

The Nomination of Judge Sonia Sotomayor to the United States Supreme Court

“As someone who will have to vote on the nomination of Judge Sotomayor, I will be paying close attention to how she responds to questions from my colleagues on the Senate Judiciary Committee. Specifically, I am concerned about her views on the Second Amendment, some of her controversial speeches, the rate at which her cases are overturned, including the Ricci case, and her statements regarding her belief that American judges should consider foreign cases when making judicial decisions.

I look forward to reviewing the thorough examination of her past decisions and judicial philosophy at the committee hearings.” – *Senator Bob Bennett (R-Utah)*

Second Amendment: Senator Bennett is concerned that some of the cases in which Judge Sotomayor has participated have been dismissive of the Second Amendment and would like the committee to question her views on Second Amendment rights further.

Background:

- Sotomayor has found that the Second Amendment does not apply against states and localities. In addition, she twice ruled the Second Amendment is not a “fundamental right”.
- The National Rifle Association wrote a letter to the chairman and ranking member of the Senate Judiciary Committee expressing concern over Sotomayor’s past rulings and the “troubling implications for future cases that are certain to come before the Court.” Read the letter [here](#).
- On July 7, 2009, two-thirds of state attorneys general (including UT) filed a brief with the Supreme Court urging it to take a recent case regarding Second Amendment rights and hold, contrary to what Judge Sotomayor ruled this year, that the Second Amendment applies to state and local governments. Click [here](#) for more information.

Preconceived Notions from Personal Experiences: Senator Bennett believes a Supreme Court Justice must interpret the law objectively, rather than bring in preconceived notions based on personal experiences when judging from the bench. Sotomayor has made a number of comments that are concerning to Senator Bennett, and he is very interested in her justification of the statements below.

Background:

- “...My experiences will affect the facts I choose to see as a judge... I accept there will be some [differences] based on my gender and my Latina heritage.” – Judge Sonia Sotomayor (Women As Judges: A Latina Judge’s Voice, Seton Hall School Of Law, 10/22/03)
- “In 2001, Sonia Sotomayor, an appeals court judge, gave a speech declaring that the ethnicity and sex of a judge ‘may and will make a difference in our judging.’ ... ‘I would hope 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,’ said Judge Sotomayor, who is now considered to be near the top of President Obama’s list of

potential Supreme Court nominees.” (“A Judge’s View Of Judging Is On The Record,” The New York Times, 5/15/09)

Foreign Law: Senator Bennett believes the Constitution is an inspired document and the Supreme Court should strictly interpret the laws of the land based on that document. Bennett is concerned with statements made by Sotomayor regarding her belief that American judges should consider foreign law when interpreting the Constitution.

Background:

- On April 28, 2009, the day after the White House contacted Judge Sotomayor regarding this nomination, she gave a speech where she stated that “I share more the ideas of Justice Ginsburg...in believing, 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.” Judge Sotomayor also argued that the U.S. legal system commands judges to consider foreign law in American cases, including those cases involving constitutional rights.

Eight out of 10 cases overturned: Senator Bennett is concerned about the rate at which Judge Sotomayor’s cases were overturned. Out of 10 opinions authored or joined by Sotomayor that the Supreme Court has substantively reviewed, her position has been reversed or vacated eight times, criticized once, and affirmed once by a 5-4 vote. In her eight outright reversals, the Supreme Court voted 52-19 against her outcome.

Background:

- *Ricci v. DeStefano*: In *Ricci v. DeStefano* Judge Sotomayor dismissed the claims of 18 firefighters (17 white and one Hispanic) who alleged reverse discrimination based on New Haven’s decision to discard the results of a promotional exam because “not enough” minorities would be eligible for promotion. Many plaintiffs claimed that they made significant personal sacrifices to study for the test. Judge Sotomayor dismissed the claims in a summary one-paragraph opinion that nearly half of the judges on her court criticized as a “perfunctory disposition” that “rests uneasily with the weighty issues presented by this appeal.” Sotomayor’s opinion failed to cite to a single precedent. Her decision in this case is consistent with her personal beliefs in favor of selective affirmative action and her view that certain racial classifications are appropriate in judicial decision-making.