

Statement of

**The Honorable Al Franken**

United States Senator  
Minnesota  
July 13, 2009

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OPENING STATEMENT ON JUDGE SOTOMAYOR'S  
NOMINATION HEARING  
Senator Al Franken

Thank you, Mr. Chairman. It is an incredible honor to be here. Less than a week into my term as a United States Senator, my first major responsibility is here, at this historic confirmation hearing.

I am truly humbled to join the Judiciary Committee, which has played, and will continue to play, such an important role in overseeing our nation's system of justice. Chairman Leahy, for several years now I have admired your strength and integrity in leading this Committee. I'm grateful for the warm welcome and consideration you have given me, and I am honored to serve alongside you.

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Ranking Member Sessions, I want you to know that I plan to follow the example of my good friend and predecessor, Paul Wellstone, who was willing and ready to partner with his colleagues across the aisle to do the work of the American people. I look forward to working over the years with you and my other Republican colleagues in the Senate to improve the lives of all Americans.

To all the members of this committee, I know that I have a lot to learn from each of you. Like so many private citizens, I have watched at least part of each and every Supreme Court confirmation hearing since they have been televised. And I would note that this is the first confirmation hearing that Senator Kennedy has not attended since 1965. We miss his presence.

These televised hearings have taught Americans a lot about our Constitution – and the role that the courts play in upholding and defending it. I look forward to listening to your questions and to the issues that you and your constituents care about.

To Judge Sotomayor, welcome. For the next few days, I expect to learn from you as well. You are the most experienced nominee to the Supreme Court in 100 years. And after meeting with you in my office last week, I know that aside from being a fine jurist, you are also an exceptional individual. Your story is inspiring and one in which all Americans should take pride.

As most of you know, this is my fifth day in office. That may mean that I am the most junior

Senator, but it also means that I am the Senator who has most recently taken the oath of office. Last Tuesday, I swore to "support and defend the Constitution of the United States" and to "bear true faith and allegiance" to it. I take this oath very seriously as we consider Judge Sotomayor's nomination.

I may not be a lawyer, but neither are the overwhelming majority of Americans. Yet all of us, regardless of our backgrounds or professions, have a huge stake in who sits on the Supreme Court and are profoundly affected by its decisions.

I hope to use my time over the next few days to raise issues that concern people in Minnesota and around the country. This hearing will help folks sitting in living rooms and offices in Winona or Duluth or the Twin Cities to get a better idea of what the court is, what it does and what it is supposed to do, and most importantly, how its actions affect the everyday lives of all Americans.

Justice Souter, whom you will replace if you're confirmed, once said: "The first lesson, simple as it is, is that whatever court we're in, whatever we are doing, at the end of our task some human being is going to be affected. Some human life is going to be changed by what we do. And so we had better use every power of our minds and our hearts and our beings to get those rulings right." I believe he had it right.

In the past months, I've spent a lot of time thinking about the court's impact on the lives of Americans and reading and consulting with some of Minnesota's top legal minds. And I believe that the rights of Americans, as citizens and voters, are facing challenges on two separate fronts.

First, I believe the position of Congress with respect to the Courts and the Executive is in jeopardy. Even before I aspired to represent the people of Minnesota in the United States Senate, I believed that the Framers made Congress the first branch of government for a reason. It answers most directly to the people and has the legitimacy to speak for the people in crafting laws to be carried out by the executive branch.

I am wary of judicial activism and I believe in judicial restraint. Except under the most exceptional circumstances, the judicial branch is designed to show deep deference to Congress and not make policy by itself.

Yet looking at recent decisions on voting rights, campaign finance reform, and a number of other topics, it appears that appropriate deference may not have been shown in the past few years – and there are ominous signs that judicial activism is on the rise in these areas.

I agree with Senator Feingold and Senator Whitehouse that we hear a lot about judicial activism when politicians talk about what kind of judge they want in the Supreme Court. But it seems that their definition of an activist judge is one who votes differently than they would like. Because during the Rhenquist Court, Justice Clarence Thomas voted to overturn federal laws more than Justices Stevens and Breyer combined.

Second, I am concerned that Americans are facing new barriers to defending their individual rights. The Supreme Court is the last court in the land where an individual is promised a level playing field and can seek to right a wrong:

- It is the last place an employee can go if he or she is discriminated against because of age, gender, or color.
- It is the last place a small business owner can go to ensure free and fair competition in the market.
- It is the last place an investor can go to try to recover losses from securities fraud.
- It is the last place a person can go to protect the free flow of information on the internet.
- It is the last place a citizen can go to protect his or her vote.
- It is the last place where a woman can go to protect her reproductive health and rights.

Yet from what I see, on each of those fronts, for each of those rights, the past decade has made it a little bit harder for American citizens to defend themselves.

As I said before, Judge, I'm here to learn from you. I want to learn what you think is the proper relationship between Congress and the Courts, between Congress and the Executive. I want to learn how you go about weighing the rights of the individual, the small consumer or business-owner, and more powerful interests. And I want to hear your views on judicial restraint and activism in the context of important issues like voting rights, open access to the Internet, and campaign finance reform.

We're going to have a lot of time together, so I'm going to start listening. Thank you, Mr. Chairman.