to have a member with an understanding of the challenges that trial judges face and the way in which Supreme Court rulings are likely to play out on the front lines of the criminal justice system.

We also find it enormously important that throughout her career Judge Sotomayor has worked to open the legal profession to women and people of color. Through her involvement in community activities and as a mentor, she has shared her remarkable talents and example.

As part of AFJ's work to promote a fair and independent judiciary, we conducted a thorough analysis of Judge Sotomayor's judicial record, composed of the more than 700 opinions she has authored in a wide range of areas of law. We focused on four areas of her jurisprudence—access to justice; criminal law and procedure; constitutional and civil rights; and business and consumer litigation—each of which will be addressed in greater detail below. Judge Sotomayor is a careful jurist who digs into the facts of a case and issues narrow rulings. She has writ-

ten frequently in her opinions about the limited role of a judge, and she has approached change in the law in a very restrained and incremental fashion. A moderate voice who displays no signs of bias toward parties of any particular background or affiliation, Judge Sotomayor tends to avoid announcing new rules or issuing broad statements of principle. She does not consciously espouse a grand theory of interpretation or judicial philosophy. Judge Sotomayor shows deference to the intent of Congress and emphasizes close reading of statutory texts. Above all, her opinions adhere closely to Supreme Court and Second Circuit precedent, showing Judge Sotomayor's deep respect for the rule of law and the importance of stare decisis.

Judge Sotomayor's rulings on legal issues such as justiciability, preemption, jurisdiction-stripping, and sovereign immunity exemplify her cautious, technical approach to judicial review. They also demonstrate both judicial restraint and a commitment to access to federal courts. Taking a measured approach to questions of standing, she has consistently demonstrated fidelity to examining justiciability prerequisites before allowing a case to proceed. Attentive to issues of mootness and ripeness, Judge Sotomayor systematically works through alleged harms, identifies those that create an active case or controversy, and gives attention to statutory limits on injury or on the class of plaintiffs authorized to seek court redress. Although Judge Sotomayor has ruled on only a few preemption cases, her rulings reflect the often complex interplay between state and federal law, and she subjects preemption claims to rigorous statutory analysis, relying on text and legislative history to discern Congressional intent. Her rulings on other doctrines concerning parties' access to justice, such as court stripping, sovereign immunity, and attorneys' fees, demonstrate awareness of the importance of access to a fair and impartial judiciary.

Judge Sotomayor's criminal law experience is lengthy and varied. She spent the first five years of her career as a prosecutor in the Manhattan District Attorney's office, and she has participated in hundreds of criminal cases during her long tenure on the federal bench. Importantly, Judge Sotomayor will bring to the Supreme Court the insights gained from her years presiding over criminal proceedings as a district court judge, which will make her the only sitting justice who has been directly responsible for implementing the U.S. Sentencing Guidelines and meting out punishment. Her district court record reflects a tough jurist unafraid of imposing sentences at the high end of the guideline range for both white collar and violent criminals. She does not, however, uniformly support sentence enhancements, and she vigorously opposed a district court's injection of personal policy preferences into a sentencing decision.

Judge Sotomayor's criminal justice opinions reveal the temperament of a former prosecutor who understands the real-world demands of prosecuting crime and fundamentally respects the rule of law. When reviewing the constitutional rights of criminal defendants, Judge Sotomayor closely follows Second Circuit precedent and dispenses narrow rulings tailored to the particular facts of the case. Exhibiting a moderate and restrained approach to judicial review of trial process, she focuses on procedural issues, and she has resolved the overwhelming majority of her cases without reaching the merits of a defendant's claim. Significantly, she frequently concludes that trial defects resulted

in harmless rather than structural error. Her restrained manner is most evident in her habeas corpus decisions, in which she strictly adheres to the procedural requirements of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), often dismissing habeas petitions as unexhausted or time-barred under AEDPA, even when faced with potentially credible—and, in one instance, ultimately proven—claims of actual innocence. While the Alliance for Justice believes that, where possible, judges should reach the merits of a defendant's constitutional claims and recognize the damage that a trial court error inflicts on the integrity of a criminal proceeding, we nonetheless respect Judge Sotomayor's moderate approach and commitment to preserving the delicate balance between the government's ability to prosecute crime and an individual's constitutional rights.

Judge Sotomayor takes a similarly cautious approach in civil rights cases, above all taking care to strictly follow precedent and limit her rulings to the facts at hand. When finding that the matter before her is not squarely addressed by precedent, she tends to rule narrowly, moving the law in small increments rather than in bold steps. While we do not always agree with her restrained interpretation of statutes or the Constitution, we applaud the consistent attention she has paid to matters of process, including procedural due process. Her opinions insist that individuals in our justice system are entitled to adequate notice, a right to be heard, and representation. In particular, we appreciate that she has shown particular attention to the procedural rights of individuals who are less likely to be able to fend for themselves. She has also emerged as a strong defender of First Amendment rights to free speech and free exercise of religion, as well as the rights of the disabled.

Her limited record reviewing controversial constitutional issues, such as those involving the Second Amendment and the Takings Clause, is a model of restraint, faithfully applying Supreme Court precedent. She does not depart from her cautious approach when reviewing civil rights protections against discrimination. Her employment discrimination decisions are within the legal mainstream, and she has ruled in a consistently balanced manner for both plaintiffs and defendants. Contrary to the accusations by some commentators, there is no evidence of racial bias in any of the hundreds of decisions Judge Sotomayor has written. Rather, her jurisprudence in cases involving racial discrimination claims is very much like her jurisprudence in other areas of the law: deliberate, measured, and strictly adherent to precedent. Finally, on other hot-button issues such as reproductive rights, capital punishment, and executive power, her record is too slim to arrive at any meaningful conclusions about her views.

Our review of Judge Sotomayor's rulings in business and consumer litigation further emphasized Judge Sotomayor's dedication to careful attention to the facts of each case, deference to the legislature, and adherence to legal precedents. Judge Sotomayor has a wealth of experience in business and consumer litigation garnered from her time spent as a judge, in private practice, and through her public service activities. Consequently, she will bring to the Court an impressive working knowledge of commercial law, including securities, antitrust, employment, banking, trademark and copyright, and product liability. An analysis of Judge Sotomayor's opinions in labor cases showed that she cannot be pigeonholed as pro-union, pro-employer, or pro-employee, although her rulings show judicial restraint and a respect for the National Labor Relations Board and

Congress's national labor policy favoring collective bargaining.

In sum, our examination of Judge Sotomayor's record demonstrates her consistency and restraint as a jurist. Importantly, her very presence on the Court may have a "Marshall effect": justices who sat with Justice Thurgood Marshall have noted that his presence in conference and on the bench changed their conversations and informed their decisions. As the Court's first Hispanic and only its third woman, Judge Sotomayor may have a similar effect on the activist justices on the Court who appear intent on weakening our core constitutional, civil rights, environmental, and labor protections.

Most fundamentally, Judge Sotomayor is a highly accomplished and qualified nominee who has proven herself to be fair, reasonable, and committed to upholding the rule of law and core constitutional values. For these reasons, Alliance for Justice is proud to endorse her historic nomination to the Supreme Court.

Sincerely,

NAN ARON,  
*President, Alliance for Justice.*

NATIONAL WOMEN'S LAW CENTER,  
*Washington, DC, July 21, 2009.*  
Re nomination of Judge Sonia Sotomayor to be Associate Justice of the Supreme Court of the United States.

HON. PATRICK J. LEAHY,  
*Chair, Senate Judiciary Committee, Washington, DC.*

HON. JEFF SESSIONS,  
*Ranking Member, Senate Judiciary Committee, Washington, DC.*

DEAR CHAIRMAN LEAHY AND SENATOR SESSIONS: On behalf of the National Women's Law Center (the "Center"), we write in support of the nomination of Judge Sonia Sotomayor to be an Associate Justice of the Supreme Court of the United States. Judge Sotomayor possesses sterling academic and legal credentials, with a varied legal career including government service as a prosecutor, private practice in complex areas of commercial law, and 17 years as a federal judge, both at the trial and appellate level. She is well-respected in the profession and has an excellent reputation as a careful, thoughtful, fair, and extremely intelligent jurist. The ABA Standing Committee on the Federal Judiciary unanimously rated her well-qualified for the Supreme Court. She has also received the endorsement of the National Association of Women Lawyers, the Hispanic National Bar Association, and the New York City Bar Association. In addition to her exceptional legal qualifications, Judge Sotomayor brings an inspiring life story and a demonstrated commitment to public and community service, including within the civil rights community.

As an organization dedicated to advancing and protecting women's legal rights, the National Women's Law Center since 1972 has been involved in virtually every major effort to secure and defend women's legal rights in this country. The Center has reviewed Judge Sotomayor's legal record, including her judicial decisions, public statements, and experiences outside of her service on the bench, and her testimony before the Senate Judiciary Committee during her confirmation hearings. The Center's review of the totality of Judge Sotomayor's legal record has led the Center to conclude that Judge Sotomayor will bring a real-world perspective, much-needed diversity of experience and background, considerable legal acumen, and a fair-minded approach to the Court. The National Women's Law Center is proud to support Judge Sotomayor, an exceptionally

qualified nominee who is only the third woman, the third person of color, and the first Latina and woman of color, to be nominated to the Supreme Court.

The Center's review focused, on issues of particular importance to women—including prohibitions against sex discrimination under the Equal Protection Clause, the constitutional right to privacy (which includes the right to terminate a pregnancy and other aspects of women's reproductive rights and health), as well as the statutory provisions that protect women's legal rights in such fundamental areas as education, employment, health and safety, and social welfare, access to justice, and public benefits. The Center's analysis is set forth in full in a public report, *The Record of Judge Sonia Sotomayor on Critical Legal Rights for women*, available at [www.org/pdf/SotomayorReport.pdf](http://www.org/pdf/SotomayorReport.pdf), which was released on July 17, 2009.

Judge Sotomayor's legal record demonstrates that she is a careful judge who is extremely respectful of the role of the judiciary, who is deferential to precedent, and who delves deeply into the factual record. Judge Sotomayor's decisions have been fully justifiable as a matter of law and fall well within the mainstream of judicial thought. Questioned extensively about her prior statements regarding the influence that a judge's background and experiences have on the decisionmaking process, Judge Sotomayor replied consistently that she believes strongly that the even-handed application of the law must always prevail. Judge Sotomayor's testimony at her confirmation hearings on a variety of topics and legal issues reinforced her record as a judge, reiterating her commitment to precedent, her careful and fact-bound approach, and her understanding of the role of the judiciary.

Judge Sotomayor's record and testimony provide confidence that her judicial philosophy and approach to the law are consistent with the legal rights and principles that are central to women, including the constitutional right to privacy and *Roe v. Wade*, Equal Protection, and key statutory protections.

The Center offers its strong support of Judge Sotomayor's nomination to the Supreme Court, and urges the Committee to approve her nomination quickly.

Sincerely,

NANCY DUFF CAMPBELL,  
*Co-President.*

MARCIA D. GREENBERGER,  
*Co-President.*

Mr. DURBIN. Madam President, as a Member of Congress, there are votes you cast that you remember for a lifetime. Recently, a new Senator, AL FRANKEN, came to my office the day after he was sworn in, and we talked about his adjustment to the Senate. He talked to me about his concern about the first three votes he cast in the Senate, that he was pushed in quickly and had to make decisions and didn't have a chance to reflect as he would have liked to reflect on those votes. I said to him that I understood that, but after he has been in the Senate for a while—or the House for that matter—and he has cast many votes, he would realize that some are more important than others.

This is an important vote. It is not the most important vote a Member of the Senate can cast—a vote for a nomination of the Supreme Court. I would argue the most important vote you can



cast is whether America goes to war because if the decision is made in the affirmative, as it has been, people will die. I can't think of anything more compelling than that vote.

But this ranks a close second in terms of the impact it will have. These are lifetime appointments to the Supreme Court. The Supreme Court Justices on average serve 26 years, longer than most Members of Congress. The Supreme Court has the last word in America when it comes to our most significant legal issues. This High Court across the street, comprised of nine men and women, defines our personal rights as Americans to privacy and the restrictions the government can place on the most personal aspect of our lives and our freedom. It doesn't get any more basic than that.

The Supreme Court decides the rights of workers, consumers, immigrants, and victims of discrimination. The nine Justices decide whether Congress has the authority to pass laws to protect our civil rights and our environment. They decide what checks will govern the executive branch—the President—in time of war.

In critical moments in American history, the Supreme Court has succeeded and failed our Nation. In the Dred Scott decision in the 1850s, the Supreme Court perpetuated slavery and led us to a civil war. In *Brown v. Board of Education*, in the 1950s, that court brought an end to the legal blessing on discrimination based on race. Because these issues were so important, and tomorrow's issues may be as well, we make our choices for the Supreme Court with great care. We obviously need Justices with intelligence, knowledge of the law, the proper judicial temperament, and a commitment to impartial and objective justice. More than that, we need Supreme Court Justices who understand our world and the impact their decisions will have on everyday people. We need Justices whose wisdom comes from life, not just from law books.

Sadly, this important quality seems to be in short supply these days. The Supreme Court has issued decision after decision in recent years that represent a triumph of ideology over common sense. The case of *Ledbetter v. Goodyear Tire & Rubber Company* is the best example of this troubling trend of the Court. In that case, the Supreme Court dismissed a claim of pay discrimination simply because the claim was filed more than 180 days after the initial discriminatory paycheck. But most employees in most businesses in America have no idea how much the person next to them is being paid, so it is often impossible to know you are a victim of pay discrimination until long after the fact, long after 180 days. The Supreme Court's *Ledbetter* decision defied common sense, the realities of the workplace, and a long record of earlier decisions.

There was another case, *Safford Unified School District v. Redding*. A 13-

year-old girl was strip-searched at her school based on a false rumor that she was hiding ibuprofen pills. At the oral argument before the Court in April, several Supreme Court Justices asked questions about the case that revealed a stunning lack of concern for the eighth grade victim. One of the Justices even suggested that being strip-searched was no different than changing clothes for gym class. Justice Ruth Bader Ginsburg helped her eight male colleagues understand why the strip search of a 13-year-old girl was humiliating enough to violate her constitutional rights. The majority of the Justices, nevertheless, ruled that school officials were immune from liability.

These and other decisions demonstrate that the Supreme Court needs to understand the real world and the impact its decisions have on real people. I believe Judge Sonia Sotomayor will be such a Justice.

One of my favorite memories of Judge Sotomayor's hearing was watching her mother's face glow with pride as Judge Sotomayor talked about the history of her family. She spoke about growing up in public housing, losing her father when she was 9 years old, and struggling to succeed against adversity, illness, and the odds. She talked about what a great impact her mom had on her life, and that her mom taught her what a friend was worth. She talked about earning scholarships to Princeton University and Yale Law School, serving as a prosecutor and a corporate litigator, and then being selected by President George H.W. Bush to serve the Federal judiciary and being promoted to a higher judicial office by President Bill Clinton.

It is a rare occurrence for a Federal judge to receive appointments by Presidents of different political parties. Sonia Sotomayor received those and that reflects so well on her skill as a judge.

Judge Sotomayor has served for more years as a Federal judge than any other Supreme Court nominee in a century and, if confirmed, she will be the only Justice on the current Supreme Court with actual experience on the district court and the trial court, the front line of our judicial system.

For many who oppose Sonia Sotomayor, her life achievements and her judicial record aren't good enough. They have gone through 3,000 different court decisions that this woman has written or been part of. They have scoured through hundreds of speeches she has given. If you watched the hearing, they focused primarily on one case and one sentence in one speech.

At Judge Sotomayor's hearing, Republican Senators mentioned the words "wise Latina woman"—that one line in one speech—17 different times. Senator after Senator asked her, "What did you really, really mean with those three words?"

Those of us who are Senators live in a world of daily decisions, speeches,

and votes. If we vote in a way that is controversial, we ask the people to be fair and judge us on our life's work, not on a single vote. It is a standard we ask for ourselves. But for some Senators, it is not a standard they would give Judge Sotomayor when it comes to her decisions and life in public office.

Members of Congress also live in a world of revised and extended remarks. We live in a world of jokes that aren't that funny, and verbal gaffes. Many want to condemn Judge Sotomayor for her "wise Latina" remark that she herself conceded was "a rhetorical flourish that fell flat." I think some of her critics in the Senate are applying a double standard here.

I pointed out at the hearing that those who read the "wise Latina" sentence should have kept reading, because a little further in that same speech, the judge noted that it was nine white male Justices on the Supreme Court who unanimously handed down the *Brown v. Board of Education* decision, and other cases involving race and sex discrimination.

Judge Sotomayor made it clear at her hearing that she believes no single race or gender has a monopoly on good judgment. But her statements are not good enough for some of my colleagues. I hope that Senators would be wise enough themselves to look at her long record on the bench and not one line in one speech.

Let's be honest. A great deal of concern about her nomination has to do with the issue of diversity. Why do we even seek diversity when it comes to appointments to the Federal judiciary? First, it is because we live in a diverse nation. We want every American to believe they have an equal opportunity to succeed. We want every American, Black, White, brown, male and female to know that our system of government is fair. We want all Americans to look at our Congress and our courts and feel there are leaders who can identify with the diversity of life experience in this great diverse Nation.

Second, diversity on the Federal bench is important because different life experiences can lead to different perspectives.

Does anybody believe there is a clear, objective answer to every case that comes before the Supreme Court? If they do, please explain to me why one-third of all rulings in that Court in the last term were decided by a 5-to-4 vote.

Does anybody believe the Supreme Court's recent strip search case would have come out the same way if Justice Ginsburg, the only woman on the Supreme Court at this moment, had not helped her eight male colleagues to reflect on what it was like for a 13-year-old girl to be treated in such a humiliating fashion at her school?

Does anybody believe that women judges have not helped their male colleagues understand the realities of sex discrimination and sexual harassment in the workplace? Study after study has shown that men and women on the

bench sometimes rule differently in discrimination cases. That is why diversity is so important.

This doesn't mean their rulings are based on personal bias. It simply means that Americans see the world through the prism of various experiences and perspectives. Our Supreme Court Justices should possess an equally rich and wide field of vision as they interpret the facts and the law. Criticizing Judge Sotomayor for recognizing this reality is unfair.

The criticism of Judge Sotomayor for her position in the Ricci case, which involved the firefighters in Connecticut, is also unfair. Judge Sotomayor's position in that case followed past judicial precedents. At her nomination hearing, she offered clear explanations about the law as she saw it when she reached her conclusion, and about how her decision was fully consistent with the way the law has historically dealt with competing claims of discrimination.

Her position in the Ricci case was supported by a majority of the members of her appellate court, a unanimous three-judge panel of her court, the district court, and by four of the nine members of the Supreme Court. Hers was not a radical, unreasonable position. I think we know that. When my colleague Senator SPECTER asked the firefighters themselves if they believed that Judge Sotomayor's ruling in the case was made in good faith, they said they had no reason to believe otherwise. Nor do I.

To those who say Judge Sotomayor wouldn't have an open mind in race discrimination cases, look at her 17 years on the bench. Based on an independent study by Supreme Court scholar Thomas Goldstein, after looking at all 96 of her race discrimination cases, he found that she ruled in favor of the plaintiffs less than 10 percent of the time. There is no bias in her decision-making. The facts don't support that conclusion.

There are two other issues I will address—foreign law and the second amendment. These issues are near and dear to the rightwing conservative base.

With respect to foreign law, Judge Sotomayor stated repeatedly over and over, in question after question, that American courts should not rely on decisions of foreign courts as controlling precedent. But she said that in limited circumstances, decisions of foreign courts can be a source of ideas, akin to law review articles or legal treatises.

She is hardly alone in her thinking on this. Justice Ginsburg took the same position and observed: "I will take enlightenment wherever I can get it."

This commonsense approach has been embraced by two conservative Supreme Court Justices appointed by President Reagan: William Rehnquist and Anthony Kennedy.

Indeed, we cannot expect the rest of the world to adopt the democratic prin-

ciples and fundamental freedoms we promote as a Nation, while at the same time saying we will never consider ideas developed in other countries. This is plain common sense.

It is sad that some of my colleagues are in the thrall of small-minded xenophobes and don't appreciate that the march of democracy has reached many corners of the world and generated thoughtful reflection on our most basic values.

On the issue of the second amendment, I was sorry to see a major lobby group in Washington, DC, the National Rifle Association, not only announce their opposition to Judge Sotomayor but also notify its members and colleagues that this vote is going to be scored against them on the annual legislative scorecard. This is the first time in its history that the NRA has taken a position on a Supreme Court Justice.

Every citizen is entitled to his opinion, but it is unfortunate that the decision of this historic gravity has become a bargaining chip for lobbyists in Washington, and contributions in the next political campaign. What is worse, Judge Sotomayor has a record of honest reflection on the second amendment.

Most of the gun-related criticism of Judge Sotomayor is focused on the Maloney case. But in that case, she came to the exact same conclusion as a three-judge panel of the U.S. Court of Appeals for the Seventh Circuit, based in Illinois. That three-judge panel was not a gathering of liberals. It featured three Republican appointees and two of the most conservative icons on the Federal bench, Judge Frank Easterbrook and Judge Richard Posner.

They concluded that only the Supreme Court, not appellate courts, could overrule century-old Supreme Court precedents on whether the second amendment right to bear arms applies to the States.

I realize the NRA and their Senate allies don't like that ruling. They wanted Judge Sotomayor to do what the Ninth Circuit did and overrule Supreme Court precedent. But in the Maloney case, Judge Sotomayor did what an appellate court should do, and she followed the law.

I am pleased that not every conservative group joined the NRA's line of fire. I will mention some organizations and individuals who don't typically show up at Democratic party rallies but who support the judge: Kenneth Starr, a man who led the impeachment of President Clinton; Charles Fried, a conservative Republican who served as Solicitor General during the Reagan administration, also supports her confirmation, as do conservative columnists Charles Krauthammer and David Brooks. The U.S. Chamber of Commerce has endorsed her. In Illinois, the conservative Chicago Tribune said:

In four days of testimony under often intense questioning, [Judge Sotomayor] han-

dled herself with grace and patience, displaying a thorough knowledge of case law and an appreciation of her critics' concerns. The result was to reinforce a strong case that she will make a good Supreme Court justice and deserves Senate approval.

I want to acknowledge that, as of this moment, eight Republican Senators have stepped forward and announced they are going to support Judge Sotomayor. I am heartened by their courage and their support of this fine judge.

The last issue I would like to address is that word "empathy." Judge Sotomayor's critics have twisted and tortured this word in an effort to discredit her and raise doubts about her objectivity. Empathy is simply the ability to see another person's point of view. It is the ability to put yourself in their shoes. That is it. It doesn't mean exercising bias or favoring a particular side. The judge's critics are wrong to conflate these concepts.

I believe, and President Obama believes, that Judge Sotomayor's life experience—from her days growing up in public housing, to her service as a high-powered lawyer representing large corporations—will give her a unique ability to understand the interests of all the parties that come before her for decisions of the Supreme Court. It gives her an ability to understand different perspectives and points of view. That is what empathy is all about.

Judge Sotomayor had demonstrated this quality in 17 years on the bench. It explains why she enjoys such a reputation for fairness and thoughtfulness.

In the 220-year history of the United States, 110 Supreme Court Justices have served under our Constitution, and 106 of them have been white males. We have had two women Justices, Sandra Day O'Connor and Ruth Bader Ginsburg. Two of them have been African Americans, Thurgood Marshall and Clarence Thomas.

In life, and in our Nation, if you want to be first, you have to be the best. Sonia Sotomayor's resume and inspirational background clearly meet that higher standard. What a great story it is for America that President Obama has given us a chance to consider Sonia Sotomayor to serve as the first Hispanic woman on the Supreme Court.

Judge Sotomayor should not be chosen to serve on the Court because of her Hispanic heritage. But those who oppose her for fear of her unique life experience do no justice to her or our Nation. Their names will be listed in our Nation's annals of elected officials one step behind America's historic march forward.

I urge my colleagues to support and vote yes on the nomination of Sonia Sotomayor to be the next Justice of the Supreme Court of the United States.

Mr. HARKIN. Madam President, I am proud to support the confirmation of Judge Sonia Sotomayor as the next Associate Justice of the U.S. Supreme Court.

Judge Sotomayor's story is proof of the central American promise: that any person, by sheer force of their talent, can rise from the humblest background to one of the highest offices in this country. Born to a Puerto Rican family, Judge Sotomayor grew up in public housing in the South Bronx. Her father, a tool-and-die worker with a third grade education, died when she was nine years old. Due to her mother's struggle and sacrifice, and Judge Sotomayor's tremendous ability and perseverance, she graduated valedictorian of her high school in New York, then graduated *summa cum laude* from Princeton University.

She went on to earn her law degree from Yale Law School, where she was editor of the *Yale Law Journal*. After law school, Judge Sotomayor served as an assistant district attorney in New York County for 5 years and then entered private practice as a corporate litigator. For the past 17 years, she has served as a Federal district and appellate court judge.

Given her experiences and career, there is no doubt that Judge Sotomayor is immensely qualified to serve on our Nation's highest Court. What is clear from her 17-year judicial career, from my meeting with her, and from her confirmation hearing is that she is an unbiased, mainstream judge with a deep commitment to the rule of law and constitutional values. She has an exemplary record during her tenure on the bench, and every independent analysis has made clear that she is a judge who faithfully applies the law.

Given her record, I am saddened that many Republicans have chosen to grossly distort her record, and have spent so much time focusing on a few out-of-context quotes and less than a handful of decisions. Putting rhetoric aside, she has participated in nearly 3,000 decisions and authored approximately 400 opinions. Her 17-year record overwhelmingly demonstrates that she is anything but a "judicial activist."

Considering her outstanding intellect, credentials and judicial record, there simply is no doubt Judge Sotomayor should be confirmed. However, for me, there is another, equally important, consideration. I also firmly believe that Judge Sotomayor will be an important and needed voice on the Court to ensure proper effect is given to our most important statutes, such as the Americans with Disabilities Act, ADA, the Civil Rights Act, and the Age Discrimination Employment Act, ADEA, so all Americans receive the fullest protections of the law.

This is illustrated in an area of the law that I care deeply about—disabilities rights. Unfortunately, as many in Congress know, the Rehnquist Court repeatedly misread the ADA, ignored the intent of Congress and narrowed the scope of individuals deemed eligible for protection under the ADA. The result of these decisions was to eliminate protection for countless thousands of Americans with disabilities. These

flawed, harmful decisions were reversed last year when Congress unanimously enacted the ADA Amendments Act.

The contrast between the Rehnquist Court and Judge Sotomayor is stark. In *Bartlett v. New York State Board of Bar Examiners*, Marilyn Bartlett had a Ph.D. in educational administration and a law degree from Vermont Law School. She was also diagnosed with a disability that affected her reading speed and fluency. After completing law school, Ms. Bartlett worked as an associate and received excellent reviews. However, when she took the bar exam, she was denied accommodation for her reading impairment, such as extra time and permission to record her essays on tape. She failed the exam. The bar claimed that she did not have a disability because the examiners did not believe she was limited in the major life activities of reading or working.

Judge Sotomayor, however, ruled for Ms. Bartlett, holding that a student with learning disabilities was entitled to an accommodation while taking the bar exam. Understanding the true purposes of the ADA, she noted:

For those of us for whom words sing, sentences paint pictures, and paragraphs create panoramic views of the world, the inability to identify and process words with ease would be crippling. Plaintiff, an obviously intelligent, highly articulate individual reads slowly, haltingly, and laboriously. She simply does not read in the manner of an average person. I reject the basic premise of defendants' experts that a learning disability in reading can be identified solely by a person's inability to decode, i.e., identify words, as measured by standardized tests, and I accept instead the basic premise of plaintiff's experts that a learning disability in reading has to be identified in the context of an individual's total processing difficulties.

As the Congressional Research Service noted, "She anticipated the legislative discussions surrounding the ADA Amendments Act by finding the use of self accommodations did not mean that the plaintiff was not an individual with a disability."

The contrast between Judge Sotomayor's approach to judging—with her respect for congressional intent and for long-standing precedent—and the current Court's activism is likewise illustrated by their respective treatment of so called "mixed motive" discrimination cases.

In June of this year, the Supreme Court decided *Gross v. FBL Financial, Inc.* In a case involving an Iowan, Jack Gross, the Court made it harder for those with legitimate age discrimination claims to prevail under the ADEA. In doing so, it reversed a well established, 20-year-old standard, consistent with that under title VII of the Civil Rights Act, that a plaintiff need only show that membership in a protected class was a "motivating factor" in an employer's action. Instead, the Court held that a plaintiff alleging age discrimination must prove that an employment action would not have been

taken against him or her "but for" age. In other words, the plaintiff must now prove that age discrimination was not a cause or a motivating factor, but must prove that it was the exclusive cause of an adverse employment action. Proving "but for" cause is extremely difficult and will greatly limit potentially meritorious suits involving discrimination Congress sought to prevent.

In doing so, the Court did not even address the question it granted certiorari on. As Justice Stevens noted in dissent, "I disagree not only with the Court's interpretation of the statute, but also with its decision to engage in unnecessary lawmaking. The Court is unconcerned that the question it chooses to answer has not been briefed by the parties or uninterested amici curie. Its failure to consider the views of the United States, which represents the agency charged with administering the [Age Discrimination Employment Act], is especially irresponsible."

The contrast with Judge Sotomayor is telling. In *Parker v. Columbia Pictures*, she addressed the very same question in the disabilities context—whether a plaintiff need show discrimination was a "motivating factor" or "but-for" cause under the ADA. In contrast to Justice Thomas's opinion in *Gross*, she carefully analyzed the statutory language, intent of Congress and precedents and noted that "Congress intended the statute . . . to cover situations in which discrimination on the basis of disability is one factor, but not the only factor, motivating an adverse employment action."

Unfortunately, the Supreme Court has transformed the legal landscape regarding the ability of Congress to protect our most vulnerable citizens. In fact, since 1995, the Rehnquist and Roberts Courts have struck down 38 acts of Congress. Until then, the Court had struck down an average of one statute every 2 years.

For example, in *University of Alabama v. Garrett*, a case I personally attended, the Court limited the rights of people with disabilities. In doing so, it ignored numerous congressional hearings and a task force which collected evidence through 63 public forums around the country attended by more than 7,000 persons. In *United States v. Morrison* and *Kimel v. Florida Board of Regents*, the Court completely ignored extensive congressional fact-finding and struck down parts of the Violence Against Women's Act and Age Discrimination Employment Act, respectively. In June, in *Northwest Austin Municipal Utility District v. Holder*, the Court suggested it was poised to strike down the Voting Rights Act, disregarding expansive congressional fact-finding, including 21 hearings and 16,000 pages of testimony.

Given the current Court's repeated disregard for Congress and for our efforts to expansively protect American citizens from discrimination, I believe it is imperative that the next Justice

be someone who respects precedent, strives to apply congressional intent and purpose, and understands the importance of this Nation's landmark civil rights protections. Based on her long judicial record, I am confident Judge Sotomayor is precisely that type of jurist.

Confirmation of Judge Sotomayor will be historic. She clearly has the intellect, experience and judgment to be an outstanding Justice. I am proud to support her nomination.

The ACTING PRESIDENT pro tempore. The Senator from Ohio is recognized.

Mr. VOINOVICH. Madam President, I rise today in support of the confirmation of Judge Sonia Sotomayor as an Associate Justice of the U.S. Supreme Court.

The role of the Senate in the nomination of a Supreme Court Justice is to give its advice and consent on the President's nomination. I believe it has been the longstanding tradition of this body that we are to judge whether an individual is qualified to serve based on the complete record of each nominee.

Once again, I compliment Senators SESSIONS and LEAHY for the excellent job they have done in handling the confirmation hearings for Judge Sotomayor. The hearings were fair and enabled the American people to get a better understanding of what sort of Justice Judge Sotomayor will be. Equally important, these hearings were conducted with civility, allowing Senators to disagree without being disagreeable. This is something I would like to see more of in the Senate. Sadly, as some of my colleagues have pointed out, the judicial nomination process has become so partisan that it seems to bring out the worst in the Senate, when it ought to bring out the best.

I believe the factors to be examined in determining whether a Supreme Court nominee is qualified include her education, prior legal and judicial experience, judicial temperament, and commitment to the rule of law. Based on my review of her record, and using these factors, I have determined that Judge Sotomayor meets the criteria to become a Justice of the Supreme Court. I didn't come to this determination lightly, and Judge Sotomayor has made statements that give me pause. However, after reviewing her judicial record and the comments made during the Judiciary Committee hearings, on balance, I believe she is fit to serve on our Nation's highest Court.

I am comforted by Judge Sotomayor's express rejection of then-Senator Obama's view that in a certain percentage of judicial decisions "the critical ingredient is supplied by what's in the judge's heart and the depth and breadth of one's empathy." In answer to a question from Senator KYL, Judge Sotomayor said:

I can only explain what I think judges should do, which is judges can't rely on what's in their heart. They don't determine

the law. Congress makes the laws. The job of a judge is to apply the law. And so it's not the heart that compels conclusions in cases, it's the law. The judge applies the law to the facts before that judge.

In addition to being fit for the bench, the story of Judge Sotomayor is the story of so many Americans who rose from humble beginnings to reach levels of achievement that would not be possible in any other nation.

It is sort of the story that reminds me of what is so unique and special about our Nation, that a young working-class Latina woman or the son of a first-generation Eastern European immigrant family can be nominated to the Supreme Court or be elected to serve his home State in this great Chamber.

During our private meeting, Judge Sotomayor and I were able to discuss this opportunity. What struck me is she is someone who understands what a great opportunity this is, as well as the great challenges that await her. While the Founding Fathers may have a disagreement with her on some of her legal views, I think they would be proud that judging individuals on their merit has endured as part of this great experiment.

As a number of my colleagues have already noted, Judge Sotomayor, through hard work, has risen from humble beginnings to now await confirmation to the Supreme Court. Judge Sotomayor excelled throughout her academic career. From the time at Blessed Sacrament School and Cardinal Spellman High School, where she was the valedictorian of her class, she has excelled in highly competitive environments. Like Justice Alito, she is a graduate of Princeton University and Yale Law School. Judge Sotomayor attended Princeton on scholarship and graduated not only summa cum laude but also was the recipient of the prestigious Pyne Prize from that university. Judge Sotomayor went on to Yale Law School, where she served as an editor of the Yale Law Journal. Her academic record should serve as an inspiration to all that in a meritocracy, we all have an equal opportunity to rise to the top.

After her stellar academic career, Judge Sotomayor entered public service as a district attorney in New York, where her drive and basic fairness were well noted. This commitment to public service impressed me.

Judge Sotomayor not only succeeded in the public sector, she also worked her way up from associate to partner, practicing corporate law at a New York law firm. In private practice, Judge Sotomayor specialized in intellectual property and copyright law. Her rise from associate to partner in such a specialized field is a clear indication that the private sector recognized her merit and rewarded her for her skill and ability.

Judge Sotomayor returned to public service with her appointment to the district court, where she served for 6

years. I believe Judge Sotomayor's experience on the district court will be invaluable to the Supreme Court, where none of her colleagues have experience as a judge in a trial court. I hope her experience there will help shape her future opinions, particularly in procedural cases where many commentators have noted a need for rules that work in practice, not just in theory.

Judge Sotomayor's time on the trial bench was marked by opinions that set forth the facts and applied the law narrowly. Did you hear that? Her time on the trial bench was marked by opinions that set forth the facts and applied the law narrowly—exactly what one would want from a trial court.

In addition to district court experience, Judge Sotomayor has appellate court experience, over 10 years on the Second Circuit. I reviewed many of her opinions from her time on the Second Circuit, and while many were not opinions I would have offered, her opinions, as well, were within the legal mainstream. Judge Sotomayor's opinions, for the most part, were lengthy, workman-like, limited rulings, the sort of opinions that exhibit the judicial restraint one would hope for a Supreme Court Justice.

Given her academic and professional achievements, it is not surprising that the American Bar Association has given the judge its highest ratings when considering her for the Supreme Court.

While impressive in what she has overcome to reach this point in her career, her record is not without blemish. In particular, the one comment that gave me significant pause as to whether I would support her nomination is the now well-known statement by the judge that "a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life." Such a statement is repugnant to someone like me who has worked so hard to reach a colorblind society where an individual's race or gender is not considered in judging a person's merit. The question I had to ask myself was, Is this comment an indication that Judge Sotomayor would reject the rule of law and blind justice to favor certain people on the basis of inappropriate criteria? After study of her judicial record, I have concluded it is not. Based on my review, Judge Sotomayor's decisions, while not always decisions I would render, are not outside the legal mainstream and do not indicate an obvious desire to legislate from the bench. Furthermore, Judge Sotomayor recognized during her nomination hearings that this "could be hurtful" and was not reflective of how she would judge cases. Through my review and my staff's review of her cases, her testimony, and my conversations with the judge, I have confidence that the parties who appear before her will encounter a judge who is committed to recognizing

and suppressing any personal bias she may have to reach a decision that is dictated by the rule of law and precedent.

I think I would be remiss in my discussion of the judge if I failed to address the Supreme Court's decision in the *Ricci v. DeStefano* case. By now, all my colleagues and many Americans are aware that the Supreme Court reversed the Second Circuit's decision in the *Ricci* case. The case involved a reverse-discrimination suit against the city of New Haven, CT.

Some opponents of Judge Sotomayor's confirmation have used this opinion to suggest that her legal philosophy is outside the mainstream of American jurisprudence and that her nomination should be rejected. I believe a review of the close decisions rendered by the various Federal courts, including the Second Circuit's 7-to-6 decision to refuse to rehear the case and the Supreme Court's 5-to-4 decision to reverse the Second Circuit, suggests this matter was, for a number of the judges who reviewed the case, a close call. In other words, it was very close. For one to say she is outside the mainstream when these decisions were so close I think is really stretching things quite a bit. Nevertheless, I believe Judge Sotomayor and her fellow panel judges would have better served the public by issuing a more comprehensive decision regarding their logic in affirming the district court's decision in favor of the city of New Haven.

In closing, I wish to make a few remarks about the judicial confirmation process.

Judge Sotomayor is the third nominee to the Supreme Court to come before the Senate since I came to the Senate in 1999. For both Justice Roberts and Justice Alito, then-Senator Obama promoted an "empathy standard" to determine if he would vote for these nominees. Then-Senator Obama said:

The critical ingredient is supplied by what is in the judge's heart.

Such an analysis is no analysis at all. In fact, it flies in the face of the meritocracy in which Judge Sotomayor succeeded. All of us in this Chamber can examine the academic credentials of and prior judicial decisions authored by a nominee and determine whether he or she is qualified. We cannot examine and judge what is in the heart.

Let me be clear. If I applied Senator Obama's standard, I would not be voting for Judge Sotomayor, his nominee. The President was wrong. I think his standard makes the whole nomination process an exercise in partisan politics. We need less politics in the judicial selection process and the judiciary in general, not more. It has become too politicized in the last several years. It is something about which all of us should be concerned.

I urge all my colleagues to reject the Obama empathy standard—just as Judge Sotomayor rejected it, just as I am rejecting it—and return to a stand-

ard where it is the qualifications of the nominee we judge, not the politics or heart of that nominee.

Judge Sotomayor is not the nominee I would have selected if I were President, but making a nomination is not my role today. My role is to examine her qualifications to determine if she is fit to serve. Again, in reviewing her academic and professional record, taking into account her temperament and integrity, it is clear to me she is qualified to serve as the next Associate Justice of the Supreme Court.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. HAGAN). Will the Senator withhold the request for a quorum call?

Mr. VOINOVICH. Yes.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. Madam President, I ask unanimous consent to jump to the Democratic side for 5 minutes, if that is possible.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont.

Mr. SANDERS. Madam President, I thank my Republican colleague.

I begin by congratulating my colleague from Vermont, Senator LEAHY, for the distinguished manner in which he has led these hearings.

I rise today in support of the nomination of Judge Sonia Sotomayor to be an Associate Justice of the Supreme Court. As an assistant district attorney, a Federal district judge for the Southern District of New York, and a Federal circuit court judge for the U.S. Court of Appeals for the Second Circuit, Judge Sotomayor has demonstrated her eminent qualifications, impartial jurisprudence, and a faithful interpretation of the U.S. Constitution, and this body has every reason to vote today in support of her nomination.

It is no secret that over the last 50 years, the Supreme Court has become a very conservative institution. We are long past the days when the Court respected and dutifully applied the full implications of the Bill of Rights and vigorously protected the freedoms provided us by the Founders of our country and the Framers of the Constitution. Recently, this rightwing drift has become worse, not better. The present Court has routinely favored corporate interests over the needs of working people and the interests of the wealthy and powerful against those of ordinary citizens.

My hope is that Judge Sotomayor will help bring balance to a Supreme Court that today is way out of balance and has moved very far to the right.

The Court recently gutted a key provision of the McCain-Feingold campaign finance law, allowing well-financed corporations to manipulate the legislative process under the guise of free speech—as if the Bill of Rights were written to grant giant corporations the same level of constitutional protection that it does flesh-and-blood

American citizens. That is wrong, and that is unfortunate.

The Supreme Court recently made it easier for employers to avoid valid pay discrimination claims by their employees on procedural technicalities, a decision Congress had to rectify. And just this past term, the Court scaled back environmental protections, holding that the Clean Water Act permits a mining company to pump hundreds of thousands of gallons of toxic wastewater per day into an Alaskan lake.

I sincerely hope and I have every confidence that Judge Sotomayor's nomination to the Supreme Court will help curb this corporatist trend and put the Court back on the path of respecting the rights of individual Americans and the environmental and other laws passed by Congress. For that reason, I intend to vote for Judge Sotomayor as Associate Justice of the Supreme Court.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. KENNEDY. Madam President, I strongly support the nomination of Judge Sonia Sotomayor to be a Justice on the Supreme Court of the United States. She will be the most experienced jurist to be placed on the Supreme Court in a century, and she will be the first Latina Justice in our Nation's history.

With her extensive career in public service and her lifelong commitment to equal justice, Judge Sotomayor will bring a remarkable perspective to the Court. Given her extraordinary and far-ranging experience, she has already distinguished herself as one of the most able and hardworking Federal judges in the Nation, and I am confident that she will bring the same high ability and dedication to all issues before the Supreme Court.

Judge Sotomayor has already spent 17 years as a Federal judge. She was first nominated to the U.S. District Court for the Southern District of New York in 1992 by President George H.W. Bush. Six years later, she was nominated by President Clinton to the U.S. Court of Appeals for the Second Circuit. She received bipartisan support in the Senate each time, and it is a special privilege for me to support her for the third time.

Judge Sotomayor has a deep understanding of our legal system as a result of the experience she has had as an attorney and a judge. She has more judicial experience at both the appellate and district court level than any Supreme Court nominee in the past 70 years. In addition, in her earlier legal career, she served as an assistant district attorney in New York City and worked as a civil litigator in private practice. Her experience in the criminal and civil systems and as a district judge and an appellate court judge give her a unique perspective that will be invaluable as a Justice of the Supreme Court.

During her years as a Federal judge, she has participated in over 3,000 decisions, including over 400 Second Circuit decisions by panels that included at least one judge appointed by a Republican President. In those cases, she has agreed with the result favored by the Republican appointee over 95 percent of the time. Some have sought to portray Judge Sotomayor as a judicial activist, but her record clearly shows that she is a mainstream jurist who does not let personal ideology dictate the outcome of the cases she is deciding.

Not only is Judge Sotomayor eminently qualified by her experience to serve on the Supreme Court, but her nomination is historic. I, like many Americans, welcome the insight and perspective that Judge Sotomayor will bring to the Court, and she will serve as a role model for millions of our people.

Judge Sotomayor's compelling life story is an impressive example of the best of our country. She was born in the Bronx and raised in New York City by hardworking parents. Through the strong support of her family and her own hard work and dedication and extraordinary achievement, she has been nominated to be the Nation's 111th Supreme Court Justice.

I commend President Obama for selecting her. With her intelligence, insight, and experience, she is an excellent choice to serve in this distinguished role, and I am sure she will do an outstanding job protecting the rule of law and the fundamental rights and liberties of all Americans. Judge Sotomayor has worked hard to achieve success, and I commend her for her life's accomplishments. I wish her well in this new role, and I urge my colleagues to support her confirmation.

On the day soon to come, when she walks up the steps of the Supreme Court and passes under those famous and inspiring words, "Equal Justice Under Law," inscribed in the marble over the entrance, millions of our fellow citizens and communities across the Nation will be able to say, "Yes, the American dream is alive and well in America today."●

Mr. BINGAMAN. Madam President, I rise to speak in support of Judge Sonia Sotomayor's nomination to be an Associate Justice of the U.S. Supreme Court.

Judge Sotomayor's nomination to the highest court in the land is historic in several respects. Clearly, becoming the first Hispanic to serve on the U.S. Supreme Court is an important milestone. Our country is well served when these barriers fall and we are able to put forward qualified candidates who reflect the diversity of our citizenry.

But what also makes Judge Sotomayor's nomination so significant is the extent of her judicial experience and her overall qualifications.

Judge Sotomayor has more Federal judicial experience than any jurist nominated to the Court in the last 100 years, and has more overall judicial ex-

perience than any nominee in the last 70 years. She is the first Supreme Court nominee to have sat on both a Federal trial court and an appellate court, and would be the only current justice with trial court experience. Altogether, she has been a Federal judge for over 17 years, including 6 years on the U.S. District Court for the Southern District of New York and 11 years on the U.S. Court of Appeals for the Second Circuit. In addition to serving on the bench, Judge Sotomayor has a distinguished record as a prosecutor and an attorney in private practice.

Considering the depth of Judge Sotomayor's experience, it is not surprising that after a thorough review of her record the American Bar Association unanimously gave her their highest rating. The ABA found that she was "well qualified" to serve as a justice based on her integrity, competence, and judicial temperament. Judge Sotomayor's testimony before the Senate Judiciary Committee also demonstrated her adherence to mainstream jurisprudence and commitment to objectively making decisions based on the facts of each case and the applicable legal precedent.

I strongly believe Judge Sotomayor has the qualifications, experience, and impartiality necessary to be an excellent justice of the Supreme Court, and I urge my colleagues to support her nomination.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SESSIONS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Madam President, we have heard a number of discussions from Senators throughout this confirmation process regarding judicial activism—what is it and what does it mean. I think our former Judiciary Committee chairman and great legal constitutional scholar, ORRIN HATCH, has defined it clearly and fairly and in the right way. ORRIN HATCH has said for years that judicial activism is when a judge is assigned a case and they allow their personal, political, moral, religious or ideological views to influence their decision, and not render a verdict based on the law and the facts. It is true of a conservative jurist with a conservative ideology as well as a liberal.

In truth, in recent years, we have had a pretty frequent national debate—for maybe 20 or more years—over this question. The intellectual defense of activism—the living constitutional view of activism—has come from the liberal side. Conservatives have said: No, that is not the role of a judge. A judge is supposed to decide the discrete issue before them in a way that handles that case because it may well pro-

vide precedent in the future. And that is what they should do and not be expansive in their rulings and set policy or to promote some long-term agenda they believe—rightly or wrongly—may be the greatest thing the country could ever do. They weren't elected to set policy. Judges aren't elected to declare to the United States how we ought to tax or regulate the environment or that kind of thing. That is what the legislative branch gets to do.

So I wished to raise that and discuss it a little further. It has also been mischaracterized that conservative jurists who show restraint are activists—they are not, but they have been accused of activism—because they have actually seen fit to throw out and find unconstitutional a statute passed by Congress. Well, we passed an 800-page stimulus package, we passed a bailout bill last fall that nobody even got to read or to study. I am surprised there are not more pieces of legislation held unconstitutional than there are.

It is not activism for a judge, such as Chief Justice Roberts—who has been accused of being an activist—to declare a statute unconstitutional. What would be wrong is if he were doing so to promote his own personal views about policy. That would be wrong.

The second amendment to the Constitution says that "a well-regulated militia being essential for the security of a free State, the right of the people to keep and bear arms shall not be infringed." That is what the second amendment says. It is in the Constitution. It is one of the Bill of Rights. Essentially, when the city of Washington, DC—a Federal enclave, a district—saw fit to almost completely ban the right of citizens in this city to have guns, Chief Justice Roberts and four other members of the Supreme Court found it violated the Constitution. It violated the right of the people to keep and bear arms. That is not activism, is what I am saying. Somehow we have gotten confused on this matter. Therefore, we need to be alerted to it.

Sometimes my colleagues, I think, have tried to say: Well, everybody does it. Everybody is an activist, so the Constitution is a malleable document. It gets redefined as the years go by. It is a living document, they say. But it is not living, is it? You can go over to the archives building and you can see it. It is a contract. The American people granted certain rights to this government and they reserved certain rights to themselves. Of the rights they reserved, for example, was the right of free speech, the right to assemble, and to criticize their incumbent politicians if they are not happy with them. They reserved the right to keep and bear arms.

I think we need to get our minds straight. Judges should see their role as a limited role, and they should not seek to impose their policy values on the country. They should see it as then—Judge Roberts said in his hearing so beautifully and so eloquently: A



judge is a neutral umpire. They call the balls and strikes. They do not take sides in the ball game. How much more basic can it be than that?

I wanted to try to clarify that point, and I think it is important. We have other constitutional rights—the right to keep your property unless it be taken for public use, such as a highway. That is a public use. But in the Kelo case, 5 to 4, and in the case rendered by Judge Sotomayor, they ruled that the government could take one man's drugstore—his property on which he was going to build a private drugstore—and the city could condemn it and give the property to another man to build a different drugstore on for personal profit. Where does the public use come from?

Justice O'Connor dissented in the Kelo case and ruled the other way. She ruled the other way, and it was okay to do that. The case dealing with Judge Sotomayor went even further than that. But it is not activism for a court to say that no city, or whatever, can take a man's property under some redevelopment scheme or plan so they can get more tax money, because if they take it and give it to this other private guy, he can build a big shopping center there and they will get more tax revenue. That is not a public use. The question is: Is the property used for a public purpose, not otherwise? The Constitution gives an individual the right to have their own property and people can't take it from you.

The Constitution, likewise, says every American citizen is entitled to equal protection of the laws and that they cannot be denied equal protection of the laws on account of their race. It is a big important constitutional issue. So we get into a situation where a city, New Haven, conducts a fair test, by all accounts; a carefully crafted test. No one criticized its validity. They conducted a test and 18 firefighters passed the test. They testified that they studied very hard to master the test which related directly to their firefighting ability. They go out and do the right thing and they are on track to be promoted. But not enough people of one group or another did well on the test, and the city—the government—decides they didn't get the results they liked on this test and so they threw it out.

It is not activism for the U.S. Supreme Court to say—really all of them to say—that this is not right, that this is not complying with the Constitution or even the civil rights statutes in America that require equal justice under the law, not favoritism based on one or the other because of their background, ethnicity, or race. That is just what it is all about.

The Justices on the Supreme Court, the ones who are known for showing restraint, should not be criticized if on occasion they declare the U.S. Congress did something wrong and it was unconstitutional. I am afraid we do it more often than we like to admit, the

truth be known. Bills come through here late at night, nobody has done any constitutional research on most of what is in them to see if it is constitutional or not. The American people are entitled to have the final decision about constitutionality rest with a court that is prepared to defend their individual rights.

On the three cases I mentioned—the case of a property taking from a private individual, the case of 18 firefighters who passed the test and were ready to claim their promotion, and the question of the right to keep and bear arms—each one of those was an individual situation in which an individual American appealed to the courts and claimed they have a right in plain words provided to them by the Constitution and they are asserting that right and they are pleading their case in the Court and asking the Court to grant them that right. In the three cases I mentioned, unfortunately Judge Sotomayor ruled with the government, the power of the State, and against the individuals asserting their claims in three exceedingly important cases.

It is not activism to throw out a city's decision on forfeiture or guns; nor is it activism to throw out a decision that discriminates against American citizens based on their race.

That is one of the things we discussed a lot in this debate. I think it has been a good debate. I complimented Senator LEAHY this morning again. He gave us all a chance to ask questions. We had 30 minutes, as we have done before. Some wanted to do less, but he said no, that is the way we do these things. We had 30-minute rounds and then 20-minute rounds and then 10-minute rounds to ask questions. I think pretty much the fundamental issues involved in this nomination got discussed in committee. Some written questions were filed in addition. Now that it is on the Senate floor, I believe the Members of the Senate have an adequate record from which they can make a decision on what they think is best for America.

I believe we should not have anyone on the Court who is not committed to the Constitution, not committed to putting aside their personal political agenda, and who will stay in strict adherence to the law and the facts of the cases that come before them. That is how I evaluated this case.

I am proud of Judge Sotomayor. She handled herself well and patiently at the committee. She was asked a lot of tough questions, but if you want to be a Justice on the U.S. Supreme Court you have to be prepared for that. You should not submit yourself if you are not prepared for that. But she handled it nicely and courteously.

I think the Senators conducted themselves well also. A lot of people wanted to vote for her but, as the hearings went by and they studied the record, they concluded they were not able to vote for her based on philosophy and her approach to the law. But I think

the committee hearing did what it was supposed to.

There have been no delays. This will be one of the fastest confirmations in history. Within a few hours we will be having an up-or-down vote on her confirmation, unlike what happened when Judge Alito—a fabulous nominee, in my opinion—was subjected to a filibuster before he was confirmed. She is going to be given an up-or-down vote in just a few hours.

I thank the Chair for this time. I look forward to the rest of the debate and final vote in a few hours.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Madam President, for a second time now, I come to the floor to voice my opposition to the nomination of Judge Sotomayor to be an Associate Justice. I cannot support her nomination because I am not persuaded she has the right judicial philosophy to be on the Supreme Court. I have spoken many times and have again spoken at the Judiciary Committee and on the floor at some length about my reasons for opposing the judge's confirmation, but I want to reiterate some of these reasons before we vote on her nomination about 2 hours from now.

It is the Senate's constitutional responsibility to thoroughly review the qualifications of the President's judicial nominations. This advice and consent process is especially important when we consider nominees to the Supreme Court, which obviously is the highest court in our land.

Both Chairman LEAHY and Ranking Member SESSIONS did an admirable job in conducting a fair but very rigorous examination of the judge's record. The nominee was asked tough questions, but she was also treated fairly and with respect, as is appropriate for all judicial nominees.

We want to make sure judicial nominees have a number of qualities, but superior intelligence, academic excellence, distinguished legal background, personal integrity, and proper judicial demeanor and temperament are not the only qualities we must consider in a judicial nominee. Judges, and in particular Supreme Court nominees, must have a true understanding of the proper role of a Justice as envisioned by the writers of the Constitution as well as an ability to faithfully interpret the law and Constitution without personal bias and prejudices. Since becoming a member of the Senate Judiciary Committee the very first year I came to the Senate in 1981, I have used this standard to confirm both Republican and Democratic Presidents' nominees for the Supreme Court.

Because Supreme Court Justices have the last say with respect to the law and have the ability to make precedent, they do not have the same kinds of restraints lower court judges have. So we need to be convinced these nominees have judicial restraint—in other words, the self-restraint to resist interpreting the Constitution to satisfy their personal beliefs and preferences. We need to be persuaded these nominees will be impartial in their judging and bound by the words of the Constitution and legal precedent. We need to be certain these nominees will not overstep their bounds and encroach upon the duties of the legislative and executive branch. That is our checks-and-balances system of government. Our American legal tradition demands that judges not take on the role of policymakers, reserved to those of us in the legislative branch, but that instead they check their biases and preferences and politics at the door of the courthouse. The preservation of our individual freedoms depends on limiting policymaking to legislators rather than on elected judges who have a lifetime appointment.

When then-Senator Obama voted against now-Chief Justice Roberts, he spoke from his desk over there about how a judge needed to have, in his words, “empathy” to decide the hard cases. He said:

That last mile can only be determined on the basis of one's deepest values, one's core concerns, one's broader perspective on how the world works and the depth and breadth of one's empathy. . . . in these difficult cases the critical ingredient is supplied by what is in the judge's heart.

In another speech, President Obama further elaborated on this empathy standard:

In those 5 percent of cases, what you've got to look at is what is in the Justice's heart. What's their broader vision of what America should be. . . . We need somebody who's got the heart—the empathy—to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old—and that's the criteria by which I'll be selecting my judges.

He spoke very well in that quote about the empathy those of us who were elected ought to have, but I think he spoke incorrectly about what judges should have. And when the President then nominated Judge Sotomayor to the Supreme Court, he did that with the belief that she meets his empathy standard.

President Obama's empathy standard has been widely criticized as contrary to the proper role of judges—and that is my point—and that is because an empathy standard necessarily connotes standards of impartiality. That is a very radical departure from our American tradition of blind impartial justice. In fact, even Judge Sotomayor repudiated President Obama's empathy standard at her confirmation hearing.

A judge's impartiality is so critical to his or her duty as an officer in an independent judiciary that it is men-

tioned three times in the oath of office for Federal judges. Every judge swears “to administer justice without respect to persons,” to “do equal right to the poor and to the rich,” and to “faithfully and impartially discharge and perform all [his] duties.” That is from the oath judges take. Therefore, empathetic judges who choose to embrace their personal biases cannot uphold their sworn oath.

If we are to have a government of laws and not of men and women, then our judges must not favor any party or class over another, whether they be historically privileged or historically disadvantaged. Our judges must decide the cases before them on the law this Congress writes and what it requires, even if the law compels a result that is at odds with the judge's personal, deeply held feelings.

The fact that we have an independent judiciary means that it is not a political body. In exchange for remaining unchecked by the will of the people, the judicial branch is required to maintain impartiality. This country was founded on the principle that justice is the same for everyone. No one is entitled to special treatment, whether by fate or fortune, because no man or woman is above the law.

No matter what you call it—empathy, compassion, personal bias, or favoritism—it can have no place in the decisionmaking process of a judge—it can have a place in decisionmaking by a Senator—but especially in the case of the judicial branch, notably the Supreme Court or a Supreme Court Justice.

While justice is not an automated or mechanical process, it also is not a process that permits a patchwork of cases where the outcome is determined not by the law but by the judge's personal predilections. Judges may differ on what the law is, but they should never reach a conclusion because of a difference in ideology or because of their empathy for one of the parties.

An empathy standard for judging would betray the very cause of equality that it purports to champion by creating classes among our citizens in the eyes of the law. That is what is so dangerous about President Obama's standard and why we should be cautious in deferring to his choices for the judicial branch. That is why we should continue to assess judicial nominees based on their fidelity to the rule of law and not on some well-intentioned hope or belief that the personal biases they will rely on in judging will be the right ones.

Unfortunately, Judge Sotomayor's speeches and writings over the years reveal a judicial philosophy that highlights the importance of personal preferences and beliefs in her judicial method. Her speeches and writings reveal her views of a judge and judicial decisionmaking process that are quite contrary to what our American tradition demands of the judiciary and our system of justice.

I will cite a few troubling statements she has made. She questioned “whether achieving the goal of impartiality is possible at all in even most cases” and also “whether by ignoring our differences as men, women, people of color, we do a disservice to both the law and the society.”

She promoted identity politics where she openly admitted that “[my experiences] will affect the facts I choose to see” and that “I willingly accept that . . . judge[s] must not deny the differences resulting from experience and heritage.”

She claimed that the court of appeals is where “policy is made.”

She said that a “wise Latina would more often than not reach a better conclusion than a white male.”

She disagreed with a statement by Justice O'Connor that “a wise old woman and a wise old man would eventually reach the same conclusion in a case.”

She said that “unless American courts are more open to discussing the ideas raised by foreign cases, and by international cases, that we are going to lose influence in the world,” as if it is for the Supreme Court Justices to worry about our influence in the world. It seems to me the chief diplomat of our country is the President of the United States. She urged judges to look to foreign law so they can get their “creative juices” flowing.

At her confirmation hearing, Judge Sotomayor attempted to distance herself from these statements and explain them away, most likely recognizing that they were controversial and out of the mainstream. However, in my mind, she was not very successful. Even the Washington Post said Judge Sotomayor's testimony about some of her statements before the Judiciary Committee was “less than candid” and “uncomfortably close to disingenuous.”

I was not the only one who had problems reconciling what Judge Sotomayor said at the hearing with the statements she has repeated over and over throughout the years. That is because the statements made at the hearing and those made in speeches and in law review articles outside the hearing are polar opposites. Some of her explanations were contrived or far-fetched. In my opinion, these statements in her writings and speeches cannot be reconciled with her hearing testimony. I am not sure which Judge Sotomayor I am to believe. She appears to be Justice Ginsburg in her speeches and writings but made statements like Chief Justice Roberts in her confirmation hearing.

So I think the Washington Post's conclusions are worth repeating:

Judge Sotomayor's attempts to explain away and distance herself from that [wise Latina] statement were uncomfortably close to disingenuous, especially when she argued that her reason for raising questions about gender or race was to warn against injecting personal bias into the judicial process. Her repeated and lengthy speeches on that matter do not support that interpretation.

I am not only troubled by the speeches and writings of the judge—these were produced during her time as a sitting judge on the Second Circuit—and her contradictory statements before the Judiciary Committee but I also have concerns with cases Judge Sotomayor decided when she sat on the Second Circuit. Some cases raise serious concerns about whether Judge Sotomayor will adequately protect the second amendment right to bear arms and the fifth amendment property rights.

Statements she made at the hearing raise concerns that she will inappropriately create or expand rights under the Constitution. Other cases raise concerns about whether she will impose her personal policy decisions instead of those of the legislative or executive branch. In addition, Judge Sotomayor's track record on the Supreme Court is not a particularly good one. She has been reversed 8 out of 10 times and was criticized in another of the 10 cases.

At the hearing, Judge Sotomayor was asked about her understanding of rights under the Constitution, including the second and fifth amendments and the right to privacy. She was asked about her legal analysis in certain cases, like the Ricci, Maloney and Didden cases. She was also asked about how she views precedent and applies it in cases before her. Ultimately, I wasn't satisfied with her responses, nor was I reassured that Judge Sotomayor would disregard her strong personal sympathies and prejudices when ruling on hard cases dealing with important constitutional rights.

With respect to the Ricci case, I wasn't persuaded by Judge Sotomayor's claims that she followed precedent, nor her explanation as to why she could dismiss such a significant case in summary fashion. The only reason this case found its way to the Supreme Court was because her Second Circuit colleague read about it in the newspaper, recognized its importance, and asked to have it reconsidered. When the Supreme Court reversed Judge Sotomayor's decision, it held that there was no "strong basis in evidence" to support her opinion. In fact, her legal reasoning in Ricci was so flawed, all nine Justices rejected it.

With respect to the Maloney case, I was concerned with Judge Sotomayor's explanation of her decision holding that the second amendment right to bear arms is not "fundamental," as well as her claims that she was simply following Supreme Court and Seventh Circuit precedent. I was also concerned with her refusal to affirm that Americans have a right of self-defense. If Maloney is upheld by the Supreme Court, the second amendment will not apply against State and local governments, thus permitting potentially unrestricted limitations on this important constitutional right.

With respect to the Didden case, I was troubled with Judge Sotomayor's failure to understand that her decision

dramatically and inappropriately expands the ability of State, local, and Federal Governments to seize private property under the Constitution. In fact, based on the Didden holding, it is not clear whether there are any limits to the ability of State, local, and Federal Governments to take private property. I also was concerned with Judge Sotomayor's mischaracterization of the Supreme Court's holding in Kelo. And I wasn't satisfied with her explanation about why she summarily dismissed the property owner's claims based on the statute of limitations. I don't think these concerns are off the mark—the Didden case has been described as "probably the most extreme anti-property rights ruling by any federal court since Kelo."

So Judge Sotomayor's discussion of landmark Supreme Court cases and her own Second Circuit decisions raise questions in my mind about whether she understands the rights given to Americans under the Constitution. I question whether she will refrain from expanding or restricting those rights based on her personal preferences.

Almost two decades ago, then-Judge Souter during his confirmation hearing spoke about courts "filling vacuums" in the law. That discussion struck me as odd and troubled me, because clearly it is not the role of a court to fill voids in the law left by Congress. Although Judge Souter backtracked on his courts "filling vacuums" statement when I pressed him about it, I believe that his decisions on the Supreme Court actually reveal that he does believe courts can and do fill vacuums in the law. It is no secret that I regret my vote to confirm him. And because of that, I have asked several Supreme Court nominees about the propriety of judges "filling vacuums" in the law at their confirmation hearings. So this question shouldn't have come as a surprise to Judge Sotomayor when I asked her about it at her confirmation hearing. Unfortunately, I wasn't satisfied with her lukewarm answers to my question. In fact, it just reinforced the concerns I had with her hearing testimony, cases, speeches and writings.

Judge Sotomayor has overcome many obstacles to get to where she is today. There is no doubt that Judge Sotomayor is an engaging, talented, intelligent woman. She has tremendous legal experience and many other good qualities. I very much enjoyed meeting with her and getting to know her personally. But I can't just base my decision on these things. I have to look at her judicial philosophy and determine whether I believe it is one that is appropriate for the Supreme Court. That is my constitutional responsibility. And based on her answers at the hearing and her decisions, writings, and speeches, I am not comfortable with what I understand to be Judge Sotomayor's judicial philosophy. I am not persuaded that she will protect important constitutional rights, and I am not convinced that she will refrain

from creating new rights under the Constitution. I am not persuaded that she won't allow her own personal biases and prejudices to seep into her decisionmaking process and dictate the outcome of cases before her. So it is with regret that I must oppose her nomination to the Supreme Court.

I said this in the Judiciary Committee, and I repeat it now on the floor. Only time will tell which Judge Sotomayor will sit on the Supreme Court. Is it the judge who proclaimed that the court of appeals is where "policy is made," or is it the nominee who pledged "fidelity to the law?" Is it the judge who disagreed with Justice O'Connor's statement that a wise woman and a wise man will ultimately reach the same decision, or is it the nominee who rejected President Obama's empathy standard? Only time will tell.

Mr. CORKER. Madam President, Judge Sonia Sotomayor has an impressive background and an inspiring American story. She is a testament to the power of a strong work ethic and a focus on education and is a role model to many Americans as a result.

I enjoyed meeting with her in June and found her to be very intelligent and eloquent in expressing her thoughts. I let her know I would reserve judgment on her nomination until the conclusion of a fair and thorough hearing process.

After much deliberation and careful review, I have determined that Judge Sotomayor's record and many of her past statements reflect a view of the Supreme Court that is different from my own.

I view the Supreme Court as a body charged with impartially deciding what the law means as it is applied to a specific case. I believe Judge Sotomayor views the Supreme Court as more of a policymaking body where laws are shaped based on the personal views of the justices.

Unfortunately, nothing I heard during Judge Sotomayor's confirmation hearing or in my meeting with her in June sufficiently allayed this concern.

For this reason, I am disappointed to say, I will not be able to support Judge Sotomayor's nomination.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent that this hour under Democratic control be divided in the following manner: REED of Rhode Island, 15 minutes; Senator CARPER, 10 minutes; Senator KERRY, 10 minutes; Senator MENENDEZ, 5 minutes; Senator SCHUMER, 5 minutes; Senator NELSON of Florida, 3 minutes; and Senator BOXER, 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REED. Mr. President, the nomination before us of Sonia Sotomayor to replace Associate Justice David Souter is of great importance. The Supreme Court is the ultimate arbiter of justice

in the land. Therefore, this is one of the most consequential votes that any Senator can cast.

The Constitution makes the Senate an active participant, along with the President, in the confirmation of a Supreme Court justice. Article II, section 2, clause 2 of the Constitution states that nominees to the Supreme Court shall only be confirmed "by and with the Advice and Consent of the Senate." The Senate's role in the confirmation process places an important democratic check on America's judiciary. As a result, this body's consent is both a constitutional requirement and a democratic obligation. It is in upholding our constitutional duties as Senators to give the President advice and consent on his nominations that I believe we have one of our greatest opportunities and responsibilities to support and defend the Constitution of the United States.

As I have said before, in weighing a nominee's qualifications for the Court, we must consider an individual's intellectual gifts, experience, judgment, maturity and temperament. Judge Sotomayor's compelling life story demonstrates that she possesses each of these qualities.

She overcame early adversity—with the loss of her father, a diagnosis of juvenile diabetes—to become an accomplished student at her high school. She went on to Princeton, where she excelled both inside and outside of the classroom, receiving the school's highest academic prize upon graduation.

From there she became a stellar student at Yale Law School and served on its prestigious law journal. Upon graduating from Yale, Judge Sotomayor surely had a number of very lucrative options available to her. It is a testament to her early commitment to public service that she chose to serve 5 years as assistant district attorney in New York.

By all accounts, she was a zealous and thorough prosecutor and demonstrated the same rigor and commitment to excellence that have been her hallmark throughout her career.

Judge Sotomayor is extremely qualified for this role. As a Supreme Court Justice, Judge Sotomayor would bring to bear her rich and varied real-world experience. She has been a big-city prosecutor. She has been an attorney in private practice. She has been a trial judge, and she also knows what it means to be an appellate judge. Judge Sotomayor would make history as only the third female Justice and the first Hispanic Justice. Moreover, she has more Federal judicial experience than any nominee to the Court in 100 years.

Yet as compelling as these qualities and accomplishments are, there is a higher bar for a nominee to the Nation's highest Court. In previous consideration of Supreme Court judges, I have stated my test for a nominee for the Supreme Court. It is a simple test, one drawn from the text, the history and the principles of the Constitution.

A nominee to the Supreme Court must live up to the spirit of the Constitution. A nominee must not only commit to enforcing the laws but also to doing justice. A nominee must give life and meaning to the great principles of the Constitution: Equality before the law, due process, freedom of conscience, individual responsibility, and the expansion of opportunity.

In my view, Judge Sotomayor has met this test quite admirably. Judge Sotomayor's opinions demonstrate that she is no ideologue. Instead, she seeks to carefully weigh the facts in determining a just and fair outcome.

One issue of great concern at this time of conflict is executive power. As Commander in Chief, the President's duty is to guard the country's national security while also safeguarding individual freedoms. All too often, in my view, President Bush, guided by other government officials and questionable legal opinions, erred on the side of concentrating executive power. Indeed, I noted during my comments on Judge Alito's nomination that his avowal of the unitary executive theory was troubling in light of the Bush administration's policies. Judge Sotomayor's record on this issue suggests that she would more appropriately balance national security and individual freedom, and the role of Congress.

In the case of *Doe v. Mukasey*, she joined a unanimous panel decision that stated:

The fiat of a governmental official, though senior in rank and doubtless honorable in the execution of official duties, cannot displace the judicial obligation to enforce constitutional requirements. "Under no circumstances shall the Judiciary become the handmaiden of the Executive."

But she has also shown a clear recognition that within the appropriate sphere, the executive must be supported. In *Cassidy v. Chertoff*, she authored a unanimous panel opinion on the constitutionality of a ferry company's search of baggage and vehicles. The panel ultimately concluded that searches were permissible because "it is minimally intrusive, and we cannot say, particularly in light of the deference we owe to the Coast Guard, that it does not constitute 'a reasonable method of deterring the prohibited conduct.'"

In answering questions from my colleagues on the boundaries of presidential power during her confirmation hearing, Judge Sotomayor chose her words carefully. However, she was clear in affirming that no one is above the law. On this issue and many others, Judge Sotomayor has demonstrated a fair and balanced approach that will add to the high Court.

I believe Judge Sotomayor would be an able successor to Judge Souter a court that in recent years has taken a sharp turn away from protections of privacy, freedom, and other values we hold dear.

Judge Sotomayor's careful application of the facts to the Constitution

and the quest for justice persuade me that she will make a worthy addition to our Nation's highest Court. Indeed, she meets my test as someone who will not only uphold the letter of the law but the spirit of the law. It is with great pleasure that I support her nomination to the highest Court in the land and urge my colleagues to do the same.

I ask unanimous consent to have printed in the RECORD a joint letter of support signed by more than 1,200 law professors from all 50 States and the District of Columbia. In their joint letter, these professors write:

Her opinions reflect careful attention to the facts of each case and a reading of the law that demonstrates fidelity to the text of statutes and the Constitution. She pays close attention to precedent and has proper respect for the role of courts and the other branches of government in our society.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Hon. PATRICK J. LEAHY,

*Chairman, U.S. Senate Committee on the Judiciary, Russell Senate Office Building, Washington, DC.*

Hon. JEFFERSON B. SESSIONS,

*Ranking Member, U.S. Senate Committee on the Judiciary, Russell Senate Office Building, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: We the undersigned professors of law write in support of the confirmation of Judge Sonia Sotomayor as an Associate Justice of the United States Supreme Court.

As a federal judge at both the trial and appellate levels, Judge Sotomayor has distinguished herself as a brilliant, careful, fair-minded jurist whose rulings exhibit unflinching adherence to the rule of law. Her opinions reflect careful attention to the facts of each case and a reading of the law that demonstrates fidelity to the text of statutes and the Constitution. She pays close attention to precedent and has proper respect for the role of courts and the other branches of government in our society. She has not been reluctant to protect core constitutional values and has shown a commitment to providing equal justice for all who come before her.

Judge Sotomayor's stellar academic record at Princeton and Yale Law School is testament to her intellect and hard work, and is especially impressive in light of her rise from modest circumstances. That she went on to serve as an Assistant District Attorney for New York County speaks volumes about her strength of character and commitment to the rule of law. When in private practice as a corporate litigator in New York, she was deeply engaged in public activities, including service on the New York Mortgage Agency and the New York City Campaign Finance Board, as well as serving on the Board of Directors of the Puerto Rican Legal Defense and Education Fund.

Her career won bi-partisan respect, which led to her becoming a U.S. District Court judge (nominated by President George H.W. Bush on the recommendation of Senator Daniel Patrick Moynihan, and confirmed by a majority Democratic Senate in 1992). Her performance on the district court solidified Judge Sotomayor's support, and in 1998 she was elevated to the Second Circuit (nominated by President Bill Clinton and confirmed by a majority Republican Senate).

Judge Sotomayor will bring to the Supreme Court an extraordinary personal story, academic qualifications, remarkable professional accomplishments and much needed ethnic and gender diversity. We are

confident that Judge Sotomayor's intelligence, her character forged by her extraordinary background and experience, and her profound respect for the law and the craft of judging make her an exceptionally well-qualified nominee to the Supreme Court and we urge her speedy confirmation.

Mr. REED. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARPER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Mr. President, I rise in support of Judge Sonia Sotomayor's confirmation to the U.S. Supreme Court. Those of us who are privileged to serve in the Senate cast literally thousands of votes during our years here. We take many votes that crucial and important. But a handful of them are far more meaningful than others. These votes have historic consequences, ones which will resonate for years—in some cases, for decades—to come. This is one of those votes.

This is my third opportunity to vote on a Supreme Court nominee. On the previous two occasions, we faced different circumstances in which I had to decide whether to vote for or against candidates who were nominated by a President not of my party, nominees who may not have shared my political beliefs or my judicial philosophy. Similar to my colleagues, I take seriously our constitutional obligation to provide advice and consent to determine whether a President's nominees truly merit a lifetime appointment.

In each of those two earlier cases, I considered my decision carefully and deliberately. In one of those cases, that of now-Chief Justice John Roberts, I chose to support the President's selection. In the other, I did not. Reasonable people can disagree about the nominee before us this week. I certainly respect the views of my friends on the other side of the aisle who may ultimately vote against Judge Sotomayor's confirmation. But, first, I wish to explain why I am supporting Judge Sotomayor and, second, I want to encourage my Republican colleagues to support her nomination as well.

In 2005, I voted to confirm Judge John Roberts' nomination to become Chief Justice of the Supreme Court. I admitted it was a close call, at least it was for me. Ultimately, I chose to take what I described at that time as a "leap of faith."

Chief Justice Roberts holds political and legal opinions that are not consistent totally with mine in a number of respects. I knew he would sometimes deliver decisions I might not fully agree with. But after carefully considering his testimony, meeting with him at some length, and personally talking to a number of his colleagues—colleagues who knew him well and colleagues who had worked closely with

him in the past—I concluded that John Roberts would prove to be a worthy successor to retiring Chief Justice Rehnquist, and I think he has.

In short, by supporting John Roberts' nomination, I voted my hopes, not my fears. Just as I voted my hopes instead of my fears in the case of then-Judge, now-Chief Justice Roberts, I hope many of our friends and colleagues on the other side of the aisle will see their way clear to doing the same in this instance.

Before coming to the Senate, I served as Governor of Delaware. As Governor, I nominated dozens of—actually scores of—men and women to serve as judges in our State courts. The qualities I sought in the judicial nominees whom I submitted to the Delaware State Senate included unimpeachable integrity, a thorough understanding of the law, a keen intellect, a willingness to listen to both sides of a case, sound judicial temperament and judgment, and a strong work ethic.

These are qualities that still guide me as I decide how to vote on judicial nominees in the Senate. In applying each of those standards to Judge Sotomayor during the course of my examination of her record, it is clear to me she meets or exceeds all of them.

First, consider her experience. Judge Sotomayor has a compelling life story—a story that confirms her work ethic and informs her judicial temperament. In June of this year, I had the pleasure of meeting personally with Judge Sotomayor. We spoke at length about her experience, her service, and her life. We talked about our respective childhoods, our respective educational opportunities, and our careers. It was a revealing conversation, and her responses were forthright. They were insightful. And they were sincere.

The nominee before us truly highlights the diversity of the country in which we live. We know her story by now. Sonia Sotomayor grew up in a south Bronx housing project. Her parents were both immigrants from Puerto Rico. Her father had limited education and did not speak English.

Her mom worked 6 days a week to support her family and instilled in her daughter the importance of a quality education. Judge Sotomayor excelled in school and went on to attend Princeton University on a scholarship. She later went on to Yale Law School, where she served as an editor of the Yale Law Journal.

I have met many people in my life who have built themselves up from nothing. Unfortunately, I have found that a number of them—maybe many of them—seem to have forgotten where they came from. But it is clear to me that Sonia Sotomayor has not forgotten. When we met, she told me she was "still Sonia from the projects." Despite all her success, she still has not forgotten her roots. Let me say, I find that enormously refreshing and encouraging.

After law school, Sonia Sotomayor served as an assistant district attorney

in New York. During her 5 years in that position, she tried dozens of major criminal cases and became known, in the words of Robert Morgenthau—who was then, and still remains, the district attorney in Manhattan—as a "fearless and effective prosecutor."

Starting in 1984, Sonia Sotomayor spent 8 years in private practice. As a civil and international corporate litigator, she gained considerable experience in the private sector, handling cases involving everything from real estate to contract law, from intellectual property to banking.

Then, in 1992, with bipartisan support, Sonia Sotomayor began her service to this country in the Federal judiciary. She was nominated to serve as a Federal district judge, not by a Democrat but by a Republican, President George Herbert Walker Bush, and was unanimously—unanimously—confirmed by this Senate.

Six years later, when Democratic President Bill Clinton nominated her to the Second Circuit Court of Appeals, she received the support of 25 of our colleagues on the other side of the aisle. Their vote of confidence in Judge Sotomayor then has since been confirmed by her reputation for moderation and impartiality.

The Second Circuit is considered by many to have one of the most demanding caseloads in our Nation. Judge Sotomayor participated in over 3,000 decisions and has written more than 230 opinions for the majority. During her time on the bench, she examined difficult issues of constitutional law, complex business disputes, and high-profile criminal cases.

Judge Sotomayor brings more Federal judicial experience to the Supreme Court than any Justice confirmed in the last 100 years.

As a Federal judge for nearly two decades, Sonia Sotomayor has demonstrated a clear commitment to unbiased, impartial justice and to the rule of law. Unlike some nominees for the Federal bench, with Judge Sotomayor, we can see a long paper trail of her legal rulings.

Her record reveals that she consistently takes each case on its own merits—regardless of the ideological outcome—and narrowly applies the law to the particular facts. She may even be more of a strict constructionist, when it comes to applying the law, than many of the Justices my friends on the other side of the aisle admire the most. Quite frankly, she is a model of judicial restraint.

As a circuit court judge, Sonia Sotomayor is known as a moderate who agrees with her more conservative colleagues far more than she disagrees with them. One of those colleagues on the Second Circuit, Richard C. Wesley, himself an appointee of George W. Bush, had this to say about her:

Sonia is an outstanding colleague with a keen legal mind. She brings a wealth of knowledge and hard work to all her endeavors on our court. It is both a pleasure and an honor to serve with her.

Another Second Circuit colleague, Judge Roger Miner, who was appointed by President Ronald Reagan, described Judge Sotomayor as an "excellent choice," saying:

I don't think I'd go as far as to classify her in one camp or another. I think she just deserves the classification of outstanding judge.

And the Second Circuit's current chief judge, Dennis Jacobs, appointed by the first President Bush, said:

Sonia Sotomayor is a well-loved colleague on our court. Everybody from every point of view knows that she is fair and decent in all her dealings. The fact is, she is truly a superior human being.

The strength of Judge Sotomayor's record and reputation is perhaps why, to some extent, many critics have focused almost exclusively on one or two legal rulings, and on a line from a speech she gave years ago. But I do not find much to agree with in these criticisms. But even if I did, it does not seem fair to me that she should be judged on those few items alone. These few quibbles need to be put in the context of her lifetime of work.

Of all people—of all people—we in the Senate should understand this. As Senators, whether we have served here for 12 years or 24 years or for 50 years, such as ROBERT BYRD has done, we will vote thousands of times. As many of us know from personal experience, it is easy to take one vote or one decision or one line from one of our speeches completely out of context and make us appear to be someone we are not or to stand for something that is entirely alien to our beliefs and values. It has happened to me. I suspect it has happened to most, if not all, of our colleagues. I might add, I believe that is what has happened to the nominee before us today.

As a result, I believe it is incumbent upon us to examine carefully a nominee's overall record, much as I hope the people of Delaware will consider my overall record when they cast their votes every 6 years.

If nothing else, Judge Sotomayor's extensive record demonstrates she sticks to the law. Perhaps that is why, in part, the American Bar Association has given this judge, this nominee, its top rating of "well qualified" in assessing her record and in evaluating her judicial temperament.

For all these reasons—and more—I invite my conservative colleagues on the other side of the aisle to take a leap of faith, as I did a few years ago with John Roberts—as I did 4 years ago—and join me in casting their vote in favor of Judge Sotomayor's nomination to serve on the U.S. Supreme Court.

With that, I say thank you to the Presiding Officer and yield the floor. Mr. BYRD. Mr. President, I have never missed a vote on a nomination for a Supreme Court Justice in my time in the Senate. Today, I will vote to support the nomination of Judge Sonia Sotomayor. I submitted questions to

Judge Sotomayor on matters of great importance to the preservation of congressional power: the constitutional grant of the purse strings to the Congress; the role and responsibility of the legislative branch to conduct oversight and investigation; and the deliberate restraints on the executive branch created by the Constitution's separation of powers. I found her answers thoughtful, her intellect keen, and that Judge Sotomayor possessed the requisite reverence—and patience—for the process outlined in article II, section 2 of the Constitution.

I watched the hearings intently; I studied Judge Sotomayor's words. What struck me about the Judiciary Committee's hearings was the dearth of inquiry into her judicial record. Indeed, her record is certainly substantial; the most substantial record I have seen in some time. But, instead of delving into her many opinions, or questioning her on Supreme Court jurisprudence, Judge Sotomayor was asked the same few questions over and over, needlessly.

The tendency to grandstand is hardly a partisan thing. The Senate's ability to question a nominee is a precious gift from our Founding Fathers—a check on the Judiciary and on the Executive. While the President may nominate, the advice and consent of the Senate is required for confirmation. But, in this particular instance, partisan trifles took the place of constitutional probing. Statements were taken out of context, while volumes of Judge Sotomayor's judicial record went unquestioned, and likely unread. Unfortunately, by not probing, the Senate shirks its responsibilities.

Judge Sotomayor's story is similar to my own story. Much like my own journey from the southern coalfields of Raleigh County to the U.S. Senate, Judge Sotomayor overcame tremendous adversity through determination and hard work.

Judge Sotomayor will be confirmed by the Senate. That is a good thing. I hope that we as a body will reflect on the nomination and confirmation processes as envisioned in the Constitution, and ask ourselves whether we can do a better job in living up to the spirit of the law in the future.

Mr. ROCKEFELLER. Mr. President, I rise today to announce my full support for the confirmation of Judge Sonia Sotomayor to be our Nation's 111th Supreme Court Justice. I am proud of Judge Sotomayor's dedication to her country, and I am impressed by her outstanding accomplishments. Today marks an historic occasion for our country, as Judge Sotomayor becomes only the third woman and first Hispanic ever to serve on the highest Court in the land.

The decision of whether to confirm a nominee for a lifetime appointment to the U.S. Supreme Court is one of the Senate's most significant and solemn duties under the Constitution. It will affect generations of Americans for years to come.

After 24 years of service to the people of West Virginia as their U.S. Senator, the nomination of Judge Sotomayor marks the 11th Supreme Court nominee under five Presidents that I have had the opportunity to consider. I have supported most nominees, but have opposed some. In each instance, I came to my decision after a careful and thorough process, and the same is true of my support for Judge Sotomayor.

The first question that must be answered about any nominee is: Does he or she possess the intellect, experience, and temperament to serve on the Supreme Court? For Judge Sotomayor, the clear answer is yes.

Her educational and professional background is impeccable. She was valedictorian of her high school class, graduated summa cum laude from Princeton University, and served as an editor of the Yale Law Journal while attending Yale Law School. Judge Sotomayor has served with distinction on almost every level of our judicial system as a prosecutor, civil litigator, district court judge, and appeals court judge. In her confirmation hearings before the Judiciary Committee, she showed herself to be an even-tempered and honest person, as well as a straightforward and critical thinker.

But once a nominee's impressive credentials and integrity are established, my analysis of his or her fitness to serve on the Supreme Court cannot end. The tremendous responsibility that all Justices have to the Constitution—and their decisions' impact on all Americans requires further consideration of the nominee's core beliefs about our country and our justice system.

Before supporting a nominee, I need to know that he or she understands the consequences of the Supreme Court's decisions. I need to know that he or she will protect the best interests of West Virginians. And I need to know that he or she will uphold the fundamental rights and freedoms that all Americans enjoy under the Constitution and in our laws.

Every American needs to know that our courthouse doors are open for everyone, not just the wealthy, the powerful, or the well-connected. The Founders intended our courts to serve as a place where all citizens can go to resolve disputes, seek relief from injustices, and hold wrongdoers accountable. As members of our court of last resort, Supreme Court Justices have a particularly important role in upholding our constitutional freedoms, even when lawmakers or public opinion would limit them.

To understand the enormously important role of the Court in the lives of Americans, we need only look at cases such as *Gideon v. Wainwright*, in which the Court recognized the fundamental right of defendants to be represented by counsel, even those who cannot afford to hire an attorney; or *Brown v. Board of Education*, in which the Court struck down racial segregation in our



public schools. These are the types of decisions that require a deep respect for our Constitution and the courage to do what is right.

After meeting with Judge Sotomayor in person and reviewing her extensive judicial record, I firmly believe that she possesses those qualities, and will always put the American people first.

I also believe that she understands the real world implications of our laws and how they affect the lives of everyday people. She knows what it is like to overcome adversity and work against the odds to become a successful lawyer and judge. In her, I see someone who shares the values that are important to West Virginians: hard work; determination; love for her country; love for her family; and a sense of pride in her community. It is no surprise that her nomination is supported by Democratic and Republican officials; conservatives, liberals, and moderates; prosecutors and law enforcement organizations; civil rights organizations; former colleagues; and fellow jurists.

I am disappointed that some of my colleagues have suggested that Judge Sotomayor's comments in a few of her speeches indicate that she will let personal biases influence her decision-making. I could not disagree more. Her extensive judicial record reflects a fair, thoughtful, and careful approach to decisionmaking—one that is based on meticulous analysis of the facts and a close following of the law and precedent.

As a trial court judge, she presided over approximately 450 cases. As an appeals court judge, she participated in over 3000 decisions and authored approximately 400 published opinions. With 17 years of service on the bench, she brings more Federal judicial experience to the Supreme Court than any nominee in nearly 100 years.

Judge Sotomayor's record speaks for itself, and I commend President Obama for nominating such a highly qualified individual to serve my fellow West Virginians and Americans on the Supreme Court.

Mr. CONRAD. Mr. President, the story of Sonia Sotomayor's life is a remarkable one. Born in humble circumstances, she has risen to the top of the legal field, and earned the opportunity to be considered for a place on America's highest court.

As evidenced by her exceptional educational achievements, and her vast and varied legal resume as a prosecutor, private practice litigator and Federal judge, Sonia Sotomayor is unquestionably qualified from the standpoint of experience, competence, and intellect. In fact, having been appointed to the Federal bench in 1992 by President George H.W. Bush, she has more Federal judicial experience than any Supreme Court nominee in 100 years, and more overall judicial experience than any nominee in 70 years.

Judge Sotomayor's record places her squarely within the mainstream of American jurisprudence. Even some of

her harshest critics have conceded that her long record on the bench is one of mainstream decisions and judicial opinions.

And Judge Sotomayor's record shows that she is not an activist and has not legislated from the bench. Instead, she has faithfully adhered to precedent. In fact, the nonpartisan Congressional Research Service, CRS, found that "perhaps the most consistent characteristic of Judge Sotomayor's approach as an appellate judge has been an adherence to the doctrine of stare decisis (i.e., the upholding of past judicial precedents)." Further, CRS found that Sotomayor has exhibited "a careful application of particular facts at issue in a case and a dislike for situations in which the court might be seen as overstepping its judicial role."

Finally, Judge Sotomayor has the temperament to serve on the Supreme Court. Her grueling nomination hearings demonstrated her patience, thoughtfulness and composure in the face of tough and aggressive questioning by almost 20 Senators over several days.

Those same qualities of character were evident during our personal meeting. During our wide-ranging discussion, I also found Judge Sotomayor to be genuine, humble and open-minded. Although she grew up in an urban setting, I am confident that she can relate to people from more rural areas like North Dakota, because she understands everyday people and their struggles, she has common sense, and she is no stranger to hard work and the need to overcome obstacles. In short, I believe she learned the same values and the same lessons growing up in the Bronx that I learned growing up in Bismarck.

Some Senators have announced their intention to vote against Judge Sotomayor, but their criticism has not been based on a comprehensive assessment of her 17-year record as a judge, or her 30 years in the legal profession. One source of opposition has been various comments she has made in speeches, particularly on the topics of race and gender. Judge Sotomayor herself has admitted that she could have phrased some of her comments in these areas more effectively or appropriately. But when taken in their full context, her remarks seem to be primarily an expression of support for the unique American "melting pot" and the notion that a diversity of backgrounds has made us a stronger and better nation. Perhaps more importantly, there is no evidence whatsoever that her personal views have improperly influenced her decisions in the courtroom.

Some have also questioned Sotomayor's views on gun rights, and, in particular, whether or not she believes the second amendment restricts the right of individual States to regulate firearms. Despite the concerns that have been raised, a careful reading of her judicial record indicates that she has been very much in the judicial

mainstream on gun issues. And she clearly stated during her confirmation hearings that she has a completely open mind on the specific question of how the second amendment should be applied to the States. I take her at her word, and it is my hope that the Supreme Court will indeed find that the second amendment protects the rights of gun owners and users against intrusion by State laws.

When voting on judges, all we can do is look at the nominee's record and accomplishments, analyze his or her intellect and character, and decide whether he or she is qualified to serve on the bench. I have consistently followed that approach in the past, most recently in voting to confirm Chief Justice Roberts and Justice Alito. Using the same standards I applied to those nominations, I believe Sonia Sotomayor is eminently qualified for a place on the Supreme Court, and I am proud to support her nomination.

Mr. JOHNSON. Mr. President, there are few decisions that have a more lasting effect on our democracy than fulfilling my constitutional duty of advice and consent for Justices of the Supreme Court. This body will assume this tremendous responsibility once again today as we consider the nomination of Judge Sonia Sotomayor to fill a seat on the Supreme Court that has been vacated by Justice David Souter. She is the third woman to be nominated to the Supreme Court and the first nominee to be of Hispanic descent.

This will be the third time that I have cast a vote in regards to a Supreme Court Justice. The previous two times were for current Chief Justice Roberts and current Associate Justice Alito. Both of these Justices were appointed by former President George W. Bush. I voted in favor of both of these nominees even though their ideologies often differ from my own. They are both qualified members of the Judiciary and while our philosophies may differ, they both are, and were, within the broad mainstream of contemporary jurisprudence.

It is within this mainstream that I find Judge Sonia Sotomayor. Her career as a jurist is a model of integrity and discipline. Her judicial philosophy is rooted in precedent and a devotion to the law. Judge Sotomayor has consistently pledged during the confirmation process her commitment to the law. She has stated that it is her duty to interpret the law and not to enact law. She has many years of service and experience as a prosecutor and litigator; district court judge and circuit court Judge. She has twice received bipartisan support from this body—the second time with my support. She has received the highest rating from the American Bar Association. It is clear that she has an accomplished résumé.

Earlier this summer, I met with Judge Sotomayor to form my own opinions on her judicial theory. While our conversation centered on a variety of interests, it was clear that Judge

Sotomayor distinguished herself as an able jurist who relied on precedent. I reviewed her record and did not find anything that would deter me from that belief. The same can be said of her testimony before the Senate Judiciary Committee during her confirmation hearings. She has said that she does not inject personal bias in her decision making process and I trust her at her word.

Often, I think that this process has become overpoliticized. Judge Sotomayor is highly qualified and able to serve on the U.S. Supreme Court. Opposition for opposition's sake is not constructive to our national dialogue. However, while I believe the President should have some latitude in selecting judges this does not mean that those nominees should be ideologues that stand outside of conventional judicial theory. Most Americans do not sit on the ends of the political spectrum but within the middle. I believe that Judge Sotomayor is within that middle ground. I support Judge Sotomayor to be Associate Justice of the U.S. Supreme Court and look forward to casting my vote in favor of this historic nominee.

Ms. MIKULSKI. Mr. President, today I rise to address one of the most significant and far reaching decisions a Senator makes: The vote on a confirmation of a Supreme Court Justice. This vote will have an immense impact on future generations. A Senator is called upon to make two decisions that are irrevocable; one is the decision to go to war and the other is the confirmation of the members of the Supreme Court. The people of Maryland have entrusted in me the right make this decision and I take this responsibility very seriously.

When I decide how I will vote on any nominee for the Federal bench, I have three criteria. First, the nominee must possess the highest personal and professional integrity. Second, the nominee has to have the competence and temperament to serve as a judge. Finally, the nominee must demonstrate a clear commitment to core constitutional principles. Judge Sonia Sotomayor passes all those tests with flying colors.

If confirmed, Sonia Sotomayor would be the third woman to serve on the Supreme Court and the first Hispanic on the Supreme Court. She has a compelling personal story, as well as a distinguished judicial record. Her father was a tool-and-die worker with third grade education who spoke no English and died when Judge Sotomayor was only nine years old. She was raised by her mother, a nurse in a public housing project in the Bronx, New York. After her father's death, she turned to reading Nancy Drew mystery novels, which inspired her love of reading and learning that put her on a path that ultimately led her to the law. Sotomayor excelled in school, graduated top of her class at Blessed Sacrament and Cardinal Spellman High School. She won a

scholarship to Princeton University where she graduated summa cum laude and Phi Beta Kappa. She then attended Yale Law School and served as an editor for the Yale Law Journal.

Sonia Sotomayor's competence cannot be questioned. She is a champion of the law with a distinguished legal career spanning three decades. She has served at almost every level of the judicial system and she is the first Supreme Court nominee in 50 years to have served as a trial judge. She began her legal career as a fearless and effective prosecutor, working in the Manhattan District Attorney's Office for 5 years where she tried dozens of criminal cases from street crimes, to child abuse, police misconduct and homicides. She then became a corporate litigator for over 8 years in private practice. She made partner at the law firm where she tried complex corporate cases, including intellectual property, trademark and copyright infringement, real estate and banking.

For nearly two decades, Sonia Sotomayor has been a sharp and fearless trial judge. In 1992, President George H.W. Bush nominated Sotomayor to serve as a Federal district judge and she was unanimously confirmed by the Senate. As a Federal district court judge, she heard over 450 cases during 6 years as trial judge and ruled against Major League Baseball owners to end the baseball strike. She was then nominated by President Clinton to the Second Circuit Court of Appeals and confirmed by the Senate on a vote of 69-29. She has been a tough, fair and thoughtful appellate judge who has written over 400 opinions, of which the Supreme Court reviewed only five cases and reversed only three of those opinions. Sonia Sotomayor understands upholding the law means the consistent, fair and common sense application of the law. She has an understanding of real world consequences of decisions and recognizes that her job as a judge is to interpret the laws passed by Congress and not making laws from the bench. Under her tenure as a judge, she has demonstrated a level head, the ability to handle difficult situations with a calm and thoughtful temperament, and is well respected among her colleagues.

Judge Sotomayor's integrity is unquestioned. Throughout her career she has worked to make sure that the courthouse doors are open to all. She was raised by hardworking parents who instilled strong work ethic. Throughout her life she has been active in her community and serves as a role model. She mentors kids from troubled neighborhood, teaches at-risk high school students job and life skills, and helps find summer jobs for these students. In addition, Sonia Sotomayor holds uncompromising views on judicial independence and has demonstrated she is an independent thinker dedicated to the rule of law. Sotomayor has stated that the Constitution should not be bent under any circumstance and from

the bench she has shown she is a moderate judge who respects judicial precedent. In fact, 95 percent of her decisions have been favored by Republican appointees on the Second Circuit and she is well known for her judicial restraint.

In sum, Sonia Sotomayor is an outstanding nominee to the highest court in the United States and an inspiration to all Americans. She is living proof that the American dream can be achieved. She is the daughter of hardworking immigrants, who overcame obstacles, went to Ivy League schools on scholarship, and has served for over 17 years as a Federal judge. Today I am proud to say when my name is called, I will vote aye.

Mr. NELSON of Nebraska. Mr. President, I wish today to discuss the nomination of Judge Sonia Sotomayor to the U.S. Supreme Court and share the reasons why I will cast my vote in favor of her confirmation.

For me, the single most important consideration in deciding whether to provide my consent to a judicial nomination is an assessment of whether the judge will bring an ideology to the bench, seeking to advance a set agenda regardless of the facts a case presents and the laws and precedents at hand. I believe—as most Nebraskans and Americans believe—that a political agenda belongs in the political branches, and thus activists and would-be policymakers should seek legislative or executive office if they want to make laws and set policy.

Judges, on the other hand, must show respect for the laws and Constitution of The United States and deference to settled law and precedent. The role of a judge is to adjudicate impartially; and the impartial application of justice should be devoid of personal views and political agendas.

Judge Sonia Sotomayor's education and legal career show that she is a brilliant woman with a breadth and depth of legal experience. She has been a prosecutor, an attorney in private practice, a trial court judge, and an appellate judge. I am particularly impressed by her record on the bench, where she has earned a reputation as tough on crime, fair on the facts and the law, respectful of precedent, and mindful of the limited role of the judiciary.

Judge Sotomayor has pledged fidelity to the law, and her extensive record of upholding the law as a trial and appellate judge is a concrete example of how she has carried out this pledge. Her 17-year record provides evidence of a restrained and mainstream judicial philosophy and shows that she has not been an activist. An objective review of Judge Sotomayor's record shows a fair, impartial, and humble judge.

For example, in addition to achieving a unanimous rating of "well qualified" from the American Bar Association's Standing Committee on the Federal Judiciary, the highest rating possible, Judge Sotomayor has won praise for

her judicial restraint. Of particular importance to me was this statement by the ABA Committee: "Judge Sotomayor's opinions show an adherence to precedent and an absence of attempts to set policy based on the judge's personal views. Her opinions are narrow in scope, address only the issues presented, do not revisit settled areas of law, and are devoid of broad or sweeping pronouncements."

In addition, the nonpartisan Congressional Research Service analyzed her record as a judge and concluded: "Perhaps the most consistent characteristic of Judge Sotomayor's approach as an appellate judge has been an adherence to the doctrine of *stare decisis* (i.e., the upholding of past judicial precedents). Other characteristics appear to include what many would describe as a careful application of particular facts at issue in a case and a dislike for situations in which the court might be seen as overstepping its judicial role." This is high praise indeed, for those of us like me who value a limited role and eschew judicial activism.

Having discussed some of the reasons why I believe Judge Sotomayor is fit to serve on the High Court, I would like to take a moment to respectfully address some of the concerns and criticisms that some of my constituents and a certain few of my colleagues have raised about Judge Sotomayor.

Foremost, I believe that actions speak louder than words. Throughout this confirmation process, certain comments Judge Sotomayor has made outside of the courtroom have been the subject of much criticism. Indeed, some of these remarks could be cause for concern if they proved to slant the judge's approach to the law or impede her ability to render an unbiased opinion. But after examining her record, meeting personally with her, and observing the Judiciary Committee hearings, I am convinced that Judge Sotomayor will approach the Supreme Court with the same unbiased fidelity to the law that has marked her distinguished career thus far. Simply put, I see no significant evidence that she has manipulated the facts of cases or interpretations of the law in the courtroom to alter the outcome of a case.

In addition, some have singled out a handful of decisions the judge has participated in as grounds for disqualification. Mr. President, I do not expect a judge to agree with me all of the time, just as I do not agree with all the laws or all the precedents on the books; however, I firmly believe that disagreeing with a law or a precedent is not grounds for a judge to rewrite the law as he or she sees fit. And while I may not personally agree with the outcome of every single case Judge Sotomayor has decided, it is clear to me that her opinions were informed by facts, bound by precedents, and faithful to the law.

Judge Sotomayor has decided more than 3,000 cases as a member of the Second Circuit Court of Appeals. Only

13 of these have been reviewed by the Supreme Court; only 5 have been reversed. Of the opinions she authored, five were reviewed, her opinion was upheld in two, and she was reversed or vacated in three. This compares favorably with recent Supreme Court reversal rates and with recent Supreme Court nominees.

My approach to confirmation of judicial nominees has not changed during my time in the Senate. I have voted to confirm the overwhelming majority of nominees to come before us—including both Chief Justice Roberts and Justice Alito for the Supreme Court—and my standards for what I consider a qualified judge have not changed since my days in the Governor's office, when I appointed 81 judges, including the entire Nebraska Supreme Court and Court of Appeals. I wish I could say the same for the way the Senate considers judicial nominations, which to my disappointment has just become increasingly political and partisan. In the 1990s, Justice Ruth Bader Ginsburg was confirmed with only three dissenting votes, Justice Stephen Breyer with only nine dissenting votes. Yet recent nominations show that rising partisanship has affected both the tenor of the debate and the outcome of the vote. The Senate confirmed Chief Justice Roberts with 22 dissenting votes, and Justice Alito was confirmed with 42 dissenting votes.

In 2005, the nomination process became so polarized that I joined with 13 of my colleagues to form the Gang of 14 to prevent the shutdown of the Senate over partisan positioning with respect to appeals court nominees. I commend the Judiciary Committee for presiding over a cordial and fair hearing process for Judge Sotomayor, but as in all things, I wish the Senate could return to a more bipartisan approach to our constitutional responsibility to provide advice and consent.

As a Senator, I have taken very seriously my role to responsibly, thoughtfully, and thoroughly review a nominee's qualifications and record. After examining her record, meeting personally with her, and observing the Judiciary Committee hearings, I am convinced that Judge Sotomayor's approach on the Supreme Court will demonstrate the same fidelity to the law that has marked her distinguished career. In the years ahead, I believe she will make an important contribution on the Supreme Court. I wish her well in her new role.

I thank the Senate for this opportunity to offer my perspective on this historic nomination.

Mr. DORGAN. Mr. President, I will vote to confirm the nomination of Judge Sonia Sotomayor to be an Associate Justice of the Supreme Court. Let me explain why I am supporting her.

Judge Sotomayor's impressive life story is an American story of working hard and making the most of every opportunity. She grew up in a housing

project in the South Bronx nurtured by a working mother who instilled in her the values of America. She understood that education was the key to unlocking the greatness that is available in our country. She won a scholarship to Princeton University, where she graduated with highest honors. But she did not stop there. She then attended one of America's finest law schools, where she also excelled and was a member of the prestigious Law Review.

In addition to her extraordinary academic achievements, Judge Sotomayor's many work experiences in the legal profession make her ideally suited to be a Supreme Court Justice. She has been a prosecutor, an attorney in private practice, a trial judge and an appellate court judge. She has been a Federal judge for more than 17 years. When she is confirmed, she will have had more judicial experience than any other Supreme Court Justice in more than 100 years, and she will be the only justice on this Supreme Court to have had experience as a trial judge. The knowledge she has gained over those many years will serve her, the Court, and our country well.

After reviewing her career on the bench and closely following her confirmation hearings, I have concluded that Judge Sotomayor is sincere in her commitment to apply the law, rather than to make the law. Her record shows that she cannot be fairly labeled "left" or "right." For many years, she has looked at the facts and law of the many cases that have come before her and she has called them as she sees them without regard for anything else. Her record clearly demonstrates that she is a moderate, mainstream judge with great respect for the law, our Constitution, our country, and its institutions.

In my own meeting with Judge Sotomayor, I found her to be intelligent, measured, deliberate, and thoughtful. Judge Sotomayor assured me that she holds great respect for settled law. The more than 3,000 cases she has participated in support that conclusion as well.

This extensive record, and all of her experiences in life and law, likely explain the remarkable breadth and scope of people and organizations, many from opposite ends of the political and ideological spectrum, supporting her nomination. For example, the Chamber of Commerce and labor unions support her as well as numerous police organizations and defense lawyers. These are not natural allies, but they have seen what I have seen: a person of exceptional intelligence, wide-ranging experience, judicious temperament, and a commitment to even-handedly and fairly applying the law without fear or favor.

This is also demonstrated by her appointments to the bench. It is telling that Judge Sotomayor was first appointed to the Federal bench by President George H. W. Bush, who nominated her to the District Court for the

Southern District of New York. Judge Sotomayor was then promoted by President Clinton to the U.S. Court of Appeals for the Second Circuit. It is rare indeed to have a judge nominated by Presidents of both parties, and this is a testament to Judge Sotomayor's intellect, impartiality, and judicial conduct.

A Supreme Court appointment is for life and many Justices serve for decades, but their influence does not stop there. The cases they write or participate in have an effect on the law of the land for many decades even after they leave the Court. That is why I take my duty as a Senator to confirm a President's nomination for the Court so seriously, as I have done here.

One of the things that makes our country great and an inspiration to so many throughout the world is our commitment to "Equal Justice Under Law," which is carved in marble over the entrance to the Supreme Court. Equal justice means that, under our law, who you are does not matter; who you know or are connected to does not matter; how much money you have or do not have does not matter; the color of your skin, your ethnicity, your gender or any other personal characteristic does not matter. The facts of a case and the applicable law are all that matter in our justice system. That is what the phrase "Equal Justice Under Law" means in our country and to our country.

I am confident that "Equal Justice Under Law" will inform and animate Judge Sotomayor's decisions throughout her years on the Supreme Court. If one looks with an open and fair mind at the full breadth of Judge Sotomayor's inspiring life, extraordinary career and superb qualifications, as I have, it is clear that she has earned a place on the Supreme Court and I am proud to be supporting her nomination. I have no doubt that our country will be well served by her.

Mr. BURRIS. Mr. President, more than half a century ago, a young couple from Puerto Rico settled down in the Bronx with dreams of a better life.

They didn't have much money, but they had a vision for the future.

A vision that their son and daughter might be able to get a good education, find a rewarding job, and live out the full promise of the American dream.

Today, their son Juan is a doctor and university professor near Syracuse, NY.

And their daughter Sonia is about to become the first Latina Justice of the U.S. Supreme Court.

This family's story could only take place in America.

It is a testament to the greatness of our democracy that the daughter of a relatively poor family can grow up to attend the finest universities in the world, and even rise to the highest judicial body in the land.

But it is not only her remarkably American story that will make Judge Sonia Sotomayor an excellent addition to the Court.

Her legal background marks her as the single most qualified Supreme Court nominee in the last 60 years.

After graduating from Princeton University and Yale Law School, she served as an assistant district attorney and then had a successful legal practice of her own.

In 1991, President George H.W. Bush appointed Ms. Sotomayor as the first Hispanic judge on the U.S. District Court in New York State.

Eight years later, President Clinton elevated her to the U.S. Court of Appeals, where she serves today.

Throughout her distinguished career, Judge Sotomayor has been a prudent and thoughtful jurist.

She has consistently exhibited the highest standards of fairness, equality, and integrity.

She is a brilliant legal mind and a moderate on the bench.

No one can argue with her professional qualifications for this post.

And I believe that her personal background will lend a fresh and dynamic perspective to the highest court in our land.

That is why I was proud to write to President Obama on May 15, urging her nomination.

I am pleased that he shares my high regard for Judge Sotomayor, and I thank him for giving us an eminently qualified nominee to confirm.

When we consider the makeup of the Supreme Court, we seek to build debate, not consensus.

Judge Sotomayor's uniquely American story will bring diversity to the Court's rulings.

And it is this diversity—of background, of perspective, of opinion—that will lend legitimacy and integrity to each decision.

As a former attorney general of Illinois, I have a deep understanding of these issues.

Every legal opinion should be bound by law and the weight of precedent.

The law must be grounded in sound and objective reasoning, and it is a powerful force in people's everyday lives.

That is why we need jurists like Sonia Sotomayor on the U.S. Supreme Court.

Because, when five voices come together to render a court decision, it becomes the law of the land.

There is no army, no threat of violence to back it up—just the quiet force of a written opinion.

That is the wonderful thing about this democracy.

And as a Supreme Court Justice, Sonia Sotomayor will never forget that.

She will be a strong addition to the highest court in our land, and I urge my colleagues to join me in giving her our utmost support.

Let us come together to make history by confirming the first Latina Supreme Court Justice in American history.

Let us renew our commitment to fairness, equality and diversity by con-

firming the most qualified nominee this Senate has seen in more than half a century.

Thank you, Mr. President. I yield the floor and suggest the absence of a quorum.

Ms. CANTWELL. Mr. President, I rise today with great pride to express my support for the confirmation of Judge Sonia Sotomayor to be Associate Justice of the U.S. Supreme Court. Today, the Senate is on the verge of a historic decision in confirming Judge Sotomayor. She brings a wealth of experience to this lifetime appointment, with 17 years of service on the judicial bench—more than any member of the current court. She has served as a prosecutor, a trial judge, an appellate judge and has also worked as an attorney in the private sector.

In fact, with the retirement of Justice David Souter and the confirmation of Judge Sotomayor, she will become the only justice on the current Supreme Court with experience as a trial judge. This experience gives her a perspective that will be a much-needed addition to the Court.

If we confirm her today—and I am confident we will—Judge Sotomayor will become the nation's first Hispanic in history to sit on the highest court in the land, and only the third female Justice. Women, Latinos and Latinas—indeed all Americans—can join in celebrating these significant milestones. Judge Sotomayor embodies the progress our country has achieved, and yet I know she would agree with me that there is much more to be done.

According to the American Bar Association, women comprise 47 percent of all law students, as compared to 1947, when women made up 3 percent of law students. That is significant progress. I firmly believe that for Hispanics, Judge Sotomayor's appointment will mark the beginning of a new era of steady progress. According to the U.S. Department of Labor, today only about 4 percent of lawyers and 3 percent of judges are of Hispanic descent.

Judge Sotomayor will serve as an able Associate Justice. She will also serve as a tremendous role model for law students and other young people thinking about entering the legal profession and for those who aspire to become judges. Her confirmation and service on the U.S. Supreme Court will serve to accelerate progress into the future.

Like election of the president who appointed her, Judge Sotomayor's confirmation says to young people of all incomes and backgrounds: You can be anything you want to be.

All of us have been moved by Judge Sotomayor's personal story—of her upbringing in the Bronx by a working mother, and her rise from those humble beginnings to graduate in one of Princeton University's first classes to include women. From there she went on to Yale Law School, where she excelled, and then to a coveted post—one of the few held by women—in the Office of the Manhattan District Attorney.

With her record of solid experience, clearly Judge Sotomayor is ready to serve on the U.S. Supreme Court. In rating Judge Sotomayor, the American Bar Association conducted confidential interviews with a large number of judges and litigants who have worked with her or argued cases in her court. The ABA unanimously found Judge Sonia Sotomayor to be "well qualified," the highest rating the association can give a judicial nominee.

Judge Sotomayor has received support from Democrats and Republicans, law enforcement groups and civil rights organizations. Among these groups are the Association of Prosecuting Attorneys, International Association of Chiefs of Police, National Fraternal Order of Police, Major Cities Chiefs Association, Women's Legal Defense and Education Fund, and the NAACP.

I agree with the Hispanic National Bar Association, which said that Judge Sotomayor "embodies all the qualities required for service as a Justice and are confident that, when confirmed, she will render fair and impartial justice for all Americans."

The National Association of Women Lawyers has noted that Judge Sotomayor's record, "establishes her lack of gender, racial, ethnic or religious bias and her willingness to maintain an open mind, deciding cases on the record before her."

Throughout her 17 years on the bench, Judge Sotomayor has shown a respect for established precedent and deference to the role of the elected branches of government. She made this point clear in the meeting I had with her shortly after President Obama nominated her for the post. The non-partisan Congressional Research Service, CRS, stated that "perhaps the most consistent characteristic of Judge Sotomayor's approach as an appellate judge has been an adherence to" existing judicial precedent.

In her meeting with me and in testimony before the Judiciary Committee, Judge Sotomayor repeatedly acknowledged the right to privacy is enshrined in our Constitution. I believe she will preserve that right.

President Obama made a wise choice in selecting Judge Sotomayor to serve on our highest court. She has demonstrated her integrity and intellect throughout the thorough confirmation process. Having followed her confirmation hearings closely, I am confident that Judge Sotomayor not only has a deep understanding of the law and great respect for precedent. I am confident she will make a fine associate justice.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I rise to express my support for the nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

Her career on the Federal bench, from the Southern District Court in

New York to the Second Circuit Court of Appeals, and her personal journey, from a childhood in a housing project in the Bronx, to honors at Princeton University and Yale Law School, are now well known to everybody in the country.

But one of the things that received a small amount of attention in her confirmation hearing are the 5 years—right out of law school—she spent as a prosecutor in the office of legendary Manhattan district attorney Robert Morgenthau. It is a reflection of Sonia Sotomayor's grit, determination, and courage that she took on this challenge at that particular time to serve as an assistant district attorney during one of the most crime-laden periods of New York's history.

It is not often we get a chance to elevate to the Nation's highest Court someone who has followed police into shooting galleries, someone who has tracked down witnesses on streets awash in drug-related violence, and someone who has personally taken on witnesses and shredded some of them on cross-examination, and who has personally moved juries to tears in her closing arguments.

It is not often we get a chance to confirm a Supreme Court nominee who does not come from what Chairman PAT LEAHY likes to call the "judicial monastery." But rather we have a chance to confirm someone who has the personal experience, perspective, and understanding of how the world works within our system of law as a practitioner and also having seen what it is like for those who try to enforce the law at the street level, our police, our law enforcement officials, and also in seeing what happens to victims and families drawn into the system unwillingly.

Judge Sotomayor certainly was not in a "judicial monastery" when she was undertaking the task of putting criminals behind bars in New York. I believe experience will prove of enormous value to somebody on the Supreme Court—someone who can go there understanding what it means to work 12-hour days as a prosecutor struggling to put together a case with reluctant witnesses, with police who have a difficult time coming to the courthouse, and, obviously, with experience in interpreting the fifth amendment, fourth amendment rights with respect to search and seizure and personal incrimination.

One of her cases, in particular, stands out, which is the 1983 so-called Tarzan Murderer case, involving a man who broke into apartments, sometimes by swinging from rooftops, robbing the residents, and then shooting them for no apparent reason. It was Judge Sotomayor's first homicide case and also her first homicide conviction. The defendant, Richard Maddicks, went to prison for 62½ years.

Judge Sotomayor said the case affected her as no other; that it underscored for her how crime destroys fami-

lies and how prosecutors "must be sensitive to the price that crime imposes on our society." I believe, having been a prosecutor, those are lessons I learned also firsthand and did not come automatically to the bar with a sensitivity to.

As much as I admire her work as a New York prosecutor, that experience alone, obviously, does not qualify her for confirmation to the Supreme Court. But I think it is an important experience, and it says a lot about her approach to the law and what she is willing to fight for.

There are, obviously, few things we do that are as important as confirming a Supreme Court Justice, and especially now with the Court so evenly divided. So this is a pivotal moment for the Court. The direction our country will take for the next 30 years is being determined now by this debate.

A vote for a Supreme Court nominee is a vote for each of our personal understandings of the Constitution, of the laws of the land, and of what we think is important with respect to the application of the rights and freedoms that define this country of ours. That is what this vote is. It is a vote to protect the basic rights and freedoms that are important to every American, and I would say, particularly, privacy, equality, and justice.

Consider, for example, the case of Lilly Ledbetter and Diana Levine as an example of how just one Supreme Court appointment can affect the lives and freedoms of countless Americans. In the Ledbetter case, five of the Court's nine Justices granted immunity to employers who discriminate against workers in matters of salary. It took a new Congress and a new President to strike down the Court's ruling in the continuing effort to ensure that all Americans—women and men—receive equal pay for equal work.

I have voted for Supreme Court nominees in the past, when it was clear to me they would protect those constitutional rights and freedoms. And I have voted against Supreme Court nominees, when it was clear to me they would not protect those rights and freedoms.

So we have to ask ourselves: What direction will this nominee take the Supreme Court? Will this nominee protect the civil rights and liberties enshrined in the Constitution and protected by law that we have fought for so long and hard? Will this nominee support Congress's power to enact critical legislation—sometimes defining those rights? Will the nominee be an effective check on the executive branch?

As a Senator, each of us has a right—not just a right, but an obligation, a duty—to protect the fundamental rights that are part of our Constitution. I think part of that means we have to preserve the incredible progress we have made with respect to civil rights and realizing those rights.

Having reviewed Judge Sotomayor's extensive record, and having read some

of her more important rulings, I have concluded that she will do exactly that, she will protect them. She is someone who understands what sets America apart from almost every other country is the right of any citizen—no matter what level they are at, in terms of their work, employment or pay, income, status—that no matter where they come from, no matter what is their lot in life, they have a right to have their day in court. Recently, in this country, over the last 15 or 20 years, we have seen those rights reduced, in some cases. We have seen the access of average citizens to the courts of America diminished.

I believe Judge Sotomayor understands the real world, and how important it is to preserve that relationship of an individual citizen to access to the courts.

It took a Supreme Court that understood the real world to see that the doctrine of “separate but equal” was anything but equal and, therefore, to break the Constitution out of the legal straightjacket it found itself in. I believe Judge Sotomayor meets the standard that was set by Justice Potter Stewart, who said:

The mark of a good judge is a judge whose opinions you can read . . . and have no idea if the judge is a man or a woman, Republican or Democrat, Christian or Jew . . . You just know that he or she was a good judge.

For the last 17 years, she has applied the law to the facts in the cases she has considered, while always cognizant of the impact of her decisions before the court. I think she showed restraint, but she also showed fairness and impartiality in performing her duties under the Constitution.

I believe, though, it is clear her years as a prosecutor prepared her for the Federal bench in ways that few jurists get to experience. After that she spent nearly 6 years as a district court judge and almost 12 years on the appellate court demonstrating a very sophisticated grasp of legal doctrine and earning a reputation as a sharp and fearless jurist.

Courage is one of the qualities that Judge Sotomayor's colleagues and friends often attribute to her. One of those colleagues who ought to know these things was her one-time boss and, I might add, somebody whom, when I was a prosecutor, we modeled much of what we did in Massachusetts on his approach to the New York District Attorney's Office, and that is Robert Morgenthau. He said she was a “fearless prosecutor” and “an able champion of the law.” The police with whom she worked so closely felt the same way. That is why her nomination to the Supreme Court has been endorsed by nearly every major law enforcement organization in the country.

As a district court judge, she showed just how fearless she could be when, in 1995, she ended the Major League Baseball strike with an injunction against the league's powerful owners. All of her actions on the district court were important.

Of all her actions on the district court, that was one of my favorites. Some experts suggested that she had saved baseball and, in doing so, she had, as Claude Lewis of the Philadelphia Inquirer wrote, “joined the ranks of Joe DiMaggio, Willie Mays, Jackie Robinson and Ted Williams.” I am not sure I would go as far as Ted Williams, but Judge Sotomayor's actions did get the Red Sox back on the field at Fenway Park.

It is interesting to me that Judge Sotomayor would bring more Federal judicial experience to the Supreme Court than any Justice in the last 100 years. That is a fact her critics conveniently ignore.

In fact, she would bring more Federal judicial experience to the high court—more than 17 years all totaled—than any of the current associate justices.

Chief Justice Roberts came to the court with just 2 years on the Federal bench, Justice Alito 16 years, Justice Scalia 4 years, Justice Thomas 1 year, Justice Kennedy 13 years, Justice Ginsburg 13 years, Justice Souter 1 year, Justice Brennan and Justice Breyer zero years.

As we all know, Judge Sotomayor would be the first Latina to serve on the Supreme Court, just as she was the first Latina on the Second Circuit Court of Appeals. Much was made of this after her nomination by President Obama. And rightly so.

Judge Sotomayor is a role model of aspiration, of discipline, of commitment, of intellectual prowess and integrity. Her story is an American story, a classic American story, an inspiring American story.

How could anyone not be moved by the sight of Judge Sotomayor's mother, Celina, wiping away tears as the Judge paid loving tribute to her during her confirmation hearing? How could anyone not celebrate the journey that is the Judge's life story? An improbable journey, an extraordinary journey, a uniquely American journey.

We should not underestimate the importance of the diversity Judge Sotomayor will bring to the Supreme Court. People from different backgrounds bring different perspectives to bear on decisions, and that produces better decisions. That is especially important for the Supreme Court, which is, after all, the ultimate champion of the rule of law and protector of rights in America.

How important is diversity? The Supreme Court recently decided a case and found that school officials violated the fourth amendment rights of a young girl by conducting an intrusive strip search of her underclothes while looking for the equivalent of a pain killer. During oral arguments in that case, one of the male Justices compared the search to changing for gym clothes. Several other Justices laughed, but Justice Ruth Ginsburg, the lone female on the court, pointed out how “humiliating” such a search is to young girls.

I know that the Judge's critics claimed that she would rely on “empathy” rather than the law when deciding cases. But during her confirmation hearing, she made clear her commitment to the rule of law. “Judges can't rely on what's in their heart,” she testified. “They don't determine the law. The job of the judge is to apply the law. And it's not the heart that compels conclusions in cases. It's the law.”

She, in fact, has never used the word “empathy” in any of her decisions in more than 3,000 cases or the nearly 400 opinions she has written. Nor has she ever used it to describe her judicial philosophy in any speech or article. Her decisions have been based on established precedent and a respect for the limited role of a judge.

But every judge, even Supreme Court Justices, are shaped by the experiences of their lives.

One recent Supreme Court nominee testified before the Senate Judiciary Committee that he would bring to the court “an understanding and the ability to stand in the shoes of other people across a broad spectrum.” That was Justice Clarence Thomas.

Another acknowledged being influenced by the fact he came from a family of immigrants. “When I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender. And I do take that into account,” he said. That was Justice Samuel Alito.

Another touted his status as a racial minority in expressing his commitment to a society without discrimination. “I am a member of a racial minority myself, suffered, I expect, some minor discrimination in my years,” he said. That was Justice Antonin Scalia.

I don't know why anyone would think gender and ethnicity do not inform one's worldview. How could it be otherwise? “We're all creatures of our upbringing,” Justice Sandra Day O'Connor once observed.

So, too, is Judge Sotomayor. But that does not mean she will not judge fairly. There is nothing in her long career to suggest otherwise. Above all, in fact, Judge Sotomayor will bring to the court a keen legal mind to the court and an extraordinary record of following, defending and upholding the rule of law.

It is no wonder that she earned a “well qualified” rating from the American Bar Association, the highest rating available in the ABA's evaluation of Federal judicial nominees' credentials, a process the organization of legal professionals has conducted for more than 50 years.

Our Nation's highest court will certainly benefit from Judge Sotomayor's scholarship, her years on the Federal bench and the uniquely American aspects of her life.

But as I noted earlier, the High Court's Justices will also benefit from Judge Sotomayor's years as a prosecutor, from having someone among



them who has been on the front lines in the fight against chaos and violence of the city, someone who has seen up close the awful toll crime exacts on its victims, someone who has stared down evil and who has sent the most evil to prison for life.

Judge Sotomayor's experience on the bench and her experiences in life have given her a keen sense of compassion and an unique understanding of everyday Americans—qualities that will serve her well as an Associate Justice of the U.S. Supreme Court, qualities that will serve our country well in the Court's deliberations.

It is clear she understands that our Nation is defined by the great struggle of individuals to earn and protect their rights.

I believe Judge Sotomayor will protect those rights, which did not come easily—access to the court house and the school house, civil rights, privacy rights, voting rights, antidiscrimination laws, all the result of bloodshed and loss of life, all written into law in a fight, all requiring constant vigilance to make sure they are enforced and maintained.

Do I overstate the importance of vigilance? Hardly. Just a few short months ago, the Court heard oral arguments in a case challenging the constitutionality of the reenacted Voting Rights Act. The act remained intact. But the fact that the Court heard the case is cause for concern that even a slight shift in the makeup of the Court could weaken or undo laws that protect the rights and well being of the American people.

It was the late Dr. Martin Luther King Jr. who said that "the arc of the moral universe is long, but it bends toward justice." I believe Judge Sotomayor's nomination to the Supreme Court—indeed, her entire career, as a prosecutor, as a district judge, as an appeals court judge—is part of that arc bending toward justice.

Mr. President, I proudly support her nomination and urge all my colleagues to do the same. A vote to confirm Judge Sotomayor will be a high mark in the history of the Senate and in the history of this country.

Mr. President, on behalf of Senator LEAHY, I ask unanimous consent that a letter and statement of support for the nomination of Judge Sotomayor to be a Justice of the U.S. Supreme Court from the Lawyers' Committee for Civil Rights Under Law be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS UNDER LAW,  
Washington, DC, July 9, 2009.

Chairman PATRICK J. LEAHY,  
Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.  
Ranking Member JEFF SESSIONS,  
Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS LEAHY AND SESSIONS; As the Co-Chairs of the Lawyers' Committee for

Civil Rights Under Law, we submit the attached Statement in Support of the nomination of Judge Sonia Sotomayor as an Associate Justice of the United States Supreme Court. This Statement is presented on behalf of our organization and with the particular support of the identified individual members of the Board of Directors and Trustees, who have joined to highlight their commitment to the Lawyers' Committee's position.

We also enclose an 81 page Report analyzing Judge Sotomayor's record pertaining to constitutional interpretation and civil rights, issues which are of paramount importance to the Lawyers' Committee.

We believe that the members of the Lawyers' Committee who have joined us in support of Judge Sotomayor have done so because the record demonstrates that Judge Sotomayor is well qualified to serve as an Associate Justice, with a record of judicial service characterized by both its longevity and its quality. Judge Sotomayor's record in the area of civil rights reveals a balanced and considered approach to following precedent and safeguarding the protections contained in our nation's Constitution and civil rights statutes. We also believe Judge Sotomayor brings needed diversity to the Court based on her gender, ethnicity and experience as a prosecutor and trial judge.

We urge the members of the Senate Judiciary Committee to recommend Judge Sonia M. Sotomayor for confirmation by the full Senate.

Sincerely,

NICHOLAS T. CHRISTAKOS,  
Co-Chair.

JOHN S. KIERNAN,  
Co-Chair.

STATEMENT SUPPORTING THE NOMINATION OF  
JUDGE SONIA SOTOMAYOR AS AN ASSOCIATE  
JUSTICE OF THE UNITED STATES SUPREME  
COURT

The Lawyers' Committee for Civil Rights Under Law, and the undersigned members of its Board of Directors and Trustees, write to support the nomination of Judge Sonia Sotomayor to the Supreme Court of the United States and to urge the Senate to confirm that nomination.

On May 26, 2009, President Barack Obama nominated Judge Sotomayor, who currently serves on the U.S. Court of Appeals for the Second Circuit, to replace retiring Justice David Souter. The last vacancy on the Court occurred in 2005, when Sandra Day O'Connor, the first woman to serve on the Supreme Court, retired. If confirmed, Judge Sotomayor would be the first Hispanic and the third female justice in the 219 year history of the Supreme Court.

Judge Sotomayor has impressive academic and professional credentials. She has had a wide-ranging legal career as a prosecutor, a corporate litigator, and both a district and appellate court judge. These combined experiences would add a perspective not currently available on the Supreme Court. In addition, having sat for six years on the district court and more than ten years on the court of appeals, Judge Sotomayor has more federal judicial experience at the time of her nomination than any Supreme Court nominee in the last hundred years.

This nomination is of special interest to us as directors and trustees of the Lawyers' Committee for Civil Rights Under Law because of our shared goal of promoting equal justice. In recent years, the Supreme Court has issued a number of decisions scaling back the critical protections against discrimination that are afforded by the Constitution and our nation's civil rights laws. This trend underscores the pressing need for a Justice who understands the persistent re-

alties of discrimination and who interprets our civil rights laws as they were intended—to provide meaningful protections.

We believe that the best evidence of Judge Sotomayor's qualifications as a nominee is the judicial opinions she has written over her long career on the bench. Analysis of her opinions in civil rights cases and related areas prepared by the Lawyers' Committee forms the primary basis for our support for Judge Sotomayor's nomination. The Lawyers' Committee also examined her speeches and other writings to see whether they contained anything that should disqualify her from serving on the Supreme Court or that might indicate that she has a different judicial philosophy, particularly in the civil rights arena, from that reflected in her judicial opinions. The results of the Lawyers' Committee's analysis are contained in its Report on Judge Sotomayor's nomination.

Based on our review, we conclude that Judge Sotomayor's record in civil rights cases demonstrates careful judicial analysis, with full consideration of the relevant facts and law, accompanied by a sensitivity to civil rights issues that is consonant with constitutional and statutory provisions. We have found nothing in Judge Sotomayor's speeches or non-judicial writings, which appropriately refer to her unique life story and the perspective she has gained from her background, that should disqualify her from serving on the Supreme Court. Our review of her judicial decisions, as well as her speeches and other writings, leads us to conclude that Judge Sotomayor would bring to the Court an appropriate regard for the importance of enforcement of the civil rights protections of the Constitution and federal civil rights laws. We further conclude that her performance as a Court of Appeals judge clearly supports the proposition that she will honor stare decisis and adhere to the rule of law.

On the Second Circuit, Judge Sotomayor has heard over 3,000 appeals and has written over 250 signed panel opinions. Her opinions reveal a jurist who follows established precedent yet is willing to raise concerns about the practical impact of that precedent. Her opinions exhibit deference to the discretion of trial judges. Judge Sotomayor's jurisprudence in civil rights cases indicates that she carefully weighs the facts and the law, and her rulings fall within the mainstream of existing judicial decisions and legal scholarship. She interprets civil rights laws in a manner that provides meaningful protection from discrimination, while being mindful of the need to grant early relief to defendants when the facts and law justify a summary ruling.

Judge Sotomayor possesses both the exceptional competence necessary to serve on the Court and a profound respect for the importance of protecting the civil rights afforded by the Constitution and the nation's civil rights laws. Additionally, we believe that having a diverse Court is important for our nation. For these reasons, we support the nomination of Judge Sotomayor to the Supreme Court of the United States and urge the Senate to confirm her nomination.

By action of the Executive Committee, this statement has been submitted to members of the Board of Directors and the Board of Trustees of the Lawyers' Committee for Civil Rights Under Law, for the individual signature of subscribing Board members whose names are set forth below. The following individual members of the Boards of Directors and Trustees of the Lawyers' Committee hereby subscribe to the statement.

Atiba D. Adams, David R. Andrews, Barbara R. Arnwine, Jeffrey Barist, Daniel C. Barr, Lynne Bernabei, Victoria Bjorklund, John W. Borkowski, Patricia A. Brannan, Steven H. Brose;

Paulette M. Caldwell, John A. Camp, Douglass W. Cassel, Michael H. Chanin, Nicholas T. Christakos, Lisa E. Cleary, Frank M. Conner, III, Michael A. Cooper, Edward Correia, Peter J. Covington;

Marion Cowell, Nora Cregan, Michael Birney de Leeuw, Doneene K. Damon, Armand G. Derfner, John H. Doyle, III, Paul F. Eckstein, Robert Ehrenbald, Joseph D. Feaster, Jr., Fred N. Fishman;

Marc L. Fleischaker, John H. Fleming, Alexander D. Forger, Katherine Forrest, Eleanor M. Fox, Joseph W. Gelb, Peter B. Gelblum, Susan M. Glenn, Jon Greenblatt, Peter R. Haje, Gregory P. Hansel, Conrad K. Harper, Robert E. Harrington;

David L. Harris, Mark I. Harrison, Amos Hartston, John E. Hickey, Jerome E. Hyman, Blair M. Jacobs, Malachi B. Jones, Jr., Michael D. Jones, James P. Joseph, Heather Lamberg Kafele, Stephen Kastenberg, Laura Kaster;

Kim M. Keenan, Frederick W. Kanner, Frank Kennamer, Andrew W. Kentz, John S. Kiernan, Loren Kieve, Teresa J. Kimker, Adam T. Klein, Alan M. Klinger, Naho Kobayashi, Daniel F. Kolb, Edward Labaton, Gregory P. Landis;

Brian K. Landsberg, Michael L. Lehr, Charles T. Lester, Marjorie Press Lindblom, David M. Lipman, Andrew Liu, Jack W. Londen, Robert MacCrate, Cheryl W. Mason, Christopher Mason, Julia Tarver Mason, Gaye A. Massey;

Colleen McIntosh, John E. McKeever, Kenneth E. McNeil, Neil V. McKittrick, D. Stuart Meiklejohn, Charles R. Morgan, Robert S. Muckleston, Robert A. Murphy, Aasia Mustakeem, Karen K. Narasaki, Frederick M. Nicholas, John E. Nolan, John Nonna;

Roswell B. Perkins, Bradley S. Phillips, Kit Pierson, Bettina B. Plevan, Robert H. Rawson, William L. Robinson, Guy Rounsaville, Michael L. Rugen, Lowell E. Sachnoff, Gail C. Saracco, John F. Savarese, Jennifer R. Scullion;

Richard T. Seymour, Valerie Shea, Jane C. Sherburne, Richard Silberberg, Jeffrey Simes, Robert Sims, Marsha E. Simms, John S. Skilton, Rodney E. Slater, Eleanor H. Smith, Edward Soto, John B. Strasberger;

Daniel P. Tokaji, Michael Traynor, Rignald M. Turner, Suzanne E. Turner, Michael W. Tyler, Kenneth Vittor, Joseph F. Wayland, Vaughn C. Williams, Thomas S. Williamson, Brenda Wright, Erika Thomas-Yuille.

Mr. KERRY. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. MENENDEZ. Mr. President, the Senate will soon vote to confirm Judge Sonia Sotomayor. In doing so, we will not only make history, but we will stand witness to a coming of age of America.

Our Founders devised a unique experiment in a new form of government built on tolerance, equal rights, justice, and a Constitution that protected us from the mighty sword of tyranny. It was a revolutionary notion that in this new Nation, no one—no one—would be bound by an accident of birth. No one would be limited by their economic or social circumstances. In America we have come to believe that all is possible.

Today, on the anniversary of the signing of the Voting Rights Act, at the other end of Pennsylvania Avenue is an African American sitting in the Oval Office. This is America.

Across the street in that magnificent symbol of equal justice under law, a woman—a Latina—will take a seat on the U.S. Supreme Court. This is America.

In this Chamber, this Senator respectfully stands before you born in the same year as Judge Sotomayor and in similar circumstances—raised in a tenement in an old neighborhood in New Jersey, the son of immigrants, the first in my family to go to college. I never dreamed I would stand on this floor on this day to rise in support of an eminently qualified Hispanic woman who grew up in a housing project in the Bronx, as I was growing up in that old tenement in Union City. Yes, this is America. It is the America our Founders intended it to be.

I said on this floor earlier in this debate that when Judge Sotomayor takes her seat on the U.S. Supreme Court, we will only need to look at the portrait of the Justices of the new Supreme Court to see how far we have come as a nation, to understand who we are as a people. It is true that we are often divided by deeply held individual beliefs that too often prevent us from reaching compromise on the complex issues and challenges facing this Nation. But in America, we are entitled to our individual beliefs. We are entitled to hold them firmly, passionately, with resolve, reason, and fairness. We are free to fight for them with every fiber of our being; to express them, to shout them from the rooftops if we like. Put simply, all of us see the world differently. All we can ask of ourselves, all any of us can ask, is that wisdom, intelligence, reason, and logic will always prevail in every decision we make.

I have said before on this floor, and I will say again: Who we are is not a measure of how we judge, it is merely one part of the many-faceted prism through which we see and analyze the facts. The real test is how we think and what we do. I know in my heart and in my mind that Judge Sotomayor will do what is right for America.

The worst her opponents have accused her of is an accident of geography that gave her the unique ability to see the world from the street view, from the cheap seats. I know that view well. I know it very well. It gives us a unique perspective on life. It allows us to focus a clear lens on the lives of those whose struggles are more profound than ours and whose problems run far deeper than our own. The view of the world from a tenement remains with me today, and it will remain with me all of my life, just as the view from that housing project in the Bronx will remain with Judge Sotomayor. It is a part of who she is. But let's be clear. It is not what she will do or how she will judge. It is the long view of America—a wide, inclusive view—often profoundly moving, sometimes heart-breaking, and it gives her an edge where she may see what others cannot, and I truly believe that is a gift that will benefit the Nation as a whole.

So I call on my colleagues to step back, take the long view, think of what our Founders hoped for this Nation, and let's vote. History awaits and so does an anxious Hispanic community in this country.

I have made my decision, and I will proudly stand in the well of this Chamber to cast my vote to confirm Judge Sotomayor as the next Justice of the U.S. Supreme Court. When she places her hand on the Bible and takes the oath of office, the new portrait of the Justices of the Supreme Court will clearly reflect who we are as a nation, what we stand for as a fair, just, and hopeful people.

Let that be the legacy of our generation, for this is America—the America our Founders intended it to be.

Mr. President, the Judiciary Committee has received letters of support for Judge Sotomayor's nomination from local, national, and international law enforcement, including the chiefs of police of major cities, among others. I ask unanimous consent that those letters, as well as letters from national Latino and Hispanic rights organizations, such as MANA, ASPIRA, and others be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

METROPOLITAN POLICE DEPARTMENT,  
Nashville, TN, July 7, 2009.

Senator PATRICK LEAHY,  
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: After careful consideration of Judge Sonia Sotomayor's established record of respect and understanding for the work of law enforcement, I am today writing to express my strong support of her nomination as the next Associate Justice of the United States Supreme Court.

In my nearly 30 years experience as a police officer and police executive in three states, Louisiana, Washington, and Tennessee, it is clear to me that our citizens are ultimately best served and protected by members of the judiciary who are committed to respect for the rule of law. I am encouraged that Judge Sotomayor, through her work as a prosecutor in New York, and later as a trial judge, learned first hand how crime impacts a community and how members of law enforcement are in the trenches every day working to make a difference for safer neighborhoods. I believe that she understands the challenges police agencies face in dealing with criminals, and, if confirmed, will ensure that law enforcement is treated with respect and fairness in matters coming before the Supreme Court.

Senator Leahy, I understand that you will explore and consider a number of issues and factors before making your confirmation decision. I have every confidence that Judge Sotomayor's clear familiarity with how the courts impact law enforcement and the criminal justice system will be given full consideration. Thank you for your kind attention to this letter, and thank you for your support of the men and women in Tennessee, Vermont and our great nation's 48 other states who wear the badge of protection and service.

Sincerely,

RONAL W. SERPAS,  
Chief of Police.

MAJOR CITIES CHIEFS ASSOCIATION,  
June 7, 2009.

Hon. PATRICK LEAHY,  
Chairman, Committee on the Judiciary, U.S.  
Senate, Washington, DC.

Hon. JEFF SESSIONS,  
Ranking Member, Committee on the Judiciary,  
U.S. Senate, Washington, DC.

DEAR MESSRS. LEAHY AND SESSIONS: On behalf of the Major Cities Chiefs, representing the 56 largest jurisdictions across the Nation, we are writing to support the nomination of Judge Sonia Sotomayor to the Supreme Court of the United States.

We applaud her distinguished career in public service, a record of achievement that began with her work as a prosecuting attorney. During those early years as an Assistant District Attorney, Sonia Sotomayor earned high marks from law enforcement. She has been praised by those who worked at her side on criminal cases as well as officials who have taken cases to her courtroom in later years.

Her record as a prosecutor and a judge both show a commitment to public safety and sensitivity to the needs of the community. She has made decisions that are both tough and compassionate. Her record shows respect for the laws and cases that enable the police to do their job.

American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Sonia Sotomayor quickly through the confirmation process.

Sincerely,

WILLIAM J. BRATTON,  
Chief of Police,  
President, Major Cities Chiefs.

INTERNATIONAL ASSOCIATION  
OF CHIEFS OF POLICE,  
Alexandria, VA, July 10, 2009.

Hon. PATRICK LEAHY,  
Chair, Committee on the Judiciary, U.S. Senate,  
Washington, DC.

DEAR SENATOR LEAHY: On behalf of the International Association of Chiefs of Police (IACP), I am pleased to inform you of our support for the nomination of Judge Sonia Sotomayor to be the next Associate Justice on the United States Supreme Court.

As you know, the IACP is the world's oldest and largest association of law enforcement executives. With more than 20,000 members in over 100 countries the IACP has, throughout its 116 year history, been committed to advancing the law enforcement profession and promoting public safety.

It is for these reasons that the IACP is proud to endorse the nomination of Judge Sotomayor to the United States Supreme Court. Throughout her career, Judge Sotomayor has consistently demonstrated a firm understanding of, and a deep appreciation for, the challenges and complexities confronting our Nation's law enforcement officers. As a prosecutor, and at the District and Circuit Courts, Judge Sotomayor has clearly displayed her profound dedication to ensuring that our communities are safe and that the interests of justice are served.

The IACP believes that Judge Sotomayor's years of experience, her expertise and her unwavering dedication to the rule of law are evidence of her outstanding qualifications to serve as the next Associate Justice of the United States Supreme Court. The IACP urges the Judiciary Committee and the members of the United States Senate to confirm Judge Sotomayor's nomination in a timely fashion.

Thank you for your attention to this matter. Please let me know how the IACP may

be of further assistance in this vitally important process.

Sincerely,

RUSSELL B. LAINE,  
President.

—  
MANA,  
Washington, DC, June 9, 2009.

Hon. PATRICK J. LEAHY,  
Chairman, Senate Judiciary Committee, Russell  
Senate Office Building, U.S. SENATE,  
WASHINGTON, DC.

Hon. JEFF SESSIONS,  
Ranking Member, Senate Judiciary Committee,  
Russell Senate Office Building, Washington,  
DC.

DEAR SENATORS LEAHY AND SESSIONS: MANA, A National Latina Organization, with headquarters in Washington, DC, twenty-six chapters nationwide, and six affiliates across the nation expresses wholehearted support for the appointment of the Honorable Sonia Sotomayor to serve as a Supreme Court Justice.

Growing up in the Bronx after her parents moved from Puerto Rico, Sotomayor's mother instilled the value of education early in her life. After graduating valedictorian at her Catholic high school, Sotomayor went on to Princeton, where she continued to excel. She attended Yale Law School and wrote for the Yale Law Journal.

Judge Sotomayor has had an exceptional and diverse career that will be an invaluable asset in a role as a Supreme Court Justice. She began her career as an assistant district attorney in the state of New York. Later, she worked in private practice as a corporate litigator, dealing with cases for both American and foreign clients. In 1992 she served as a federal judge for the U.S. District Court, having been nominated by President George H.W. Bush. In this position she was the youngest judge in the Southern District of New York and the first Hispanic federal judge in New York. During that time she supported claims to freedom of religious expression under the First Amendment. She continued in that position until her appointment as appellate judge by President William Jefferson Clinton in 1998.

The Honorable Sonia Sotomayor's perseverance, work ethic, integrity, and tested and proven ability to excel demonstrate her strength of character. Her commitment to nonpartisan, fair decision making, and upholding the law without bias makes Judge Sotomayor a clear choice for Supreme Court Justice. We are confident that Judge Sotomayor will dutifully represent the law as it is written, always serving in the best interests of the nation. A true example of living the American dream, she is an inspiration.

Moving forward, we urge that the Senate follow the timeline suggested by the White House, with an expeditious hearing by mid-July. As is our established procedure, we will also be submitting this legislative vote to the National Hispanic Leadership Agenda for consideration on the Annual Congressional Report Card, which tracks and publishes the voting records of Members of Congress on issues relevant to the Hispanic community. In the best interest of our nation, we ask you to confirm the Honorable Sonia Sotomayor based on her credentials, experience, and desire to honorably serve our great nation.

Sincerely,

ALMA MORALES RIOJAS,  
President & CEO.

MANA DE ALBUQUERQUE,  
Albuquerque, NM, June 2, 2009.

Hon. PATRICK LEAHY,  
Chairman, Senate Judiciary Committee, U.S.  
Senate, Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR LEAHY: On behalf of MANA de Albuquerque, its thirty-five members, and its affiliation with MANA, A National Latina Organization that represents twenty-six Chapters, six Affiliates, and individual members nationwide, I would like to declare my support for the confirmation of Judge Sonia Sotomayor as Justice of the Supreme Court.

The Honorable Sonia Sotomayor has had an exceptional and diverse career that will be an invaluable asset in a role as a Supreme Court Justice. Judge Sotomayor's perseverance, work ethic, veracity, and tested and proven ability to excel demonstrate her strength of character. Her commitment to bipartisan, fair decision making, and upholding the law without bias makes Judge Sotomayor a clear choice for Supreme Court Justice.

Judge Sonia Sotomayor's nomination reflects an enormous achievement for the Latina community. She is a woman of astonishing achievement, keen intellect, and integrity. These characteristics will aid her in making just decisions in representing and reflecting the law of the United States of America.

As a member of your constituency, the Latino community, and MANA de Albuquerque, I ask you to support Judge Sonia Sotomayor's expeditious confirmation.

Sincerely,

LYDIA LOPEZ MAESTAS,  
President.

—  
WOMEN OF EL BARRIO,  
El Barrio, NY, May 8, 2009.

Re United States Supreme Court nomination  
of Judge Sonia Sotomayor.

Hon. PATRICK J. LEAHY,  
Chairman, Committee on the Judiciary, U.S.  
Senate, Russell Senate Office Building,  
Washington, DC.

DEAR MR. LEAHY: Women of El Barrio (WOES) proudly and respectfully urge you to make Judge Sonia Sotomayor your first appointment to the Supreme Court of the United States of America. Our appeal is consistent with WOEB's mission to develop the leadership and promote the contributions of Puerto Rican grandmothers and young women from our community, through efforts that extend from preserving a block, to honoring the gifts of our precious Planet! Sonia Sotomayor, is a star whose light shows working class boys and girls that they can become men and women who achieve in order to serve.

As a Latina, Judge Sotomayor's appointment addresses two glaring deficiencies in the court's lack of diversity and will bring our court system closer to real equality of opportunity.

In their appeal New York Senators Schumer and Gillibrand recognize that "Latinos are a large and growing segment of our society that have gone grossly underrepresented in our legal system. Indeed, while Latinos comprise around 15 percent of the population, only about 7 percent of federal judges are Latino. Moreover, not a single Latino has served on the United States Supreme Court in the history of our country."

While more than half the U.S. population is female, nearly one-third of all U.S. lawyers are women. Approximately 30 percent of the judges serving on the lower federal courts are women. It is truly shameful that the retirement of Justice Sandra Day O'Connor should have resulted in the reduction of the paltry number of women from

two to one. Most recently the lone remaining female, Justice Ruth Bader Ginsburg, has battled serious health problems.

In Judge Sotomayor you have a nominee of unquestioned legal prowess and excellent academic credentials. She's a Princeton University graduate, summa cum laude; a Juris Doctor from Yale Law School, including Editor of the Yale Law Journal. As a practicing attorney, she was a litigator in an international law firm and served as Manhattan Assistant District Attorney under Robert Morgenthau 17 years on the federal bench as trial judge in the Southern District of New York and her current position on the 2nd Circuit.

In its October 2008 issue of *Esquire* magazine found that "In her rulings, Sotomayor has often shown suspicion of bloated government and corporate power. She's offered a reinterpretation of copyright law, ruled in favor of public access to private information, and in her most famous decision, sided with labor in the Major League Baseball strike of 1995. More than anything else, she is seen as a realist. With a likely 20 years ahead on the bench, she'll have plenty of time to impart her realist philosophy."

Just as importantly, we, the people want a Supreme Court of men and women who uphold the Constitution of the United States and the laws flowing from it; a court that is balanced when it is called upon to scrutinize preemptive war, torture, black prisons, warrantless surveillance, erosion of the common wealth, and deemed the true arbiter of social, economic and electoral justice for all.

Sincerely,

SANDRA TALAVERA,  
*Chair.*

THE ASPRIA ASSOCIATION, INC.,  
*Washington, DC, June 15, 2009.*

Re vote to confirm Judge Sonia Sotomayor to the U.S. Supreme Court.

HON. PATRICK LEAHY,  
*U.S. Senate, Washington, DC.*

DEAR SENATOR LEAHY: ASPIRA, the largest national Latino organizations in the United States and the only national organization dedicated exclusively to the education of Latino youth, urges you, as a member of the Senate Judiciary Committee, to vote to confirm Judge Sonia Sotomayor after a thorough but swift confirmation process.

Judge Sotomayor's outstanding academic credentials, keen intellect, extensive judicial experience, and long history of fairness and adherence to the law, make her an exemplary candidate to serve on the Supreme Court. Raised by a single mother in public housing in the Bronx, Judge Sotomayor went on to graduate with honors from Princeton and Yale Law School, two of the most prestigious universities in the country. In her three-decade career, Judge Sotomayor has served as an Assistant District Attorney, a litigator in private practice, and served as U.S. District judge for six years before serving eleven years on the U.S. Court of Appeals for the 2nd District. She was appointed to the District Court by Republican President George H.W. Bush and to the appeals court by President Clinton. She has participated in over three thousand court decisions, and has written over 380 opinions. No other Supreme Court nominee in the last 100 years has had the experience she will bring to the court. Judge Sotomayor's compelling life experiences will allow her to bring a range of experiences and perspectives to the court's deliberations.

We sincerely hope that you will join the majority of senators, Republicans and Democrats to confirm this exemplary American to the Supreme Court.

Sincerely,

RONALD BLACKBURN MORENO,  
*President and CEO.*

Mr. MENENDEZ. Mr. President, with that, I yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I am honored to be here today. In a few hours, we will have achieved something truly great as a nation. Our first African American President has nominated the first Hispanic Justice to the U.S. Supreme Court. Times are changing.

If there are two words that sum up this nomination, it is these: "It's time." It is time that we confirm a nominee to the Supreme Court who will improve its diversity. It is time that we confirm a moderate nominee to the Supreme Court who will pull it back into the mainstream and away from the extreme. It is time we confirm a nominee whose life story, personal history, intelligence, and experience represent the best America has to offer.

Judge Sotomayor's story is a true American story, a true New York story, and a great story. When Nancy Sotomayor was growing up, the Nancy Drew stories inspired her sense of adventure, developed her sense of justice, and showed her that women could and should be outspoken and bold. Now, in 2009, there are many more role models for a young student from her alma mater, Cardinal Spellman, to choose from, with Judge Sotomayor foremost among them.

If one listened to the debate over the last 2 days, one could easily think that my colleagues on the other side of the aisle are not talking about the same person we are. Those who are voting for Judge Sotomayor's confirmation have focused, as they should, on her history and her record. Judge Sotomayor was a prosecutor and a commercial litigator. She was nominated to the district court bench by a Republican President. Her record shows she is a true moderate. She has agreed with her Republican colleagues 95 percent of the time. She has ruled for the government and against the immigrant petitioner in 83 percent of immigration cases. She has denied race claims in 83 percent of race cases. All of these numbers place her squarely in the middle of the judges on her circuit.

But my Republican colleagues have chosen instead to focus on the speeches she has given outside the courtroom. They have zeroed in on a few choice quotes we have heard over and over again about the "wise Latina woman" quote. Is this the same person who has sat on 3,000 cases in 17 years, who ruled against Hispanic and African American plaintiffs in a wide variety of cases, and who ruled in favor of a police officer who engaged in blatantly racist speech because the first amendment protected him? Should three words outweigh 3,000 cases? Only if you have something against her in the first place.

"Bias" and "activism" are now code words for "not hard right." My colleagues say they don't want activist

judges. What they really mean is they don't want judges who disagree with them and who put rule of law ahead of moving America in ideological directions.

We must and will continue to fight for mainstream judges. We must and will continue to free our unelected branch of government from ideologues and result-oriented extremism.

With the nomination of Judge Sotomayor, we have an opportunity to restore faith in the notion that the Court should reflect the same mainstream ideals that are embraced by America.

Judge Sotomayor is clearly a moderate. She is highly qualified. She is extremely intelligent. She represents the American ideal that at the end of the day, race and ethnicity and class aren't supposed to predetermine anything; through hard work and a good education, a girl from a Bronx housing project can rise to the highest Court in the most democratic country in the world.

I am so proud to cast my vote for Judge Sonia Sotomayor. I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I thank the Senator from New York for what are heartfelt words.

I was able to spend some time privately with the judge to get to know her from a first impression. Usually, in my 37 years of public life, I have been able to size up a person, and it has proven to be a fairly accurate measure of a person. My sense from that private meeting is that here we have a judge who will use a lot of common sense in making judicial decisions.

I think that is important. I think it is also important that a judge have deference in the rule of law to precedent that has already been established. I believe that to be the case with this judge.

Since it is the U.S. Supreme Court, the Supreme Court will also have the final determination on what a law does or does not say. In that case, I think we not only want a judge who is extremely sharp, intelligent, well schooled in the law, with a long history in the law, with common sense, but of moderate disposition.

I think that is what Judge Sotomayor brings to this position of the U.S. Supreme Court. I believe Judge Sotomayor will be a fair, impartial, and an outstanding Supreme Court Justice. I am very proud that I will be able to cast my vote for her in a few minutes.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Mr. President, I want to begin my remarks by introducing into the RECORD a letter I wrote with Senator OLYMPIA SNOWE in May, after Justice Souter announced he would be retiring from the Supreme Court.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, May 11, 2009.

THE PRESIDENT,  
The White House,  
Washington, DC.

DEAR MR. PRESIDENT: The announced retirement of United States Supreme Court Justice David Souter—an outstanding jurist—has left you with the crucial task of nominating someone for a lifetime appointment to our nation's highest bench.

The most important thing is to nominate an exceptionally well-qualified, intelligent person to replace Justice Souter—and we are convinced that person should be a woman.

Women make up more than half of our population, but right now hold only one seat out of nine on the United States Supreme Court. This is out of balance. In order for the Court to be relevant, it needs to be diverse and better reflect America.

Mr. President, we look forward with great anticipation to your choice for the Supreme Court vacancy.

Sincerely,

BARBARA BOXER,  
U.S. Senator.  
OLYMPIA SNOWE,  
U.S. Senator.

Mrs. BOXER. Mr. President, at that time, we wrote, in part:

The most important thing is to nominate an exceptionally well-qualified, intelligent person to replace Justice Souter—and we are convinced that person should be a woman.

That was the letter that was written by a Democrat and a Republican Senator who believe strongly that it does matter, when you only have one woman on a Court of nine, as we do right now—until we vote—it is just not enough.

President Obama has nominated an exceptionally well-qualified and intelligent woman. She has more experience on the Federal bench than any Supreme Court nominee in the last hundred years.

Judge Sotomayor received the highest rating from the American Bar Association, and she will be an outstanding addition to the high Court.

When she is confirmed, she will become only the third woman ever to don the robes of a Supreme Court Justice. She will make history as the Nation's first Hispanic Supreme Court Justice.

This is a proud moment for our entire Nation, and especially for the 13 million Latinos in California and the 45 million Latinos nationwide. She already is a role model for so many young women.

As Justice Sandra Day O'Connor said in a recent interview:

About half of all law graduates today are women, and we have a tremendous number of qualified women in the country who are serv-

ing as lawyers. So they ought to be represented on the Court.

In the weeks since she was nominated, Judge Sonia Sotomayor has proven that she has the right judgment and the right temperament to serve on the Nation's high Court. This is a proud moment for our Nation, a very proud moment.

She demonstrated, during a week of intense questioning before the Judiciary Committee, that she is tough, she is smart and, most importantly, she knows the law.

During those hearings, she made clear that she understands the role of a judge, which is to apply the law to the facts of each and every case. She said:

In the past month, many Senators have asked me about my judicial philosophy. It is simple: fidelity to the law. The task of a judge is not to make law. It is to apply the law.

Her 17-year record as a Federal judge demonstrates a respect for the law and for precedent.

Let me read some comments from Judge Sotomayor's many supporters. Robert Morgenthau, District Attorney for the County of New York, said:

Judge Sotomayor's career in the law spans three decades, and [she] worked in almost every level of our judicial system—prosecutor, private litigator, trial court judge, and appellate court judge. . . . She is an able champion of the law, and her depth of experience will be invaluable on our highest court.

Kim Askew, chair of the American Bar Association's Standing Committee on the Federal Judiciary, said:

[Judge Sotomayor] has a reputation for integrity and outstanding character. . . . Her judicial temperament meets the high standards for appointment to the court.

I have to say, having watched some of the very tough questioning of Judge Sotomayor—if I might say, questions that were asked and answered, asked and answered, and asked and answered—the judge showed she understood that the Senators had a right to be tough, had a right to ask her anything they wanted, and she stood her ground beautifully.

Second Circuit Chief Judge Dennis Jacobs said:

Sonia Sotomayor is a well-loved colleague on our court—everybody from every point of view knows that she is fair and decent in all her dealings. . . . The fact is, she is truly a superior human being.

We all bring different experiences to our work. The judge has had experiences growing up as a young Latina that have shaped her life, and she has a firsthand appreciation of the American dream.

She was raised in a South Bronx housing project. Her father, a factory worker, died when she was only 9 years of age. Her mother worked two jobs to support the family. From this humble background, she graduated summa cum laude from Princeton and became an editor of the Yale Law Review.

As a woman, Judge Sotomayor will bring a different perspective than her male counterparts on the high Court. As we have said, those of us who feel it

is important to have women represented, whether it is in the Senate, the House, or in corporate boardrooms or on the Supreme Court, a different perspective is important. I will give you an example of why I believe this.

During oral arguments in a recent Supreme Court case involving a 13-year-old girl who was strip-searched, Justice Ruth Bader Ginsburg pointed out that her male colleagues didn't understand the humiliation a teenage girl would feel from being strip-searched. Justice Ginsburg said the obvious:

They have never been a 13-year-old girl. It's a very sensitive age for a girl. I didn't think that my colleagues, some of them, quite understood.

So Justice Ginsburg pointed out in that one case how important it is to have this type of diversity on the court. As the Nation's first Latina Supreme Court Justice, Judge Sotomayor will bring a unique set of experiences to her role; and the Court will be a richer place because of her perspective.

I commend our President for selecting such an outstanding, well-qualified nominee.

I congratulate Judge Sotomayor for the very dignified manner in which she carried herself throughout this long, grueling process.

As President Obama said when he nominated her:

When Sonia Sotomayor ascends those marble steps to assume her seat on the highest Court of the land, America will have taken another important step toward realizing the ideal that is etched above its entrance: Equal justice under the law.

I look forward to seeing her sworn in as our next Supreme Court Justice.

Mr. JOHANNES. Mr. President, Senators have an enormous responsibility when it comes to deciding whether to support or oppose a Supreme Court nominee.

We must examine whether the person nominated to the highest court in the land will uphold and defend the principles contained in the Constitution, refrain from judicial activism, respect the rule of law, deliver blind justice to each and every litigant before the Court, and render reasoned decisions that adhere to precedent.

This duty has been characterized by many of my colleagues as one of the most important and far reaching decisions a Senator will ever make. I couldn't agree more.

I entered into the nomination process of Judge Sonia Sotomayor, a woman with an impressive life story and resume, with an open mind and a steadfast resolve to evaluate the nominee's qualifications on an unbiased basis.

In fact, having gone through the confirmation process myself before being sworn in as Secretary of Agriculture, I believe that a necessary amount of deference should be given to the President's choices.

However, after carefully reviewing Judge Sotomayor's record and speeches as well as closely monitoring her hearing before the Judiciary Committee, I could not support her nomination.

There are several areas that concern me with regard to Judge Sotomayor.

First, I am concerned that she will not be a neutral umpire. You see, a judge has the duty to preside over a courtroom with no inclination to side with one team over the other.

A judge must be able to put aside his or her personal or political agenda before sitting down on that bench. That is because no matter who you are—Black or White, woman or man, rich or poor—every person in this country is entitled to receive equal justice under the law.

There is a reason that Lady Justice wears a blindfold.

By now, most people are aware of Judge Sotomayor's comments that a "wise Latina woman" would "more often than not reach a better conclusion than a White male." However, I think it bears pointing out to those who claim the comment was made in isolation and taken out of context, that Judge Sotomayor has made a series of similar comments over the years.

For example:

In short, I accept the proposition that a difference will be made by the presence of women on the bench and that my experiences will affect the facts that I choose to see as a judge.

Our experiences as women and people of color affect our decisions. The aspiration to impartiality is just that—it's an aspiration.

I willingly accept that we who judge must not deny the differences resulting from experience and heritage but attempt . . . continuously to judge when those opinions, sympathies, and prejudices are appropriate.

By ignoring our differences as women or men of color we do a disservice both to the law and society.

Nowhere in the history of our judicial system have judges been told to "go with their gut" as implied in the judge's statement. Such a standard would erode the legitimacy of the judicial system and would put every litigant in jeopardy of receiving an unfair trial.

Rather, judges are expected to decide cases based on the rule of law, not on the basis of their feelings. Otherwise empathy towards one person would mean antipathy against another.

A concrete example of my concern that Judge Sotomayor would not be able to set aside her personal preferences and biases is the *Ricci v. DeStefano* case. In this case, Judge Sotomayor and two of her colleagues dismissed in a summary one paragraph unpublished opinion the claims of 17 white firefighters and one Hispanic firefighter. They alleged reverse discrimination based on New Haven's decision to discard the result of a promotional exam because not enough minorities would be eligible for promotion. Nearly half of the judges on the Second Circuit criticized the ruling as a "perfunctory disposition."

However, on June 29, 2009, the Supreme Court announced it was overturning the Second Circuit's ruling in the *Ricci* case. And while the final out-

come appeared to narrowly overturn the Circuit's decision by a vote of 5-4, a deeper analysis is needed. All nine Justices unanimously rejected the lower court's specific holding and legal standard.

It also bears mentioning Justice Alito's concurring opinion in the case:

The dissent grants that petitioners' situation is "unfortunate" and that they "understandably attract this Court's sympathy." But "sympathy" is not what petitioners have a right to demand. What they have a right to demand is evenhanded enforcement of the law—of Title VII's prohibition against discrimination based on race. And that is what, until today's decision, has been denied them.

Many of my colleagues questioned Judge Sotomayor about her decision in *Ricci*. Judge Sotomayor repeatedly indicated that she relied on precedent, but the Supreme Court disagreed, saying, there were "few, if any, precedents in the Court of Appeals."

Because the Supreme Court is the highest court in the land and there is no backstop, I cannot support Judge Sotomayor's nomination. She did not convince me, either through her past rulings or during her confirmation hearing, that she would carry out justice in an impartial manner. Impartiality is essential to our justice system.

Beyond my concern that Judge Sotomayor will not be able to set aside personal views and prejudices, is her overall record before the Supreme Court. The Supreme Court has substantively reviewed 10 of Judge Sotomayor's decisions. Of those cases, eight have been reversed or vacated, one was upheld on a different legal standard and sharply criticized for using a flawed legal theory, and the last one was upheld on a slim 5-4 margin. This is a record that directly questions the nominee's legal reasoning and the ability to sufficiently apply the rule of law. A 10-percent success rate does not exude the confidence and mastery of the law that I feel is necessary of a Supreme Court Justice.

The final point of concern that I would like to highlight is Judge Sotomayor's view of the Second Amendment. In *Maloney v. Cuomo*, Judge Sotomayor joined a panel opinion that decided in one paragraph that the Second Amendment did not apply to the states. Also, in *United States v. Sanchez-Villar*, she joined a summary panel opinion that, among other things, used a one-sentence footnote to conclude that "the right to possess a gun is clearly not a fundamental right."

Judge Sotomayor believes that states have the authority to infringe on Second Amendment rights. This is fundamentally at odds with the Constitution.

Although Judge Sotomayor attempted to disavow and reconcile her past comments during the hearing, her record speaks for itself. Even the *Washington Post*, which endorsed Judge Sotomayor, found her testimony "less

than candid" and "uncomfortably close to disingenuous."

Ultimately, I came to the decision that too many uncertainties exist regarding whether Judge Sotomayor will uphold the rule of law equally for all people and adhere to the Constitution.

While I respect and appreciate her impressive life story and accomplishments, I cannot support her nomination to the highest Court.

Mrs. HUTCHISON. Mr. President, I rise today to speak about the nomination of Judge Sonia Sotomayor to the U.S. Supreme Court.

Judge Sotomayor has a compelling biography.

As the first daughter of a young Puerto Rican couple, she grew up in a public housing project in the South Bronx.

Her father, a factory worker, died when she was 9 years old.

Her mother, a nurse, then raised her and her younger brother, and instilled in them a belief in the power of education.

Judge Sotomayor excelled in school.

She graduated as valedictorian of her class at Blessed Sacrament and at Cardinal Spellman High School in New York.

She won a scholarship to Princeton University, where she continued to excel, graduating summa cum laude and Phi Beta Kappa.

She was a co-recipient of the M. Taylor Pyne Prize, the highest honor Princeton awards to an undergraduate.

At Yale Law School, Judge Sotomayor served as an editor of the *Yale Law Journal* and as managing editor of the *Yale Studies in World Public Order*.

Over a distinguished career that spans three decades, Judge Sotomayor has worked at almost every level of our judicial system.

Today, she serves on the U.S. Court of Appeals for the Second Circuit.

An appointee of President Clinton on the Second Circuit Court, she has participated in over 3,000 panel decisions, and authored roughly 400 published opinions.

When I met with Judge Sotomayor last month, I found her to be a very likeable woman.

She also displayed these traits during her Senate confirmation hearings.

If she is confirmed, she will be the first Hispanic Supreme Court Justice—an ascendancy that will mark a historical moment for our country.

I have, throughout my career, been a strong supporter of Hispanic nominees for judicial appointments and confirmation.

I am proud of the fact that, of the 40 judges I have had a role in nominating for the district courts in Texas, and the Fifth Circuit Court of Appeals, 30 percent have been Hispanic.

Likewise, I was a strong supporter of Miguel Estrada, who, like Judge Sotomayor, had an incredibly compelling life story, but whose nomination for the U.S. Court of Appeals for the District Circuit was filibustered.



I believe the decision of whether to support a nominee for the Federal courts—and especially the highest court—must be grounded in qualification and judicial philosophy.

She certainly meets the academic and experience criteria for service on our country's highest court.

The criteria for judicial philosophy for my concurrence is to apply the law, not make the law.

A judge must interpret the Constitution, not amend it by judicial decree.

One of the most important and recently confirmed constitutional rights is the right to keep and bear arms.

The Founding Fathers knew what they were doing when they put the second amendment in the Bill of Rights. This wasn't an accident.

They knew from their experience in the Revolutionary War that a free people must have the right to possess and bear arms.

The second amendment clearly says: "A well regulated Militia, being necessary to the security of a free State, the right of the People to keep and bear Arms, shall not be infringed."

Although some people are confused by the word "militia," it is clear that the Founders did not use the word "militia" to mean that gun rights could only be used in an organized army.

The Framers did not intend for this right to be a "collective" right.

If that had been their purpose, they would have been satisfied with article 1 section 8 of the Constitution that gives Congress the power "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."

The Framers went further than that.

They wanted to ensure that gun ownership was recognized by posterity as an "individual right." So they included it as part of the Bill of Rights, which is a compilation of protected individual liberties such as free speech, freedom of religion, and a fair trial.

The second amendment ensures that every American can secure his freedom, and defend his life and property, if necessary.

In that sense, the right to keep and bear arms could very well be one of our most important rights—because it is the right from which all of our other rights, freedom of speech, freedom of religion, et cetera are secured.

That's why, last year, I led a congressional effort to support the affirmation of the second amendment as an important individual right in the Supreme Court case of *D.C. v. Heller*, which overturned Washington, DC's unconstitutional ban on handguns.

In that case, Senator Tester and I, joined by 53 of our colleagues and 250 members of the U.S. House, filed a "friend of the court" brief in favor of Dick Heller, who simply wished to exercise his constitutional right to protect himself and his family.

That brief was proof that a majority in Congress believe that the second amendment is a constitutionally secured individual right.

It was the first time in history that a majority of the House and Senate sent this type of brief to the Supreme Court.

In the case of *D.C. v. Heller*, the Supreme Court affirmed the right to keep and bear arms as an individual right for the first time in almost seven decades.

Unfortunately, however, just a few months ago, even after the Supreme Court's verdict in *D.C. v. Heller*, Judge Sotomayor issued an opinion in another case, *Maloney v. Cuomo* refusing to acknowledge that the second amendment is a fundamental right, and therefore may not be binding on the States.

As a strong advocate of the second amendment, I cannot ignore this decision.

I am very troubled by Judge Sotomayor's opinion in *Maloney v. Cuomo* because it appears to disregard an instruction by the Supreme Court in *Heller* specifically regarding fundamental rights.

In Footnote 23 of the *Heller* decision, the Supreme Court stated: "With respect to *Cruikshank*'s continuing validity on incorporation, a question not presented by this case, we note that *Cruikshank* also said that the First Amendment did not apply against the States and did not engage in the sort of Fourteenth Amendment inquiry required by our later cases."

These "later cases" to which the court is referring held most Bill of Rights guarantees to be incorporated through the due process clause of the 14th amendment against State violation.

This was a clear instruction to the circuits that in future second amendment cases they will need to confront the incorporation argument and do so following the Supreme Court's line of cases on incorporation.

I must take issue with Judge Sotomayor's per curiam opinion in *Maloney* because while her opinion references the *Heller* footnote, it only acknowledges the portion noting the continued validity of Supreme Court precedent indicating the second amendment is not binding on the States.

Her court failed to recognize the instruction to conduct the contemporary 14th amendment incorporation analysis the *Heller* footnote demands.

As such, the Sotomayor opinion reaches the conclusion that the cases from the 1890s are still applicable—and therefore, basically, the second amendment is not binding on the states.

When questioned by the Judiciary Committee about the *Maloney* case, Judge Sotomayor said she was following precedent.

However, she did not follow the instruction of the Supreme Court in *Heller* on this point.

In *Maloney*, the Second Circuit cites the Supreme Court cases of *Heller* and *Presser v. Illinois*, decided in 1886, and the Second Circuit opinion *Bach v. Pataki*, decided in 2005.

Judge Sotomayor determines that *Presser* and *Bach* instruct the court to maintain *Presser*'s conclusion that the second amendment is not applicable to the States.

But *Heller*'s Footnote 23 asks the Court to "engage in a Fourteenth Amendment inquiry."

I specifically asked Judge Sotomayor when we met why she did not follow this instruction, articulated just last year by the Court?

I did not receive a satisfactory explanation to this very pivotal question, nor did I hear one in her testimony before the Judiciary Committee.

*Heller* is precedent, and in this precedent, the Supreme Court tells the circuits to perform a 14th amendment inquiry.

In April of this year, the Ninth Circuit considered the same second amendment incorporation question.

While also looking to *Presser* for guidance, the Ninth Circuit turned to its own circuit precedent, *Fresno Rifle & Pistol Club, Inc. v. Van de Kamp*, and—like the Second Circuit—it would have been inclined to conclude that the second amendment did not apply to the States.

However, the Ninth Circuit acknowledged that it had not yet engaged "in the sort of Fourteenth Amendment inquiry required by [the Supreme Court's] later cases," and therefore undertook the due process incorporation analysis as envisioned by the *Heller* footnote.

At the conclusion of the analysis, the Ninth Circuit finds that the second amendment right to keep and bear arms is "deeply rooted in this Nation's history and tradition" and "compels [us] to recognize that it is indeed fundamental" and is therefore incorporated by the due process clause of the 14th amendment and applied against the states and local governments.

Let me repeat that. The Ninth Circuit's opinion holds that the second amendment protects an individual's liberty, and because that protection is enumerated and so fundamental, the due process clause guarantees it, and the second amendment is therefore binding on the States.

We cannot escape the fact that both courts, each bound by the same *Heller* precedent, reached opposite conclusions, with Judge Sotomayor's opinion failing to subject the second amendment to the incorporation analysis required by the Supreme Court, and failing to identify the second amendment as a fundamental right, binding against the States.

It is from this fact, this outcome, that I am unable to reconcile with my earnest desire to confirm the first Hispanic Justice to the Supreme Court.

With the circuit courts split on the question of whether the second amendment is an individual right protected against State infringement, the Supreme Court will undoubtedly have this issue before it in the upcoming term.

With the constitutional right to keep and bear arms hanging in the balance, I cannot in good conscience vote to confirm a nominee whose judicial record indicates an unwillingness to protect and defend such a fundamental, individual right.

For that reason, I must oppose the nomination of Judge Sotomayor to the Supreme Court of the United States.

I similarly opposed the confirmation of Attorney General Eric Holder earlier this year due to his stance on the second amendment embodying a collective right rather than an individual right.

One added point. I am troubled by a line in her February 25, 2005, speech at the Duke Law School, "Court of Appeals is where policy is made."

This is a troubling statement in the area of judicial philosophy.

As I have stated earlier, I believe policy is made by elected officials who must be accountable through elections, not by Federal judges with lifetime appointments.

Judge Sotomayor is without a doubt an intelligent, experienced, and capable nominee, and she will bring much needed diversity to the Court.

But, after careful examination, I cannot support her confirmation to the highest court in the land.

The PRESIDING OFFICER. Under the previous order, the time until 3 p.m. will be divided, with the following speakers controlling 15 minutes each in the following order: the Senator from Alabama, Mr. SESSIONS; the Senator from Vermont, Mr. LEAHY; the Republican leader; and the majority leader.

Mr. SESSIONS. Mr. President, when President Obama nominated Judge Sotomayor to the Supreme Court, I pledged that we would treat her with respect and that our questions would be tough but always fair. It is an important office. I believe we have lived up to that obligation.

Again, I thank Chairman LEAHY and the members of the Judiciary Committee for their efforts. I think it did help provide a basis for our full debate in the Senate. I thank Judge Sotomayor for her kind words regarding how the process has been conducted, and the way she conducted herself.

We have had a robust debate on the Senate floor over these past few days, and we have addressed many important questions and issues.

The debate over Judge Sotomayor's nomination began with President Obama's radical new vision for America's court system. According to the President, all nominees to the Federal bench would now have to meet an "empathy standard." This standard requires judges to reach their most difficult and important decisions through the "depth and breadth of [their] empathy" and "their broader vision of what America should be." This is a stunning ideology. It turns law into politics. The President of the United States is breaking with centuries of American legal tradition to enter a new era

where a judge's personal feelings about a case are as important as the Constitution itself.

The President's empathy standard is much more than a rhetorical flourish. It is a dangerous judicial philosophy where judges base their rulings on their social, personal, and political views. It is an attempt to sell an old, discredited activist philosophy by marketing it under a new label. It is this activist philosophy, now under the guise of empathy, that has led judges to ban the Pledge of Allegiance because it contains the words "under God," to interpret the Constitution on the basis of foreign laws, to create a new right for terrorists who attacked the United States while robbing American citizens of their own rights to engage in activities such as silent prayer.

That philosophy also helps explain why Judge Sotomayor's panel of Federal judges allowed the city of New Haven to strip 18 firefighters of their eligibility for promotion on the basis of their race. It explains why judges have interpreted the second amendment to permit cities and States to ban guns despite the Constitution's clear language: "the right of the people to keep and bear arms . . . shall not be infringed." And it explains why judges have allowed government to seize private property for private commercial development despite the Constitution's guarantee that private property may not be taken except for "public use."

The empathy standard may sound nice, but in reality, it is cruel. It is, in truth, a bias standard. The power to rule on empathy is the power to rule on prejudice, and the power to deny the rights of some is the power to deny the rights of any or of all. A judge embraces empathy at the expense of objectivity and equality and fairness.

Eighteen firefighters in New Haven worked, studied, and sacrificed to pass the city's promotion exam. But when the results did not fit a certain racial quota, the city leaders unceremoniously scrapped the results. The firefighters put their faith in the system, and the system let them down. So they took their case to court. But Judge Sotomayor summarily dismissed their case in a one-paragraph order that did not even consider their civil rights claims. But the Judge Sotomayor who testified before the Committee did not effectively explain her ruling to deny these firefighters their day in court.

She also did her best to distance herself from the activist philosophy she has so long spoken of and championed. But it was an unconvincing effort. I believe she failed to offer a credible explanation for her critically important rulings that would eviscerate gun rights and property rights. She failed to offer a credible explanation of her policy role in an advocacy group that took extreme positions when pursuing racial quotas, advocating that the Constitution requires that the government fund abortions and opposing reinstatement

of the death penalty. Her effort to rebrand her judicial approach stretched the limits of credulity. As one editorial page opined, her testimony was "at times uncomfortably close to disingenuous."

Nevertheless, I believe we have had a deeply valuable public discussion. By the end of the hearing, not only Republicans and not only Democrats but the nominee herself ended up rejecting the very empathy standard the President used when selecting her. This process reflected a broad public consensus that judges should be impartial, restrained, and faithfully tethered to the law and the Constitution.

I think it will now be harder to nominate activist judges. This is not a question of left versus right or Republican versus Democrat. This is a question of the true role of a judge versus the false role of a judge. It is a question of whether a judge follows the law as written or as they might wish it to be. It is a question of whether we live up to our great legal heritage or whether it is abandoned.

Empathy-based rulings, no matter how well-intentioned, do not help society but imperil the legal system that is so essential to our freedoms and so fundamental to our way of life. We need judges who uphold the rights of all, not just some, whether they are New Haven firefighters, law-abiding gun owners, or Americans looking for their fair day in court. We need judges who put the Constitution before politics and the right legal outcome before their desired personal political and social outcome. We need judges who understand that if they truly care about society and want it to be strong and healthy, then they must help ensure our legal system is fair, objective, and firmly rooted in the Constitution.

Our 30th President, Calvin Coolidge, said of the Constitution:

No other document devised by the hand of man ever brought so much progress and happiness to humanity. The good it has wrought can never be measured.

I certainly believe he is correct. That document has given us blessings no people of any country have ever known, which is why real compassion is not found in the empathy standard but in following the Constitution.

Judge Sotomayor, however, has embraced the opposite view. For many years before her hearings, she has bluntly advocated a judicial philosophy where judges ground their decisions not in the objective rule of law but in the subjective realm of personal "opinions, sympathies, and prejudices."

A Supreme Court Justice wields enormous power—a power over every man, woman, and child in our country. It is the primary guardian of our magnificent legal system. Because I believe Judge Sotomayor's philosophy of law and her approach to judging fail to demonstrate the kind of firm, inflexible commitment to these ideals, I must withhold my consent.

Mr. President, I see my colleague, Senator LEAHY, is here. He has handled

many of these nominations over quite a few years. We did not agree on a lot of the things that came up in the hearings, but he committed to giving the opportunity to the minority party to have a full opportunity to ask questions and to raise issues and speak out. I thank the chairman. I think it did credit to the Senate.

I thank the chairman, and I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the Senator from Alabama for his kind comments. As he knows, I made similar comments about him this morning in the Senate Judiciary Committee. I reiterate them here today.

We did decide, both Senator SESSIONS and I, at the beginning of this process that we would try to make sure everybody was heard. We may have different outcomes on how everybody would vote, but everybody was heard. That has been done. I compliment the leaders of the Senate for doing that.

We are about to conclude Senate consideration of this nominee. I thank those Senators who evaluated this nomination fairly. I thank especially those Republican Senators who have shown the independence to join the bipartisan confirmation of this historic nomination. I thank all Senators on both sides of the aisle who spent hours and hours and days and days in our hearings.

Some critics have attacked President Obama's nomination of Judge Sonia Sotomayor by contending he picked her for the Supreme Court to substitute empathy for the rule of law. These critics are wrong about the President; they are wrong about Sonia Sotomayor.

Let's leave out the rhetoric and go to the facts. When the President announced his choice of Judge Sotomayor 10 weeks ago, he focused on the qualities he sought in a nominee. He started with "rigorous intellect" and "a mastery of the law."

He then referred to recognition of the limits of the judicial role when he talked about "an understanding that a judge's job is to interpret, not make, law; to approach decisions without any particular ideology or agenda, but rather a commitment to impartial justice; a respect for precedent, and a determination to faithfully apply the law to the facts at hand." That is what President Obama said.

Then he went on to mention experience. He said:

Experience being tested by obstacles and barriers, by hardship and misfortune; experience insisting, persisting, and ultimately overcoming those barriers. It is experience that can give a person a common touch and a sense of compassion; an understanding of how the world works and how ordinary people live. And that is why it is a necessary ingredient in the kind of justice we need on the Supreme Court.

Then the President concluded by discussing how Judge Sotomayor has all these qualities. The President was

looking not just for lawyerly ability, but for wisdom—for an understanding of how the law and justice work in the everyday lives of Americans.

In a subsequent radio and Internet address, the President reiterated the point when he said:

As a Justice of the Supreme Court, she will bring not only the experience acquired over the course of a brilliant legal career, but the wisdom accumulated over the course of an extraordinary journey—a journey defined by hard work, fierce intelligence, and the enduring faith that, in America, all things are possible.

President Obama did not say that he viewed compassion or sympathy as a substitute for the rule of law. In fact, he has never said he would substitute empathy for the rule of law. That is a false choice. The opposition to this nomination is based on a false premise.

When she was first named, Judge Sotomayor said: "I firmly believe in the rule of law as a foundation for all our basic rights." Judge Sotomayor reiterated time and time again during her confirmation hearing her fidelity to the rule of law. She said:

Judges can't rely on what's in their heart. They don't determine the law. Congress makes the laws. The job of the judge is to apply the law. And so it's not the heart that compels conclusions in cases. It's the law. The judge applies the law to the facts before that judge.

Those who, after 4 days of hearing, would ignore her testimony, should at least take heed of her record as a judge. Judge Sotomayor has demonstrated her fairness and impartiality during her 17 years as a judge. She has followed the law. There is no record of her substituting her personal views for the law. The many independent studies that have closely examined Judge Sotomayor's record have concluded it is a record of applying the law, not bias.

What she has said, and what we should all acknowledge, is the value her background brings to her as a judge and would bring to her as a Justice, our first Latina Justice.

Judge Sotomayor is certainly not the first nominee to discuss how her background has shaped her character. Justice O'Connor has acknowledged, "We are all creatures of our upbringing. We bring whatever we are as people to a job like the Supreme Court." Everybody knows that, just as all 100 of us bring who we are to the Senate. Many recent Justices have spoken of their life experiences as influential factors in how they approach the bench. Justice Alito and Justice Thomas, nominated by Republican Presidents, did so famously at their confirmation hearings, and then they were praised by the Republican side of the aisle for doing so. Indeed, when the first President Bush nominated Justice Thomas to the Supreme Court, he touted him as an "intelligent person who has great empathy."

Some of those choosing to oppose this historic nomination have tried to justify their opposition by falsely con-

tending that President Obama is pitting empathy against the rule of law. Not so. Not so. This President and this nominee are committed to the rule of law. They recognize the role of life experience not as a substitute for the law or in conflict with its mandates, but as informing judgment.

What is really at play is not a new Obama "empathy standard" with respect to judicial selection, but a double standard being applied by those who supported the nominations of Justice Alito and Justice Thomas.

Judge Sotomayor's career and judicial record demonstrate that she has always followed the rule of law. The point is, we don't have to guess at what kind of a judge she has been. She has had more experience on the Federal court, both trial level and appellate level, than any nominee in decades. She will be the only member of the U.S. Supreme Court with experience as a trial judge. We don't have to guess. There are well over 3,000 cases, so we don't have to guess. Attempts at distorting that record by suggesting that her ethnicity or her heritage would be the driving force in her decisions as a Justice of the Supreme Court are demeaning to women and all communities of color.

I have spoken over the last several years about urging Presidents from both political parties to nominate someone from outside the "judicial monastery." I believe that experience, perspective, an understanding of how the world works and people live, and the effect decisions will have on the lives of people are very important qualifications. By striving for a more diverse bench drawn from judges with a wider set of backgrounds and experiences we can better ensure there will be no prejudices and biases controlling our courts of justice. All nominees have talked about the value they will draw on the bench from their backgrounds. That diversity of experience and strength is not a weakness in achieving an impartial judiciary.

I have voted on every member of the current U.S. Supreme Court. I have participated in the hearings of all but one of them, and that one I voted on the nomination having watched the hearing. I have sat in on the hearings of Justices no longer there, either because of retirement or death. I have conducted hundreds of nomination hearings—everything from courts of appeals judges, Federal district court judges, and Department of Justice appointees. I have been ranking member on two Supreme Court nominations and conducted this one. I mention that to thank the Senator from Alabama for his cooperation during it.

After those hundreds of hearings, you get a sense of the person you are listening to. I met for hours with Judge Sotomayor, either in the hearing room or privately. You learn who a person is, you really do, in asking these kinds of questions. You have to bring your own experience and your own knowledge to

what you are hearing. There are only 101 people in this great Nation of 300 million people who get a say as to who is going to be one of the nine members of the U.S. Supreme Court. First and foremost, it is the President who makes the nomination, but then the 100 of us in the U.S. Senate who must follow our own conscience, our own experience, our own abilities in deciding whether we will advise and consent to that nomination. It is an awesome responsibility, and we should do it not because we are swayed by any special interest group of either the right or the left.

In fact, I have a rule—my office knows it very well—that in Supreme Court confirmations I will not meet with groups on either the right or the left about it. I will make up my mind through those hours and days and the transcripts of the hearing. I would urge all Senators to do that. I think it is unfortunate if any Senator of either party were to make up their mind on a Supreme Court nominee based on pressure from special interest groups from either the right or the left. That is a disfavor to those hundreds of millions of Americans who don't belong to pressure groups of either the right or the left. They expect us to stand up.

That is what we should do on Judge Sotomayor. This is an extraordinary nominee. I remember when President Obama called me a few hours before he nominated her. I was with our troops in Afghanistan, and he explained what he was going to do in a few hours. We talked about that and we talked about Afghanistan, but we talked especially about her. He said, you know, there are Web sites already developing opposed to her. And within hours, we had leaders calling her racist, bigoted, or being affiliated with a group akin to the Ku Klux Klan. Fortunately, Senators on neither side joined with that.

We are almost at a time for a vote. I would hope every Senator would search his or her conscience and ask whether they are voting for this nominee based on their oath of office, based on their conscience, or are they reflecting a special interest group.

When the Judiciary Committee began the confirmation hearings on this Supreme Court nomination, and when the Senate this week began its debate, I recounted an insight from Dr. Martin Luther King, Jr., which is often quoted by President Obama. "Let us realize the arc of the moral universe is long, but it bends toward justice."

It is distinctly American to continually refine our Union, moving us closer to our ideals. Our union is not yet perfected, but with this confirmation, we will be making progress.

Years from now, we will remember this time when we crossed paths with the quintessentially American journey of Sonia Sotomayor and when our Nation took another step forward through this historic confirmation process. I urge each Senator to honor our oath, our Constitution, and our national

promise by voting his or her conscience on the nomination of Sonia Sotomayor to serve as a Justice of the U.S. Supreme Court. I will proudly vote for her.

Mr. President, I see the Republican leader is here, and I will reserve the remainder of my time.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. McCONNELL. Mr. President, once again I wish to thank the chairman and the ranking member of the Judiciary Committee, Senator LEAHY and Senator SESSIONS, and their staffs, for conducting a dignified and respectful hearing. From the beginning of the process, I assured Judge Sotomayor that Republicans would treat her fairly. At the end of the process, I can say with pride that we kept that commitment.

This particular nominee comes before us with an impressive resume and a compelling life story. Yet the question we must ask ourselves today is whether we believe Judge Sotomayor will fulfill the requirements of the oath that is taken by all Federal judges to administer justice without respect to persons; that is, to administer justice evenhandedly.

President Obama asked himself a different question when he was looking for a nominee. The question he asked is whether that person has the ability to empathize with certain groups. And as I have said, empathy is a fine quality. But in the courtroom, it is only good if a judge has it for you. What if you are the other guy? When he walks out of the courthouse, he can say he received his day in court. He can say he received a hearing. But he can't say he received justice.

At her hearings Judge Sotomayor was quick and even eager to repudiate the so-called empathy standard. But her writings reflect strong sympathy for it. Indeed, they reflect a belief not just that impartiality is not possible, but that it is not even worth the effort.

Judge Sotomayor's record of complex constitutional cases concerns me even more. Because in Judge Sotomayor's court, groups that didn't make the cut of preferred groups often found they ended up on the short end of the empathy standard, and the consequences were real.

One group that didn't make the cut in Judge Sotomayor's court were those who needed the courts to enforce their first amendment rights to support candidates for political office free from government interference. She is free to express her personal opinions on this issue, as she did when she wrote that merely donating money to a candidate is akin to bribery.

But as a judge she was obligated to follow clear Supreme Court precedent. And when it came to this issue, she followed her political beliefs instead, voting not to correct her circuit's clear failure to follow the Supreme Court precedent in this area of the law.

Ultimately, the Supreme Court, in a 6-to-3 opinion authored by Justice

Breyer, corrected this error by her circuit on the grounds that it had failed to follow "well-established precedent."

Another group that didn't make the cut were those who need the courts to protect them from unfair employment preferences. As a lawyer, she advocated for—and, in fact, helped plan—lawsuits that challenged civil service exams for public safety officers. And as a judge, she kicked out of court—with just six sentences of explanation and without any citation of precedent—the claims of a group of firefighters who had been unfairly denied promotions they had earned. This past June, the Supreme Court reversed her ruling, making her 0 for 3 this term, with all nine Justices finding that she had misapplied the law.

Gun owners didn't make the cut, and they haven't fared well before Judge Sotomayor either. She has twice ruled the second amendment isn't a fundamental right and thus doesn't protect Americans when States prevent them from bearing arms. And here too, she didn't even give the losing party's claims the dignity of a full treatment. In one case, she disposed of the party's second amendment claim in a one-sentence footnote. In the other, she did it with a single paragraph.

Property owners weren't on the list either, and they too haven't fared well in Judge Sotomayor's court. In an important fifth amendment case—the amendment that protects against the government taking private property—Judge Sotomayor broadened even further the government's power, a ruling which one property law expert called "one of the worst property rights decisions in recent years."

And her ruling in this case fit an all-too-familiar pattern: she kicked the aggrieved party's serious constitutional claims out of court in an unsigned, unpublished, summary order, with only a brief explanation as to why.

These important cases illustrate the real-world consequences of the empathy standard, in which judges choose to see certain facts but not others, and in which it's appropriate for judges to bring their personal or political views to bear in deciding cases. Lieutenant Ben Vargas, one of the firefighters who did not fare well under the empathy standard, may have put it best. Speaking of himself and the other plaintiffs in that case, he said,

We did not ask for sympathy or empathy. We asked only for evenhanded enforcement of the law, and . . . we were denied that.

Lieutenant Vargas understands what most other Americans understand and what all of them expect when they walk into a courtroom: that in America, everyone should receive equal justice under the law. This is the most fundamental test for any judge, and all the more so for those who would sit on our Nation's highest court, where a judge's impulses and preferences are not subject to review. Because I am not convinced that Judge Sotomayor would

keep this commitment, I cannot support her nomination.

Mr. President, does our side have time left, I would ask?

The PRESIDING OFFICER. Only the leader has time.

Mr. McCONNELL. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, on May 17, 1954, the Supreme Court of the United States handed down a ruling that would begin to reroute America toward a more unified Union. When the Justices unanimously directed, in *Brown v. Board of Education*, that our children's schools must no longer be racially segregated, their decision echoed far beyond the walls of a courtroom in Washington, DC, or a classroom in Topeka, KS. The decision paved the way for countless future turns that would make our Nation more just and its people more equal.

Not 6 weeks later after that opinion, Sonia Sotomayor was born in the south Bronx. In her lifetime, this Senate has sent to the Supreme Court the only two women and the only two Americans of color to ever sit on that bench.

In the 10 weeks since President Obama made history by nominating Judge Sotomayor, many have emphasized the importance of putting the first Hispanic on the Nation's highest Court. This is truly historic for our entire Nation but especially for the young Latinos in this country who will see in Judge Sotomayor concrete evidence of the heights to which they can legitimately aspire.

But it is no less significant that in a country where women represent half of our population, Judge Sotomayor will be the third woman, only the third woman to ever serve as a Justice and will be one of only two women serving on the Court today.

In many ways, Justices Sandra Day O'Connor and Ruth Bader Ginsburg have made this day possible for Judge Sotomayor. Because of the trail these women; that is, O'Connor and Ginsburg and others like them, have forged, Judge Sotomayor has been recognized throughout her career for her intelligence, talent, and accomplishments rather than being defined by her gender.

It was not easy. Justice O'Connor finished high school at age 16, and when she finished Stanford Law School, one of the finest law schools in the world, a year early—she did it in 2 years—she was third in her class, two behind Justice Rehnquist but no law firm in California would hire Justice O'Connor as an attorney because—because she was a woman. The most one firm would offer her was a position as a legal secretary.

When Justice Ginsburg arrived at Harvard Law School, she was greeted by a dean who asked why the nine women in her class—it was a class of about 700 people—why nine women in her class were occupying seats that could otherwise be taken by men.

Little did he know she would later join another group of nine legal experts whose membership was long restricted to men, the Supreme Court of the United States. Like Justice O'Connor, Justice Ginsburg did not receive a single offer from any of the 12 law firms with which she interviewed, even though she finished first in her law school class.

When she was recommended for a clerkship to the Supreme Court, at least two of the Justices refused to hire her. Why? She was a woman.

America is grateful that O'Connor and Ginsburg did not give up. We are fortunate that their voices and the real-world perspective they brought to the table were part of the debate during some of our Nation's landmark cases on gender equality.

In the Lilly Ledbetter 2007 case before the Supreme Court, Justice O'Connor's successor, Samuel Alito, wrote the majority opinion in a 5-to-4 ruling that made it virtually impossible for women and other victims of pay discrimination to fight back.

Justice Ginsburg, who herself has been a victim of pay discrimination because she was a woman, read her powerful dissent aloud from the bench. It is rarely done. But she stood and proudly voiced her dissent in that 5-to-4 opinion. She invited Congress to correct this injustice, and we did that. We changed the law. After we passed the Lilly Ledbetter Fair Pay Act this year, it was the first piece of legislation that President Barack Obama signed into law.

Similarly, when the Supreme Court heard the case of a 13-year-old honor student, a girl who had been strip-searched at school, Justice Ginsburg heard her colleagues minimize the humiliation the student had suffered. Justice Ginsburg noted that she was the only one on the Court who had ever been a 13-year-old girl and encouraged her colleagues to take into account the victim's perspective. The Court rightly ruled the search was unreasonable. That would not have happened but for Ruth Bader Ginsburg.

Judge Sotomayor's life experiences will not dictate her decisions any more than Justices O'Connor, Ginsburg, Scalia, or Alito have let their personal pasts prescribe their own rulings. But as the newest member of the Supreme Court, she will bring a perspective not only as a woman and a Hispanic, but also a former criminal prosecutor, commercial litigator, trial judge, and appellate judge. She will share the depth and breadth of that experience with her colleagues, just as they will be able to share their own unique views on any case with her—their own views.

Justice O'Connor has said that the first African-American Justice,

Thurgood Marshall, opened for his colleagues a window into a different world and was able to relate to them experiences they could not know.

Justices O'Connor and Ginsburg have done the same. Soon so will Judge Sotomayor. A more diverse Supreme Court is a better Supreme Court.

Judge Sotomayor's journey to this day has not been without obstacles. But because of the struggles fought by those who came before her, she has been able to succeed. Today the Senate will make history by confirming the first Hispanic, the third woman, and the third person of color to the Supreme Court of the United States. But equally as important, we will also make history by confirming someone as qualified as Sonia Sotomayor.

Her experiences come not only from the legal world but also the real world. Her understanding of the law is grounded not only in theory but also in practice. Her record is beyond reproach, her respect for the limits of the judiciary is resolute, and her reverence for the law is unwavering.

Sonia Sotomayor is an American of tremendous credentials. Both her academic record and her career experience are second to none. She graduated summa cum laude from Princeton University and excelled at Yale; again, Stanford, Harvard, Yale, all in the top three law schools in the country. She excelled at Yale where she was a member of the law review, the prestigious Yale Law Review.

After she is confirmed, she will be the only Justice who has seen a trial from every single angle. She has seen a trial from prosecuting civil and criminal cases, she has presided over them as a trial judge, and handled them as an appellate court judge. That is precisely the kind of experience we need on the Supreme Court.

I have had concerns for quite some time that we have far too few judges on the Court who have had trial experience. As a trial lawyer—I have tried more than 100 cases in front of juries—that experience to someone sitting on that Court is important. And she will bring that. That is so important.

We have too many Supreme Court Justices who have never conducted a trial. Some of them have never been involved in a trial. They have looked at cases from the appellate purview. I wanted someone who has looked at a case from a trial court perspective.

As the distinguished ranking member of the Senate Judiciary Committee, Senator JEFF SESSIONS of Alabama, said shortly after her nomination, Judge Sotomayor's nomination: "She's got the kind of background you would look for, almost an ideal mix of private practice, prosecution, trial judge, circuit judge."

I could not agree more with my friend JEFF SESSIONS. Her experience as a trial judge will be invaluable to the Supreme Court. As a former trial lawyer, as I have indicated, a judge is more than just a political title to me.

It is someone who understands the law and sees every day how it affects people, real people.

When looking at Judge Sotomayor, I see someone who knows what happens in a courtroom, which is an arena unlike any other arena in the world. We tend to think of Supreme Court cases as major milestones that change the arc of our history and define our principles. And they do. But they often begin as ordinary, routine cases before a trial judge. It could be a traffic stop that winds up at the Supreme Court, it could be a protest in a park, it could be the placement of some monument in a park or some public place, it could be a dispute over money.

Linda Brown was a girl trying to go to public school close to her house in Topeka, Kansas, setting in motion the beginning of the end of segregation in *Brown v. Board of Education*. Linda Brown was that little girl who wanted to go to school close to her home. Judge Sotomayor understands people like Linda Brown. She has developed a 17-year record as a moderate judge who is squarely in the mainstream.

One of her colleagues on the Second Circuit Court of Appeals for our country has credited Sotomayor with such an insightful and convincing understanding of the law that she changed his mind many times. He said: "I would read one of the memos she had written on a case and say, I think she's got it and I don't."

This is one of the reasons that both Republican and Democratic Presidents have nominated her to the Federal bench. It is the reason she has been confirmed twice by this body with strong bipartisan support. It is the reason that liberals and conservatives alike in the Senate will vote today to confirm her.

This woman's brilliance was on display last month. Remember, she just broke her leg. But she stood 4 days of grueling testimony with some of the finest legal minds in our country, the Democrats and Republicans of that Judiciary Committee. She did a good job in a very difficult situation. She was asked tough questions and she gave honest answers. Judge Sotomayor, who has been credited with saving baseball in one of her opinions, hit it out of the park in her testimony and her presence before the Judiciary Committee. If there ever were a home run, she hit it.

I thank Chairman LEAHY, my dear friend, who has been so good to me for so many years. I think back with fondness of our time here together in the Senate. I thank Ranking Member SESSIONS, who has always been a gentleman to me. We have disagreed on many public issues, political issues, but never do we disagree on our friendship.

I appreciate Chairman LEAHY and Senator SESSIONS for running a thoughtful and thorough confirmation hearing. I appreciate the generous and genuine cooperation of my colleagues who support this nomination as well as

the respect shown by those who dissent.

But I commend Barack Obama, the President of the United States, for selecting such an accomplished, qualified, and experienced nominee to replace Justice Souter. It is with some sadness that I stand here today and recognize that David Souter will no longer be on the Supreme Court. I can say about no other Member of the Supreme Court what I can say about David Souter. David Souter was my friend. We did things socially. We had meals together. What a wonderful human being. I will miss him. He has always been a powerful defender of constitutional rights, whether it is the State of New Hampshire's constitutional rights or our country's constitutional rights. All Americans thank this good man for his decades of service to our Nation, and he has more to give. I am confident, though, that Judge Sotomayor will soon build upon her impressive record which is already very impressive when she is across the street at the Supreme Court.

I am certain she will leave the writing of the law to those of us on this side of the street. That is our job, and she will impartially and faithfully fulfill her constitutional duty to apply only the laws that we pass here.

I am also convinced that, when she soon takes the same oath every Justice before her has taken, she will "administer justice without respect to persons, and do equal right to the rich and to the poor."

Sonia Sotomayor has risen remarkably from the trials of a modest upbringing in the South Bronx of New York to presiding over major trials on the Federal bench. All Americans, men and women of every color and background, can be confident that she will ensure equal justice under the law in our Nation's very highest Court.

That is why I am so proud to cast my vote in a few minutes for the confirmation of Sonia Sotomayor as an Associate Justice of the United States Supreme Court.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Sonia Sotomayor, of New York, to be an Associate Justice of the Supreme Court of the United States?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER. Visitors in the galleries are reminded that expressions of approval or disapproval are not permitted.

Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 68, nays 31, as follows:

[Rollcall Vote No. 262 Ex.]

#### YEAS—68

Akaka	Franken	Mikulski
Alexander	Gillibrand	Murray
Baucus	Graham	Nelson (NE)
Bayh	Gregg	Nelson (FL)
Begich	Hagan	Pryor
Bennet	Harkin	Reed
Bingaman	Inouye	Reid
Bond	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown	Kerry	Schumer
Burris	Klobuchar	Shaheen
Byrd	Kohl	Snowe
Cantwell	Landrieu	Specter
Cardin	Lautenberg	Stabenow
Carper	Leahy	Tester
Casey	Levin	Udall (CO)
Collins	Lieberman	Udall (NM)
Conrad	Lincoln	Voinovich
Dodd	Lugar	Warner
Dorgan	Martinez	Webb
Durbin	McCaskill	Whitehouse
Feingold	Menendez	Wyden
Feinstein	Merkley	

#### NAYS—31

Barrasso	DeMint	McConnell
Bennett	Ensign	Murkowski
Brownback	Enzi	Risch
Bunning	Grassley	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Wicker
Cornyn	Kyl	
Crapo	McCain	

#### NOT VOTING—1

Kennedy

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table.

The President will be immediately notified of the Senate's action.

Mr. LEAHY. Mr. President, the Senate has concluded consideration of the nomination of Sonia Sotomayor and has confirmed her as a Justice on the U.S. Supreme Court. The consideration of a nomination for a lifetime appointment to the Supreme Court is one of our most consequential responsibilities. The consideration of the nomination of Sonia Sotomayor has been a credit to the Judiciary Committee and to the Senate.

We could not give this process the attention it deserves without the help of dedicated staff. For 2½ months, the staff of the Judiciary Committee has worked long hours dutifully to help Senators in their review. I wish to thank the following members of the majority staff in particular: Jeremy Paris, Erica Chabot, Kristine Lucius, Roscoe Jones, Shanna Singh Hughey, Maggie Whitney, Sarah Hackett, Michael Gerhardt, Elise Burditt, Noah Bookbinder, Stephen Kelly, Kelsey Kobelt, Matt Virkstis, Anya McMurray, Juan Valdivieso, Curtis



LeGeyt, Zulima Espinel, Tara Magner, Roslyne Turner, Erin O'Neill, Sarah Guerrieri, Brian Hockin, Joseph Thomas, Leila George-Wheeler, Laura Safdie, Kathleen Roberts, Aaron Guile, Matt Smith, Lydia Griggsby, Patrick Sheahan, Scott Wilson, Dave Stebbins, Sarah Hasazi, Kiera Flynn, Bree Bang-Jensen, Tom Wheeler, Eric Poalino, Brad Wilhelm, Lauren Rosser, Chuck Papirmeister, and Bruce Cohen. I also thank my staff for their hard work on this nomination, in particular, Ed Pagano, David Carle, Jennifer Price, and Kevin McDonald.

I commend and thank the hard-working staffs of the other Democratic members of the Judiciary Committee for their tremendous contributions to this effort. I also want to extend considerable thanks to the Democratic leadership and floor staff, in particular Serena Hoy, Mike Spahn, Stacy Rich, and Joi Chaney.

I also commend and thank Senator SESSIONS, the committee's ranking Republican, and his staff, in particular, Brian Benczkowski, Elisebeth Cook, Danielle Brucchieri, and Lauren Pastarnack, for their hard work and professionalism.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The majority leader.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BEGICH). Without objection, it is so ordered.

#### MAKING SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2009 FOR THE CONSUMER ASSISTANCE TO RECYCLE AND SAVE PROGRAM

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 3435, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3435) making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Parliamentary inquiry, Mr. President: What is the order of business right now?

The PRESIDING OFFICER. Certain amendments are in order to be offered to the bill, with a 30-minute time limit.

Mr. HARKIN. Thirty-minute time limit on?

The PRESIDING OFFICER. Each amendment.

#### AMENDMENT NO. 2300

Mr. HARKIN. Mr. President, I have an amendment. I believe it is at the desk. If not, I send it to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 2300.

Mr. HARKIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To limit the provision of vouchers to individuals with adjusted gross incomes of less than \$50,000 or joint filers with adjusted gross incomes of less than \$75,000)

At the appropriate place, insert the following:

#### SEC. \_\_\_\_ . ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Section 1302(c)(1) of the Supplemental Appropriations Act, 2009 (Public Law 111-32; 123 Stat. 1910; 49 U.S.C. 32901 note) is amended by adding at the end the following:

“(H) ELIGIBLE INDIVIDUALS.—A voucher may only be issued under the Program in connection with the purchase of a new fuel efficient automobile by an individual—

“(i) who filed a return of Federal income tax for a taxable year beginning in 2008, and, if married for the taxable year concerned (as determined under section 7703 of the Internal Revenue Code of 1986), filed a joint return;

“(ii) who is not an individual with respect to whom a deduction under section 151 of the Internal Revenue Code of 1986 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins; and

“(iii) whose adjusted gross income reported in the most recent return described in clause (i) was not more than \$50,000 (\$75,000 in the case of a joint tax return or a return filed by a head of household (as defined in section 2(b) of the Internal Revenue Code of 1986)).”.

(b) REGULATIONS.—Not later than 7 days after the date of the enactment of this Act and notwithstanding the requirements of section 553 of title 5, United States Code, the Secretary of Transportation shall promulgate final regulations that require—

(1) each purchaser or leaser of a new fuel efficient automobile under the Consumer Assistance to Recycle and Save Program established under section 1302(a) of such Act (Public Law 111-32; 123 Stat. 1909; 49 U.S.C. 32901 note) to affirm on a standard form, determined by the Secretary, that such purchaser or leaser is an individual described by section 1302(c)(1)(H) of such Act, as added by subsection (a); and

(2) each dealer that receives a form described in paragraph (1) under such program to submit such form to the Secretary.

(c) FRAUD DETECTION.—Upon receipt under paragraph (2) of subsection (b) of a form described in paragraph (1) of such subsection, the Secretary shall submit such form to the Internal Revenue Service to determine whether the purchaser or leaser has violated section 641 of title 18, United States Code.

Mr. HARKIN. Mr. President, the Car Allowance Rebate Program, or the cash for clunkers as everyone knows it, has been very popular with the American people, there is no doubt about it, the

way it has been used. It has been a shot in the arm for the auto industry and our dealers at a very critical time. But I believe the program should be strengthened, and I think we should seize this supplemental time as an opportunity to do just that.

When this program was first authorized last year and we put this into effect, at that time I made the observation, which I will repeat here today, that, why would we want to give \$4,500 to the President of the United States, who makes \$400,000 a year, so he can buy a new car? Why would we want to give a Member of the Senate, who makes \$172,000 a year, \$4,500 to buy a new car? Quite frankly, we can afford to buy a new car.

But how about the rest of the American people out there, those who are making \$30,000 a year, just above the minimum wage or \$35,000 a year or \$40,000 a year? How about them? What do they get out of this? Well, they can get \$4,500 to buy a new car too. Someone who is making \$35,000 a year probably does not have health insurance either. They probably have some old clunker made back in the 1990s or 1980s they are still driving that they are paying a lot for because it is a gas guzzler and they are paying a lot to get it repaired because they cannot afford to buy a new car. If you give them \$4,500, many still cannot buy a new car.

So I argued at that time, when we did this, that we ought to put an income limit on it. That way, if you put an income limit on it, then the amount of money we are appropriating—that is what we are doing, by the way, spending taxpayers' money; we are putting this money out there—then that amount of money goes to a smaller subset of people, those who are low and moderate income. If you do that, then you can afford to give them a little bit more money. So someone making \$35,000, \$30,000, \$40,000 a year might be able to get not \$4,500 but maybe \$7,500, maybe \$8,000. Someone in that income category, then, could go out and buy a new car because they could get a loan, say, if they are buying a \$16,000 or \$17,000 car, and that is what new cars are selling for, at least some of the more modest automobiles. Some of the more modest automobiles cost around \$14,000, \$16,000, \$17,000. So if they got more money, that means they could get a loan for 50 percent of the price. They probably could not get a loan for 75 percent or 80 percent of the price because they simply do not have that much credit. But they could get a loan for maybe half of the price of a car because, obviously, when they drove it away, the value of the car would still be more than that.

So I argued at the time that is what we should do with this money, and that is what I do again with this amendment. This amendment just basically says it limits the income, restricting the participation to individuals with an adjusted gross income of less than \$50,000 and families with an adjusted