

Statement of

The Honorable Richard J. Durbin

United States Senator
Illinois
July 13, 2009

Opening Statement
Senator Dick Durbin
Senate Judiciary Committee
July 13, 2009

Nomination Hearing of Sonia Sotomayor to be Associate Justice of the Supreme Court

Judge Sotomayor, welcome to you and your family. These nomination hearings can be long and painful, but after surviving a broken ankle and individual meetings with 89 members of the United States Senate during the past few weeks, you are already battle-tested.

At the nomination hearing for Justice Ruth Bader Ginsburg in 1993, my friend Senator Paul Simon of Illinois said: "You face a much harsher judge . . . than this Committee and that is the judgment of history. And that judgment is likely to revolve around the question: Did she restrict freedom or did she expand it?"

I asked this question with respect to the nominations of Chief Justice Roberts and Justice Alito, and I think it is an important question to ask about any Supreme Court nominee. The nine men and women on the Supreme Court serve lifetime appointments, and they resolve many of our most significant legal and constitutional issues.

It is the Supreme Court that defines our personal right to privacy and decides the restrictions that can be placed on the most personal aspects of our lives. The Court decides the rights of discrimination victims, immigrants, and consumers. The nine Justices decide whether Congress has the authority to pass laws to protect our civil rights and our environment. They decide what checks will exist on the executive branch in war and in peace.

Because these issues are so important, we need Justices with intelligence; knowledge of the law; the proper judicial temperament and a commitment to impartial justice.

More than that, we need our Supreme Court Justices to have an understanding of the real world and the impact their decisions will have on everyday people. We need Justices whose wisdom comes from life, not just law books.

Sadly, this important quality seems to be in short supply these days. The current Supreme Court has issued decision after decision in recent years that represent a triumph of ideology over common sense and concern for ordinary Americans.

When Chief Justice Roberts came before this Committee in 2005, he famously said that as a Supreme Court Justice he would be like an umpire, simply calling balls and strikes. We have observed, unfortunately, that it's a little hard to see home plate when you're standing in right field.

If being a Supreme Court Justice were as easy as calling balls and strikes, why have we seen so many 5-4 decisions in recent years? In the last year alone, 23 of the Supreme Court's 74 decisions were decided by a 5-4 vote.

The recent case of *Ledbetter v. Goodyear Tire & Rubber Company* is the best example of the Supreme Court putting conservative activism over common sense. The question in that case was simple and fundamental: Should women be paid the same as men for the same work?

Lilly Ledbetter was a manager in a Goodyear Tire plant in Alabama. She worked there for 19 years but didn't learn she was being paid less than her male colleagues until the end of her job. She brought a discrimination lawsuit and a jury awarded her a large verdict. But the Supreme Court, in a 5-4 decision, reversed the jury and threw out the verdict. What was the basis of their ruling? They said Lilly Ledbetter filed her discrimination complaint too late. They said her complaint should have been filed within 180 days of the initial act of pay discrimination. That decision defied common sense and the realities of the workplace, where few employees know what their fellow employees are paid. And it contradicted decades of past precedent.

Another recent case, *Safford Unified School District v. Redding*, involved a 13-year-old girl who was strip-searched at her school based on a false rumor that she was hiding ibuprofen pills. At the oral argument in April, several of the Supreme Court Justices asked questions about the case that revealed a stunning lack of empathy with the 8th grade victim. One of the Justices even suggested that being strip-searched was no different than changing clothes for gym class. Although Justice Ruth Bader Ginsburg helped her eight male colleagues understand why the strip search of a 13-year-old girl was humiliating enough to violate her constitutional rights, a majority of the Justices ruled that the school officials were immune from liability.

In a 5-4 case from 2007, *Gonzales v. Carhart*, the Supreme Court again overturned past precedent and ruled for the first time that it was permissible to place restrictions on abortion that don't include an exception safeguarding a woman's health.

And in a recent case involving the Louisville and Seattle public school districts, the Supreme Court held 5-4 that voluntary decisions by local governments to consider race as one factor among many in efforts to integrate and diversify their schools are just as unlawful as racist efforts to segregate schools in bygone eras.

These and other decisions demonstrate the need for Supreme Court Justices who understand the real world and the impact their decisions will have on our society.

Judge Sotomayor, you have overcome many obstacles in your life that have given you an understanding of the daily realities and struggles faced by everyday people. You grew up in a public housing complex in the Bronx. You overcame a diagnosis of juvenile diabetes at age 8 and the death of your father, a factory worker, at age 9. Your mother worked two jobs so she could afford to send you and your brother to Catholic schools. And you earned scholarships to Princeton and Yale.

Your first job out of law school was as an assistant district attorney, where you prosecuted violent crimes that have such a devastating impact on our families and communities. You went on to work in a law firm representing corporations, which gave you another valuable perspective on the law and our legal system.

In your 17 years as a federal judge, you have demonstrated an ability to see both sides of every issue. You have earned a reputation as a neutral, open-minded jurist who reveres the law and understands the consequences of your decisions on real people.

Of the 110 individuals who have served as Supreme Court Justices throughout our nation's history, 106 have been white men. Until Thurgood Marshall's appointment to the Supreme Court a generation ago, every Justice throughout our nation's history had been a white male.

President Obama's nomination of you to serve as the first Hispanic and the third woman to serve on the Supreme Court is historic. The President knows and we know that to be the first you must meet a higher standard before you can serve on our nation's top court. The American people through their duly elected Senators will be asked to judge you. We owe it to you and the Constitution to be a fair jury.