PRLDEF's own meeting minutes. For example, on October 8, 1978:

[Litigation Committee] Chairperson Sotomayor summarized the activities of the Committee over the last several months which included the review of the litigation efforts of the past and present. . . .

The New York Times has detailed her active involvement, as recounted by former PRLDEF colleagues, who have described Judge Sotomayor as a ''top policy maker'' who ''played an active role as the defense fund staked out aggressive stances.'' According to these reports, she ''frequently met with the legal staff to review the status of cases'' and ''was an involved and ardent supporter of their various legal efforts during her time with the group.''

What were the litigation positions advanced by PRLDEF during Judge Sotomayor's tenure there? Well, it argued in court briefs that restrictions on abortion are analogous to slavery. And it repeatedly represented plaintiffs challenging the validity of employment and promotional tests—tests similar to the one at issue in Ricci.

I want to return to a question I raised in my opening statement of Judge Sotomayor's hearing: What is the traditional basis for judging in America?

For 220 years, Presidents and the Senate have focused on appointing and confirming judges and Justices who are committed to putting aside their biases and prejudices and applying the law fairly and impartially to resolve disputes between parties.

This principle is universally recognized and shared by judges across the wide ideological spectrum. For instance, Judge Richard Paez of the ninth circuit—with whom I disagree on a number of issues—explained this in the same venue where, less than 24 hours earlier, Judge Sotomayor made her remarks about a ''wise Latina woman'' making better decisions than other judges. Judge Paez described the instructions that he gives to jurors who are about to hear a case. ''As jurors,'' he said, ''recognize that you might have some bias, or prejudice. Recognize that it exists, and determine whether you can control it so that you can judge the case fairly. Because if you cannot—if you cannot set aside those prejudices, biases and passions—then you should not sit on the case.''

And then Judge Paez said:

The same principle applies to judges. We take an oath of office. At the federal level, it is a very interesting oath. It says, in part, that you promise or swear to do justice to both the poor and the rich. The first time I heard this oath, I was startled by its significance. I have my oath hanging on the wall in the office to remind me of my obligations. And so, although I am a Latino judge and there is no question about that—I am viewed as a Latino judge—as I judge cases, I try to judge them fairly. I try to remain faithful to my oath.

What Judge Paez said has been the standard for 220 years. It correctly describes the fundamental and proper role both for jurors and judges.

Before the hearing, my biggest question about Judge Sotomayor was whether she could abide by that standard. We spent 3 days asking her questions, trying to understand what she meant in some of her controversial speeches and what drove her to questionable conclusions in cases such as Ricci and Maloney.

Judge Sotomayor did not dispel my concerns. Her sworn testimony was evasive, lacking in substance, and, in several instances, incredibly misleading.

Her dissembling was widely noticed. Indeed, in an editorial, the Washington Post criticized Judge Sotomayor's testimony about her ''wise Latina'' statement. Here is what the Washington Post said:

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

Until now, Judge Sotomayor has been operating under the restraining influence of a higher authority—the Supreme Court. If confirmed, there would be no such restraint that would prevent Judge Sotomayor from—to paraphrase President Obama—deciding cases based on her heartfelt views.

If the burden is on the nominee to prove herself worthy of a lifetime appointment to the Nation's highest Court, she must do more than avoid a ''meltdown'' in her testimony. She must be able to rationalize contradictory statements—assuming she does not repudiate one or the other—such as the differences between her speeches and her committee testimony. Her failure to do that has left me unpersuaded that Judge Sotomayor is absolutely committed to setting aside her biases and impartially deciding cases based upon the rule of law.

Judge Sotomayor is obviously intelligent, experienced, and talented. She represents one of the greatest things about America—the opportunity to become whatever you want with your God-given abilities. She is a role model for young women, as well as minorities, specifically. She is personable and, apparently, hard working. I respect the views of those who regard her well.

Moreover, I appreciate her many declarations during the hearing that judges must decide cases solely on the basis of the facts and the law; and especially her disagreement with the President's erroneous, I believe, formulations that, in the hard cases, a judge should rely on empathy and what is in his or her heart.

It may have been possible to vote to confirm her notwithstanding her decisions in Ricci, Maloney, and some other questionable cases. What I cannot abide, however, is her unwillingness to forthrightly confront the contradictions among her many statements, so as to give us confidence that her Judiciary Committee testimony represents what she believes and what she will do. Instead, she would have us believe that there is no contradiction, that she can hold onto what she said before in speeches and decisions—for example, that she merely followed Supreme Court and circuit precedent in Maloney, and that the dissenters in Ricci did not disagree with her reasoning—and also her testimony.

I cannot ignore her unwillingness to answer Senators' questions straightforwardly—for instance, her insistence that as chair of PRLDEF's litigation committee, she had little to do with the organization's legal positions. She has not carried her burden of proof and, therefore, regrettably, I cannot vote to confirm her.

RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 5 p.m.

Thereupon, the Senate, at 3:11 p.m., recessed until 5 p.m. and reassembled when called to order by the Presiding Officer (Mr. BURRIS).

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

The PRESIDING OFFICER. Under the previous order, the Senate will resume the 1-hour alternating blocks of time with the Republicans controlling the first hour.

The Senator from Oklahoma.

Mr. COBURN. I ask unanimous consent that the Republican time for the next hour be allocated as follows: Myself, 15 minutes; Senator SNOWE, 30 minutes; and Senator BROWNBACK, 15 minutes.

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

Mr. COBURN. Mr. President, I rise today to discuss the nomination of Judge Sonia Sotomayor to be a Justice on the U.S. Supreme Court. Judge Sotomayor comes to the Senate with a compelling personal story and notable professional accomplishments. She has worked as a prosecutor, a corporate attorney, and then as a Federal district court and circuit court judge. And, after meeting with Judge Sotomayor and visiting with her, I like her. She is a very kind and affable person.

Certainly Judge Sotomayor has an impressive resume; however, the Senate's inquiry into her suitability for a seat on the Supreme Court does not end with her professional accomplishments. Equally important to our providing ''consent'' on this nomination is our determination that Judge Sotomayor has the appropriate judicial philosophy for the Supreme Court. Judge Sotomayor needed to prove to the Senate that she will adhere to the

proper role of a judge and only base her opinions on the plain language of the U.S. Constitution and statutes. She needed to demonstrate that she will strictly interpret the Constitution and our laws and will not be swayed by her personal biases or political preferences. As Alexander Hamilton stated in Federalist Paper No. 78 ''the interpretation of the law is the proper and peculiar province of the courts. The constitution . . . must be regarded by the judges as a fundamental law.'' Hamilton further stated that it was ''indispensable in the courts of justice'' that judges have an ''inflexible and uniform adherence to the rights of the Constitution.'' A nominee who does not adhere to these standards necessarily rejects the role of a judge as dictated by the Constitution and should not be confirmed.

With regard to judicial philosophy, the burden of proof always rests on the nominee. But, in Judge Sotomayor's case, that burden was exacerbated by her prior speeches and statements. President Obama promised to nominate someone ''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.'' Senator Obama referred to his empathy standard when he voted against Chief Justice John Roberts. He stated that the tough cases ''can only be determined on the basis of one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy.'' She meets his standard but not mine. The President's ''empathy'' standard is antithetical to the proper role of a judge. The American people expect a judge to be a neutral arbiter who treats all litigants equally. There is a reason why Lady Justice is always depicted blindfolded and why Aristotle defined law as ''reason free from passion.'' The judicial oath succinctly expresses this ideal by requiring judges to swear that they ''will administer justice without respect to persons, and do equal right to the poor and to the rich, and . . . will faithfully and impartially discharge and perform all the duties incumbent upon them under the Constitution and laws of the United States.''

During her hearing, I was pleased to hear Judge Sotomayor disavow this empathy standard. In response to a question asking whether empathy should play a role in a judge's decision, Judge Sotomayor responded, ''We apply law to facts. We don't apply feelings to facts.'' She further stated that she ''wouldn't approach the issue of judging in the way the President does. . . . 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.'' While I was encouraged to hear Judge Sotomayor's testimony, I am concerned that these statements and her other testimony were a dramatic departure from her earlier statements. So, I am left wondering: Which Judge Sotomayor are we getting?

I believe a person speaks from their heart when they discuss matters that are most important to them. On numerous occasions, most notably when she was teaching and guiding law students and bar associations, Judge Sotomayor made some impassioned statements about the role of a judge, which contradict her testimony at the hearing. Speaking in 2002, Judge Sotomayor said: ''I wonder whether achieving that goal—of transcending personal sympathies and prejudices and aspiring to achieve a greater degree of fairness and integrity based on the reason of law—is possible in all or even in most cases. And I wonder whether by ignoring our differences as women or men of color we do a disservice both to the law and society.'' This statement is of extraordinary concern to me. Not only does Judge Sotomayor's statement indicate that she cannot set aside her personal sympathies and prejudices ''in most cases,'' but she does not appear to believe that this goal is even an admirable one.

Even more concerning, Judge Sotomayor stated prior to her hearing that ''[p]ersonal experiences affect the facts that judges choose to see'' and ''our gender and national origins may and will make a difference in our judging.'' It seems to me, and I think to most Americans, that the facts of a case are pretty clear and, if a judge is picking and choosing the facts they see based on their personal experiences, then they cannot possibly be impartial arbiters. I believe President Adams said it best when he stated: ''Facts are stubborn things . . . and whatever may be our wishes, our inclinations, or the dictums of our passions, they cannot alter the state of facts and evidence.'' I am disturbed that Judge Sotomayor does not agree with President Adams's assessment.

Prior to her hearing testimony, she also stated that ''court of appeals is where policy is made.'' This statement is in stark contrast to her hearing testimony, and that contradiction is deeply disturbing to me. I think Judge Sotomayor believes what she said previously in her speeches, and when you believe in something, I think you should stand up and defend it. You should explain why you can still be a good judge even though you made those statements. That is what I wanted and expected to hear from her during her hearing. I was disappointed that she chose to dodge questions and obfuscate her record.

I was even more concerned that Judge Sotomayor reversed herself when discussing her judicial philosophy on the use of foreign law by U.S. judges. Results-oriented, activist judges who seek to rule based on their personal sympathies and prejudices often look to foreign law when interpreting our statutes and the Constitution in order to reach their desired outcome, and so I was deeply troubled by some of Judge Sotomayor's earlier statements that endorsed the use of foreign law by U.S. judges. Justice Scalia succinctly articulated the problem with using foreign law in his dissent from a recent Supreme Court opinion, Roper v. Simmons. The majority decision in Roper cited the worldwide ''evolving standards of decency'' to strike down a statute that allowed judges to impose capital punishment for juveniles, even for the most heinous crimes. In his dissent, Justice Scalia asserted that the practice of relying on foreign law inevitably leads to judicial activism. He argued that ''[w]hat these foreign sources 'affirm,' rather than repudiate, is the Justices' own notion of how the world ought to be, and their diktat that it shall be so henceforth in America.''

I agree with Justice Scalia's assessment. Unfortunately, judging by her statements, Judge Sotomayor does not. During her hearing, I asked Judge Sotomayor about a recent speech she gave in which she stated that prohibiting the use of foreign law would mean judges would have to ''close their minds to good ideas'' and that it is her ''hope'' that judges will continue to consult foreign law when interpreting our Constitution and statutes. In that speech, she condemned Justices Scalia and Thomas for their criticism of the use of foreign law in Supreme Court decisions stating: ''The nature of the criticism comes from . . . a misunderstanding of the American use of that concept of using foreign law and that misunderstanding is unfortunately endorsed by some of our own Supreme Court Justices. Both Justice Scalia and Justice Thomas have written extensively criticizing the use of foreign and international law in Supreme Court decisions. . . . But, I share more the ideas of Justice Ginsburg in thinking, . . . 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.'' In her speech, Judge Sotomayor then specifically cited Roper v. Simmons—ruling unconstitutional a statute permitting imposing the death penalty for juveniles—and Lawrence v. Texas—overturning a law against same-sex sodomy—as examples of cases where the Supreme Court used foreign law appropriately to strike down State criminal laws.

I asked Judge Sotomayor about her statements disagreeing with Justices Scalia and Thomas's criticism of the Court's use of foreign law in cases such as Roper and Lawrence, and she reversed her earlier statement saying she ''actually agreed with Justices Scalia and Thomas on the point that one has to be very cautious even in using foreign law with respect to the things American law permits you to.'' Clearly, her hearing testimony was either inaccurate or designed to be misleading

since she previously said she shared ''more the ideas of Justice Ginsburg'' who has endorsed the Court's use of foreign law in cases such as Roper and Lawrence.

I then asked Judge Sotomayor to affirm that she would refrain from using foreign law in making her decisions and writing her opinions, outside of where she was directed to do so through statute or through treaty. She stated unequivocally that she would ''not use foreign law to interpret the Constitution or American statutes'' and she would ''not utilize foreign law in terms of making decisions.'' I was reassured by these statements.

Regrettably, my reassurance did not last long. In her responses to written questions following the hearing, Judge Sotomayor reverted back to her former stated judicial philosophy regarding foreign law. She wrote: ''In some limited circumstances, decisions of foreign courts can be a source of ideas, just as law review articles or treatises can be sources of ideas. Reading the decisions of foreign courts for ideas, however, does not constitute 'using' those decisions to decide cases.'' She further stated: ''decisions of foreign courts can be a source of ideas informing our understanding of our own constitutional rights. To the extent that the decisions of foreign courts contain ideas that are helpful to that task, American courts may wish to consider those ideas.'' This reversion is extremely troubling to me because it suggests that Judge Sotomayor was either misleading or simply disingenuous in her hearing testimony. Equally troubling is Judge Sotomayor's continued concern with world opinion of American law. Prior to her hearing she asserted 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.'' She echoed this concern after her hearing writing: ''To the extent that American courts categorically refuse to consider the ideas expressed in the decisions of foreign courts, it may be that foreign courts will be less likely to look to American law as a source of ideas.'' A judge's job is not to consider what the rest of the world thinks about us, it is to interpret the Constitution.

Her judicial philosophy with regard to the use of foreign law is extremely important because it suggests that she will not strictly interpret our Constitution. If Judge Sotomayor believes it is appropriate to consult foreign law in some cases, where will she draw the line? During her hearing testimony, Judge Sotomayor stated that the right to bear arms is ''settled law''; however, the recent Supreme Court decision in District of Columbia v. Heller left many questions unanswered. One critical unanswered question is whether the right will be incorporated on to the States—meaning that the States will not have the right to outlaw the use of firearms. If confirmed, would Justice Sotomayor be receptive to arguments that foreign countries impose greater restrictions on gun rights and, therefore, be persuaded that some excessive State and Federal restrictions are constitutional? As she noted in her recent second circuit opinion holding that there is no fundamental right to bear arms, there are very few Supreme Court cases addressing the right to bear arms. If confirmed, would she fill in the gaps with foreign law?

Unfortunately, I believe my fears were confirmed by her answers to written questions following the hearing when she refused to pledge that she would not consider foreign law when considering second amendment cases. She stated: ''Because cases raising Second Amendment questions are currently pending before the Court, I would not comment on how I would decide those cases if I am confirmed.'' Her refusal to answer that should give pause to those who, like me, cherish the fundamental right to bear arms.

The concern that Judge Sotomayor may use foreign law to interpret the Second Amendment is further exacerbated by her judicial record on the bench and her hearing testimony, which demonstrates a clear hostility to gun rights. In Maloney v. Cuomo, decided January 29, 2009—post-Heller—Judge Sotomayor joined a cursory unsigned opinion holding that the second amendment is not a fundamental right and also that the amendment does not apply to the States. In Maloney, Judge Sotomayor incorrectly relied on an 1886 case—Presser—which did not use the modern Due Process incorporation analysis, a fact Judge Sotomayor failed to note in her opinion. When asked at her hearing to discuss the holding in Presser, she responded that she had not ''read it recently enough to remember exactly'' what it said even though she had relied on it in a decision issued a mere 7 months previously. Her disturbing lack of familiarity with the case suggests that she did not give great weight to the constitutional right at issue in Maloney. If Judge Sotomayor's ruling in Maloney is upheld by the Supreme Court, States could ban all guns and other weapons for practically any reason.

During her oral and written testimony, she also refused to acknowledge the fundamental right to self-defense, which predates the Constitution, and stated that she did not recall a case that addressed the right to self-defense, despite the fact that the Supreme Court discusses the right to self-defense at length in Heller, the opinion upon which she relied. Judge Sotomayor even refused to discuss the legal test the Supreme Court uses to determine whether a right is fundamental, a basic legal test.

In another notable case about which Judge Sotomayor was questioned, she gave short shrift to a constitutional right that is vitally important to Americans, suggesting that she does not have the appropriate respect for the rights guaranteed by the fifth amendment. In Didden v. Village of Port Chester, Judge Sotomayor extended the government's power to take private property in a cursory opinion that one property professor said was the ''worst federal court takings decision since Kelo.'' He further stated that the opinion is ''very extreme'' and ''is significant as a window into Judge Sotomayor's attitudes toward private property.'' Another notable professor said the opinion is ''a disappointment'' and is ''wrong and ill thought out'' and is ''about as naked an abuse of government power as could be imagined.'' Those are strong criticisms from respected legal scholars and nothing in Judge Sotomayor's testimony reassured me about her opinion in the Didden case.

Following the hearing, I remain concerned that Judge Sotomayor's hostility to gun rights, abortion restrictions, and property rights, among others, stem from a ''personal prejudice'' that will influence her decisions once she is untethered from precedent. It is true that she has an extensive record on the bench; however, the Senate's inquiry into Judge Sotomayor's suitability for the Supreme Court cannot merely rest on an overview of the cases she decided when she was constrained by precedent. Judge Sotomayor's extra judicial statements are critically important to our examination of her fitness for a seat on the Supreme Court because when a judge is free from the confines of precedent—as she was in her speeches and as she will be if she is a Supreme Court Justice—she shows her true colors and passions.

So the question remains, which Judge Sotomayor are we getting? Will Judge Sotomayor follow in the footsteps of Justice Ginsburg or will she adhere to her testimony during her hearing that she will strictly apply the law to the facts? Will she revert back to the judicial philosophy she espoused prior to the hearing, the same way she reverted back to her prior statements on the use of foreign law by American judges? Because I am not convinced that she can put aside her personal politics and preferences, I regretfully must oppose her nomination.

I am pleased to come to the floor today to talk about our Supreme Court selection process. Judge Sotomayor is the third Supreme Court candidate I have had the privilege of getting to know, interview, and ask rigorous questions of during the hearing. She has a miraculous and wonderful personal story. She is very accomplished. She is to be admired for what she has accomplished.

When we look at Supreme Court nominees, we are actually charged to do two things. One is to look at their record of judicial behavior and assess it, and then also to look at their record that is out there besides their judicial decisions. We did a very thorough job in analyzing her 15-plus years as a Federal judge and appellate judge. There

were some very concerning cases that we encountered for which we questioned her, and the record will fully show her defense of that record and the reversal rate that she had at the U.S. Supreme Court.

It is interesting for the American public to know that a Supreme Court Justice is much different than an appellate judge or even a Federal circuit judge because they, in fact, are not bound by precedent. As an appellate judge they have to follow precedent, and when they don't they get reversed, and Federal circuit judges have to follow precedent or they get reversed. But a Supreme Court Justice has the freedom to change precedent, and that is why the inquiry into the candidacy and the qualifications of a Supreme Court nominee is so important. It is also why our Founders wrote extensively on what should be the qualifications of a Supreme Court Justice.

Alexander Hamilton stated in Federalist Paper No. 78: ''The interpretation of the law is the proper and peculiar province of the courts.''

He further stated that it was ''indispensable in the courts of justice'' that judges have an ''inflexible and uniform adherence to the rights of the Constitution.'' A nominee who does not adhere to these standards necessarily rejects the role of a judge as dictated by the Constitution and should not be confirmed.

When we look at the Constitution, we are told in the Constitution how judges are to decide cases. They are given three strict parameters. One is they are to look at the Constitution each and every time. No. 2 is they are to look at the statutes that have been passed by the people's representatives, and they are to look at the facts. They are to look at the facts in a way that will show never a bias—in other words, blind justice—looking at those critical factors of what are the facts of the case, what is the law, and what does the Constitution say.

You can be an appellate court justice for 50 years in this country and still not qualify to be a Supreme Court Justice. It is tremendously important who goes on the Supreme Court. The reason it is important is because we have had a tendency in the last three decades to abandon those three principles and use other principles.

Let me mention two of them. One is that we consider foreign law, that we can become enlightened with foreign law. I don't doubt that we can become enlightened with what other people in the world think about law, but the fact is our Founders said: This is our law. The Constitution is our law. And we have a way of setting law which comes through the Congress. That is what we shall look at with one exception, and that is on trade and treaties where we have to consider the agreements and foreign laws related to those treaties.

The other tendency which has been espoused by our President is an empathy standard, that we can somehow—other than looking at the three main parameters of which our Founders told us we must use in deciding cases at the Supreme Court. Well, I will tell you that a standard other than looking at the facts and looking at the law and looking at the Constitution doesn't meet the test of our Founders nor does it meet the test of our Constitution as it is spelled out in our Constitution.

I wish to say as an American citizen, I think we should all be proud of this nomination: a Hispanic female coming to the Supreme Court. But that is not a good enough reason to say somebody should become a Justice. So I go back to those three founding principles of who should qualify. And who should qualify is somebody who is going to strictly adhere to what our Founders said was the job of a Supreme Court Justice, not with parameters that have been discussed as maybe to be OK or parameters that fall outside of what our Founders said.

During my questioning and my visits with Judge Sotomayor, I found some very disturbing things. I asked her specifically in the hearing: Do individuals have a fundamental right to self defense? She wouldn't answer yes to that question. Now, a fundamental right to self-defense predates our Constitution. That is what liberty is all about. That is one of the bedrocks of our liberty. And the fact that she will not agree that we as U.S. citizens have a fundamental right to self-defense is extremely troubling.

The reason that fundamental right is so important, and it is guaranteed in the Constitution, is because on that rests the second amendment for which I find her somewhat less than comfortable in accepting what our Founders said in the second amendment, adopted almost 200-and-some-odd years ago.

The second area I have concern with is in the area of property rights. It is very explicitly stated, and it is clear except in two cases in this country in the Supreme Court, which I hope that someday will be reversed, that our right to property is a real right. There was a Kelo decision that has markedly limited American citizens' rights to property. On both her cases and her comments and her written testimony, I believe that right of Americans is at risk. I believe judges are going to decide we don't have that fundamental right. I believe she believes, based on what she has ruled and what she has written and what she has said, that, in fact, there are times when judges can decide whether we have that right. That is inherently wrong and 180 degrees against what our Constitution guarantees us as individual citizens.

The final area has to do with the use of foreign law. In her speeches and statements she was highly critical of people who were critical of the use of foreign law. Upon questioning in the committee, she retracted and moved away from those statements. I specifically asked her if she would assure the committee that she would, in fact, never use foreign law to decide U.S. cases. I got her to say yes.

The only problem with that is, in the answer to questions following the hearing, she backtracked 180 degrees from that statement which matched her previous statements in speeches and writings which caused me to ask the question in the first place. So in the area of property rights, in the area of the second amendment and the fundamental right to self-defense, and in the area of foreign law, I believe her viewpoint is something other than what I see in the Constitution.

Regrettably, I believe that disqualifies her from being a Justice of the Supreme Court. That when, in fact, we look at the constitutional basis of how judges are instructed to make law and to decide law—because every decision makes law; it sets precedent—that when we extract from that the fundamental right of self-defense, the written, specific right to the second amendment, the written specific right of property ownership and due process associated with that, and then we lay on top of that the idea that it is more important for us to look good in our decisions to foreign governments than it is to follow the oath, to follow the Constitution of the United States—make no mistake, I believe this is a wonderful woman, and I think she has done a fairly good job as a judge on the appellate court, but she has been constrained—as we measure her writings and her words with her decisions on cases, what we find is a conflict for those who would strictly follow what the Constitution tells us.

I want our grandchildren to endure and to accept and hold the same freedoms we have. A U.S. Supreme Court Justice will determine that; just one can determine that. So I regretfully announce and state that I will not be able to vote for this very fine woman. But I would also state that we need to be very concerned and very vigilant as we see the Supreme Court make decisions, whether they are sitting Justices today or Justices to come, who violate both the intent, instruction, and the spirit of the U.S. Constitution.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. SNOWE. Mr. President, I rise to speak to the nomination of Judge Sonia Sotomayor to be the next Associate Justice of the Supreme Court of the United States.

After a careful and considerate review of her testimony before the Senate Judiciary Committee and her overall record, her distinguished judicial background, and a personal meeting

with her in June, I have concluded she should be confirmed as the next Associate Justice of the Supreme Court.

I have not arrived at my decision lightly. It has been said that, of all the entities in government, the Supreme Court is the most closely identified with the Constitution—and that no other branch or agency has as great an opportunity to speak directly to the rational and moral side of the American character; to bring the power and moral authority of government to bear directly upon the citizenry.

The Supreme Court passes final legal judgment on the most profound social issues of our time. The Court is uniquely designed to accept only those cases that present a substantial and compelling question of federal law; cases for which the Court's ultimate resolution will not be applied merely to a single, isolated dispute—but, rather, will guide legislatures, executives, and all other courts in their broader development and interpretation of law and policy.

In the end, ours is a government of both liberty and order, State and Federal authority, and checks and balances. The remarkable challenge of calibrating these fundamental balance points is entrusted ultimately to the nine Justices of the Supreme Court of the United States.

To help meet this extraordinary challenge, any nominee for the Court must, as I stated during the confirmations of Chief Justice John Roberts and Associate Justice Sam Alito, have a powerful intellect, a principled understanding of the Court's role, and a sound commitment to judicial method. A nominee must have the capacity to engender respect among the other justices in order to facilitate the consensus of a majority. And to warrant Senate confirmation, the nominee must have a keen understanding of, and a disciplined respect for, the tremendous body of law that precedes her.

It is with these high standards that we should evaluate the record of Judge Sonia Sotomayor. Reviewing her professional credentials, it is clear that Judge Sotomayor is well qualified. She has served for nearly 11 years on the U.S. Court of Appeals for the Second Circuit where she has participated in over 3,100 cases. The judge also previously served on the U.S. District Court for the Southern District of New York for six years where she decided over 400 additional cases. She also worked for 8 years in private practice and 4 years in the highly respected office of the district attorney for the County of New York. According to the White House, if confirmed, Judge Sotomayor would bring more Federal judicial experience to the Supreme Court than any Justice in 100 years, and more overall judicial experience than anyone confirmed for the Court in the past 70 years. So I applaud the President for selecting an individual who clearly possesses the professional credentials to serve on the Court.

In reviewing her personal credentials, Judge Sotomayor's accomplishments are equally noteworthy. If confirmed, she will become the first Hispanic and only the third woman ever to serve on our Nation's highest Court. Along the way, she has ascended from modest means to excel in our country's most prestigious schools and our judiciary's highest offices. In doing so, she now stands as a model for others to follow in summoning their own courage to break barriers and pursue dreams. And she does so with a personal manner that I find to be refreshingly candid and forthright.

This brings us to the more particular factors we must consider when providing our consent on a President's nominee for Associate Justice—judicial temperament, methodology, integrity and philosophy. By their very nature, these attributes are often challenging to measure, but they can be ascertained through a careful analysis of a nominee's complete record.

With regard to the first consideration, judicial temperament, we all agree that it is absolutely essential that a judge be fair, open-minded, and respectful. Our citizens simply must have confidence that a judge who weighs their legal claims does so with an even temperament. A judge must be truly committed to providing a full and fair day in court, while projecting a sincere equanimity and respect for the law. When these attributes are not clearly present in our judges, the public justifiably begins to lose faith in the integrity of our courts.

This issue has been rightly explored and satisfactorily answered with Judge Sotomayor. For example, both the New York City and American Bar Associations who reviewed the nominee on all key criteria gave the judge their highest ratings. Robert Morgenthau, the judge's former employer and highly regarded district attorney of New York County since 1975, testified that the judge is ''fair,'' ''non-political,'' and ''highly qualified for any position in which a first-rate intellect, common sense, collegiality and good character would be assets.'' And former Federal judge, colleague, and FBI Director Louis Freeh, has called Judge Sotomayor ''fair, neutral, nonpartisan [and] open-minded . . .'' And, indeed, I believe that the Judge's professional manner was in evidence during all aspects of her 4-day appearance before the Judiciary Committee.

We look next at the nominee's judicial methodology which directly reflects her commitment to the essential tenets of care, discipline and fairness. Here, the judge was very clear and direct in our June meeting. Her approach to all cases is to carefully identify the facts—what she characterized as a prized skill that she learned as a successful young prosecutor—and then follow the law: What it says; what end was meant to be accomplished; what legislative intent it was meant to advance; and how, if at all, other courts have answered those questions.

As the judge elaborated, she believes that the law can and should develop, but that such development should occur only ''incrementally'' through the measured development of analogous cases. And when I asked her which opinions best reflect her judicial method, Judge Sotomayor candidly replied, ''Read any of my opinions and you will see my structure.'' And the record supports that assertion—the structure of her opinions shows a consistent, methodical and careful approach to deciding cases.

As she testified at her hearing, her methodology is to ''apply the law to the facts at hand'' and keep a ''rigorous commitment to interpreting the Constitution according to its terms; interpreting statutes according to their terms and Congress's intent; and hewing faithfully to precedents . . .'' She stated further her view that the ''process of judging is enhanced when the arguments and concerns of the parties to the litigation are understood and acknowledged. . . . That is why,'' she explained, ''I generally structure my opinions by setting out what the law requires and then by explaining why a contrary position, sympathetic or not, is accepted or rejected. That is how I seek to strengthen both the rule of law and faith in the impartiality of our justice system.''

Indeed, the integrity of the judge's methodology can be measured in a variety of ways. First, the judge has a low reversal rate. Research on Judge Sotomayor's performance on the trial court demonstrates she was overruled in only 6 of her over 400 trial bench decisions. Westlaw reports that, in her 11 years on the appellate court, the judge has participated—as I referenced earlier—in over 3,100 cases and, of those cases, the White House reports that the Judge has only been reversed another six times. In each of those circuit cases she was part of a unanimous three-judge panel, and the cases involved the interpretation—not of important constitutional provisions—but of very technical statutes that, in several instances, had created clear divisions of opinion among several of the circuit courts.

Moreover, three of the six circuit cases created 5–4 opinions in the Supreme Court, one created a 6–3 split, and one produced this unusual alignment: Justices Ginsburg and Scalia together in the majority, and Justices Breyer and Alito together in dissent. These facts combine to show the relative difficulty of, and the reasonable room for debate in, these appellate cases.

Next, there is the measurement of the judge's concurrence and dissent rates. There, the data demonstrate that the judge's method of deciding cases is consistent with that of her colleagues on the Second Circuit. For example, research sources indicate that, despite the thousands of her appellate opinions, Judge Sotomayor has only dissented in 21 cases, and has written

separate concurring opinions in only 22 others.

Finally, there is the degree to which other courts and scholars find the judge's method of decision worthy of citation. There, data compiled by law professors and students from three universities reveal that, between 1999 and 2001, the judge's opinions were cited by other courts and scholars at meaningful rates—4.4 court citations and 4.6 law review citations per opinion. And between 2004 and 2006, those rates rose to 8.5 court citations and 4.8 law review citations per opinion. These more recent rates are not only higher than the percentage of citation rates for other distinguished Federal appellate judges, they underscore the increasing respect that Judge Sotomayor's work is garnering.

I turn now to the third qualification: judicial integrity. Here, there are those who have suggested that the judge will use her office to engage in ''judicial activism'' and advance a certain social or political agenda that suits her personal preferences. Principally, these critics point to the New Haven firefighters' case and her Berkeley and Duke speeches as examples of such activism, and I believe these instances have warranted strict scrutiny.

At the outset, it bears noting the White House report that, in her 11 years on the Second Circuit, Judge Sotomayor has agreed with the result favored by the Republican appointees in 95 percent of the published panel decisions where the panel included at least one judge appointed by a Republican president. This statistic is evidence of a nonpartisan or nonideological approach to judging.

At the same time, I have shared the concerns expressed specifically about the New Haven firefighters' case—as many have voiced opposition to both her decision as well as the curt and summary opinion that was used to dismiss the complaint. I sympathize with the plaintiffs, who were told the rules for qualifying for a promotion, who believed they were participating in a fixed process for determining their future career advancement, who did what was asked of them, and then, when it was all over, were informed that what they had done wasn't good enough. So I understand the frustration.

I approached Judge Sotomayor's handling of this case by looking at both the merits—that is, what was decided in the case, as well as the process, or how, the case was decided. As regards the process, as we all well know, the panel that included Judge Sotomayor wrote only a three-paragraph opinion concluding that, ''We affirm, for the reasons stated in the thorough, thoughtful, and well-reasoned opinion of the court below.''

Now, it may well be that the district judge's opinion was ''thorough, thoughtful, and well-reasoned.'' But the confidence of the litigants and public alike in any court relies on their opportunity to explore a judge's rationale. And the panel's summary affirmance, albeit adopting verbatim the long opinion of the court below, simply failed to meet that expectation.

When I asked Judge Sotomayor in our June conversation—and when she was queried before the Judiciary Committee—she stated that she and her colleagues gave the case their full attention and review, and that only after that full and fair consideration did they determine that their own written opinion was not necessary, given the district court's exhaustive 48-page opinion applying the seemingly clear ''four-fifths rule'' of the EEOC regulations and the seemingly settled precedent of what the Judge referred to in her testimony as the Bushy line of cases—this is Bushy v. New York State Civil Service Commission, Kirkland v. New York State Department of Correctional Services, and Hayden v. County of Nassau. In reviewing a petition for rehearing in Ricci, six of the Judge's own colleagues were not persuaded by that argument. Yet, another six of her colleagues were so persuaded.

Additionally, the judge testified before the Judiciary Committee that ''the practice is that about 75 percent of circuit decisions are decided by summary order, in part because we can't handle the volume of our work if we were writing long decisions in every case; but more importantly, because not every case requires a long opinion if a district court opinion has been clear and thorough on an issue . . .''

Yet, the bottom line is, in my view, this particular case was simply too sensitive and complex—with significant societal implications—to leave to a summary order. And, therefore, the three-judge panel should have issued its own, comprehensive opinion and explanation.

On the matter of the merits of the case, Judge Sotomayor ruled that the city acted lawfully in trying to meet its obligations under Federal employment discrimination law to avoid disparate impact discrimination when making certain employment promotions. And I understand some believe this decision evinces the judge's predisposition to rule for minority litigants. One well-respected DC law firm, however, has found that the judge has decided nearly 100 race-related cases in her 11 years on the Second Circuit, and has effectively rejected such race-related claims by a margin of ''roughly eight to one.''

Others have suggested that the Supreme Court's reversal of the Second Circuit raises questions of the judge's qualifications to serve. In evaluating that possibility, I have taken into account that the Supreme Court took this action with a 5–4 vote, with four complex and nuanced opinions, as well as an admission from Justice Scalia that the underlying question presented by the case—when affirmative action becomes unlawful discrimination—is ''not an easy one.''

And I have considered that the High Court reached its decision only by identifying and applying an entirely new standard. Indeed, both the trial and Sotomayor courts applied the then-existing ''four-fifths rule'' of the EEOC title VII regulations and the seemingly settled circuit precedent of the ''Bushy line of cases'' in determining that a significant disparity in the results of an employment test is itself adequate evidence of unlawful disparate impact discrimination.

On appeal, the Supreme Court changed the rule, saying in essence that such a significant disparity in test results is no longer itself adequate evidence. Importing anew from 14th amendment jurisprudence, the Court said that the new rule for interpreting the title VII statute demands a ''strong[er] basis in evidence,'' such as evidence that the test was ''not job related and consistent with business necessity, or if there existed an equally valid, less discriminatory alternative that served the city's needs but that the city refused to adopt.''

Therefore, based on the record, it would appear the district and circuit judges fulfilled their assigned job of applying existing precedent to the existing rule. And in weighing all of the facts, given Judge Sotomayor's assurance to me and the committee that she gave the case her full consideration, given her established reputation for careful decision-making, and given the daily reality of the Second Circuit's burgeoning caseload, particularly with the surge of post-September 11 immigration cases, I cannot conclude that the decision in Ricci should itself disqualify this nominee.

Mr. President, I was also concerned—like many Americans—by Judge Sotomayor's speech at Berkeley in 2001, and specifically by the following line that appears to suggest that the judge decides cases more by personal identity than by fidelity to the law:

> I would hope that a wise Latina woman . . . would more often than not reach a better conclusion than a white male. . . .

To thoroughly examine this question with regard to the judge's qualifications, I believed it was necessary to review both the entirety of her speech, as well as her testimony before the Senate Judiciary Committee, to understand to the fullest extent possible her intention behind those comments, because I agree that they are disconcerting.

In that light, I note that the judge, in answering a question from the committee, offered that it is the job of a judge to apply the law, and that it is the law, rather than one's own sympathies, that ''compels conclusions in cases.''

I also recall the judge's response when I asked her specifically about this speech during our opportunity to meet one-on-one. I said that commentators had criticized that portion of her speech because it suggested that gender and ethnicity enable her to make ''better'' decisions than a male judge of a different ethnicity. Judge

Sotomayor, in replying, suggested that those who have concerns must ''read the whole speech;'' that she was only trying to say—she admits now inartfully—that ''judges are human beings and they necessarily will be affected by who they are. But this only makes them attuned to certain case aspects; it does not replace following the law.''

In evaluating these responses, I recalled prominent judges in our history who also raised this issue.

Indeed, this was the subject to which Justice Felix Frankfurter referred to when he said, long ago, that one of the greatest challenges for all judges, because they are all human, is to recognize their own personal views and develop the patience, insights and discipline to compensate for them. When I raised Justice Frankfurter's comments personally with Judge Sotomayor, she agreed and asserted that was ''exactly'' the point she was attempting to communicate in her Berkeley speech.

She also asserted in our meeting, and reaffirmed in her committee testimony that, ''no racial or ethnic group has a market on sound judgment.'' She explained that some judges, like many lay people, have ''tin ears'' on certain matters, and that is why the collegial decision-making is so vital—because sharing different perspectives and blending them into consensus opinions serves as both a ''spotlight and a filter.'' She spoke of how judges, like all people, are inescapably affected by their own life experiences, but that those experiences only affect how ''attuned'' judges are to certain aspects of cases. They do not replace the requirement to follow and apply the law consistent with the limited role and specific oath of their office.

A review of Judge Sotomayor's decisions and her resulting affinity, dissent and reversal rates that I described earlier bolster the judge's statements that she understands this imperative—and that she decides cases based not on personal identities or classifications, but by ''fidelity to the law.''

A final question about the judge's judicial integrity has been raised from her remark in 2005 at Duke University that the ''Court of Appeals is where policy is made.'' This comment has understandably raised the specter of a commitment to judicial activism, and is therefore a legitimate cause for examination. When I raised this issue with the judge she responded that she was referring to the educational difference between trial and appellate court clerkships—how a trial court clerkship focuses primarily on resolving limited factual disputes and how an appellate court clerkship focuses primarily on cases involving broader questions of how the law ought to be interpreted.

An essential component of weighing the competing interpretations proffered by appellate advocates is for the court to understand the practical effect of the advocates' competing arguments. It is this understanding that defines the scope and reach of the possible interpretations. I believe it is therefore legitimate to read and understand her comments within this context. It has also been argued that—as the Supreme Court only accepts and decides about 80 of approximately 8,000 cases per year, Federal circuit courts of appeal often do, as the judge noted in her testimony effectively become the final decisionmaker on what the law—and by necessary extension, the policy it advances—is.

Given all of these factors, again, in considering the entirety of her record, it is fair to conclude that the Duke University speech is not evidence that Judge Sotomayor would practice judicial activism on the Supreme Court.

Finally, we have a fourth and final qualification—judicial philosophy, judge's sense of limits and horizons and great promises of our Constitution and the nominee's view of the proper role of the Supreme Court in deciding whether to take cases and, once taken, the underlying philosophy used to rule upon them.

On this point, I note first the judge's answer when asked whether she subscribes to one or another school of constitutional interpretation. She said: ''I don't use labels.'' I also recall the study by the New York University Law School's Brennan Center for Justice which analyzed over 1,100 constitutional cases decided during Judge Sotomayor's tenure on the second circuit and found as an appellate judge, she voted with the majority in over 98 percent of constitutional cases and that 94 percent of her constitutional decisions have been unanimous. Such figures argue strongly that the judge's constitutional approach is squarely in the mainstream.

The inquiry into any nominee's judicial philosophy is particularly significant for those of us who value the Court's landmark rulings. Decisions protecting the rights of privacy, civil rights, and women seeking equal protection in the workplace—to name a few—comprise a crucial and settled body of the Court's case law. Entire generations of Americans have come to live their lives in reliance upon the Court's rulings in these key areas, and overruling these precedents would simply roll back decades of societal advancement and impose substantial disruption and harm.

Therefore, central to the question of this nominee's judicial philosophy are her views on one of the cornerstones of jurisprudence, and that is judicial precedent.

In our June meeting, I asked whether she agreed with Chief Justice Rehnquist's observation in Dickerson v. United States which upheld the famous decision Miranda v. Arizona. There, the Chief Justice wrote there are situations where constitutional precedent—that a Justice might have believed had been wrongly decided—should nevertheless be upheld because the people have accepted the principle of the decision as an ''embedded . . . part of our national culture.'' Judge Sotomayor agreed with that position.

This expressed adherence to applying precedent has achieved significance in many passionately contested areas of the law, such as the second amendment, which brings me to the concerns raised with respect to Judge Sotomayor's decision in Maloney v. Cuomo. I happen to be a strong, longtime defender of second amendment rights, as evidenced by my amicus support for Mr. Heller in his recent case before the Supreme Court, in District of Columbia v. Heller. Accordingly, I am very well aware the issue of whether second amendment protections are to be construed as incorporated against acts of a State government—as opposed to the Federal Government—has assumed renewed importance and visibility since the Court's recent landmark decision ruling in Heller.

I also understand that several longstanding Court precedents have been widely construed by State and Federal courts around the country, including the Maine Supreme Judicial Court, not to incorporate the second amendment. Judge Sotomayor in Maloney v. Cuomo, and her two panelists, have stated that those consistent interpretations of the Supreme Court's precedent were binding upon them. And while a panel in the ninth circuit in Nordyke v. King bypassed such precedent, a seventh circuit panel, led by Judge Shakley, sharply criticized the Nordyke decision for doing so, and instead in NRA v. City of Chicago agreed with Judge Sotomayor's opinion because they, too, concluded that the Supreme Court's precedent was binding upon them. Last week, the full ninth circuit itself agreed to reconsider its decision in the Nordyke decision.

The Supreme Court may well revisit this issue soon. But the issue before us in the Senate right now is whether the judge has demonstrated, as she describes, ''fidelity to the law'' and precedent as we would expect—because several longstanding Supreme Court precedents have been widely construed by State and Federal courts alike not to incorporate the second amendment, and because the Supreme Court in footnote 23 of the Heller majority opinion expressly said the Court was not deciding the incorporation question. Moreover, given her demonstrated adherence to stare decisis, while no one can predict the future with certainty, it is reasonable to conclude she will continue to follow precedent, as also evidenced by her testimony to the Judiciary Committee in which she stated:

> The Supreme Court did hold that there is in the second amendment an individual right to bear arms. And that is its holding, and that is the Court's decision. I fully accept that.

Finally, what a powerful and profound message it will send to have Judge Sonia Sotomayor join with Justice Ruth Bader Ginsburg on the highest Court in the land. The fact is, it

does make a difference who women and girls see at the pinnacles of government, just as it matters in all fields of endeavor. As Justice Ginsburg has said recently:

> My base concern about being all alone was the public got the wrong perception of the Court. It just doesn't look right in the year 2009 . . . It matters for women to be here at the conference table to be doing everything that the Court does . . . Women belong in all places where decisions are being made.

Given the totality of the record before us, I have concluded from Judge Sotomayor's testimony regarding both her judicial methodology and her judicial philosophy that she is not predisposed to overturning settled precedent. Obviously, none of us can know with certainty how Judge Sotomayor would vote on any particular case. But we can assess her methodology and analysis in approaching cases by reviewing her responses to the committee and to other Members throughout this process.

In that light, in evaluating the essential qualifications as I have outlined them, and reviewing the entire judicial record of Judge Sotomayor, I find a fairminded judge with a deep respect for the rule of law and the independence of the courts, and a judicial method committed to stability in the law. It is, therefore, my conclusion that based on the totality of the record and her distinctive qualifications, Judge Sonia Sotomayor has earned the distinction of serving as the next Associate Justice of the Supreme Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. I ask the Presiding Officer to inform me when 2 minutes is left of my time.

Mr. President, I rise today to discuss the nomination of Judge Sonia Sotomayor to be a Justice of the U.S. Supreme Court. Ultimately, the core of this debate, I believe, is over the proper role of the Court. Our side tends to believe that the Court does not make policy and must stay within the written text of the Constitution. The other side sees the Constitution more often as a living document and that its meaning changes along with the attitudes of society.

When the courts improperly assume the power to decide issues more political than legal in nature, the people naturally focus less on the law and more on the lawyers who are chosen to administer it. Some are key to impose their policy agendas through the judicial process. Others want judges who will stick to interpreting the law rather than making it. It is beyond dispute that the Constitution and its Framers intended for judges to satisfy the latter criteria; that is, to stay within the law rather than making it.

President Obama has voiced his support for judges looking to the Constitution as a living document malleable to the times. He has said he will pick judges who will look to empathy rather than written law when deciding cases. When then-Senator Obama voted against the confirmation of Chief Justice John Roberts, he said this:

> [W]hile adherence to legal precedent and rules of statutory or constitutional construction will dispose of 95 percent of the cases that come before a court, so that both a Scalia and a Ginsburg will arrive at the same place most of the time on those 95 percent of the cases—what matters on the Supreme Court is those 5 percent of cases that are truly difficult. In those cases, adherence to precedent and rules of construction and interpretation will only get you through the 25th mile of the marathon. That last mile can only be determined on the basis of one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy.

I don't dispute that there is a small percentage of cases that are truly difficult. But the question is: Do we want these cases decided by what the law says or by a judge's own personal empathies? I reject the idea that these cases cannot be resolved by staying faithful to the text of the Constitution, and it is dangerous to the rule of law to suggest otherwise.

In June, I came to the floor and stated my opposition to Judge Sotomayor's nomination based on numerous past statements she made embracing an activist judiciary and endorsing the idea that judges should look to areas outside of the law when deciding cases. However, when Judge Sotomayor appeared before the Judiciary Committee last month, she consistently took positions contrary to her past writings and, in many cases, did a complete 180. This leads me to ask which Sotomayor are we voting to confirm—the liberal activist or the modest judge who believes in strictly applying the law as written?

Judge Sotomayor attempted to assure Senators that the real Sotomayor is reflected in her 17-year record on the bench. I find this argument interesting but unpersuasive, because as a judge on the court of appeals, Judge Sotomayor has been constrained by Supreme Court precedent. That is the position she held. Her judicial record tells us very little about who the real Sotomayor will be when on the Supreme Court. It is in her speeches and writings where she is unrestrained that we find the real views on the fundamental questions that she will decide as a Justice on the Supreme Court.

When asked at her confirmation hearing to summarize her judicial philosophy, she said: ''Fidelity to the law.'' I completely agree with this philosophy, but I have difficulty reconciling the words she chose at her confirmation hearing with the statement she made in 1996 at Suffolk University Law School when she stated: ''The law that lawyers practice and judges declare is not a definitive capital 'L' law that many would like to think exists.'' The only reasonable interpretation to that is that she pledges fidelity to whatever she says the law is.

In a 2001 famous speech she gave to Berkeley Law School, which was later published in the Berkeley La Raza Law Journal, she dismissed the idea that ''judges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law,'' saying that ''by ignoring our differences as women or men of color, we do a disservice both to the law and society.'' This certainly doesn't sound like a judge who believes in fidelity to the law.

In the same speech, Judge Sotomayor famously said:

> Justice O'Connor has often been cited as saying that a wise old man and a wise old woman will reach the same conclusion in deciding cases. I am not so sure that I agree with that statement. 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.

When asked about this statement at her confirmation hearing, Judge Sotomayor said:

> The words I used, I used agreeing with the sentiment that Justice Sandra Day O'Connor was attempting to convey.

Really? Are we really supposed to believe that each time Judge Sotomayor said, ''I'm not so sure I agree with that statement,'' she actually meant ''I agree with that statement''? Judge Sotomayor's explanation requires some suspension of disbelief.

Also at Berkeley, Judge Sotomayor said:

> Whether born from experience or inherent physiological or cultural differences, our gender and national origins may and will make a difference in our judging.

At her hearing, she said:

> I do not believe that any ethnic, racial, or gender group has an advantage in sound judging.

Again, are we being asked to believe that Judge Sotomayor is either a very poor communicator or her past statements have been continually taken out of context and misinterpreted? I don't think she is a bad communicator at all.

In her writings, Judge Sotomayor has repeatedly rejected the principle of impartiality and embraced the novel idea that a judge's personal life story should come into play in the courtroom. But when she was in front of the Senate Judiciary Committee, with the Nation watching, she suddenly embraced the judicial philosophy of Chief Justice Roberts.

The past positions simply cannot be reconciled with what she said before the Judiciary Committee. We do not know what she actually believes.

In a 2005 appearance at Duke University Law School, she said, ''The court of appeals is where policy is made.'' During her confirmation hearing, she said, ''Judges don't make law'' and they ''look at the Constitution and see what it says.''

Even some of Judge Sotomayor's defenders have criticized her flip-flopping on her views. Georgetown Law Center professor Louis Michael Seidman, a liberal constitutional law scholar, said:

I was completely disgusted by Judge Sotomayor's testimony today. If she was not perjuring herself, she is intellectually unqualified to be on the Supreme Court. If she was perjuring herself, she is morally unqualified.

There was never any doubt that this President would nominate liberal judges who shared his views. He won the election. Judge Sotomayor's record on the bench has been fairly typical of a liberal judge. However, there have been some notable exceptions.

After the Supreme Court ruled that individuals have a constitutionally protected right to gun ownership in the case of District of Columbia v. Heller, Maloney v. Cuomo, another second amendment case, was argued in front of the Second Circuit. In a per curiam opinion issued by a panel that included Judge Sotomayor, the Second Circuit ruled that ''the Second Amendment applies only to limitations the Federal Government seeks to impose on this right.'' They also said:

Legislative acts that do not interfere with fundamental rights or single out suspect classifications carry with them a strong presumption of constitutionality and must be upheld if rationally related to a legitimate state interest.

In other words, the second amendment does not protect a fundamental right. I believe the second amendment protects a fundamental right, just as the first amendment protects a fundamental right. The Supreme Court agrees it protects a fundamental right, and the Founders most certainly believed there was a fundamental right to keep and to bear arms.

In a high-profile racial discrimination case, Judge Sotomayor's panel issued an unpublished summary order denying a group of firefighters a promotion they had earned because the promotion exam had a disparate impact on minorities. Sotomayor and her two colleagues' actions were troubling because by issuing an unpublished summary order, they avoided bringing the case to the attention of other judges on the Second Circuit. It was only after another judge of the circuit read about the case in a New Haven newspaper and requested that the full Second Circuit rehear the case that Sotomayor's actions came to light. The case was eventually appealed to the Supreme Court, and in a 5-to-4 opinion, the Court reversed the Second Circuit. Perhaps even more importantly, the Court was unanimous—unanimous—in rejecting Sotomayor's opinion that simply having a disparate racial impact was justification to void the test. The dissenters at the Supreme Court believed a jury trial should have been granted to examine the evidence and determine whether the test was job related. Sotomayor clearly erred in her decision.

Judge Sotomayor was nominated by a President who said judges should have ''the empathy to recognize what it's like to be a young teenaged mom; the empathy to understand what it's like to be poor or African-American or gay or disabled or old,'' and that difficult cases should be decided by ''what is in the justice's heart.''

When asked about President Obama's empathy standard by Senator KYL, Judge Sotomayor said this:

I wouldn't approach the issue of judging in the way the President does. He has to explain what he meant by judging. I can only explain what I think judges should do, which is judges can't rely on what is in their heart.

Are we really to believe the President chose a nominee who outright rejects his view of justice? I am concerned that the President has, in fact, nominated an individual who shares his view that the Constitution is a living document, and that is why I will be voting against her confirmation.

After watching her performance in front of the Judiciary Committee last month and observing that performance, I learned something I have long suspected: Judge Sotomayor had no choice but to reverse many of her past statements. A judge who openly embraces an activist judiciary, using empathy to pick winners and losers, using his or her own race and gender to decide the outcome of cases, using foreign law, who does not believe the second amendment is a fundamental right and sees judges as policymakers—all those things—is a judge who cannot be confirmed by this body despite 60 Members belonging to the party of the President.

I hope President Obama has learned that important lesson as well, that the people of the country want a Justice on the Supreme Court to be a justice and not a policymaker; to be a judge and not somebody who goes with the sympathies in their heart; someone who sticks with the Constitution and does not try to rewrite it. If the President realizes that, it will be a victory for the rule of law. And that is what this is about.

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

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

Mr. CARDIN. I ask unanimous consent that the time in this hour be divided in the following manner: Senator CARDIN, 15 minutes; Senator BAUCUS, 15 minutes; Senator MERKLEY, 10 minutes; Senator AKAKA, 10 minutes; and Senator LIEBERMAN, 10 minutes.

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

Mr. CARDIN. Mr. President, the confirmation of Judge Sonia Sotomayor to be Associate Justice to the Supreme Court will be my first Justice confirmation vote as a Senator. It is an honor for me to represent the people of Maryland in the Senate and to serve on the Judiciary Committee. I particularly thank Chairman LEAHY and Ranking Member SESSIONS for the dignified manner in which the committee handled the nomination process of Judge Sotomayor. Each Senator on our committee had ample time to review Judge Sotomayor's background and ask questions of the nominee. Her answers were as responsive as possible and gave me confidence that she understood the appropriate role of a judge in applying the law.

The Supreme Court, our Nation's highest Court, holds a tremendous responsibility in deciding cases of fundamental issues that have real impacts on the lives of Americans. In recent years, we have seen less of a consensus on the Court, with many 5-to-4 decisions. Regrettably, too many of these decisions have been at times when the Court has ignored congressional intent and precedent to instead move forward with its own agenda. It has been the so-called conservative Justices who have been the most active in ignoring the intent of Congress in protecting individual rights. For example, in the Ledbetter decision, the Court denied women a remedy against employer discrimination pay equity cases, thus eliminating protection intended by Congress. In the Riverkeeper and Rapanos decisions, the Supreme Court narrowed the congressional protections for clean water. In the Northwest Austin Municipal Utility District decision, the Court challenged congressional authority to extend the Voting Rights Act. In each of these cases, the Supreme Court actively ruled to restrict laws passed by Congress to protect individual rights. I want the next Justice to respect legal precedent and congressional intent and advance, not restrict, individual rights.

In determining whether to support Judge Sotomayor for this lifetime appointment, I looked at several factors. First, I believe judicial nominees must have an appreciation for the Constitution and the protections it provides to each and every American. I also believe each nominee must embrace a judicial philosophy that reflects mainstream American values, not narrow ideological interests. I believe a judicial nominee must respect the role and responsibility of each branch of government. I look for a strong commitment and passion for continued progress in civil rights protections.

I understand there is a careful balance to be found. Our next Justice should advance the protections found in the Constitution but not disregard important precedents that have made society stronger by embracing our civil liberties. I believe Judge Sotomayor understands this balance and will apply these principles appropriately.

During the hearing, we all learned more about Judge Sotomayor's approach to the law and to judging. She clearly outlined for us her fidelity to the law, respect for precedent, and due deference to the intent of Congress. With each question, our committee and the American public gained a greater

appreciation of Judge Sotomayor's knowledge of and commitment to the rule of law. Her command of legal precedent and her ability to challenge attorneys in their arguments will bode well for reaching the right decisions in the Supreme Court. She is mainstream in her judicial decisions and opinions, and she possesses a correct sense of the role of a judge in deciding a case based on sound legal precedent and the facts, giving due deference to congressional intent.

Over the past few months, our committee has had time to thoroughly review Judge Sotomayor's record. From the moment she was nominated by President Obama, we knew Judge Sotomayor had a strong background, including extensive experience as a prosecutor, trial judge, and appellate judge. She grew up in modest circumstances, worked hard to attend two of our Nation's most prestigious universities, Princeton and Yale Law School, and she excelled at the highest levels in each institution. Judge Sotomayor's lifelong work has been recognized by both Democratic and Republican Presidents who nominated her for Senate-confirmed judicial appointments, and for 17 years she has served as a distinguished jurist.

Judge Sotomayor is an example of a highly competent and experienced nominee. She has more Federal judicial experience than any Supreme Court nominee in the last 100 years. She was rated ''well qualified'' by the American Bar Association, which is the highest rating given by the ABA. She has been supported by the National Fraternal Order of Police, the NAACP, the U.S. Chamber of Commerce, the National Association of Women Legislators, the Brennan Center for Justice, the Lawyers Committee for Civil Rights Under Law, and many more.

The nine Justices of the Supreme Court have a tremendous responsibility of safeguarding the Framers' intent and the fundamental values of our Constitution, while ensuring the protection of rights found in that very Constitution are applied and are relevant to the issues of the day. It is my belief that the Constitution and Bill of Rights were created to be timeless documents that stand together as the foundation for the rule of law in our Nation. Were it not possible for the Supreme Court to apply the basic tenets of the Constitution to changing times, moving beyond popular sentiment, our Nation would never have made the progress it has, improving society for the better. When the Constitution was written, African Americans were considered property and counted only as three-fifths of a person. Non-Whites and women were not allowed to vote. Individuals were restricted by race as to whom they could marry.

Decisions by the Supreme Court undeniably have moved the country forward, continuing the progression of constitutional protections. I believe Judge Sotomayor's record and background demonstrate that she understands these principles and that she will apply sound legal precedent to contemporary challenges advancing individual rights.

During the confirmation hearing, I spent the majority of my time questioning Judge Sotomayor on the topic of civil rights. We discussed the right to vote, women's rights, minority rights, including race and gender issues, the environment, and the importance of diversity of the courts throughout society. While difficult questions will continue to come before the Court, for me, it bears repeating how important it is to have Justices on the Supreme Court who will apply established precedents and are not tempted to turn back the clock on landmark court decisions that protect individual constitutional rights.

I gained great confidence in Judge Sotomayor after listening to her answers to questions I posed. I wished to mention a few of the key cases decided by Judge Sotomayor that we discussed at the hearing. Judge Sotomayor has protected the civil rights of all Americans, advanced equal opportunity, and promoted racial justice.

In the Gant case, she protected the rights of a young African-American student who was treated differently than his fellow White classmates. In the Boyton case, she looked at the facts presented and reversed and remanded the case because the facts did present a plausible claim of disparate treatment in a housing application process. Judge Sotomayor has also shown an understanding of privacy rights. While we do not have cases to review that she participated in, her responses to questions gave me great confidence that she will respect legal precedent while applying privacy protections to the challenges in the 21st century.

I have confidence that Judge Sotomayor understands the importance of protecting the freedom of speech based on the decisions she reached in the Pappas case, where an off-duty police officer used speech that was repugnant, but her ruling showed an understanding of the importance of constitutional protections, even when the speech is unpopular and hateful.

I have confidence Judge Sotomayor will protect religious freedom based on her decision in the Ford case, where she protected the rights of a Muslim prison inmate. I was particularly impressed by Judge Sotomayor's record on voting rights. In the Hayden case, she wrote in a dissent:

> The duty of a judge is to follow the law, not to question its plain terms. I do not believe that Congress wishes us to disregard the plain language of a statute or to invent exceptions in the statutes it has created.

Her commitment on voting rights was reinforced at the hearing when she responded to a question I posed. She acknowledged, unequivocally, that the right to vote is a fundamental right for all Americans. With current Justices on the Court ready to question Congress's right to extend the basic voting protections of the Voting Rights Act, it is refreshing to hear Judge Sotomayor say in the Hayden case: ''I trust that Congress would prefer to make any needed changes itself rather than have the court do so for it.''

I have great confidence that Judge Sotomayor understands the importance of civil rights and the importance of protecting those rights for the American people.

I believe Judge Sotomayor will defend Congress's intent with the passage of the Clean Water Act, the Clean Air Act, and many others, based on her decision in the Riverkeeper case. In this case, she wrote for a unanimous panel and held that under the Clean Water Act, the EPA could not engage in a cost-benefit analysis. Allowing cost-benefit analysis would undermine congressional protections, when determining what constitutes the ''best technology available for minimizing the adverse environmental impact.'' She concluded, instead, the test for compliance should consider ''what technology can be reasonably borne by the industry and could engage in cost-effectiveness analysis in determining the [best technology available].''

In addition to her impressive legal background, Judge Sotomayor is on the verge of becoming the first Latino and only the third woman to serve on the Supreme Court. Her story of personal success is an inspiration for young Latinos, women, and for all Americans. She is prepared and ready to serve our Nation on the Court, where I am confident she will continue to build upon the outstanding record she has already achieved as a distinguished jurist. For all these reasons and many more, I will vote to confirm Judge Sotomayor to be the next Associate Justice of the U.S. Supreme Court. I urge my colleagues to join in support of her confirmation.

I ask unanimous consent to have printed in the RECORD the following letters of support: The Lawyers Committee for Civil Rights Under Law, a joint letter with more than 25 disability rights organizations in support of Judge Sotomayor's confirmation; and letters of support signed by more than 80 civil rights and labor organizations in support of her nomination to be the next Supreme Court Justice.

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

CONFIRM JUDGE SONIA SOTOMAYOR TO THE U.S. SUPREME COURT

August 4, 2009

DEAR SENATOR: On behalf of the undersigned organizations, we write to express our support for the confirmation of Judge Sonia Sotomayor as associate justice of the Supreme Court of the United States. In her 17 years of service to date as a federal trial and appellate judge, and throughout the course of her entire career, Judge Sotomayor has strongly distinguished herself through her outstanding intellectual credentials and her deep respect for the rule of law, establishing

herself beyond question as fully qualified and ready to serve on the Supreme Court.

Judge Sotomayor will be an impartial, thoughtful, and highly respected addition to the Supreme Court. Her unique personal background is compelling, and will be both a tremendous asset to her on the Court and a historic inspiration to others. Her legal career further demonstrates her qualifications to serve on our nation's highest court. After graduating from Yale Law School, where she served as an editor of the Yale Law Journal, Judge Sotomayor spent five years as a criminal prosecutor in Manhattan. She then spent eight years as a corporate litigator with the firm of Pavia & Harcourt, where she gained expertise in a wide range of civil law areas such as contracts and intellectual property. In 1992, on the bipartisan recommendation of her home-state senators, President George H.W. Bush appointed her district judge for the Southern District of New York. In recognition of her outstanding record as a trial judge, President Bill Clinton elevated her to the U.S. Court of Appeals in 1998.

During her long tenure on the federal judiciary, Judge Sotomayor has participated in thousands of cases, and has authored approximately 400 opinions at the appellate level. She has demonstrated a thorough understanding of a wide range of highly complicated legal issues, and has a strong reputation for deciding cases based upon the careful application of the law to the facts of cases. Her record and her inspiring personal story indicate that she understands the judiciary's role in protecting the rights of all Americans, in ensuring equal justice, and in respecting our constitutional values—all within the confines of the law. Moreover, her well-reasoned and pragmatic approach to cases will allow litigants to feel, regardless of the outcome, that they were given a fair day in court.

Given her stellar record and her reputation for fairness, Judge Sotomayor has garnered broad support across partisan and ideological lines, earning glowing praise from colleagues in the judiciary, law enforcement community, academia, and legal profession who know her best. Her Second Circuit colleague (and also her former law professor) Judge Guido Calabresi describes her as ''a marvelous, powerful, profoundly decent person. Very popular on the court because she listens, convinces and can be convinced—always by good legal argument. She's changed my mind, not an insignificant number of times.'' Judge Calabresi also discredited concerns about Judge Sotomayor's bench manner, explaining that he compared the substance and tone of her questions with those of his male colleagues and his own questions: ''And I must say I found no difference at all.'' Judge Sotomayor's colleague Judge Roger Miner, speaking of her ideology, argued that ''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 New York District Attorney Robert Morgenthau, her first employer out of law school, hailed her for possessing ''the wisdom, intelligence, collegiality, and good character needed to fill the position for which she has been nominated.''

The undersigned organizations urge you not to be swayed by the efforts of a small number of ideological extremists to tarnish Judge Sotomayor's outstanding reputation as a jurist. These efforts have included blatant mischaracterizations of a handful of her rulings, as well as efforts to smear her as a racist based largely on one line in a speech that critics have taken out of context from the rest of her remarks. The simple fact is that after serving 17 years on the federal judiciary to date, she has not exhibited any credible evidence whatsoever of having an ideological agenda, and certainly not a racist one. We hope that you will strongly reject the efforts at character assassination that have taken place since her nomination.

In short, Judge Sotomayor has an incredibly compelling personal story and a deep respect for the Constitution and the rule of law. Her long and rich experiences as a prosecutor, litigator, and judge match or even exceed those of any of the justices currently sitting on the Court. Furthermore, she is fair-minded and ethical, and delivers thoughtful rulings in cases that are based upon their merits. For these reasons, the undersigned organizations strongly urge you to vote to confirm Judge Sotomayor. If you have any questions, please feel free to contact Leadership Conference on Civil Rights (LCCR) Counsel Rob Randhava at (202) 466–6058, or LCCR Executive Vice President Nancy Zirkin at (202) 263–2880.

Sincerely,

80 signatures in support of Judge Sotomayor's confirmation.

AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES,
Washington, DC, July 7, 2009.

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

DEAR SENATORS LEAHY AND SESSIONS: On behalf of the undersigned national advocacy organizations representing the interests of millions of people with disabilities, we write to express our strong support for the confirmation of Judge Sonia Sotomayor as Associate Justice of the Supreme Court of the United States. We have reviewed hundreds of Judge Sotomayor's decisions, including her disability rights decisions, from her career as a trial judge and appeals court judge, along with her public statements in speeches and in interviews. Based on her sterling judicial record, and on her valuable life experience, we strongly believe that Judge Sotomayor will adequately and fairly protect the rights of all Americans, including people with disabilities. As such, we ask that you vote to confirm her nomination.

Judge Sotomayor's decisions under our seminal civil rights law, the Americans with Disabilities Act (ADA), have demonstrated a good understanding of—and healthy respect for—the rights of persons with disabilities. In important ADA cases concerning the definition of ''disability''—an area of the law subject over the years to many inappropriately narrowing judicial interpretations, so much so that last year Congress amended the ADA to restore its broad reach—Judge Sotomayor has often combed through voluminous or technical testimony to determine whether the plaintiff was protected by the law. Similarly, her understanding of the importance of accommodations to help workers with disabilities maintain employment is reflected in her thoughtful decisions in workplace accommodation cases. She has not been afraid to dissent from a decision finding that plaintiffs did not have disabilities. Nor has she been afraid to overturn a jury verdict where incorrect instructions to the jury impeded a plaintiff's ability to obtain relief under the ADA.

In her ADA decisions, and in other cases, Judge Sotomayor has demonstrated great sensitivity to the needs of, and challenges facing, people with disabilities in this country. For example, her analysis of special education issues arising under the Individuals with Disabilities Education Act (IDEA) reflects—and language from her decisions explicitly states—a keen awareness of the importance of timely special education services to students with disabilities and their families, She has been vigilant in reviewing administrative decisions denying Social Security benefits, especially where applicants are not represented by attorneys. In a notable dissent, Judge Sotomayor argued forcefully that the appointment of a guardian ad litem violated the constitutional rights of a plaintiff who had received psychiatric treatments, because she was not properly notified that she would have no control over her case once the guardian was appointed.

Given her record of balanced and thoughtful decisionmaking, we believe that Judge Sotomayor understands and appreciates Congress's role in enacting important disability rights protections, in enacting the ADA and other disability rights laws, Congress carefully considered the history of people with disabilities in the United States, and acknowledged that many people with disabilities have been ostracized from their families and communities—that they have been prevented from going to school in their neighborhood schools, from working at jobs for which they were qualified, and from participating fully in all aspects of community life. The care that Judge Sotomayor has taken in her disability rights decisions indicates a respect for Congress's intent that these laws have a broad remedial effect on the relationships between individuals with disabilities and covered entities such as employers, schools, state agencies, and public accommodations. For this reason, we expect that she would accord Congress appropriate deference in this area.

It is our belief that Judge Sotomayor will bring her fair, thorough approach to disability rights cases to her work on the Supreme Court, Judge Sotomayor understands the language and purpose of the ADA and other disability rights laws. Further, she understands that the decisions of judges, including Supreme Court justices, that interpret these laws have consequences for people with disabilities. Admirably, she has been unafraid to take strong positions on issues where she believes her reading of the law and facts is correct. Based on her record and her experience—including the fact that she has publicly acknowledged her own insulin-treated diabetes—we strongly urge you to confirm Judge Sotomayor for the Supreme Court.

Thank you for your important work on Judge Sotomayor's nomination. Should you have questions about this letter, please feel free to contact Andrew lmparato of the American Association of People with Disabilities, Jim Ward of ADA Watch/National Coalition for Disability Rights or Jennifer Mathis or Lewis Bossing of the Judge David L Bazelon Center for Mental Health Law.

Sincerely,

Alexander Graham Bell Association for the Deaf and Hard of Hearing.
American Association for Affirmative Action.
American Association on Health & Disability.
American Association of People with Disabilities.
American Diabetes Association.
ADA Watch/National Coalition for Disability Rights.
Association of Programs for Rural Independent Living.
Autism Society of America.
Burton Blatt Institute.
Disability Rights Education and Defense Fund.
Empowerment for the Arts International.
Epilepsy Foundation.
Higher Education Consortium for Special Education.
Judge David L. Bazelon Center for Mental Health Law.

MindFreedam International.
National Association of the Physically Handicapped.
National Association of Social Workers.
National Association of State Head Injury Administrators.
National Center for Environmental Health Strategies, Inc.
National Center for Learning Disabilities.
National Council on Independent Living.
National Disability Institute.
National Disability Rights Network.
National Down Syndrome Society.
National Spinal Cord Injury Association.
Teacher Education Division of the Council for Exceptional Children.
United Church of Christ Disabilities Ministries Board of Directors.
United Spinal Association.

JUNE 30, 2009.

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

DEAR SENATORS LEAHY AND SESSIONS: As professors of Disability Law, Disability Rights Law, and Special Education Law from across the country, we write to express our support for the confirmation of Judge Sonia Sotomayor for appointment to the United States Supreme Court.

A review of Judge Sotomayor's record on disability law issues indicates that she has an excellent understanding of the various laws' application to people with disabilities in various contexts, including disability civil rights, employment, special education, Social Security, Medicaid, and guardianship.

Judge Sotomayor's record shows that she takes a balanced, thoughtful approach to disability issues. Her analysis is consistently thorough, practical and respectful of individual rights. In close cases, she does not appear to follow any particular ideology or activist agenda.

DEFINITION OF DISABILITY

With the passage of the Americans with Disabilities Amendments Act of 2008, Congress repudiated much of the way that the Supreme Court has interpreted the Americans with Disabilities Act's definition of disability. Notwithstanding this flux In the law, Judge Sotomayor's opinions in this area stand out as being careful and reasoned, as she has engaged in searching inquiries into the nature of plaintiffs' impairments to determine whether they meet the functional and legal definition of disability. (See Bartlett v. New York State Board of Law Examiners, 2001 WI 930792 (S.D.N.Y, 2001).

Judge Sotomayor has not been reluctant to dissent in cases where the law was being applied overly narrowly, particularly on the Issue of coverage based on an employer's perceptions of disability (''regarded as''). (See EEOC v. J.B. Hunt Transp., Inc., 321 F.3d 69, 78 (2d Cir. 2003) (Sotomayor dissenting)). After the passage of the ADA Amendments Act, Judge Sotomayor's interpretation of the ''regarded as'' prong of disability now has been adopted as consistent with congressional intent.

DISCRIMINATION

Judge Sotomayor has authored decisions holding, as a matter of first impression in the Second Circuit, that ''mixed motive'' analysis (allowing discrimination claims where there are both discriminatory and non-discriminatory motives for a challenged action) applies in ADA employment discrimination claims (See Parker v. Columbia Pictures Industries, 204 F.3d 326 (2d Cir, 2000)). Her opinion fully analyzed, and was consistent with, precedents in other jurisdictions and the demonstrated intent of Congress.

REASONABLE ACCOMMODATION

Judge Sotomayor has participated in several cases reversing grants of summary judgment for ADA defendants where there were questions of fact regarding whether plaintiffs requested accommodations were reasonable. Judge Sotomayor wrote a decision reversing a jury verdict against the plaintiff for failure to give a jury instruction indicating that, in determining whether reassignment to a vacant position is a reasonable accommodation, an offer of an inferior position is not reasonable when a comparable, or lateral, position is available, (See Norville v. Staten Is. Univ. Hosp., 196 F.3d 89 (2d Cir. 1999)).

EDUCATION

Judge Sotomayor's education opinions reflect an appropriate concern for parents' procedural rights, recognizing that, only by ensuring parents' rights to hearings and records can their children's substantive educational rights be ensured, while also balancing states' rights under the ''cooperative federalism'' envisioned by the Individuals with Disabilities Education Act (IDEA). (See Taylor v. Vermont Dep't of Educ., 313 F.3d 768 (2d Cir, 2002). She has also written opinions recognizing that the IDEA exhaustion requirement is not so inflexible as to require parents to engage in futile efforts. (See Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195 (2d Cir. 2002)).

CONSTITUTIONALITY OF FEDERAL CIVIL RIGHTS LEGISLATION

Judge Sotomayor has resisted judicial attempts to artificially limit federal legislative authority to articulate and enforce individual rights. While demonstrating respect for precedent, she has not interpreted the Constitution to prevent Congress from recognizing individual and civil rights. (See Hayden v. Pataki, 449 F.3d 305 (2d Cir. 2006) (Sotomayor joining dissent from en bane decision); Connecticut v. Cahill, 217 F.3d 93 (2d Cir. 2000) (Sotomayor dissenting)). Her opinions reflect a deference to Congress and to the plain language of the Constitution.

The Supreme Court is the guardian of our rights and freedoms. As such, we recognize the importance of each nomination to the Court. Based on her record as a district court judge and as a Judge on the Second Circuit Court of Appeals, we believe Judge Sotomayor has demonstrated appropriate respect for the rule of law and the importance of individual rights, Therefore, we urge you to confirm the nomination of Judge Sonia Sotomayor to the U.S. Supreme Court.

23 signatures in support of Judge Sotomayor's confirmation.

Mr. CARDIN. I yield the floor.

The PRESIDING OFFICER (Mr. BENNET). The Senator from Montana.

Mr. BAUCUS. Mr. President, it is with great honor that I rise to express my support for the nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

In the Federalist Papers, explaining our great Constitution and the role of the judiciary, Alexander Hamilton quoted Montesquieu to say:

> There is no liberty, if the power of judging be not separated from the legislative and executive power.

We Americans should take a moment to recognize that few other nations in the world possess such a strong emphasis on individual rights and liberties—something we cherish greatly. Too often we take it for granted. We can, in large part, point to this Nation's independent judiciary as the reason for this emphasis on individual rights and liberties. Sure, they are enshrined in the Constitution, but the independent judiciary, framed in the Constitution, helps make all that possible. Justice Sandra Day O'Connor stated, for example:

> The Framers of the Constitution were so clear in the Federalist Papers and elsewhere that they felt an independent judiciary was critical to the success of the nation.

Our Founding Fathers were wise in setting up three separate branches of government, including a strong and independent judiciary. The pinnacle of this system and its independence is the U.S. Supreme Court, the highest Court in the land.

Our Constitution embodies this independence in the separation of powers and checks and balances throughout this great document. This is the case in the structure of appointing our Supreme Court Justices. The Constitution provides of the President, for example, that:

> He shall nominate, and by and with the advice and consent of the Senate, shall . . . appoint judges of the Supreme Court.

Let me repeat, the Constitution says: the President ''shall nominate, and by and with the advice and consent of the Senate, shall appoint . . . judges of the Supreme Court.''

The Senate's role is of utmost importance in defending the independence of the Supreme Court. The Senate's active advice and consent role in the confirmation of Supreme Court Justices helps to ensure that nominees have the support of a broad political consensus.

Of the many responsibilities the Constitution grants to the Senate, few are more critical than the Senate's role in the confirmation process for Supreme Court Justice nominees.

I take—and I know each of us in the Senate does—this constitutional responsibility very seriously. Throughout my time in the Senate, I have established three criteria I use to examine nominees. These three criteria are: professional competency, personal integrity, and a view of important issues within the mainstream of contemporary judicial thought. Those are the three. They are the criteria I use. I have analyzed past Supreme Court nominees using these three criteria, including Chief Justice Roberts and Justice Alito. I will review my criteria.

First, professional competency. The Supreme Court must not be the testing ground for the development of a jurist's basic values. We do not have time for that. A Justice cannot learn on the job, nor should she require further training. The stakes are simply too high. She must be professionally competent on day one.

Second, personal integrity. Nominees to our Nation's highest Court must be of the highest caliber.

And, third, the nominee should fall within the mainstream of contemporary judicial thought. The next Justice must possess the requisite judicial philosophy to be entrusted with the Court's sweeping constitutional powers.

I believe that in the case of Judge Sonia Sotomayor, the answer to all three questions is a resounding ''yes.''

Judge Sotomayor is the embodiment of the American dream—rising from a Bronx public housing project to a place among the judicial elite. She attended Princeton, where she graduated among the top of her class, and she was editor of the Law Journal at Yale Law School.

Judge Sotomayor's work history is diverse and rich with experience. Judge Sotomayor began her legal career as assistant district attorney for New York County in 1979. She then worked as a litigator at Pavia & Harcourt, a small firm in Manhattan, where she handled commercial cases.

Judge Sotomayor's 17 years on the bench, first as a district court judge, then on the second circuit, have yielded an enormous yet consistent body of work. Her opinions show thorough and thoughtful analysis, an eye for detail, and, in her own words, fidelity to the law.

I have no doubt that Judge Sotomayor has the professional competency that the American people require of Supreme Court Justices.

Judge Sotomayor's life experiences also convey the personal integrity essential to a Supreme Court Justice. She has given back her time, energy, and expertise to the community that helped shape who she is. She has worked hard throughout her career, inspiring students across the country to pursue study of the law.

For her service, Judge Sotomayor has received many honorary degrees—many—countless awards, and accolades from her colleagues, clerks, and the academic community. Judge Sotomayor has also made personal sacrifices. She recognizes the personal sacrifices she must make in order to serve as a Justice on the Supreme Court.

My third criteria—that is, a nominee who falls within the mainstream of contemporary judicial thought—is met, again, by reviewing Judge Sotomayor's lengthy judicial record. Some of my colleagues want to paint her as a judicial activist with leftwing leanings.

In fact, in constitutional cases that came before the second circuit, Judge Sotomayor voted with the majority 98 percent of the time—hardly a leftwing activist. In the rare cases where she held a government action unconstitutional, the decision was so clear that it was unanimous. Judges appointed by Republican Presidents have agreed with Judge Sotomayor 90 percent of the time—hardly a leftwing activist.

This is not the actions of an activist judge. In fact, this is a judge who can be relied on to produce a decision that most people can agree with.

I strongly believe Judge Sotomayor has met the three criteria I view essential to a Supreme Court Justice, and this was even more evident during her confirmation hearing.

Over the 4 days of hearings on the nomination of Judge Sotomayor, what did we see? We saw a composed, intelligent, and thoughtful judge, someone committed to the law, and one with a rich life story and expansive judicial experience, whose perspective will enrich the judgments of the U.S. Supreme Court.

In closing, I congratulate our President. I congratulate President Obama on his historic nomination. I am confident Judge Sotomayor will make an outstanding Justice on the U.S. Supreme Court.

Mr. President, 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 that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, for the benefit of Members, we will have no more votes tonight. I just completed a meeting with Senator MCCONNELL, and we are trying to work through when we are going to have a final vote on the Supreme Court nomination, what we are going to do on travel promotion, and what we are going to do for cash for clunkers. We are trying to work through that. We hope we will have something worked out tonight, but knowing how things work around here, we probably will not be able to get information to Members until tomorrow. But there will be no more votes tonight.

I have indicated the number of things we have to complete before we leave here, and that is all dependent on the amount of cooperation we get from the minority whether we finish tomorrow, Friday, or Saturday, or Sunday. There is no reason we can't put in a modestly long day tomorrow and complete everything, but we will have to see. We will do our best to try to get notice to Members as quickly as we can.

Mr. INOUYE. Mr. President. I support the nomination of Judge Sonia Sotomayor to the Supreme Court.

Some of my colleagues have criticized Judge Sotomayor for her views. I welcome an independent thinker.

Some have criticized her for being a ''liberal'' in certain cases. What is wrong with being a liberal? Do all Supreme Court Justices have to qualify as being conservatives?

I welcome the nomination of Judge Sotomayor to the Court because she, unlike most members of the Supreme Court, has lived through the experiences of many of our citizens. She knows what it is to be poor. She knows what it is to have grown up in public housing.

I wish her the very best.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I rise today in support of the confirmation of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court. She has received support from many parts of the community. The Judiciary Committee has received many letters of support for Judge Sotomayor's nomination, from current and former public officials, including the National Association of Latino Elected and Appointed Officials, the Congressional Asian Pacific American Caucus, former President Bill Clinton, as well as former Judge Advocates General. These letters of support continue to come.

Judge Sotomayor is well qualified, with significant judicial experience. After graduating from Yale Law School, she worked in the New York County District Attorney's Office prosecuting criminal cases such as homicides and robberies, child pornography, police misconduct, and fraud cases. She then spent over 7 years in private practice working with large corporations on international business issues.

In 1992, Judge Sotomayor was appointed by President George H.W. Bush to the Southern District Court of New York. Six years later she was appointed by President Clinton to the Second Circuit Court of Appeals where she has served for more than 10 years.

Throughout her career, Judge Sotomayor has displayed a keen intellect and an understanding of the world around her. She knows the law and knows firsthand how it affects Americans' daily lives.

If confirmed, Judge Sotomayor will be the first Hispanic Justice and the third female Justice to sit on the Supreme Court. Her confirmation would make the Supreme Court more reflective of our great and diverse Nation.

She brings a rich background and a wealth of experience and understanding of American life that will have an impact on the cases before the Court. As other Justices have noted, the unique personal story of each Supreme Court Justice allows them to better understand the parties before them and to better apply the law to the facts at hand. She has a deep understanding of the real lives of Americans—how her decisions can affect not only the parties before her but society at large.

In June, I had the pleasure to meet with Judge Sotomayor. During our meeting we talked about Hawaii, its history, and its culture. We talked about how being an island State forces us to work together to resolve challenges and how our diverse culture helps us find unique solutions. Judge Sotomayor understands that. She knows our diversity ultimately makes America stronger.

Her commonsense approach to the law gives Americans reason to believe that she will be an unbiased and fair-minded Supreme Court Justice. In fact,

Judge Sotomayor's record demonstrates her realistic approach to deciding cases and her fair treatment of the parties before her. She has a long record of judicial restraint and respect for our constitutional freedoms, established precedent, and the other branches of the government, including the lawmaking role of Congress.

Last month we watched as she handled her confirmation hearing with poise and composure. She addressed the committee members' questions with thoughtfulness and respect. She demonstrated that she is up to the challenge and the great responsibility of serving on the Supreme Court. I am confident, based on her experience and background, that she will make an excellent addition to the U.S. Supreme Court.

I urge my colleagues to focus on her qualifications, her life experience, and her judgment and join me in supporting Judge Sotomayor's confirmation.

Mr. President, I ask unanimous consent that the letters I mentioned at the beginning of my remarks be printed in the RECORD.

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

NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS,
Los Angeles, CA, July 10, 2009.

Hon. PATRICK J. LEAHY,
Chairman, Senate Committee on the Judiciary, Washington, DC.
Hon. JESS SESSIONS,
Ranking Member, Senate Committee on the Judiciary, Washington, DC.

DEAR SENATOR LEAHY AND SENATOR SESSIONS: On behalf of the National Association of Latino Elected and Appointed Officials (NALEO), I am writing to express our strong support for the swift confirmation of Judge Sonia Sotomayor to serve as Association Justice of the U.S. Supreme Court. NALEO is the leadership organization of the nation's more than 6,000 Latino elected and appointed officials.

Judge Sotomayor is an exceptionally accomplished jurist who has demonstrated a deep commitment to equal justice for all Americans. She has excelled as a prosecutor, a corporate litigator, a federal judge, and an appellate judge on the Second Circuit Court of Appeals. Judge Sotomayor has more experience in the federal judiciary than any other person nominated to the United States Supreme Court in a hundred years.

In addition, during her distinguished career, Judge Sotomayor has combined a profound respect for the rule of law with careful and thoughtful analysis of the law's impact on the day-to-day realities of our diverse nation. Through her extensive public service efforts, she has promoted equal opportunity in employment and housing, and expanded access to the electoral process.

NALEO's Board reached the decision to support Judge Sotomayor's nomination after a thorough review of her qualifications conducted in accordance with the Board's principles governing the assessment of federal judiciary nominees. This assessment involved a comprehensive evaluation of the Judge's professional accomplishments, and her opinions and rulings that affect equal access to civic and economic opportunities. The Board also reviewed the Judge's record of service to the legal profession, the judiciary, and the public.

We believe that the confirmation of Judge Sotomayor is particularly important, because it will help enhance the diversity of the nation's highest court, where no Latino has yet served. In order for our judicial system to carry out justice effectively and interpret our laws fairly, our judges must understand how laws affect the daily realities of the life of our nation's diverse residents. Latinos are the nation's second largest and fastest growing population group, and Judge Sotomayor will bring a deep understanding of the issues facing Latinos and all Americans to the Supreme Court. Thus, her service as an Associate Justice will greatly enrich the administration of justice in our nation.

NALEO believes Judge Sotomayor will be an invaluable asset to our nation's highest court because she possesses exceptional judicial expertise and a firm dedication to our laws and Constitution. The full Senate must confirm the Judge's nomination by the August Congressional recess in order for Judge Sotomayor to participate in September when the Court confers, and to be seated on the first Monday in October, when the court publicly convenes. We urge the Senate Judiciary Committee to help meet this schedule by advancing Judge Sotomayor's nomination to the full Senate as expeditiously as possible.

Thank you for attention to this matter. Should you have any questions, please contact me.

Sincerely,

ARTURO VARGAS,
Executive Director.

CONGRESSIONAL ASIAN PACIFIC AMERICAN CAUCUS,
Washington, DC, July 13, 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: On behalf of the Congressional Asian Pacific American Caucus (CAPAC), I am writing to inform you of CAPAC's endorsement of the nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

CAPAC applauds President Obama's decision to choose Judge Sonia Sotomayor as his Supreme Court nominee A brilliant legal mind, Judge Sotomayor has already served our country with great distinction. Over the course of her distinguished career, Judge Sotomayor has been a fearless guardian of the rule of law and demonstrated integrity of the highest class, earning her the respect of the legal community.

Despite humble beginnings from the South Bronx, Judge Sotomayor went on to become the valedictorian of her high school, the top undergraduate student in her class at Princeton, and an editor of the Yale Law Journal. Her legal career has been as dazzling as her life story, and she is unquestionably qualified to serve as a Supreme Court Justice.

She would bring to the Supreme Court her experience in nearly every level of our judicial system as a prosecutor, litigator, trial court and appellate judge—offering a depth and breadth of experience that will inform her work on our nation's highest court. In fact, she has a wider range of federal legal experience than any Justice sitting on today's Court.

CAPAC extends its endorsement with pride. Members of our caucus look forward to working with you to ensure a fair and smooth confirmation process.

Sincerely,

MICHAEL M. HONDA,
Chair.

JULY 14, 2009.

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

DEAR MR. CHAIRMAN: I write respectfully to urge the Senate's speedy confirmation of the Honorable Sonia Sotomayor as Associate Justice of the Supreme Court of the United States.

I had the privilege to name Judge Sotomayor to a position in the Federal Judiciary. On that occasion, she was a trailblazer as the first Latina nominated to a U.S. Circuit Court. As the first Hispanic nominee to the U.S. Supreme Court, Judge Sotomayor once again breaks new ground. If confirmed, Justice Sotomayor will be the second jurist in history nominated to three judgeships by three different Presidents. I am very proud of our nation at this auspicious moment.

It is my hope that Judge Sotomayor will join the Supreme Court, where she can make a unique contribution through her experience as a state prosecutor and a trial judge. Her compelling life story, being raised by a single mother of modest means who instilled in her the values of hard work and educational achievement, is the true embodiment of the American Dream.

I congratulate President Obama for selecting an eminently qualified nominee and encourage the Senate to recognize Judge Sotomayor's outstanding qualifications and experiences, which make her worthy of the honored role of Associate Justice of the Supreme Court of the United States.

Sincerely,

BILL CLINTON.

Hon. PATRICK J. LEAHY,
Chairman, U.S. Senate Committee on the Judiciary, Washington, DC.
Hon. JEFFERSON B. SESSIONS,
Ranking Member, U.S. Senate Committee on the Judiciary, Washington, DC.
Hon. LINDSEY GRAHAM,
Member, U.S. Senate Committee on the Judiciary, Washinton, DC.

DEAR CHAIRMAN LEAHY, RANKING MEMBER SESSIONS, AND SENATOR GRAHAM: We, former Judge Advocates General and a general in the Judge Advocate General's Corps, respectfully write to support the confirmation of Judge Sonia Sotomayor as an Associate Justice of the United States Supreme Court.

Judge Sotomayor is well-qualified for the Supreme Court and should be confirmed. She has earned a reputation for careful, narrowly-tailored decisions in seventeen years as a federal judge, applying the law impartially, and faithfully honoring precedent and the rule of law. Earlier in her career, she impressed her colleagues as a focused and hard-working prosecutor and corporate litigator. She has distinguished herself in each role, displaying rigorous thinking and careful attention to the facts before her. Judge Sotomayor would serve the Court, and the nation, well.

We urge your speedy confirmation of this qualified nominee.

Sincerely,

JAMES P. CULLEN,
Brigadier General, USA (Ret.).
DONALD J. GUTER,
Rear Admiral, USN (Ret.).
JOHN D. HUTSON,
Rear Admiral, USN (Ret.).

Mr. AKAKA. Mr. President, I yield the floor, and 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. MERKLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MERKLEY. Mr. President, over the past few weeks of meetings and hearings, both the Senate and the American people have witnessed the intelligence, the legal understanding, and dedication to the law that makes Judge Sonia Sotomayor well qualified to be our next Supreme Court Justice. Today, I rise to support her nomination and share a few thoughts on why I think Judge Sotomayor should be confirmed as the next U.S. Supreme Court Justice.

When I was in college I took a freshman seminar on the Bill of Rights. Each week, our professor would give us the facts of a Supreme Court case without the opinions and would ask us to draft our opinion of a situation. After we had prepared our opinion, we would share them the next week, and then and only then read the official majority and minority opinions of the Justices. It was quite an education in the Bill of Rights.

Over the course of the semester, many of us came to identify with the approach and viewpoints of one Justice or another. It was very helpful in gaining insight into my own thinking and that of our Supreme Court. So when I met Judge Sotomayor, I posed a question to her: Which judge do you most identify with? Her answer was Justice Benjamin Cardozo.

Let me tell my colleagues a little bit about Benjamin Cardozo. A native of New York, he served on the New York Court of Appeals, the highest State court in New York, from 1914 to 1932, and then on the U.S. Supreme Court from 1932 to 1938. Cardozo was descended from Portuguese Jewish immigrants who long ago had fled the Spanish Inquisition, and Cardozo was the first Jewish person to serve on the New York Court of Appeals. His careful, brilliant opinions on New York law earned him wide recognition as one of our Nation's most outstanding judges.

When he was nominated to the Supreme Court in 1932, he was confirmed by the Senate by a unanimous voice vote. I can see many reasons why Judge Sotomayor, as a native New Yorker, as a child of Spanish-speaking immigrants from Puerto Rico, and as a longtime judge in New York might identify with Justice Cardozo. I am sure Judge Sotomayor would love to extend the parallel to Cardozo's unanimous Senate confirmation vote. But Judge Sotomayor cited none of these reasons. Rather, she pointed to his particular approach to judging—the careful, fact-intensive approach that was Cardozo's hallmark.

Let me put that observation in context. Cardozo served as a judge during the industrializing early 20th century. Because of the rapidly changing times in which he lived, he was faced with a wide range of cases that raised new and difficult issues. His opinions became recognized for drawing deeply on the facts of individual cases and relied heavily on the development of the law that came before him. He was innovating and forward-looking but also deeply respectful of careful development of the law. He described his style as one of steady, hard work. Justice Cardozo and Judge Sotomayor share a love for steady, hard work—the steady, careful development of law that comes from fact-intensive, careful judging. These are approaches to law that will serve the judge well as our next Supreme Court Justice.

Interpreting the Constitution is, of course, a challenge. Our Constitution is mostly written in broad, general directives. For example, our first amendment says Congress shall pass no law ''abridging the freedom of speech.'' Our fourth amendment ensures persons shall be free in their homes from ''unreasonable searches and seizures.'' The fourteenth amendment declares that no State shall ''deny to any person within its jurisdiction the equal protection of the laws.''

Those broad phrases do not provide easy answers to complicated cases. When is a search or seizure unreasonable? When does a practice or law abridge freedom of speech? When does a practice or law abridge equal protection under the law?

Our first Chief Justice, John Marshall, correctly noted it is the responsibility of the judicial branch to provide answers. How should a Supreme Court Justice go about providing these answers?

Judge Sotomayor's background and record offer a model for how it should be done. First, she brings to her work extraordinary academic and experiential qualifications. She graduated at the top of her class from Princeton University and from Yale Law School. She brings valuable life experience from growing up in public housing in the Bronx, from serving as a prosecutor in New York City, and from working as an attorney in private practice. In 1992, she was appointed to the Federal bench by President George Herbert Walker Bush. During the following 17 years, including 11 on the U.S. Court of Appeals for the Second Circuit, she weighed in on over 3,000 panel decisions and authored about 400 published opinions.

What this body of work shows, more than anything else, is that Judge Sotomayor is diligent and prudent in her approach to hearing and deciding cases. She thoroughly weighs the facts and carefully adapts the principles expounded by previous courts to reach a just result in each new set of circumstances. In fact, the reason many find it difficult to pin a label on her—be it conservative or liberal—is because her decisions do not follow ideological lines. Rather, they emerge from close readings of previous cases and careful thought about the implications of the particular facts. Clearly, the judge's respect for Justice Cardozo isn't just an off-the-cuff remark. Hers is record a judicial record that Benjamin Cardozo would be proud of.

Just as Cardozo faced the challenge of interpreting the Constitution in a newly industrialized state, so, too, do we face the challenge of interpreting the Constitution in a high-tech, globally interconnected world. The answers to tomorrow's constitutional questions will not be easy. But if we follow Judge Sotomayor's approach, our constitutional interpretations will be built on the wise interpretations of the past. We will, with this approach, have confidence that our Supreme Court will stay true to the body of principles of justice and freedom that are at the heart of our constitutional tradition.

Let me summarize. Judge Sotomayor has a stellar academic background. She brings diverse and valuable life experiences. She has a distinguished record on the bench, and she will bring a carefully measured judicial approach and valuable insights to our Supreme Court.

Moreover, the value of the diversity that Sotomayor would bring to the Court, as a woman, as an American of Puerto Rican descent, cannot be overstated. We often talk about government by and for the people. That is a cherished part of our tradition. We often talk about it in terms of the diversity of those who serve in the executive branch. We often talk about it being important in the diversity of those who serve in the legislature, so we can bring valuable insights to bear. But government by and for the people extends to the judicial branch as well. We need to have the insights that flow from having judges with many different life experiences.

I am confident Sonia Sotomayor will be a wise guardian of our Constitution. Therefore, I urge my colleagues to join me in casting their votes to confirm Judge Sonia Sotomayor as an Associate Justice of the U.S. Supreme Court.

I yield the floor.

Mr. FEINGOLD. Mr. President, I want to say a few words about Judge Sotomayor and about the hearing process we have just been through.

First, I commend Chairman LEAHY and his staff for a remarkably well-run proceeding in the Judiciary Committee. I think anyone who saw the 4 days of hearings would agree that the

process was scrupulously fair. Everyone got a chance to ask all the questions they wanted to ask. They had the time they needed for follow up questions, and for follow ups to those follow ups. No stone was left unturned, even if the answers the Judge gave weren't always what the questioner hoped to hear.

What the public doesn't see is the work that is done behind the scenes to get us to that point. Not just the setup of the room and all the complex preparations that go into the smooth running of the hearing itself, but also the enormous effort to make all of the background information that came to the Judiciary Committee available online virtually immediately—all of Judge Sotomayor's speeches and articles, over 100 letters and reports from people who know her, or organizations that wished to express their views on her nomination, as well as all of the materials received from the PRLDEF organization in response to the Judiciary Committee's request. Chairman LEAHY has set a new standard for transparency and public access to Supreme Court nomination proceedings, and I truly commend him for that, and I also thank him and his staff for the tremendous work they have done over the last several weeks.

The scrutiny to be applied to a President's nominee to the Supreme Court is the highest of any nomination. The Supreme Court, alone among our courts, has the power to revisit and reverse its precedents, and so I believe that anyone who sits on that Court must not have a pre-set agenda to reverse precedents with which he or she disagrees, and must recognize and appreciate the awesome power and responsibility of the Court to do justice when other branches of government infringe on or ignore the freedoms and rights of our citizens. This is the same standard I applied to the nominations of both Chief Justice Roberts and Justice Alito during the last administration.

What we saw over 4 days of hearings on the nomination of Judge Sotomayor was a thoughtful, intelligent, and careful judge, a person committed to her craft and to the law, someone whose remarkable life story and varied experience will add diversity and perspective, which the Court sorely needs. Not only will Judge Sotomayor become the first Latina Justice, and only the third woman, to serve on the Court, but she will be the only Justice who has served as a trial court judge, and she will have more judicial experience at the outset of her service on the Court than any of her colleagues did. There is no doubt she is highly qualified, and I think we saw during those 4 days of hearings that she has an admirable judicial temperament and demeanor that will serve her well on the Court.

Judge Sotomayor's record and testimony satisfied me that she understands the important role of the Court in protecting civil liberties, even in a time of war. She sat on a Second Circuit panel that struck down portions of the National Security Letter statute that was so dramatically expanded by the Patriot Act. And when I asked her how September 11 changed her view of the law, she gave the following answer:

> The Constitution is a timeless document. It was intended to guide us through decades, generation after generation, to everything that would develop in our country. It has protected us as a nation. It has inspired our survival. That doesn't change.

Later, when we discussed the Korematsu case, she said:

> A judge should never rule from fear. A judge should rule from law and the Constitution.

Those words give me hope that she will have the courage to defend the liberties of the American people from an overreaching executive or legislative branch.

At the same time, she appreciates the deference the judiciary must give to the legislature as it seeks to solve the problems facing the American people. I don't see in her record or in her public statements a burning desire to overturn precedent or to remake constitutional law in the image of her own personal preference, and I certainly don't see bias of any kind. I was also impressed with her record and statements during the hearing on judicial ethics. Judge Sotomayor seems to understand that the extraordinary power she will wield as a Justice must be accompanied by extraordinary care to guard against any apparent conflict of interest.

All that being said, I do want to express a note of dissatisfaction. Not with Chairman LEAHY, or with my colleagues on the Judiciary Committee, and certainly not with Judge Sotomayor, but with a nominations process that I think fails to educate the Senate or the public about the views of potential Justices on the Supreme Court. I have said before that I do not understand why the only person who cannot express an opinion on virtually anything the Supreme Court has done in recent years is the person from whom the American public most needs to hear. It makes no sense to me that the current Justices can hear future cases notwithstanding the fact that we know their views on a legal issue because they wrote or joined an opinion in a previous case that raised a similar issue, but nominees for the Court can refuse to tell us what they think about that previous case under the theory that doing so would compromise their independence or their ability to keep an open mind in a future case.

I remain unconvinced that the dodge that all nominees now use—''I can't answer that question because the issue might come before me on the Court''—is justified. Nomination hearings have become little more than theater, where Senators try to ask clever questions and nominees try to come up with cleverer ways to respond without answering. This problem certainly did not start with these hearings or this nominee, but perhaps it is inevitable. The chances of the Senate rejecting a nominee who adopts this strategy are very remote, based on the recent history of nominations. Nonetheless, I do not think it makes for meaningful advice and consent.

So I cannot say that I learned everything about Judge Sonia Sotomayor that I would have liked to learn. But what I did learn makes me believe that she will serve with distinction on the Court, and that I should vote in favor of her confirmation.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, it is a privilege to rise to speak on behalf of President Obama's nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

This takes me back to a time, shortly after I was privileged to be elected to the Senate, when President George H.W. Bush nominated David Souter to be an Associate Justice of the Supreme Court of the United States. David Souter had, by that time, been in law enforcement as an attorney general of New Hampshire. As a former attorney general, I felt an instant kinship with him. He had also been a trial judge in New Hampshire, a member of the New Hampshire Supreme Court and, ultimately, he sat on the Federal First Circuit Court of Appeals. He was proposed to President Bush 41 by our former colleague, Warren Rudman, a Senator from New Hampshire, a great Senator and a great friend.

I remember when Senator Rudman brought David Souter around and introduced him after President Bush nominated him. It has been my privilege to have had a friendship with David Souter in the company of former attorneys general, particularly those who gather periodically to speak of matters past, present, and future. I wanted to speak of Justice Souter because, of course, it is his announcement of retirement that opens the vacancy that President Obama has asked us to fill with Judge Sonia Sotomayor.

In the case of now-Justice Souter, I was privileged in one of my early votes here to join 89 of my Senate colleagues in voting to confirm Justice Souter. With his retirement this summer, after two decades on the Court, he has become the first Justice to retire of the six Supreme Court Justices on whose nominations I have had the privilege and responsibility of voting.

I wish to first thank and commend Justice Souter for his decades of public service, generally, and, specifically, for his thoughtful, distinguished service to the highest Court of our land. I know Justice Souter is a very honorable, straightforward man. He is—if I may say so as a New Englander—a quintessential New Englander. He carries with him all the great constitutional traditions of the part of our country from which I am proud to hail. He

brings with him some characteristics that are best associated with a New Englander. He is straightforward. He is not one for flowery rhetoric. He is one who is committed to integrity in his personal life, as well as his public life. He has a great New England sense of humor—probably not often seen in his decisions, but I bear personal testimony here, though I am not under oath at the moment, to that great quality he has.

I know there are some who have become critics of Justice Souter, who have said he isn't what they thought he would be when he was nominated. But when he was nominated, what he presented himself as was a man of the law who believed in our Constitution, believed in the values that underlie it, and one who would always do what he thought was right. He has done that in his years on the U.S. Supreme Court. I haven't agreed with every opinion Justice Souter has ever written, but this I know: Every time he sat to write an opinion or to join an opinion, he did so after the most careful consideration. He is an extraordinarily hard-working, disciplined individual and, ultimately, he reached a judgment that he felt was right, according to the requirements of our Constitution. I salute this great American, this quiet American, but this profoundly patriotic American, and wish him well in the years he has ahead of him as he returns now, by his own choice, to his beloved New Hampshire.

The life tenure of Supreme Court Justices—a lifetime appointment for those who choose not to step down—defines, in many ways, the importance of the Senate's role in providing advice and consent to the President on Supreme Court nominees. I have always felt, from the time I first came in—and the first vote I cast was on a controversial nomination for Secretary of Defense. It was in 1989. I spent a lot of time looking back at the history of the advice and consent clause. To make a long story short, I felt it wasn't for me to vote for a nominee of the President, to advise and consent. I did not have to feel that nominee was the person I would have chosen but just that that nominee was within the range of being acceptable and was prepared and qualified for that job. There is a slightly higher standard for Supreme Court nominees because they do serve lifetime appointments.

It is with that in mind that I approach this nomination of Sonia Sotomayor. I have met with Judge Sotomayor and have reviewed her judicial record. I followed her confirmation hearing before the Judiciary Committee and, based on all that, I conclude, without question, that she possesses remarkable intellectual and legal credentials, has a distinguished record of experience in the public and private sector, and a deep commitment to our country and our Constitution. I will, therefore, vote affirmatively to consent to her nomination to the Supreme Court.

Judge Sotomayor's 17-year record as a Federal judge speaks volumes about her qualifications to serve on the Court, and that is why I feel she more than passes the threshold for this lifetime appointment. During 6 years as a trial judge on the U.S. district court and 11 years as a judge on the court of appeals, Sonia Sotomayor has shown she possesses a superior intellect, a commendable judicial temperament, and an admirable respect for the role of established precedent in our legal system.

It is usually and quite naturally true that those who know people best are those with whom they have worked most closely. Those who have worked most closely with Judge Sotomayor are consistent, even effusive, in their praise for her personal attributes, her professional qualifications, and her fairness. Chief Judge Dennis Jacobs of the Second Circuit Court of Appeals, 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.

Another colleague on the Second Circuit, Senior Judge Roger Miner, said:

> I don't think I'd go so far as to classify her in one camp or another. I think she just deserves the classification of outstanding judge.

While the most significant facts about Judge Sotomayor are her personal qualifications and her judicial record, I also note that women are underrepresented on the Supreme Court of the United States. I say that not just as a matter of numbers but as a matter of qualification.

I thank the President for this historic nomination of the first American of Hispanic descent to the Supreme Court. This nomination was clearly made on the basis of merit, not ethnicity or gender. I think it is consistent with her merit. But acknowledging her ethnicity, her selection represents another barrier that has been broken in American life. When that happens in American life, the doors open wider for every other American.

I will be proud to vote yes to confirm Sonia Sotomayor, of New York, to be Associate Justice of the U.S. Supreme Court.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. WARNER). The Senator from Nevada.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the Republican time for the next hour be allocated as follows: Senator ENSIGN, 30 minutes; Senator MURKOWSKI, 20 minutes; and Senator SESSIONS, 10 minutes.

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

Mr. ENSIGN. Mr. President, I rise to speak about Supreme Court nominee, Judge Sonia Sotomayor.

The words ''Equal Justice Under Law'' are engraved in the stone above the entrance to the U.S. Supreme Court. This simple phrase, ''Equal Justice Under Law,'' carries an immense amount of weight and responsibility.

As a Senator tasked with the monumental responsibility of confirming a Supreme Court nominee, it is with these four words in mind that I carefully studied this Supreme Court nominee. There is no denying that Judge Sotomayor is impressive. Her qualifications, diverse experience, and personal disposition make her a worthy candidate for this nomination. The fact that this is a proud moment for our Nation has not been lost on me. This year, America has certainly filled the history books. On the tails of his historic election, President Obama has chosen to nominate the Nation's first Hispanic woman to the Supreme Court. President Obama and Judge Sotomayor have made history, but the impact they will have on future generations is so much greater.

Although, as a child, Judge Sotomayor could do little more than dream. She was born in the Bronx, raised by a single mother after her father passed away when she was 9 years of age. Her mother instilled in her a deep value for education and a strong work ethic, which paid off with a full scholarship to Princeton University. She graduated summa cum laude from Princeton and went on to attend Yale Law School, where she earned her juris doctorate. She is truly an inspiration for people across our great country.

Judge Sotomayor's humble upbringing is reminiscent of another recent judicial nominee, also of Hispanic heritage, who rose above his meager means in New York to attend and graduate with honors from Ivy League schools. And the similarities do not stop there. I am referring to the American success story of Miguel Estrada, an individual equally deserving of our respect.

Miguel Estrada came to America as a Honduran immigrant at the age of 17. With very little English in his vocabulary, he rose to the top of the legal profession after graduating with honors from Columbia University and Harvard Law School. He clerked for Supreme Court Justice Anthony Kennedy and was a former Assistant Solicitor General of the United States. Miguel Estrada served in the administrations of both President Bill Clinton and President George W. Bush.

In 2001, President George W. Bush recognized his talent and nominated him to the U.S. Court of Appeals for the DC Circuit. Unfortunately, partisan politics came into play, and Estrada's record was not judged purely on its merits. He did not receive the fair consideration that has been given to Judge Sotomayor. He never even made it as far as a confirmation vote. Miguel Estrada's nomination and expected ascension to the Supreme Court was cut short by a Democrat filibuster—as a matter of fact, seven Democrat filibusters that helped create a new standard for judicial nominees and the Senate's constitutional role of ''advise and consent.'' Had he been given

the fair consideration he deserved, the Hispanic community would have another great role model in our judicial system.

As I have previously stated, I am impressed by Judge Sotomayor. In our meeting, I found her very personable and easy to talk with. Unfortunately, our discussions during that meeting did little to alleviate the concerns I had upon reviewing her record and her public statements, including her testimony before the Judiciary Committee. Judge Sotomayor's record and testimony have left me with more uncertainty and doubt instead of the assurance that she has the ability to rule with a fair and impartial adherence to the rule of law. I fear that Judge Sotomayor, when seated on the Supreme Court bench, will not be a zealous advocate for ''Equal Justice Under Law.'' Many of her responses to me and to my colleagues on the Judiciary Committee were troubling, not necessarily because of substance, but more due to the lack of it.

I remain concerned that we just do not know who we will be getting on the Supreme Court. The inconsistencies in Judge Sotomayor's testimony, judicial record, and writings make it impossible to fully understand her commitment to how she will interpret and uphold the Constitution.

This especially concerns me because a lifetime appointment to the Supreme Court comes without the barriers of additional judicial review that someone has in a lower court. The restraints of precedent that she was under as a district court and circuit court judge will not apply.

Even if I was to solely consider her judicial record, I cannot in good conscience dismiss her cursory treatment of cases dealing with serious and important constitutional questions. Some of her decisions have run contrary to the Constitution, were decided in opinions lacking analysis, and are consistent with liberal political thought.

For example, there was her 2006 private property decision that permitted the government to take property from one developer and give it to another.

And we have heard a lot about her 2008 Ricci decision, recently overturned by the U.S. Supreme Court, which would have effectively allowed employers to engage in reverse discrimination, so long as their claims of their actions were motivated by a desire to avoid conflicts with favored minority groups. A majority of Justices found that Judge Sotomayor misapplied the law.

Then there was her 2009 second amendment decision in Maloney v. Cuomo that would give States the power to ban firearms. The unsigned decision, joined by Judge Sotomayor, held that New York's state statute does not interfere with a fundamental right. The opinion also dismissed the argument that a complete ban violates the Second Amendment by citing Supreme Court cases from the 19th century holding that the Second Amendment applies only to the Federal Government and not to the States. To me, the Maloney ruling is an indication that Judge Sotomayor does not view the Second Amendment as protecting a fundamental right.

This is further supported by a 2004 decision in U.S. v. Sanchez-Villar in which she also joined a decision that flatly denied gun possession as a fundamental right. While that decision predated Heller, the Maloney decision occurred more than six months after the Heller decision, and yet Sotomayor again dismissed the possibility that the second amendment protects a ''fundamental right.'' Once again in the decision, no analysis was given as to why. Her conclusion was that, one, the Second Amendment does not apply to the States and, two, the Second Amendment does not protect a fundamental right.

Had Judge Sotomayor looked to the history of the Fourteenth Amendment, the Civil Rights Act, and the Freedman Bureau's Act, she would have recognized—or at least she should have recognized—that they were enacted to ensure that the constitutional rights of freedmen were protected against State infringement. This is especially true as it relates to the Second Amendment and the practice by States and localities that were outlawing the ownership of firearms by newly freed slaves.

Given this information, coupled with Judge Sotomayor's record, I believe it is reasonable to conclude that she has a bias against firearms and our constitutional right to ''keep and bear arms.'' Should we expect her to rule differently when the Supreme Court takes up the Maloney case or the Ninth or Seventh Circuit cases that deal with the question of whether the Second Amendment applies to the States?

Judge Sotomayor appears to believe that the Second Amendment is not an individual, fundamental right. It is, in fact, a fundamental right granted to all Americans and enshrined in our Constitution. The Second Amendment is the cornerstone of our Bill of Rights. If it is chipped away or infringed upon in any way, our freedom and liberties will be compromised. It is my fear that Judge Sotomayor will threaten Second Amendment rights for all Americans.

This was not the first time her bias and propensity to rule with purpose-driven results impacted her judicial decision making. Unfortunately, Judge Sotomayor's record and testimony provides more uncertainty and doubt than a declaration to her ability to rule with a fair and impartial adherence to the rule of law.

Presidents, Senators, judges, and Supreme Court Justices alike take an oath to preserve, to protect, and to defend the Constitution. It is our most solemn duty. Judges are expected to be tethered to the Constitution and impartially apply the law to the facts. The American people overwhelmingly reject the notion that unelected judges should set policy or allow their social, moral, or political views to influence the outcome of cases. I worry about her prior dismissal of the goal of judicial impartiality as an unattainable ''aspiration.'' And I disagree that embracing her biases is a good thing.

Judge Sotomayor's views on international law are also troubling. While the use or consideration of foreign and international law in judicial decision-making is not new and remains a subject of controversy, Judge Sotomayor appears to embrace using international standards or laws to decide U.S. constitutional questions.

I asked Judge Sotomayor about her thoughts on the use of foreign law. Her answers on this worrisome issue only confirm a contradictory position reflected in many of her public statements and an apparent endorsement of using foreign law as a source of creative ideas.

During the confirmation hearings, Judge Sotomayor was asked if she agreed that ''there is no authority for a Supreme Court justice to utilize foreign law in terms of making decisions based on the Constitution or statutes.'' This was her response:

> Unless the statute requires you or directs you to look at foreign law . . . the answer is no. Foreign law cannot be used as a holding or a precedent or to bind or to influence the outcome of a legal decision interpreting the Constitution or American law that doesn't direct you to that law.

She went on to say:

> I will not use foreign law to interpret the Constitution or American statutes. I will use American law, constitutional law to interpret those laws, except in the situations where American law directs a court.

This seems fairly straightforward. But her answers to written questions are contradictory, saying:

> In limited circumstances, decisions of foreign courts can be a source of ideas informing our understanding of our own constitutional rights.
>
> To the extent that the decisions of foreign courts contain ideas that are helpful to that task, American courts may wish to consider those ideas.

This was not the only time she offered support for utilizing foreign law. On April 28, 2009, Judge Sotomayor gave a speech to the ACLU of Puerto Rico entitled ''How Federal Judges Look to International and Foreign Law Under Article VI of the U.S. Constitution.'' Article VI makes the Constitution and subsequent laws the ''supreme law of the land.'' In her April speech, she gave a broad defense of the practice by some American judges of looking to foreign and international law as a source of ''good ideas'' in deciding questions of American law. She stated that U.S. courts can use foreign law to ''help us understand whether our understanding of our own constitutional rights f[a]ll[s] into the mainstream of human thinking.''

Apparently, the sentiments Judge Sotomayor expressed this past April are not new. In 2007, she wrote a forward to a book on international judges, titled ''The International Judge,''

where she assumed there is value to ''learn[ing] from foreign law and the international community when interpreting our Constitution.''

I believe, and Justices Roberts, Scalia, and Thomas agree, it is illegitimate for judges to look to foreign sources for guidance in interpreting the Constitution and laws ratified and enacted by ''We the People, of the United States.'' Judge Sotomayor has also specifically criticized Justices Scalia and Thomas for their opposition to relying on foreign law to interpret the Constitution. She has even suggested that we will lose our influence globally if we are not open to foreign and international law.

While Judge Sotomayor acknowledges that judges are prohibited from treating foreign statutes or foreign court judgments as binding, she has publicly embraced their use in formulating decisions. Judge Sotomayor attempted to distinguish the ''use'' of foreign law to decide American legal questions from the act of ''considering'' foreign law by ''us[ing] the ideas of foreign courts in some of our decision-making.''

According to Sotomayor, any effort to ''outlaw the use of foreign or international law . . . would be asking American judges to . . . close their minds to good ideas.'' She further stated, ''How can you ask a person to close their ears? Ideas have no boundaries. Ideas are what set our creative juices flowing.''

I agree, good ideas are important. Aren't we fortunate that our Constitution is full of them? And our Constitution will always be the supreme law of our land.

Unfortunately, we have already experienced the negative impact of so-called good ideas from foreign law and how some on the Supreme Court may be using them to erode our constitutionally protected rights. Let's take a look at the controversial 2005 Supreme Court decision of Kelo v. New London.

It appears the global ''good idea'' of ''Sustainable Development'' from a U.N. Earth Summit may have influenced the majority decision to widely expand the definition of the ''Takings Clause'' and eminent domain from its original purpose—''public use'' for bridges, roads, or traditional government uses.

In Kelo, I believe the Court incorrectly ruled against the private property owners, allowing the City of New London, CT, to transfer the private property from long-time homeowners to a private developer for what the city considered a greater ''public purpose,'' instead of public use to increase the city's tax base.

Again, I believe this is a troubling interpretation of the Constitution, and the Kelo decision suggests the danger of allowing international or foreign good ideas to impact interpretation of U.S. constitutional questions.

I further fear that she may be less restrained by the text of the Constitution and more inclined to embrace judicial activism. Throughout her hearing, Judge Sotomayor insisted her judicial philosophy was, ''fidelity to the rule of law,'' and that judges are required to defer to the policy choices made by Congress. Unfortunately, she declined to explain how she would apply that principle in practical terms.

When asked how her commitment to the ''rule of law'' would guide her judgment on whether the Second Amendment protected a fundamental constitutional right against encroachments from States and local governments, Judge Sotomayor declined to answer other than to vaguely commit to look at the Supreme Court's prior decisions. And when asked whether she views the Constitution as a ''living, breathing, evolving document,'' Judge Sotomayor professed that the Constitution ''is immutable'' and ''has not changed except by amendment.''

Yet, once again, her own responses to Senators' questions adopt a strikingly different tone. When asked to distinguish between judicial decisions that apply a broadly-written statute to specific circumstances based on a judge's view of ''common sense'' and a legislative act that endorses and codifies a court's decisions, Judge Sotomayor argued that a court's action—with precisely the same practical effect as the action of the legislature—does not amount to ''making law'' solely because it is a judicial act.

If, as her written answers argue, Judge Sotomayor believes judges cannot make law solely because they are judges, her repeated disavowals of judicial law-making while sitting before TV cameras are essentially meaningless.

In conclusion, when thinking back on the phrasing engraved in marble above the entrance to the U.S. Supreme Court, ''Equal Justice Under Law,'' Judge Sotomayor's record and testimony provide uncertainty and doubt that she will rule with a fair and impartial adherence to the rule of law. Therefore, I respectfully oppose her nomination because she has given no assurances that the Second Amendment is an individual, fundamental right; she has demonstrated a propensity to rule with purpose-driven results; she has indicated a particular interest in considering international standards or laws to decide U.S. constitutional questions; and her televised testimony contradicted much of her public record and professed judicial philosophy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, a decision as to whether to confirm a President's nominee to the Supreme Court is one of the most significant decisions any of us will make during our Senate careers. The precedents that are established by the U.S. Supreme Court do not merely affect the litigants but the entire fabric of American society, often for centuries.

Justices of the Supreme Court enjoy life tenure. They are not accountable to the President who appointed them or to the Senators who voted to confirm them. They are not directly accountable to the American people. Yet it is undeniable today, as it has been since the founding of our Republic, that the Supreme Court is relied upon as the last line of defense against the loss of our liberties.

It is critical that the American people have the highest confidence in the Supreme Court and its objectivity. In a Democratic society, the credibility of any institution relies on the consent of the governed. Those who seek nomination to the Supreme Court must be ever vigilant in their words and in their deeds that they do nothing to undermine that credibility.

Mr. President, after lengthy, lengthy introspection, I rise this evening to inform my colleagues that I am unable to support the nomination of Judge Sotomayor to serve on the Supreme Court. This is a difficult result for me because I like Judge Sotomayor on a personal level. I visited with the judge for nearly an hour when she came through to meet with Senators. She is absolutely an engaging individual, and I left thoroughly impressed with her intellect and certainly with her resolve. She was open to my invitation to visit Alaska, and that invitation still stands.

The nomination of Judge Sotomayor, who would be the first woman of Puerto Rican descent to serve on the Supreme Court, is indeed a historic one. Many were disappointed that President Bush did not nominate a woman to fill Justice Sandra Day O'Connor's seat on the Supreme Court. Justice O'Connor herself underscored the importance of placing women on the bench and in other high governmental positions in an interview with the National Law Journal that was published on May 26, 2009. So I am pleased that President Obama has nominated a woman to succeed Justice Souter.

Judge Sotomayor's education and experience certainly qualify her for the position for which she was nominated—experience as a prosecutor and in the private practice of law, 17 years service on the Federal trial and appellate bench, a gifted and inspiring law professor.

Judge Sotomayor's rise from the South Bronx to Princeton and Yale Law School is truly an American success story. Her excellence in practice as a prosecutor and private practice attorney is also an American success story. Her rise through the ranks of the Federal Court system is an American success story. And here in America, we celebrate success stories such as Judge Sotomayor's.

But as much as I like Judge Sotomayor and am impressed with the obstacles she has clearly overcome, there are aspects of Judge Sotomayor's record that make me uncomfortable. I have heard from about 1,400 Alaskans

who are troubled by what they know of Judge Sotomayor as well, and this discomfort arises from Judge Sotomayor's speeches as well as her decisions in key cases involving the second amendment and property rights.

Alaskans, by their nature, are independent thinkers, and this nomination has rightly engaged their attention. So let's begin with the speeches.

In the National Law Journal interview I referred to a moment ago, Justice O'Connor reasserted her viewpoint that ''a wise old woman and a wise old man, at the end of the day, can reach the same conclusion.'' I agree with that conclusion. But this is a viewpoint that Judge Sotomayor has challenged in one form or another on some eight different occasions.

During the confirmation hearings I was looking for a simple, straightforward statement that Judge Sotomayor had come to appreciate that perhaps her remarks were ill-conceived; that she would not use those words if she were delivering those speeches today. During the confirmation hearings Judge Sotomayor used many words to justify and to explain her statements. She argued vigorously that she was misunderstood. But I am still not clear she understands the impact the plain meaning of her words had upon the American people or the impact they potentially could have on the credibility of the Court.

Many of my constituents in the State of Alaska are not impressed with this talk. Alaskans champion diversity. In the Anchorage school district where my children attended elementary and middle school, more than 90 different languages are spoken. About 20 percent of Alaskans are of Alaska Native ancestry. Yet we reject the notion that coming from a particular background makes you wiser than one who has a different background. Alaskans judge each person as an individual.

Alaskans respect those who respect our lifestyle and our values—hunting and fishing and sustaining one's self from the land, responsible development of our natural resources, and a government that restrains itself from intruding on the lawful choices of American citizens.

About 63 percent of our State is owned by the Federal Government. Alaska is constantly in Federal court defending attacks to our ability to access Alaska's lands and develop our economy, and often these issues end up before the Supreme Court. Many Alaskans were disappointed recently with the outcome of the Exxon Valdez punitive damages case. This may explain why so many Alaskans are so attuned to the objectivity of those nominated to serve on our Supreme Court.

We are initially suspicious of those who are educated at Ivy League schools and spend their entire careers in the Boston-Washington corridor. Alaskans wonder whether those with this background truly understand the slice of the American experience that we live in the 49th State, and with good reason.

I would not expect that Judge Sotomayor would devalue her own experiences. But neither should she have suggested that the experiences of others would lead them to decisions of lesser wisdom. One's diverse background does not and should not diminish the value of another's experiences.

All of this leads me to question whether Judge Sotomayor will consider the pleas of those with experiences different from her own with the objectivity that is demanded of a Supreme Court Justice. My constituents are also troubled by the speech in which Judge Sotomayor expresses her notion that the appellate courts are where policy is made. Judge Sotomayor has subsequently explained that the point she was trying to make is that the courts of appeal establish precedent and the district courts do not. But there is a difference between policy and precedent, and my constituents don't believe Judge Sotomayor would have used the words ''make policy'' to mean ''establish precedent.''

They believe that she really did mean ''make policy.'' Alaskans get nervous when courts make policy decisions. Particularly those policy decisions that infringe upon our constitutional rights, as Alaskans understand them.

And no constitutional issue concerns my constituents in Alaska more than the second amendment. They question whether Judge Sotomayor's experiences enable her to fully understand why people in the West fear the creep of government regulation on their second amendment right to bear arms. Judge Sotomayor has dealt with second amendment issues on two occasions. Neither inspires confidence.

Let me focus on the 2009 Maloney decision. Maloney presented the question whether the second amendment protects citizens from State interference with their right to keep and bear arms. It was heard by a three judge panel in the Second Circuit. Judge Sotomayor served on that panel. Maloney was one of the first cases to construe the second amendment following the Supreme Court's landmark 2008 decision in Heller.

Judge Sotomayor's panel held that the second amendment did not protect citizens from state interference. It reasoned that it was constrained by the U.S. Supreme Court's 1866 decision in Presser v. Illinois.

But as the Supreme Court explained in Heller, the Presser case said nothing about the second amendment's meaning or scope, beyond the fact that it does not prevent the prohibition of private paramilitary organizations.

Maloney had nothing to do with private paramilitary organizations. The sole question in Maloney was whether the State of New York could ban the possession of a particular kind of weapon.

A three judge panel in the Ninth Circuit, a circuit which is often regarded as one of the more ''liberal'' circuits, reached quite the opposite conclusion from Judge Sotomayor's panel. The case was Nordyke v. King.

It concluded that Heller left little doubt that the second amendment is a fundamental right. Accordingly the second amendment is incorporated into the 14th amendment and applies with equal vigor to the States. To the Ninth Circuit panel this was not a question of ideology or judicial activism. It was the undeniable outcome of Heller's reasoning.

But if Judge Sotomayor and her colleagues really believed that courts of appeals must await additional guidance from the Supreme Court before determining whether the second amendment constrains State action they could have stopped there. Instead, the Sotomayor panel went on to conclude that the rights secured under the second amendment are not fundamental rights. It was not necessary to reach any conclusion on this issue because the panel had already decided that the second amendment doesn't apply to the States. So why did Judge Sotomayor's panel go out of its way to make this point?

I am also disappointed that Judge Sotomayor did not write a separate opinion in Maloney. On a question as significant as whether the second amendment is a fundamental right, I would have expected that Judge Sotomayor would have written a thoughtful and scholarly opinion. Instead she signed on to an analysis of the second amendment that is widely regarded as superficial.

Unfortunately, this is not the first time that Judge Sotomayor failed to write a substantial opinion on a significant constitutional issue. Some of my colleagues have discussed their concerns with Judge Sotomayor's handling of the New Haven firefighters' case.

I would like to take a moment to discuss the Didden case which involves property rights and constitutional limits on the scope of eminent domain.

The reasoning of Didden is particularly perplexing. The panel on which Judge Sotomayor sat concluded that Didden's constitutional challenge to the taking of his property was time barred. If a suit is time barred there is no reason for judges to reach the merits of the case.

Yet for reasons I cannot fathom, Judge Sotomayor's panel went on to do just that. They performed a superficial analysis of whether the taking of a piece of private property by a municipality for a drugstore is a constitutionally permissible public purpose. The Supreme Court invited lower courts to scrutinize a claim of public purpose to determine whether it is pretextual. Judge Sotomayor's panel never analyzed this question.

They simply concluded that Didden's constitutional rights were not violated. This analysis was dicta. Not necessary to the outcome of the case. But it is a most troubling piece of dicta because it

undermines the constitutional protection for private property. It could be used to limit the rights of litigants in other cases.

My professional training is no different than that of the other lawyers in this body. In law school you spend 3 years reading appellate decisions day in and day out. Hundreds of appellate decisions—over a 3-year period. We are taught that the measure of a judge is in the quality of her analysis.

The strength of a judge's reasoning is as important, if not more important, than who wins and who loses. It is important because that reasoning is part and parcel of the precedent that is used in deciding future cases.

In three separate cases of significant constitutional import, Judge Sotomayor's panel failed to provide the rigorous analysis we commonly expect of future Supreme Court Justices. That troubles me deeply.

I appreciate that the decision of who to nominate to the Supreme Court belongs to the President. However, if advice and consent is to be meaningful the Senate cannot be a mere rubberstamp on the President's decision.

My decision to oppose Judge Sotomayor's nomination is not based upon partisanship, ideology or the recommendations of any outside interest group. It is the product of reservations I have about the positions that Judge Sotomayor has taken in speeches on multiple occasions over a period of years. It is based on the brief and superficial treatment she has given to important constitutional questions. Equally troubling is the fact that about 1,400 Alaskans have arrived at the same conclusion.

This is not the conclusion I would have preferred to announce but it is one that is compelled by Judge Sotomayor's record.

I yield the floor.

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

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

Mr. SESSIONS. Mr. President, we had a number of Members discuss the second amendment issue that was dealt with by Judge Sotomayor in two different cases. It is an important question and I think her nomination raises very serious concerns about it. I would like to try as fairly as I can to analyze the circumstances in her dealing with these issues and why I think it is a problem that Senators rightly have objections to.

The second amendment is in the Constitution. It is the second of the first 10 amendments. It is part of the Bill of Rights. If you remember, the people were not so happy with the Constitution. They wanted to have a guarantee of individual rights that they as American citizens would possess no matter what the Federal Government or anyone else wanted to do about it. So they passed the right not to establish a religion, free speech, free press, the right to jury trial and other matters of that kind in the first 10 amendments, as adopted.

The second amendment was one of those, of course. It says:

> A well regulated militia being essential to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

The right of the people to keep and bear arms shall not be infringed.

Over the years, laws have been passed that caused difficulties and that began to overreach with respect to the second amendment right. The American people have gotten their back up, as the Senator from Alaska told us, Senator MURKOWSKI. People in Alaska, people in Alabama, people all over America are concerned about this. It is a constitutional right. It has been there since the founding of the Republic.

I think most scholars have believed for some time that it is, in fact, an individual right, that the first clause regarding the well-regulated militia did not undermine the final declaratory clause which said:

> The right of the people to keep and bear arms shall not be infringed.

But no Supreme Court case had ruled on that squarely until last year when the Supreme Court took up the Heller case, which was in the Federal city we are in today, DC. The Supreme Court in the Heller case said it was an individual right and it prohibited the city of Washington, DC, from effectively barring any citizen in the District from having a gun.

It was an exceedingly broad ban on guns. But I would note something that ought to be remembered: It was a 5-to-4 decision—four members of the Supreme Court did not agree. Some people do not agree.

One of our Democratic colleagues yesterday said of the result in Heller, that it was ''a newly minted and narrowly enacted constitutional right.''

That is cause for concern. The Constitution, I don't think, is newly minted. I don't think the Court created a right. I think the Court simply declared a right that was plainly in the Constitution. So this is part of our concern.

I would suggest that it is a fragile right, however, based on the way some of the courts have been ruling and based on how Judge Sotomayor ruled.

Somebody had raised the point several times that it is somehow not right that the National Rifle Association here, at the end, after the hearings, declared that they think that Judge Sotomayor should not be confirmed. Certainly they were reluctant to be engaged in this debate. But for the reasons I would note—and Senator MURKOWSKI and others have noted—I don't think they had much choice, because it is a critical thing we are dealing with here, the next appointment to the U.S. Supreme Court.

In a year after the Heller case was decided that the right to keep and bear arms is a personal or individual right and it cannot be abridged by the Federal Government, the case came before her as to whether the second amendment applied to States and cities.

What if other cities were to declare that you couldn't have a gun in the city, or a State were to declare you couldn't have a firearm, or if a State were to place massive restrictions on the use of personal weapons? She took that case, the first major case after Heller to deal with this issue. Anyone who is familiar with the appellate courts in America, as this judge would be, would know this was a big, big, big case, a case of great importance coming on the heels of the widely discussed Heller decision. In it, she rendered an exceedingly short opinion. In it, she found it was ''settled law'' that the second amendment does not apply to individual Americans in States or cities. The city or State could completely bar them from having any kind of gun.

In the Heller case, to be fair with her, this is what the circumstances were. There was an old 1800s case that basically held this way. It basically held that the second amendment did not apply to the States. I think the judge could rightly conclude that she may have been bound by that case. However, in the Supreme Court decision, they put a footnote in it and said: we are not deciding the question of whether the second amendment applies to the States because we are deciding a case in the District of Columbia, and the law in the District of Columbia is not city law. The law in the District of Columbia is U.S. Government law. They put a footnote and indicated that the incorporation doctrine was out there, but that they would review that in the future.

My first point is this: I don't believe it would be appropriate to say it is settled law that the second amendment does not apply to the States after the Heller case. That troubled me that she said that.

Judge Sotomayor made a decision in the Maloney case, the first major case after Heller. It was only eight paragraphs in a case that everyone knew was of great importance. And only one paragraph dealt with the question of whether the second amendment would apply to the States. Those who have supported Judge Sotomayor have correctly noted that the seventh circuit heard the same kind of case some months later and they agreed with the Maloney case and Judge Sotomayor. They spent, however, a number of pages on it. They spent 2½ pages on the question of whether it was incorporated against the States. But they concluded that even with the footnote in the Heller case, they concluded that the more clear authority was still this old case that is out there in the 1800s.

They did not say, however, that it was settled law.

The ninth circuit took up the very same case just a few months after Judge Sotomayor's Maloney decision. In a 19-page opinion that discussed in great depth the important constitutional issues, the panel said, when you read the Heller decision, when you consider the footnote of the Supreme Court's opinion where they said they didn't explicitly decide whether it applied to the States, they found differently. They found the second amendment does apply to the States and cities, and the States and cities must comply with it, and they can't ban all guns. They found not only that it was not settled law. To the contrary, they found that the footnote in the Supreme Court opinion ''explicitly left open this question.'' And because they found the question was left open by the Supreme Court, they felt they were authorized to consider the constitutional laws and questions that are important and render a decision that they thought was the right constitutional decision. That is why they went forward in that fashion.

At the hearing, the judge was asked a number of questions about this. I didn't find those questions answered very persuasive, frankly. In some instances, I found them confusing. There was no retreat that I heard from this untenable position. In answering questions from Senator HATCH, the judge said that:

> The Supreme Court didn't consider [the second amendment] fundamental [in the Heller case] so as to be incorporated against the state. . . . Well, it not only didn't decide it, but I understood Justice Scalia to be recognizing that the [C]ourt's precedent held that it was not fundamental.

In the course of her decision she also found a critical question, that the second amendment is not a fundamental question. The judge was just wrong on that in a big, big case. It is the kind of thing you shouldn't make a mistake on. In the majority's footnote on this issue, the Court expressly reserved the question of whether the second amendment applies to the States. The footnote said this:

> With respect to Cruikshank's
>
> one of the old cases
>
> —continuing validity on incorporation, a question not presented in this case . . .

So they explicitly said that they didn't were addressing this issue. But it is pretty clear that the doctrine that allows the Bill of Rights, the first 10 amendments, to apply to the States. That doctrine has developed dramatically in the 20th century, over the last 100 years. Virtually every one of the 10 amendments has been incorporated against the States. But the Second Amendment has not yet been applied to the States. To me, that is an odd thing in light of the doctrine of the incorporating of the first 10 amendments as protections for individual Americans against both the Federal Government and State and local governments. That doctrine has developed great strength and power over the last 100 years. Few people would want to go back. I think most people would be awfully surprised to learn that the second amendment would not be one of those applied to the States. It certainly, in my opinion, is not settled law.

This case was dealt with in a most cursory manner. It dealt with a matter of huge national importance. It is the kind of case that legal scholars watch closely. It was an exceedingly short opinion, a few paragraphs. It showed little respect for the seriousness of the issue. It didn't discuss it in any depth. It incorrectly stated it was settled law that the second amendment would not apply to the States. These are the problems we have with it.

Judge Sotomayor now seeks to be on the Supreme Court. And with regard to the 5-to-4 decision in Heller and to the question of whether she should recuse herself, as asked by Senator KYL, she indicated that if her case came up, she would recuse herself. It could come before the Supreme Court. It is that important. But if one of the other cases raising exactly the same issue came up, she refused to say she would recuse herself. Of course, if her case comes up, it is a matter of ethics that she would have to recuse herself. I thought that since having already clearly decided precisely the same issue the Supreme Court would have to deal with, she ought to have indicated to us that since she expressed her opinion on it, she wouldn't sit on the case. But that did not happen.

I will share likewise another concern we have about the firefighters case and how that was handled in such a short manner. The firefighters contended that they had studied hard. They had passed a promotion exam. They were on the road to being promoted. The city, because of political complaints about the fact that certain groups did not pass the test in a way that raised concerns, decided they would give up and not have the test and wipe out the test and not follow through with the test. The firefighters felt they had done everything possible, and they challenged that. Indeed, later the Supreme Court held that no evidence was ever presented that the test was not a fair and good test. Indeed, they had taken great care to get good people to help write the test in a way that would be neutral and fair to all groups of people and would not have any kind of unfair advantage.

When that case came before the judge, I was very disappointed that she and her panel treated it as a summary order. A summary order is reserved for cases that present no real legal question. Summary orders are not even circulated among the other judges in the circuit. Here, it was a summary order that did not even adopt the opinion of the lower courts that had ruled in this fashion. It just summarily dismissed the firefighters' claim and rendered judgment in favor of the city which had altered the plan for promotion. It was basically done because of their race.

The equal protection clause of the Constitution says that all American citizens are entitled to equal protection of the laws, regardless of race. That is what their complaint was, one of the complaints. I would note that this was not even an opinion. It was basically a line or two summarily dismissing this.

Then one of the other judges on the court apparently found out this opinion had been rendered in a case that struck him, apparently, as a matter of real importance, a case that ought not to be disposed of by a summary order, that the firefighters were at least entitled to an opinion. And by the way, they never got a trial. Basically it was dismissed prior to trial on motions. So after great debate within the circuit, a little bit of a dust-up within the circuit, by a 7-to-6 margin, Judge Sotomayor casting the decisive seventh vote, they decided not to rehear the case and any precedent that may exist in the circuit. But at that point, I guess as part of the process of confrontation that arose there, the panel issued an opinion that adopted the lower court opinion, a procuring opinion. They didn't write their own opinion but basically adopted the lower court's opinion.

It was from that decision, as a result of by chance another judge heard about it, not through the normal processes but, according to Stuart Taylor's article, from seeing it on television, that the case got some attention. And the Supreme Court agreed to hear it and reversed the case and rendered a judgment in favor of the firefighters. I think that was not responsible. That was a huge case of major constitutional import. It should have been written in detail. Any person, any judge should have done that, particularly one who would be considered for the Supreme Court.

So I will say those two opinions to me are troubling in that I think they were wrong, No. 1. And No. 2, they were exceedingly short, too short, when you consider the seriousness of those issues.

I yield the floor.

Mr. ENZI. Mr. President, I rise today to discuss the nomination of Judge Sonia Sotomayor to serve as an Associate Justice of the U.S. Supreme Court. Judge Sotomayor has a long career as a jurist with many cases for Senators to review and determine how she may address cases brought before the Supreme Court. Judge Sotomayor is clearly an accomplished attorney and intelligent person who overcame many obstacles and came from a humble beginning to rise to this nomination. However, in that long record I have found a tendency to at times place more emphasis on personal experience than the most fundamental parts of our Constitution.

I must oppose Judge Sotomayor's nomination.

I am concerned about Judge Sotomayor's past rulings and statements during the Senate Judiciary Committee hearings about the second amendment as a fundamental right. The Supreme Court's ruling in 2008 in the Heller case confirmed that the second amendment's right to keep and bear arms includes the right of American citizens to have weapons for personal self-defense. The Supreme Court has not yet reviewed an incorporation case involving the second amendment, but its second amendment opinion last year noted that a due process analysis is now required. Earlier this year, when Judge Sotomayor and the Second Circuit Court of Appeals ruled on Maloney v. Cuomo determining that the second amendment is not a fundamental right, they relied on rulings from the 1800s rather than following the 2008 Supreme Court ruling.

The second amendment of our Constitution guarantees the fundamental right of an individual to keep and bear arms. This is clear to me and a clear legal precedent set by the Supreme Court.

As a father and grandfather, who strongly believes in the rights of the unborn, I am also troubled by Judge Sotomayor's past affiliation and leadership of an organization, the Puerto Rican Defense and Education Fund, which has taken positions on abortion that I find unsettling. Judge Sotomayor's case record does not include direct rulings on abortion issues, so we must look at her history with this organization. The fund, while Judge Sotomayor served in a leadership capacity, filed briefs with the Supreme Court not only supporting abortion rights but in support of Federal funds for abortion services. I could not disagree more with these positions, and I cannot help but wonder how Judge Sotomayor would use her experiences with the fund to rule on a possible case before the Supreme Court. Unfortunately, she would not provide a satisfactory answer or position when my colleague from Oklahoma, Senator COBURN, asked her direct questions during the Judiciary Committee process.

The issue of international law is another area of concern. Judge Sotomayor has stated that ideas have no boundaries, but we must remember that nations do have boundaries as well as laws that govern actions within those boundaries. The U.S. Constitution is the highest law of our land and the basis of our Nation's sovereignty. It may be good and well for academics to discuss international laws, or even domestic laws of other countries, as they compare to the United States, but when making a ruling, a member of the U.S. judicial branch must rely on the laws of this Nation.

Finally, I would like to address the issue of judicial impartiality. Judge Sotomayor's statements about her ability to judge cases better than others based on her background are certainly troublesome. These statements have been vetted in the Judiciary Committee and certainly through the media. The statements warrant further discussion, however. As public figures, I, and the rest of my colleagues, may be faced with situations where a comment can be taken out of context. A comment that is repeatedly used in prepared remarks, however, should be interpreted as showing the true thoughts and beliefs of the speaker.

I believe the United States is a great nation because of the foundation of our government, one element of which is an independent judicial branch where we believe that justice is blind. This is a critical element of our system and a part of the judicial oath. I can agree that our personal backgrounds lead us to look at situations differently, but I cannot agree that judges should allow their backgrounds to determine a case. Judicial decisions must be based on facts. When the facts or the Constitution comes into conflict with Judge Sotomayor's feelings and past experiences, I am not confident which side she will ultimately take.

I voted against Judge Sotomayor's nomination in 1998 to the Second Circuit Court of Appeals. At that time, I shared the concern of many of my colleagues about Judge Sotomayor's positions and her view of the role of the Judiciary. While I hold Judge Sotomayor in the highest respect, I believe my concerns then are borne out by her record now. I have no reason to believe anything will change in the future.

I understand that Judge Sotomayor has support from many of my colleagues, and I hope they will listen to the concerns I and others are raising. I hope they will take the time to fully consider the impact of Judge Sotomayor's positions on future decisions of the Supreme Court as the Court's decisions will affect our entire Nation.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I rise tonight, as so many have, in the last several days, especially to speak about the nomination of Judge Sonia Sotomayor to be on the U.S. Supreme Court.

As we all know, she is a distinguished Federal jurist who has been nominated to serve as an Associate Justice on the U.S. Supreme Court—a critically important decision that the Senate is charged with making to advise and consent on such nominations.

Sonia Sotomayor's life story is an authentically American story. It is a story with which so many people in this capital and across the country can identify. It is a story of hard work and sacrifice. It is a story of struggle and triumph, overcoming barriers in her life that, candidly, many in this Chamber have not had to overcome.

It is a story, like so many authentically and compelling American stories, that starts with her family and, in particular, her parents, not people of tremendous means or wealth. Her mother was a nurse, her dad was a factory worker, and she, unfortunately, lost him at a very young age. I think she was just 9 years old when her father died—a very difficult circumstance for anyone to overcome, especially a young girl.

When we look at her record as a student, it is also a great American story of academic excellence, and I believe that is an understatement. Her record as a student through high school and then going on to Princeton and graduating with honors and going to Yale Law School and serving on the Law Review and being such a leader and a student in both college and law school—not only being a leader but also achieving academic excellence—is a record we would hope every member of the U.S. Supreme Court could bring to their nomination debate.

I was reflecting the last couple of days about my remarks tonight, and I remembered that when our President, President Obama, was campaigning, I had the chance to introduce him a number of times. One of the times I introduced him, I was trying to convey the reality of what he had overcome, and it is very difficult to put that in a few words. But I said at the time, in one particular place in northeastern Pennsylvania, that then-Senator Obama did not have a path cleared for him, that he had to overcome barriers and obstacles in his life growing up, as a public official, and all the way to the Presidency.

The same can be said of Judge Sotomayor. She had not, in her life—and has not to this day—ever had a path cleared for her. She has had to work and struggle and achieve to get where she is today, to the point of being on the verge of being confirmed to serve on the Supreme Court.

So I think it is very important to point out her life story, her remarkable life story, her achievements, but also to speak, as we must, and as we should, of her judicial expedience.

We hear all kinds of comparisons, when someone is nominated to the Supreme Court, about how many years they have served as a judge, how many years they have served as a lawyer or as an advocate or as a public official—whatever their background is. But it just so happens this particular nominee, Judge Sotomayor, has more judicial experience, I am told, than anyone currently sitting on the U.S. Supreme Court—all distinguished in their own way. But if you add up the years, I guess it is 17—first on the district court, the trial court in New York, for the Southern District of New York—nominated and confirmed by the Senate—and the same when she was confirmed and served as a judge on the U.S. Court of Appeals for the Second Circuit at the appellate level. In both of those appointments, she gained enormous experience on the very matters that will come before the U.S. Supreme Court.

First, she was on the district court where you have litigants coming before

you, for example, in a trial or in a hearing—sometimes a criminal matter that involves someone's liberty, involves law enforcement issues, and all the complexities of our human condition in the context of a criminal case. Also coming before that court are very complex civil matters, and I know the record is replete with references to her rulings in various cases involving civil, criminal, and other matters.

Then she went to the appeals court, working in a different court, with a different set of issues and, candidly, a different procedure, where someone is appealing to the Federal appeals court, in this case, in the U.S. Court of Appeals for the Second Circuit—all the complexities that involves, where you are not taking testimony as you do in a trial, not making determinations of fact, you are deciding the law, what the law should be, how to apply the law to the facts in the record, which is already established.

Both are very different judicial responsibilities, but both are very important to serve on the ultimate appellate court, the top court in the land, that being the Supreme Court.

So she has had broad and unprecedented experience as a Federal judge for 17 years. That is very important in this debate.

She also served as a prosecutor dealing with all of the complexities and all of the difficulties that any prosecutor encounters, dealing with victims and the impact of a crime on a victim and his or her family, dealing with the impact of crime on a community and in a jurisdiction, dealing with judges and witnesses and law enforcement with whom often you work so closely—the prosecutor—to develop your case, to marshal the evidence that a prosecutor has to put before a judge and jury.

That experience is particularly relevant because a number of the cases the Supreme Court will hear—and they do not hear every case; they take a number of cases per year—some of those cases will involve the rights of one party versus the other, will involve the rights of a criminal defendant versus the State. There are very complex matters that a Supreme Court Justice has to decide.

So whether you look at her experience as a prosecutor, as a Federal district court judge, a trial judge, or her experience on the appellate court—hearing appeals at the Federal level—all are very relevant to and I think prepare her well for her service on the U.S. Supreme Court.

Two more sets of experiences—one as a lawyer. I think it helps when you have been an advocate, a lawyer, to have that as part of your experience serving on the Supreme Court, where you have had to take on a battle for a client, to be their advocate, sometimes in very complicated matters, sometimes matters that will affect their lives in ways that will alter the course their life is taking when they have a matter before a court.

Finally, her life experience. I would hope we nominate people to the Supreme Court who have a broad life experience, who have not just been in one area of a profession, but also have had challenges in their lives they have had to overcome because the people who come before the Supreme Court may be a little bit distant, but often arrive there after months or years or longer of struggle.

I think Judge Sotomayor has a life story that indicates she not only understands struggle and understands how difficult life can be, but also has an appreciation for the complexities of life as well. She has been described, as a judge and as a prosecutor, as both tough and fair—tough and fair. That is a good description that you would want, when you are evaluating the role and the record of a Supreme Court Justice—someone who asks difficult questions and probing questions as a member of the Court, but also someone who is fair, who does not seek to gain an advantage over a lawyer in the course of an argument but is both tough and fair.

I believe integrity is a central consideration that Senators should weigh when we are deciding who serves on the Supreme Court after a President nominates. We want someone with broad life experiences. We want someone with experience in the law and often as a judge. But we also want someone who has character.

I got a sense of that when I met with her. I also got a better sense by reading the long list, which I will not read tonight, of all the organizations that have endorsed her. They did not just endorse a set of cases. They did not just endorse a resume. They endorse and give their support to a human being, a person who has had tremendous experience. And part of that, of course, is integrity.

I think we saw both her integrity and her temperament, which is another very serious consideration. But we saw both of them tested in the course of her hearings, where she was asked a lot of tough questions by members of the Senate Judiciary Committee on both sides of the aisle, Democratic Senators and Republican Senators—hour after hour after hour, day after day, under very difficult circumstances, on live television, with all of the pressure that every word, every response is weighed and scrutinized and criticized often and examined. I think both her integrity and her temperament were on display, and, in my judgement, she passed both of those tests in considerations we have to weigh, that she passed them so easily and so effectively.

I would make two more points. Inscribed over the building that houses the courtroom where the U.S. Supreme Court meets—that historic room where so many great cases have been decided—inscribed over the building, above it, is the phrase we all know well: ''Equal Justice Under Law.'' ''Equal Justice Under Law.'' That is what we expect certainly of every judge, even lawyers, but especially someone who becomes a U.S. Supreme Court Justice; that they would have that philosophy in every case, but also the reality that precept entails, that they would approach every case, every litigant, every party with the same approach, dispensing equal justice under the law—not equal justice under my law or equal justice under a philosophy of, in this case, Judge Sotomayor as a Supreme Court Justice, not her definition of what the law is, but what the law is, in fact, that she is required to apply.

That equal justice under law is not just something inscribed above that building. I believe, based upon her record, based upon her experience, and based upon her character, she believes that and will be governed by that as a member of the U.S. Supreme Court.

I conclude with this thought. When President Lincoln was speaking at Gettysburg, PA—a place we all learned about as children and learned about the Gettysburg Address and the meaning of it and the enduring value of that speech—in one of the lines Lincoln used in that speech, he was talking about the Nation being tested at a time of war, and, unfortunately, at that time, a time of civil war, the worst of all wars. He was posing the question about this Nation that had been conceived not too long before he gave that speech. He said that one of the questions he posed was whether a nation so conceived can ''long endure,'' whether our Nation could long endure, that we were being tested at a time of war.

I believe our Nation has been tested at other times as well, not only in something as grave as a war, but we are tested in other ways as well. We were tested in the Great Depression, whether we could endure the misery and the difficulty, the joblessness of that, and all of the problems the Depression brought to America. We have been tested in other wars. We were tested in the battle for civil rights. We have been tested as a nation very often—maybe not every day, maybe not every week, but at some period of time in our lifetimes, we can see how our Nation was tested. In some ways, we are tested when debates occur in the Senate. We are tested in terms of appointments that a President makes.

In this case, President Obama has nominated someone to the U.S. Supreme Court who I believe will allow us to be able to say that as long as we are nominating people with the experience, the character, and the integrity of Judge Sonia Sotomayor, this Nation will long endure. I have no doubt about that. I say that with as much confidence as anyone could because her record demonstrates that. Her experience demonstrates that if we have people such as Judge Sotomayor in the U.S. Supreme Court, this Nation will not only long endure, it will indeed thrive under that kind of judicial excellence and that kind of experience she will bring to the bench. So I have

no hesitation at all in saying that I will vote for her confirmation to be an Associate Justice of the Supreme Court. We can be proud of her record and her experience but also her remarkable and authentically American story.

Before I conclude my remarks, I ask unanimous consent to have printed in the RECORD a letter of endorsement for Judge Sotomayor that the Judiciary Committee received on July 15 from the National Hispanic Christian Leadership Conference, serving approximately 16 million Hispanic American born-again Christians and 25,434 member churches across the country.

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

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

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS:

America's largest Hispanic Christian Organization, The National Hispanic Christian Leadership Conference (NHCLC), serving approximately 16 million Hispanic American Born Again Believers via 25,434 member churches, hereby endorses Judge Sonia Sotomayor's nomination to the Supreme Court.

We commend President Obama's selection of Sotomayor as a brilliant exercise in pragmatism and moderation. First, as Hispanic Americans, we celebrate her nomination. Her journey is our collective journey. Sotomayor stands as a model to all our Hispanic young people throughout America that faith, family and education can overcome the most difficult of environments and economic circumstances.

More importantly, as Americans concerned with judicial activism and defacto legislation from many sectors of our judiciary, Sotomayor reflects, via her career on the bench, the type of tempered restraint and moderation necessary for appropriate application of the rule of law. Without a doubt, Judge Sotomayor serves with a moderate voice without displays of bias towards any party based on affiliation, background, sex, color or religion. Judge Sotomayor's over 700 decisions stand as testimony of a commitment and respect for the rule of law, particularly the importance of stare decisis.

As an organization serving America's largest minority group and the fastest growing religious demographic, we seek to reconcile both the vertical and horizontal planes of the Christian message. As we serve both matters of the soul and community, religious liberties stand as an issue of utmost concern for our constituents. Judge Sotomayor's rulings affirm Constitutional safeguards for those liberties.

In conclusion, even moderate and conservative evangelicals within our ranks find no reason to conclude that the nomination and confirmation of Judge Sonia Sotomayor would diminish the collective application of Constitutional rights and freedoms to a religious community committed to Life, Liberty and the Pursuit of Happiness. For that matter, we encourage the support of this nominee from both sides of the political aisle.

JESSE MIRANDA,
CEO, NHCLC, President of Miranda Center for Hispanic Leadership.

Mr. CASEY. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Mr. President, before I discuss the nomination of Judge Sotomayor, I wish to take a moment to thank all of my colleagues here in the Senate for their very warm welcome and hospitality. I joined this body a little less than a month ago, but I have been humbled by this institution, by the work that goes on here, and, most importantly, by my colleagues. It is an honor to represent the people of Minnesota, and it is a special privilege to do so here in the Senate.

One of my first responsibilities on joining the Senate was to participate in the nomination hearings for Judge Sotomayor. I said at the start of the hearings that I wanted to be a voice for the overwhelming majority of Americans who aren't lawyers. The actions of the Supreme Court directly affect the everyday lives of all Americans. Whom we choose to place on the Supreme Court affects every one of us. That is what I want to do this evening. I want to put the nomination of Judge Sotomayor in context. I want to put it in the context of what the Supreme Court has done these past 5 years and how that has affected the lives of Minnesotans and of all Americans.

Our country is going through some tough times. We are experiencing the highest unemployment in decades. Businesses are failing. Investors are seeing their investments shrink, even disappear. Yet, despite all of this, despite our faltering economy, in the past 5 years this Supreme Court has restricted the rights of Americans as employees, as small business owners, and as investors, and they have done this by overturning longstanding precedents.

Let me put this in the context of Minnesota. Ten years ago, Minnesota had an unemployment rate of 2.8 percent. Let me repeat that. Ten years ago, Minnesota had an unemployment rate of 2.8 percent. Today, it is 8.4 percent. In certain counties, it hovers between 13 and 14 percent. At the same time, Minnesota has an older workforce. The Twin Cities are fourth in the Nation in the percentage of seniors working past the age of 65. When businesses are making tough personnel decisions, you can bet they are taking a good hard look at older workers who have higher pension and health care costs.

But just last month, the Supreme Court eviscerated the one law designed to prevent discrimination against older workers: the Age Discrimination in Employment Act, or ADEA, as it is called. Because of this case, the Gross case, it is not enough for a worker suing for age discrimination to show he or she was fired improperly because of their age. Under this new standard, an older worker must now show that age was the single determinative reason for the firing. This is a difficult, if not practically impossible, standard to meet. This also breaks with the longstanding rule that the ADEA must be interpreted the same as title VII of the Civil Rights Act which protects women and minorities against discrimination in the workplace. Because of the Gross case, Minnesota's older workers have fewer rights in the workplace precisely when they need them the most.

This was the same Court that 2 years ago barred a title VII suit by Lilly Ledbetter, a woman who was paid less than her male colleagues for the same work for two decades. Minnesota women are paid 74 cents for every dollar earned by men. Until Congress fixed this ruling last year through the Lilly Ledbetter Fair Pay Act, this was yet another ruling that limited Minnesotans' rights in the workplace.

This Supreme Court has put Minnesota's small business owners in a similar position. Like entrepreneurs around the country, Minnesota business owners are struggling. Business bankruptcies in our State increased 40 percent between 2006 and 2008, and it will likely be worse in 2009. If there were ever a time small business owners in Minnesota needed a leg up, it is right now. But 2 years ago, this Supreme Court overturned one of the strongest protections small business owners have under the Sherman Act, our main antitrust law. For over 100 years, it has been illegal for manufacturers to price-fix—to force retailers to sell their goods at a certain price. Today, thanks to this Court's ruling in the Leegin case, price fixing is now permitted. In fact, the burden is now on consumers and small business owners to show, through a complex economic analysis, that the price fixing hurts them.

This Court has been no kinder to investors. Like almost all American investors, Minnesota investors are reeling from the trillions of dollars in losses in the stock market. These losses were partly caused by structural deficiencies in our finance system, but they were also caused by speculation and by fraud, by people such as Bernie Madoff and Tom Petters, a Minnesota financier who is in prison right now charged with a $3.5 billion scheme that bilked stockholders in a number of Minnesota companies. Yet, last year, the Supreme Court handed down a decision that severely limited investors' ability to defend themselves against securities fraud. In the Stoneridge case, the Supreme Court said that an investor cannot sue an outside accountant or a lawyer who worked with a company to fraudulently alter its financial records to deliberately cook its books unless that third party somehow, for some reason, publicly announced its involvement.

Together, the Age Discrimination in Employment Act, title VII of the Civil Rights Act, the Sherman Act, and the Securities Exchange Act are some of the strongest protections employees, small business owners, and investors

have under American law. These laws help to level the playing field for the less powerful in our society. Yet, in each of these cases, for each of these laws, this Supreme Court has ignored longstanding precedent and original congressional intent to limit the rights these laws afford precisely when they are needed the most.

The Supreme Court's willingness to ignore longstanding precedent to restrict individual rights is not limited to our economy. This same Supreme Court recently overturned a 30-year rule that requires that a woman's health be taken into account in any law regulating her right to choose.

The Court is also poised to overturn critical protections to voters. This Supreme Court has questioned the constitutionality of section 5 of the Voting Rights Act, even though the 15th amendment expressly grants Congress the power to regulate elections and even though Congress recently voted to reauthorize those provisions for the fourth time by a vote of 98 to 0. Talk about judicial activism. This is judicial activism. This is the Supreme Court questioning the constitutionality of a law passed by Congress under an explicit and exclusive grant of power granted in the Constitution of the United States.

If she is confirmed, the first case Justice Sotomayor will hear will reconsider the constitutionality of sections of McCain-Feingold that the Supreme Court upheld just 6 years ago. The underlying principle in question goes back over 100 years to the Tillman Act of 1907. For 100 years, Congress has said with increasing force that corporations should not be spending money on Federal election campaigns. Yet this Court is poised to contravene that 100-year-old rule and its own ruling on the identical provision just 6 years ago. Again, I think this is judicial activism. In fact, I think it is judicial activism in one direction: away from longstanding protections for the individual and toward a more friendly law for the powerful.

As I said last week, I firmly believe that in this context, with this Supreme Court, a vote for Judge Sotomayor is a vote against judicial activism. In a careful review of her opinions as an appellate judge, the nonpartisan Congressional Research Service recently concluded that:

> [p]erhaps the most consistent characteristic of Judge Sotomayor's approach as an appellate judge has been an adherence to the doctrine of stare decisis—

The upholding of past judicial precedents. Of the 230 majority opinions Judge Sotomayor wrote as an appellate judge, the Supreme Court has reversed only 3. That is 3 reversals out of 230 majority opinions.

But the best examples of Judge Sotomayor's inherent judicial restraint are the two cases for which she has ironically received the most criticism—the Ricci case and Maloney v. Cuomo, the Second Circuit's most recent second amendment case. In both of these cases, Judge Sotomayor simply followed the Supreme Court's own maxim that it is the Court's—the Supreme Court's—prerogative alone to overrule one of its precedents. When a three-judge panel in Ricci affirmed the district court's decision, it was simply following existing title VII law. When the three-judge panel in the Maloney case said that the second amendment does not apply to the States, it was simply following a 120-year-old Supreme Court precedent that said exactly that. Moreover, a three-judge panel on the Seventh Circuit that included two of the most prominent negligent conservative judges in the country, Frank Easterbrook and Richard Posner, reached the same exact conclusion unanimously.

Judge Sonia Sotomayor is a judge who follows and respects precedent. She is a judge who does not make new law.

In fact, it seems that Judge Sotomayor's worst sin in this whole process is her straightforward observation that our life experiences shape who we are and what we do. This is not a new idea. Mr. President, 175 years ago, on the first page and at the most famous treatise in American law, Oliver Wendell Holmes wrote:

> The life of the law has not been logic; it has been experience.

This isn't just an old idea either. Justices Alito, Scalia, and Thomas each acknowledged in their own confirmation hearings that their own life experiences—being born into an immigrant family, an exposure to discrimination, a childhood in poverty—shaped their own approach to judging.

But Judge Sotomayor went beyond Justices Alito, Scalia, and Thomas by also recognizing that judges must be aware of these prejudices, and they must not allow these prejudices to impact their approach to a case.

Since this is a body that values its history, I thought it would be appropriate to close by mentioning the last nominee to the Supreme Court with a comparable amount of experience to Judge Sotomayor. That person is Benjamin Cardozo.

Judge Cardozo was nominated to the Supreme Court in 1932, after spending 18 years on his State's highest court. Like Judge Sotomayor, Judge Cardozo was from New York. Like Judge Sotomayor, he had a tough childhood, losing a parent when he was 9 years old. He had a tough childhood like her. Like Judge Sotomayor, Cardozo was from an ethnic minority—he was a Sephardic Jew, a descendent of Portuguese immigrants. Like Judge Sotomayor, Cardozo was rightly proud of his heritage. Like Judge Sotomayor, Cardozo was the most experienced nominee to the Supreme Court in his generation.

Yet, unlike Judge Sotomayor, Judge Cardozo did not attract so much controversy. In fact, he was unanimously confirmed to the Supreme Court in a voice vote that lasted all of 10 seconds.

Judge Sotomayor is one of the leading jurists of our Nation. If confirmed, she will be the only judge on the Supreme Court with trial court experience. She would be one of the only ones with experience as a prosecutor. As many have commented, she would be the appointee with the most Federal court experience in a century.

We have, right now, a chance to make history. Thankfully, unlike a lot of the important decisions we have to make that come before this body, this is an easy one to make.

Judge Sotomayor will not only be the first Latina on the Supreme Court; she will be the first person of Hispanic descent to reach the pinnacle of any one of the three branches of the Federal Government. She could not be more qualified for this position. Her appointment will help protect the individual rights and liberties that are so necessary for Minnesotans and for all Americans—and that this Supreme Court has steadily, and substantially, eroded.

I am honored to cast my vote in favor of Judge Sonia Sotomayor, and I hope my colleagues on both sides of the aisle will join me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, while this is my first opportunity to vote for a Supreme Court nominee named by a Democratic President, I don't view the confirmation of judges through a partisan lens. Instead of partisanship, I have developed several criteria for assessing Supreme Court nominations. I believe these criteria are straightforward, and they are easy to understand:

Does the nominee have extensive experience with the law and a judicial temperament?

Has the nominee demonstrated sharp legal intelligence and sound judgment?

Does the individual display a judicial philosophy that falls within the mainstream of American legal thought?

Is he or she able and willing to separate their personal beliefs from their constitutional obligations?

On each count, I rule in favor of Judge Sotomayor.

My colleagues and I have all been listening carefully to Judge Sotomayor's testimony, and we have reviewed her record. In that record, everything I have been able to ascertain indicates that Justice Sotomayor will look a lot like Judge Sotomayor—an exemplary arbiter of the law, firm but practical, tough but fair.

For these reasons, I will cast my vote to confirm her as the next Associate Justice of the Supreme Court.

I speak from, perhaps, a unique position among Senators. I may be the shortest serving Senator in the history on our Senate Judiciary Committee. At the beginning of the 111th Congress, Senator REID asked me to serve on this extraordinarily important committee. Senator REID told me it would be a

temporary assignment, but I was still on the committee when Judge Sotomayor was nominated to the Supreme Court. I very much enjoyed my meeting with Judge Sotomayor, and I told her I wasn't sure how long I would be serving on the committee. I said I felt a little bit like a snowflake with the prospect of an Oregon rain coming in the afternoon. In fact, the rain came just a few days before the Judiciary Committee began the confirmation hearing for Judge Sotomayor. I did get a chance to talk with her and discuss, at some length, her views with respect to the key issues surrounding how a Senator evaluates a nominee to the Supreme Court.

On the basis of that discussion and a review of her record, while I wasn't able to cast a vote for her in committee, it is going to be, later this week, an honor for me to vote for her on the Senate floor.

When I met with Judge Sotomayor, we discussed a number of important issues—particularly matters relating to national security, the power of the Commander in Chief, and we also spent some time on a matter that I know the occupant of the chair is most interested in and that is end-of-life health care. What struck me the most about Judge Sotomayor was her openness, her intellectual curiosity, and her desire to make sure she had all the facts, all the information, all the views and background and the reading material that you have to have when you are going to make a call not on the basis of your predisposition but on the basis of the law and the law as it is applied to the facts.

In a number of areas we discussed with respect to end of life, Judge Sotomayor acknowledged that these were issues she hadn't personally considered. The occupant of the chair and I have talked at some length about the politicized case of the late Terri Schiavo. I objected on the floor of the Senate to the Senate considering that matter.

Of course, Judge Sotomayor could not go into how she would rule on end-of-life cases. But we talked at some length about those issues, and I am going to discuss them later in this statement tonight.

I wish to start my comments by saying I believe, with the young people at home in Oregon, this nomination by President Obama is regarded as an inspiration and a remarkable personal story. Oregonians have told me they look at her journey as the realization of the American dream. Oregonians have followed her testimony before the Senate Judiciary Committee. They believe she is qualified for this job. They are very excited about the fact that this nomination makes history, and I commend the President for demonstrating with this nomination how it is possible to increase the diversity, talent, and experience on the Supreme Court with one very capable individual.

Chairman LEAHY and others have done an excellent job of going through the judge's impressive background. I do want to spend some time talking about the issues that Judge Sotomayor and I discussed in my office most extensively—Presidential power and end of life.

Serving on the Senate Select Committee on Intelligence, I have followed the history with respect to a President's Commander in Chief authority. Disagreements about this authority and how it is applied are certainly nothing new. There have been vigorous debates about this issue since our country was founded. But over the past several years, there has been especially heated debate around these questions and, in particular, the issue of whether, during times of war, the President has the authority to ignore laws passed by the Congress. As a result, there have been several occasions, over the past few years, where the Supreme Court has had to rule on major national security issues and address this question directly.

Our Court has frequently been sharply divided on this issue. At the same time, it has consistently ruled that—in Justice Sandra Day O'Connor's words—''a state of war is not a blank check for the President.'' I believe this is a principle that has to be upheld.

When I raised these issues with Judge Sotomayor, I was impressed with her thoughtfulness, her knowledge, and the experience she discussed about dealing with these thorny issues. Her answers made me believe that, as a Supreme Court Justice, she would apply the Constitution in a way that struck a balance—a very careful balance—between protecting our collective security and protecting our individual liberty.

We have always had, in the national security area, something of a constitutional teeter-totter, where the Founding Fathers always sought to try to ensure that there was an appropriate balance between protecting our Nation and securing our individual liberties; and maintaining that balance is what the Founding Fathers saw as paramount.

While Judge Sotomayor certainly gave no inkling to me in our discussion about national security how she might rule in a particular case, I felt very strongly that she would be able to define the reach of the Commander in Chief's power so as to strike that appropriate balance between collective security and individual liberty.

I must say, I don't want judges who will defer to any one President. I want judges who are going to defer to the Constitution. I believe Judge Sotomayor will do that in her service on the U.S. Supreme Court.

As I mentioned, I discussed with the judge the matter of end-of-life health care. This is a very sensitive issue for millions of Americans. What was striking about this in our discussions, when she and I met, is she recognized it was a contentious area of the law—one that deals with the rights of individuals and family members; and she certainly indicated she was going to spend a lot of time trying to learn about the history of cases in this area and the Court's judgments on end-of-life care.

I have been very interested particularly in Justice Brandeis's dissent in the Olmstead case. This was a 1928 case. The Supreme Court later adopted Justice Brandeis's view in the Katz case which essentially made it clear there is a right to be left alone, a right to be respected in these very delicate questions.

What concerned me so much about the Terry Schiavo case—and again, Judge Sotomayor gave no inkling about how she would rule on an end-of-life case—I think she understood my concern, and would follow up on it, that we cannot have elected officials, and particularly the Senate, become something of a medical court of appeals where the Senate essentially appoints itself the arbiter of these very difficult tragedies.

Judge Sotomayor did not commit herself to any specific position on end-of-life issues or any of the other issues. And, in fact, the judge said that coming from New York where they have a very sophisticated set of laws and legal protections to empower the individual to make their own choices—not government—empower the individual to make these very difficult questions, the judge said because New York had those statutes empowering individuals that she would spend time looking at the laws and the decisions of the Supreme Court in this area, reflecting, again, her commitment to follow the facts, follow the law, and not bring any predisposition of one sort or another to a very difficult and contentious area of the law, one that is as sure as night follows the day is going to be before the Supreme Court again—the matter of end-of-life health care.

Let me also mention one of our colleagues talked about her respect for precedent. I asked her about a woman's right to choose. She said that is an area of the law that has been settled for decades.

On the second amendment, she indicated she would not try to eliminate the right to own guns for hunting or for personal protection, again, what amounts to a recognition of existing law.

On foreign law, she said she would not rely on international legal decisions to interpret the Constitution.

This is a nominee who is going to be very sensitive to following precedent, following the facts, and ensuring that those principles are what guide her service on the U.S. Supreme Court.

Before I close, I wish to submit a letter the Senate Judiciary Committee received in support of Judge Sotomayor from the Federal Bar Association. They passed a resolution in support of the judge's nomination. The Senate Judiciary Committee has also received statements of support from the Hispanic National Bar Association, from the past presidents of NHBA.

I ask unanimous consent to have printed in the RECORD the letter and resolution and statement of support.

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

JUNE 1, 2009.

Re Nomination of Judge Sonia Sotomayor to the United States Supreme Court.

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

DEAR CHAIRMAN LEAHY: On May 26, 2009, President Barack Obama nominated Judge Sonia Sotomayor to fill the vacancy left by Justice David H. Souter in the United States Supreme Court.

The Hon. Raymond L. Acosta Puerto Rico Chapter of the Federal Bar Association has issued the enclosed resolution supporting Judge Sotomayors nomination and endorsing her as qualified in every respect to fill this important position.

In sharing our background, please, note that the Federal Bar Association is a professional organization for private and government lawyers and judges that has been established for over 80 years with a membership of about 16,000 federal practitioners and over 900 members of the bench. The FBA is dedicated to the advancement of the science of jurisprudence and to promoting the welfare, interests, education and professional development of all attorneys involved in federal practice. The Hon, Raymond L. Acosta Puerto Rico Chapter is one of the largest and most distinguished chapters of the Federal Bar Association.

We greatly appreciate your consideration of our resolution, and respectfully request that you include it in the candidate's Senate Judiciary Committee evaluation file.

Respectfully,
KATHERINE GONZÁLEZ-VALENTIIN,
President.

RESOLUTION OF THE BOARD OF DIRECTORS ON PRESIDENT BARACK OBAMA'S NOMINEE FOR THE CURRENT JUDICIAL VACANCY IN THE UNITED STATES SUPREME COURT

Whereas on May 26, 2009, President Barack Obama nominated Judge Sonia Sotomayor to fill the vacancy left by Justice David H. Souter in the United States Supreme Court;

Whereas Judge Sotomayor has received widespread support, and in view of this Chapter, is an exceptionally qualified federal jurist with a stellar record of professional achievement;

Whereas the Board of Directors of this Chapter is convinced that the nominee will administer justice fairly and impartially, and will faithfully and impartially discharge and perform all the duties incumbent upon her under the Constitution and laws of the United States; and further, will support and defend the Constitution of the United States against all enemies, foreign and domestic, and will bear true allegiance to our Constitution and laws;

Whereas this Board of Directors is fully satisfied that Judge Sotomayor possesses the necessary professional skills, temperament, and other qualifications that are required to perform this important judicial role with distinction;

Now, therefore, the Board of Directors of the Federal Bar Association, Hon. Raymond L. Acosta Puerto Rico Chapter, hereby unanimously resolves:

1. To express its unconditional satisfaction with the qualifications of Judge Sonia Sotomayor to fill the vacancy in the United States Supreme Court, and the Chapters unconditional support of this important nomination;

2. To exhort the United States Senate and Its Committee on the Judiciary to expeditiously consider and favorably act on Judge Sonia Sotomayor's nomination, so that the United States Supreme Court may have a full complement of Justices by the time the Supreme Court reconvenes on October 5, 2009.

In San Juan, Puerto Rico, this 29th day of May, 2009.

HISPANIC NATIONAL BAR ASSOCIATION,
JULY 8, 2009.

HNBA ANNOUNCES ENDORSEMENT OF THE HONORABLE SONIA SOTOMAYOR

WASHINGTON, DC.—The Hispanic National Bar Association (HNBA) announced today that it has formally endorsed The Honorable Sonia M. Sotomayor to serve as Associate Justice of the Supreme Court of the United States. The HNBA's Special Committee on the U.S. Supreme Court has concluded its most recent review of Judge Sotomayor's qualifications and overall record, and found her to be 'extraordinarily well-qualified' to serve on the Nation's highest court. According to Ramona E. Romero, HNBA National President, ''the HNBA unanimously endorsed Judge Sotomayor after reviewing her judicial record, professional competence, intellect, character, reputation for integrity, temperament, commitment to equal justice and record of service to the American public and the Hispanic community.'' Carlos Ortiz, who co-chairs the HNBA's Supreme Court Committee, added that ''based on our review, we are certain that she is extraordinary well-equipped to serve on our country's high court. We believe that she 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. We recommend her without any reservation.''

This is the HNBA's fourth review of Judge Sotomayor's record. The HNBA conducted due diligence before including Judge Sotomayor on a short list of potential Hispanic American nominees for the U.S. Supreme Court released in 2005. Her credentials were also reviewed by the HNBA prior to her elevation to the Second Circuit in 1998, and when she was nominated for the U.S. District Court. ''In each instance, we have been impressed by her intellect, her commitment to the rule of law and equal justice, her experience, and her respect for all who interact with the legal system,'' said Ms. Romero. Since the nomination of Judge Sotomayor to the U.S. Supreme Court in late May, the HNBA has met with members of the Senate Judiciary Committee and their staff to advocate for a fair and expeditious confirmation hearing. The HNBA looks forward to the opportunity to reiterate its strong support for Judge Sotomayor during the confirmation process.

The HNBA Supreme Court Committee is co-chaired by Robert Raben, founder and President of The Raben Group. Its members are Michael A. Olivas, Houston, TX; HNBA Law Professor Sect Chair Emeritus, 1987–2009; Gilbert F. Casellas, Round Rock, TX; HNBA Past President, 1984–1985; Mark S. Gallegos, Miami, FL; HNBA Past President, 1988–1989; Dolores S. Atencio, Denver, CO; HNBA Past President, 1991–1992; Mary T. Hernandez, San Jose, CA; HNBA Past President, 1994–1995; Gregory A. Vega, San Diego, CA; HNBA Past President, 1997–1998; Lillian R. Apodaca, Albuquerque, NM; HNBA Past President, 1998–1999.

The Hispanic National Bar Association (HNBA) is an incorporated, not-for-profit, national membership Association that represents the interests of the more than 100,000 attorneys, judges, law professors, legal assistants, and law students of Hispanic descent in the United States, its territories and Puerto Rico. For more information about the HNBA, please visit *www.hnba.com.*

HNBA PRESIDENTS' STATEMENT

We the undersigned past presidents of the Hispanic National Bar Association wholeheartedly support the nomination of Judge Sonia Sotomayor to serve as an Associate Justice on the United States Supreme Court. Judge Sotomayor has exceptional academic and professional credentials. She is a summa cum laude graduate of Princeton University and graduated from Yale Law School, where she served as an editor of the Yale Law Journal. Before her appointment to the federal bench, Judge Sotomayor was a prosecutor for five years in the Manhattan District Attorney's Office and then a commercial litigator in a private law firm. Judge Sotomayor has been a federal judge for 17 years, serving with distinction on both the U.S. District Court for the Southern District of New York and the Second Circuit Court of Appeals.

We have all long been troubled by the fact that no person of Hispanic heritage has ever served on our nation's highest court. During our terms as HNBA President, each and every one of us engaged in bipartisan efforts to diversify the federal bench and to build a pipeline of qualified Latino lawyers, jurists and legal scholars who would be prepared to serve on the U.S. Supreme Court with distinction. We have always been convinced that greater diversity on the Supreme Court would broaden and strengthen the perspective of its jurisprudence and enhance the administration of justice for all Americans. Words cannot adequately express the delight in our hearts that our time has finally arrived. We urge the U.S. Senate to confirm an exceptional jurist with extraordinary federal judicial and legal experience, Judge Sonia Sotomayor.

Mario G. Obledo, John R. Castillo, Lorenzo Arredondo, Gilbert F. Casellas, William Mendez, Jr., Mark S. Gallegos, Robert J. Ruiz, Carlos G. Ortiz, Benjamin Aranda III, Robert M. Maes, Mari Carmen Aponte, Robert G. Mendez, Michael N. Martinez, Jimmy Gurule, Dolores Atencio, Wilfredo Caraballo, Mary T. Hernandez, Hugo Chaviano, Lillian G. Apodaca, Rafael A. Santiago, Duard M. Bradshaw, Alan Varela, Jimmie V. Reyna, Jose Gaitan, Gregory A. Vega, Alice Velazquez, Angel G. Gomez, Carlos Singh, Nelson A. Castillo, Victor Marquez.

Mr. WYDEN. Mr. President, this organization, the Hispanic National Bar Association is not for profit, a national membership association that represents the interests of more than 100,000 attorneys, judges, law professors, legal assistants, and law students of Hispanic descent in United States, its territories, and Puerto Rico.

After a review of her qualifications and overall record, the Hispanic National Bar Association's Special Committee on the U.S. Supreme Court concluded that Judge Sotomayor is extraordinarily well qualified to serve on the Nation's highest Court.

Let me close simply by saying that when we have to review a nominee for this extraordinarily important position, one of the most important measures for me is to know that the nominee's views are squarely in the mainstream of American jurisprudence.

I came away believing that, but I hope that the Senate will not take my word for it or any other colleague's word for it. I think we ought to reflect on what the American Bar Association said. They gave her their highest rating. Or listen to former FBI Director Louis Freeh who called her an ''outstanding judge.'' Or read the dozens of endorsements for her, including those from the American Hunters & Shooters Association, the Chamber of Commerce, and the National Association of Women Lawyers.

I started my statement tonight by laying out the criteria that I believe ought to be used in evaluating a Supreme Court nominee. In terms of those criteria, Judge Sotomayor is an individual who will bring great credit to the Supreme Court. She will be a role model for millions and millions of young people in our country. I hope our colleagues will vote in a resounding fashion in favor of her nomination to serve on the U.S. Supreme Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BENNET. Mr. President, I, too, rise in strong support of the President's historic nomination of Judge Sonia Sotomayor to be Associate Justice of the U.S. Supreme Court.

The Senate has no more important responsibility than to advise and consent on nominations to our Nation's highest Court. It will be an honor, on behalf of the people of my State, to cast my vote to confirm Sonia Sotomayor.

Judge Sotomayor is a distinguished lawyer with a lifetime of experience in and out of the courtroom, as a litigator, a prosecutor, a trial judge, and an appellate judge on one of the most prestigious courts in the Nation.

At an early point in her career, she showed a dedication to public service, serving 5 years as an assistant district attorney in New York City. As a prosecutor, she focused on murder and robbery cases at a time when violence was high in New York and law and order was essential. And she has chosen in recent years to share her knowledge and experience with young legal scholars as an adjunct professor at local law schools.

Three Presidents from both parties have also agreed she merits a prestigious lifetime judicial appointment. That is impressive bipartisan support at our Nation's highest levels.

The question before the Senate is whether the nominee meets the high standards we rightfully expect of our Supreme Court Justices. It is our role to advise and consent on whether a President's nominee seeks to apply the law and not to make or remake it. On both of these fronts, Judge Sotomayor meets and far exceeds the mark. She is clearly a judicial moderate and has demonstrated this through a Federal judicial record longer than any nominee in the last 100 years.

As Federal district court judge in the Southern District of New York, Judge Sotomayor presided over roughly 450 cases. As a member of the Second Circuit Court of Appeals, Judge Sotomayor has participated in over 3,000 panel decisions and authored over 400 published opinions.

Seldom does the Senate have a record as long as Judge Sotomayor's. There is no mystery here about what kind of Justice she will be.

Since joining the second circuit, she has participated in 434 published panel decisions where the panel included at least one judge appointed by a Republican President. In these cases, Judge Sotomayor agreed with the result favored by the Republican appointee 95 percent of the time. She has ruled for the government in 83 percent of immigration cases, and 92 percent of criminal cases. She has hewed closely to second circuit precedent. On employment cases, she has split her decisions evenly. By all accounts, she is a mainstream moderate nominee.

The American Bar Association unanimously found her well qualified. She is someone with a long record of moderation and humility toward the law. Her work is driven by a thorough application of the law to the facts of each case. Our focus and the basis for support or opposition should be on her qualifications and record. And on this point, she clearly should be confirmed.

This week, we have a historic opportunity to add a mainstream, moderate judge to our Nation's highest Court. President George H. W. Bush saw this kind of potential in her when he nominated her to the Federal district court, and she has fully realized his faith in her, so much so that she stands on the brink of history after being nominated by President Obama.

Judge Sotomayor has all the professional ingredients to make a great Supreme Court Justice. It is on that basis she should be confirmed by this body by an overwhelming vote.

But there is more to Judge Sotomayor than this impressive legal career. Judge Sotomayor has also lived a truly American story. The daughter of Puerto Rican parents, Judge Sotomayor lost her father at the age of 9 and was raised in a housing project in the Bronx. Through strong-willed parenting by her mother, she rose from difficult circumstances to receive the very highest honor that Princeton awards to an undergrad. She also went to Yale Law School where she had a much more distinguished career than my own.

When she is confirmed as the first Hispanic and third woman ever to be nominated to the Supreme Court, Judge Sotomayor will be an inspirational example to all children all across the country, telling us that regardless of where you come from, regardless of your economic circumstances, nothing is beyond your reach in America.

Judge Sotomayor will be a role model for young Coloradans in all of our schools, and with her on the high Court, I fully expect that school-age girls, such as my three daughters, will have an important role model of success to follow in their own lives.

These intangible factors make her nomination an important statement for millions of young Americans setting out on their own paths.

I have the utmost faith in Sonia Sotomayor. The President made an excellent nomination. Through sheer persistence, hard work, intelligence, and integrity, she has become an inspiration to the American people, and she is a compelling reminder that in this Nation, everything is possible.

I am proud to commit my vote in favor of this nominee.

Mr. LEAHY. Mr. Presdient, many independent studies that have closely examined Judge Sotomayor's record have concluded that hers is a record of applying the law, not bias. For example, the American Bar Association's Standing Committee on the Federal Judiciary unanimously found Judge Sotomayor to be ''well qualified''—its highest rating—after conducting a thorough evaluation that included an examination of her integrity and freedom from bias. The Chair of the Standing Committee testified, ''the committee unanimously found an absence of any bias in the nominee's extensive work,'' and described Judge Sotomayor's opinions as ''show[ing] an adherence to precedent and an absence of attempts to set policy based on the judge's personal views.''

Numerous other studies from groups such as the Congressional Research Service, the New York City Bar Association, the Transactional Records Access Clearinghouse, the National Association of Women Lawyers, and the nonpartisan Brennan Center for Justice, have reached similar conclusions. These studies were entered into the record during Judge Sotomayor's confirmation hearings. Nothing in these studies or in her 17 year record on the bench raises a concern that Judge Sotomayor would substitute feelings for the command of the law.

Judge Sotomayor's critics attack her by pretending that President Obama does not respect the Constitution and the rule of law. They are wrong. They attack him for using the word empathy to describe one of the qualities he is looking for in a judicial nominee. He has never said that empathy is intended to override the rule of law. It is, nonetheless, ironic that the Senate Republican leader has criticized Judge Sotomayor for not being more empathetic and ruling for Frank Ricci, Ben Vargas, and the other plaintiffs despite the well-settled law in the Second Circuit which she applied in that case.

They attack her by misconstruing what empathy means. Empathy is understanding and awareness. That is what Justice Alito was testifying about at his confirmation hearing. That is what Justice Thomas was testifying about when he said that what he would bring to the Supreme Court ''is

an understanding and the ability to stand in the shoes of other people across a broad spectrum of this country.'' Justice Alito and Justice Thomas were not testifying that they would be biased. What the partisan critics do not appreciate is that the opposite of empathy is indifference and a lack of understanding. Empathy does not mean biased or mean picking one side over another, it means understanding both sides.

When she was designated by the President, Judge Sotomayor said: ''The wealth of experiences, personal and professional, have helped me appreciate the variety of perspectives that present themselves in every case that I hear. It has helped me to understand, respect, and respond to the concerns and arguments of all litigants who appear before me, as well as to the views of my colleagues on the bench. I strive never to forget the real-world consequences of my decisions on individuals, businesses, and government.''

It took a Supreme Court that understood the real world to see that the seeming fair-sounding doctrine of ''separate but equal'' was a straightjacket of inequality. We do not need more conservative activists second guessing Congress and who through judicial extremism override congressional judgments intended to protect Americans' voting rights, privacy rights and access to health care and education.

In her widely misconstrued speech at the University of California at Berkeley, Judge Sotomayor said: ''[J]udges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law.'' That parallels what Chief Justice Roberts said at his confirmation hearing when he testified about ''the ideal in the American justice system'' and judges ''doing their best to interpret the law, to interpret the Constitution, according to the rule of law'' and not substituting their own personal agenda.

Those who spent days asking Judge Sotomayor to explain what she meant in a partial quotation from that speech about the decisions reached by a ''wise Latina woman with the richness of her experiences'' miss that she begins that statement with the words, ''I would hope.'' They miss that her statement is aspirational. She would ''hope'' that she and the other Hispanic women judges would be ''wise'' in their decisionmaking and that their experiences would help inform them and help provide that wisdom. Judge Sotomayor's critics have ignored her modesty in not claiming to be perfect, but rather in aspiring to the greatest wisdom and fairness she can achieve.

These critics also miss that Judge Sotomayor was pointing out a path to greater fairness and fidelity to law by acknowledging that despite the aspiration she shares with other judges, there are imperfections of human judging. By acknowledging rather than ignoring that while all judges seek to set aside their personal views, they do not always succeed, and we can be on guard against those views influencing judicial outcomes.

Judge Sotomayor has described herself as ''an ordinary person who has been blessed with extraordinary opportunities and experiences.'' In her opening statement at her Supreme Court confirmation hearing she spoke about witnessing the ''human consequences'' of judicial decisions. She testified that her judicial decisions ''have not been made to serve the interests of any one litigant, but always to serve the large interest of impartial justice.''

We have a long and important tradition in the law of seeking justice and fairness and equity. Judge Sotomayor spoke about the meaning of the word ''justice'' a decade ago and said: ''Almost every person in our society is moved by that one word. It is a word embodied with a spirit that rings in the hearts of people. It is an elegant and beautiful word that moves people to believe that the law is something special.''

In this country, the law is special, and it is special because of what it protects and what it can do. In England there were separate law courts and chancery courts. But, in the United States we have combined these functions to be performed by all of our Federal judges.

We all talk about the importance of judges following the law. Yet we should remember that the law that judges must follow includes the reconstruction amendments and particularly the 14th amendment, which transformed the rule of law and the role of judges and Congress in the United States. In the aftermath of the bloody, tragic Civil War, the 14th amendment was passed to give the courts and the Congress a more active role in defining and protecting civil rights. The complete abolition of slavery was only a part of its grand purpose. It was driven by a profound desire to arm the newly freed slaves—and all Americans—with the rule of law—set forth in the grand phrasing of the equal protection, due process, and privileges or immunities clauses—to guarantee their equal rights against invidious governmental discrimination.

The 14th amendment does not supplant but reinforces the historical equitable powers of our courts to redress problems. It is not just the statutes Congress writes, but also the precedent and interpretations of the courts that make up the law. We have a strong common law tradition in that regard. And we have a powerful equitable tradition that ensures that fairness and justice are done.

We need judges who appreciate when and how to use their equitable powers. Judges who follow the law are empowered to enjoin illegal behavior, as the Supreme Court did in its historic series of orders enjoining the States and others from segregating schools on the basis of race. This does not mean that our courts have the power to remedy every problem in America. They do not. In addition, they can abuse their power, as I think the Supreme Court did when it intervened in the Presidential election in 2000 and determined its outcome. But, we should never forget that it is through its equitable powers that the Supreme Court and most other courts in this country are able to do justice and to ensure fairness and equity. In that regard, I believe that the experience and wisdom Judge Sotomayor has gained from an extraordinary life will benefit all Americans.

Mr. President, 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. REID. 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.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent to proceed to a period of morning business with Senators allowed to speak for up to 10 minutes each.

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

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

COMMENDING DR. RICHARD BAKER

• Mr. BYRD. Mr. President, the U.S. Senate is an institution that reveres precedent, continuity, and tradition. Ours is an institution that prides itself on the great men and women who preceded us in this Chamber, and the role this institution has played in protecting our Nation, and in making our Nation a better place in which to live, work, and raise families. This is an institution that prides itself on its history.

Therefore, it is important that the Senate have an official historian, along with an Historical Office to document our history, and supervise the management of the records of the Senate as an institution, of Senate committees, and of individual Senators.

For the past 34 years, the Senate has been fortunate, perhaps I should say we have been blessed, to have Dr. Richard Baker as the Senate Historian. Unfortunately for us, he is now leaving his position as Senate Historian, so I must say farewell.

This is a most reluctant and sad farewell. While I am pleased that Dr. Baker will now have the time and opportunity to pursue other endeavors, such as spending more time with his wife and other family members, as well as