

and completely” a judge has to follow the law, no matter what their upbringing has been. That is the kind of fair and impartial judging the American people expect. That is respect for the rule of law. And that is the kind of judge Judge Sotomayor has been. That is the kind of fair and impartial Justice she will be and that the American people deserve.

Judge Sotomayor has been nominated to replace Justice Souter, whose retirement last month has left the Court with only eight Justices. Justice Souter served the Nation with distinction for nearly two decades on the Supreme Court with a commitment to justice, an admiration for the law, and an understanding of the impact of the Court’s decisions on the daily lives of ordinary Americans. I believe that Judge Sotomayor will be in this same mold and will serve as a Justice in the manner of Sandra Day O’Connor, committed to the law and not to ideology.

In the weeks and months leading up to this hearing, I have heard the President and Senators from both sides of the aisle make reference to the engraving over the entrance of the Supreme Court. I look at that every time I go up there. It is carved in Vermont marble, and it says: “Equal Justice Under Law.” Judge Sotomayor’s nomination keeps faith with those words.

Senator SESSIONS.

STATEMENT OF JEFF SESSIONS, A U.S. SENATOR FROM ALABAMA, RANKING MEMBER, COMMITTEE ON THE JUDICIARY

Senator SESSIONS. Thank you, Mr. Chairman. Thank you for your leadership, and I believe you have set up some rules for the conducting of this hearing that are consistent with past hearings and I believe allow us to do our work together. And I have enjoyed working with you on this process.

Chairman LEAHY. Thank you.

Senator SESSIONS. I hope this will be viewed as the best hearing this Committee has ever had. Why not? We should seek that. So I join Chairman Leahy, Judge Sotomayor, in welcoming you here today.

It marks an important milestone in your life. I know your family is proud, and rightly so. And it is a pleasure to have them with us today.

I expect this hearing and resulting debate will be characterized by a respectful tone, a discussion of serious issues, a thoughtful dialogue, and maybe some disagreements. But we have worked hard to set that tone from the beginning.

I have been an active litigator in Federal courts. I have tried cases as a Federal prosecutor and as Attorney General of Alabama.

The Constitution and our great heritage of law I care deeply about. They are the foundation of our liberty and our prosperity, and this nomination hearing is critical for two important reasons.

First, Justices on the Supreme Court have great responsibility, hold enormous power, and have a lifetime appointment. Just five members can declare the meaning of our Constitution, bending or changing its meaning from what the people intended.

Second, this hearing is important because I believe our legal system is at a dangerous crossroads. Down one path is the traditional American system, so admired around the world, where judges im-

partially apply the law to the facts without regard to personal views.

This is the compassionate system because it is the fair system. In the American legal system, courts do not make the law or set policy, because allowing unelected officials to make law would strike at the heart of our democracy.

Here, judges take an oath to administer justice impartially. That oath reads: "I . . . do solemnly swear that I will administer justice without respect to persons, and do equal right to the rich and the poor, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States. So help me God."

These principles give the traditional system its moral authority, which is why Americans respect and accept the rulings of courts—even when they disagree.

Indeed, our legal system is based on a firm belief in an ordered universe and objective truth. The trial is the process by which the impartial and wise judge guides us to truth.

Down the other path lies a Brave New World where words have no true meaning and judges are free to decide what facts they choose to see. In this world, a judge is free to push his or her own political or social agenda. I reject that view, and Americans reject that view.

We have seen Federal judges force their own political and social agenda on the Nation, dictating that the words "under God" be removed from the Pledge of Allegiance and barring students from even private—even silent prayer in schools.

Judges have dismissed the people's right to their property, saying the Government can take a person's home for the purpose of developing a private shopping center.

Judges have—contrary to longstanding rules of war—created a right for terrorists, captured on a foreign battlefield, to sue the United States Government in our own country.

Judges have cited foreign laws, world opinion, and a United Nations resolution to determine that a State death penalty law was unconstitutional.

I am afraid our system will only be further corrupted, I have to say, as a result of President Obama's views that, in tough cases, the critical ingredient for a judge is the "depth and breadth of one's empathy," as well as, his word, "their broader vision of what America should be."

Like the American people, I have watched this process for a number of years, and I fear that this "empathy standard" is another step down the road to a liberal activist, results-oriented, and relativistic world where laws lose their fixed meaning, unelected judges set policy, Americans are seen as members of separate groups rather than as simply Americans, and where the constitutional limits on Government power are ignored when politicians want to buy out private companies. So we have reached a fork in the road, I think, and there are stark differences.

I want to be clear:

I will not vote for—and no senator should vote for—an individual nominated by any President who is not fully committed to fairness and impartiality toward every person who appears before them.

I will not vote for—and no Senator should vote for—an individual nominated by any President who believes it is acceptable for a judge to allow their personal background, gender, prejudices, or sympathies to sway their decision in favor of, or against, parties before the court. In my view, such a philosophy is disqualifying.

Such an approach to judging means that the umpire calling the game is not neutral, but instead feels empowered to favor one team over the other.

Call it empathy, call it prejudice, or call it sympathy, but whatever it is, it is not law. In truth, it is more akin to politics, and politics has no place in the courtroom.

Some will respond, “Judge Sotomayor would never say it’s acceptable for a judge to display prejudice in a case.” But I regret to say, Judge, that some of your statements that I will outline seem to say that clearly. Let’s look at just a few examples.

We have seen the video of the Duke University panel where Judge Sotomayor says “It is [the] Court of Appeals where policy is made. And I know, and I know, that this is on tape, and I should never say that, and should not think that.”

And during a speech 15 years ago, Judge Sotomayor said, “I willingly accept that we who judge must not deny the differences resulting from experience and heritage but attempt . . . continuously to judge when those opinions, sympathies, and prejudices are appropriate.”

And in the same speech, she said, “my experiences will affect the facts I choose to see. . . .”

Having tried a lot of cases, that particular phrase bothers me. I expect every judge to see all the facts.

So I think it is noteworthy that, when asked about Judge Sotomayor’s now-famous statement that a “wise Latina” would come to a better conclusion than others, President Obama, White House Press Secretary Robert Gibbs, and Supreme Court Justice Ginsburg declined to defend the substance of those remarks. They each assumed that the nominee misspoke. But I do not think it—but the nominee did not misspeak. She is on record as making this statement at least five times over the course of a decade.

I am providing a copy of the full text of those speeches for the record.

[The speeches appear as a submission for the record.]

Senator SESSIONS. Others will say that, despite these statements, we should look to the nominee’s record, which they characterize as “moderate.” People said the same of Justice Ginsburg, who is now considered to be one of the most members of the Supreme Court in history.

Some Senators ignored Justice Ginsburg’s philosophy and focused on the nominee’s judicial opinions. But that is not a good test because those cases were necessarily restrained by precedent and the threat of reversal from higher courts.

On the Supreme Court, those checks on judicial power will be removed, and the judge’s philosophy will be allowed to reach full bloom.

But even as a lower court judge, our nominee has made some troubling rulings. I am concerned by *Ricci*, the *New Haven Firefighters* case—recently reversed by the Supreme Court—where she

agreed with the City of New Haven's decision to change the promotion rules in the middle of the game. Incredibly, her opinion consisted of just one substantive paragraph of analysis.

Judge Sotomayor has said that she accepts that her opinions, sympathies, and prejudices will affect her rulings. Could it be that her time as a leader in the Puerto Rican Legal Defense and Education Fund, a fine organization, provides a clue to her decision against the firefighters?

While the nominee was Chair of that fund's Litigation Committee, the organization aggressively pursued racial quotas in city hiring and, in numerous cases, fought to overturn the results of promotion exams. It seems to me that in *Ricci*, Judge Sotomayor's empathy for one group of firefighters turned out to be prejudice against another.

That is, of course, the logical flaw in the "empathy standard." Empathy for one party is always prejudice against another.

Judge Sotomayor, we will inquire into how your philosophy, which allows subjectivity in the courtroom, affects your decision-making like, for example, in abortion, where an organization in which you were an active leader argued that the Constitution requires taxpayer money to fund abortions; and gun control, where you recently noted it is "settled law" that the Second Amendment does not prevent a city or State from barring gun ownership; private property, where you have ruled recently that the Government could take property from one pharmacy developer and give it to another; capital punishment, where you personally signed a statement opposing the reinstatement of the death penalty in New York because of the "inhuman[e] psychological burden" it places on the offender and the family.

So I hope the American people will follow these hearings closely. They should learn about the issues and listen to both sides of the argument, and at the end of the hearing ask: "If I must one day go to court, what kind of judge do I wish to hear my case?"

"Do I want a judge that allows his or her social, political, or religious views to change the outcome? Or do I want a judge that impartially applies the law to the facts and fairly rules on the merits, without bias or prejudice?"

It is our job to determine on which side of that fundamental divide the nominee stands.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Another housekeeping thing. We are going to try to keep these opening statements to 10 minutes. I will recognize Senators on the Democratic side based on seniority. I have told Senator Sessions I will—

Senator SESSIONS. Likewise.

Chairman LEAHY. That is what you want on your side. Then they will be recognized on your side by the same way. So the next Senator is Senator Kohl.

STATEMENT OF HON. HERB KOHL, A U.S. SENATOR FROM WISCONSIN

Senator KOHL. Thank you, Mr. Chairman.