

from financial ruin. The cost of inaction is too great and the status quo is no longer an option. The status quo simply is not something we need to look to.

On another subject, today is a historic day in America. Right now, they are having opening statements in the Senate Judiciary Committee, Democrats and Republicans, regarding Sonia Sotomayor. She will, later today, testify before that committee as President Obama's nominee for the highest Court in our country. As we all know, she is the first Hispanic American to do so.

Judge Sotomayor has a wide range of experience, not just in the legal world but in the real world. Her understanding of the law is grounded not only in theory but also in practice. Her record and qualifications are tremendous. She has worked at almost every level of our judicial system—as a prosecutor, as a litigator, a trial court judge, and appellate judge.

That is the exact type of experience we need on the Supreme Court. When she is confirmed, she will bring to the bench more judicial experience than any sitting Justice had when they joined the Court.

Judge Sotomayor has been nominated by both Democratic and Republican Presidents. She has been confirmed twice by the Senate with strong bipartisan support. Her record is well known and well respected. We are committed to ensuring that she has a rigorous and reasonable confirmation hearing. We expect both sides to ask tough questions and we expect both the questions and their answers to be fair and honest before she is confirmed.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

SOTOMAYOR CONFIRMATION HEARINGS

Mr. McCONNELL. Mr. President, today the Senate Judiciary Committee will begin its hearings on the nomination of Judge Sonia Sotomayor to be an Associate Justice on the U.S. Supreme Court. The consideration of a Supreme Court nominee is always a historic event. Since our Nation's founding, only 110 people have served on the High Court, and 10 of those were nominated by George Washington. There are few duties more consequential for a Member of the U.S. Senate than to vote on a Supreme Court nominee.

This particular nominee comes before the Judiciary Committee with a compelling life story. Like so many other Americans before her, Judge Sotomayor has overcome great adversity. In this, she has reaffirmed once again that ours is a nation in which one's willingness to work hard and

apply one's talents are the principal requirements for success. And yet, as we begin these hearings, it is important to remind ourselves that our obligation as Senators under the Constitution's advice and consent clause requires us to do more than confirm someone to a lifetime position on our Nation's highest court based on their life story. Rather, it requires us to determine whether he or she will be able to fulfill the requirements of the oath taken by all Federal judges, that they will, "administer justice without respect to persons, and do equal right to the poor and to the rich, and that [they] will faithfully and impartially discharge and perform all the duties incumbent upon [them] under the Constitution and laws of the United States."

The emphasis here is on the equal treatment of everyone, without respect to person, status, or belief, that everyone in America can expect that when they enter a courtroom, they will not be treated any differently than anyone else. That is what justice is, after all. And that is what Americans expect of our judicial system, equality under the law.

Now, President Obama has made it abundantly clear, as a Senator, as a candidate for President, and now as President, that he has a somewhat different requirement for his appointees to the Federal bench. He has repeatedly emphasized that his "criterion" for a federal judge is their ability to "empathize" with certain groups. That is a great standard, if you are a member of one of those specific groups. It is not so great, though, if you are not. So it might be useful to consider some of the groups who have found themselves on the short end of the "empathy" standard.

First, there are those who rely on the first amendment's right to engage in political speech. Then there are those Americans who want to lawfully exercise their right to bear arms under the second amendment. Next, those who want protection under the fifth amendment's requirement that private property cannot be taken for a public purpose without just compensation, and that it should not be taken for another person's preferred private use at all. Also, there are those who want protection from unfair employment practices under the 14th amendment's guarantee of the equal protection of the law.

I mention these specific groups because Judge Sotomayor has had to handle cases in each of these areas. And looking at her record, it appears the President has nominated just the kind of judge he said he would, someone who appears to have "empathy" for certain groups who appear before her, but not for others.

As I discussed last week, Judge Sotomayor kicked out of court the claims of New Haven, CT, firefighters who had been denied promotions because some minority firefighters had not performed as well as a group of mostly White firefighters on a race-

neutral exam. The Supreme Court reversed her decision in this matter, her third reversal just this term, with all nine justices finding that she misapplied the law. Her treatment of this case, the Ricci case, has been criticized across the political spectrum as "perfunctory" and "peculiar," and it called into question whether her dismissive handling of the firefighters' important claims was unduly influenced by her past advocacy in the area of employment preferences and quotas.

I also spoke last week about provocative comments Judge Sotomayor had made about campaign speech, including her claim that merely donating money to a candidate is akin to bribery. It is her prerogative to make such statements, as provocative as they may be. But it is not her prerogative as a judge to fail to follow clear Supreme Court precedent in favor of her political beliefs. Yet when she had the chance to vote on whether to correct a clear failure to follow Supreme Court precedent by her circuit in this very area of the law, she voted against doing so. Ultimately, the Supreme Court, in an opinion authored by Justice Breyer, corrected this error by her circuit on the grounds that it had failed to follow precedent.

There are other areas of concern.

Judge Sotomayor also brushed aside a person's claim that their private property had been taken in violation of the fifth amendment's "takings clause." As in the Ricci case, her panel kicked the plaintiffs' claims out of court in an unsigned, unpublished, summary order, giving them only a brief, one paragraph explanation as to why. Moreover, in the course of doing so, she dramatically expanded the Supreme Court's controversial 2005 decision in *Kelo v. New London*. In *Kelo*, the Supreme Court broadened the meaning of "public purpose" that allows the government to take someone's private property. Judge Sotomayor, in the case of *Didden v. Village of Port Chester*, broadened the government's power even further.

Her panel's ruling in *Didden* now makes it easier for a person's private property to be taken for the purpose of conferring a private benefit on another private party. This result is at odds with both the plain language of the fifth amendment's takings clause, and with the Supreme Court's statements in *Kelo*. And, as in Ricci, she did it without providing a thorough analysis of the law. Her panel devoted just one paragraph to analyzing the plaintiffs' important Fifth Amendment claims. It is no wonder then that property law expert Professor Ilya Somin at George Mason University Law School called it "one of the worst property rights decisions in recent years." Professor Richard Epstein at the University of Chicago College of Law called it not only "wrong" and "ill thought out," but "about as naked an abuse of government power as could be imagined."

There is more. Judge Sotomayor has twice ruled that the second amendment