

vacated 80 percent of her opinions that have reached that body, by a total vote count of 52 to 19.

But we cannot simply brush aside her extrajudicial statements. Until now, Judge Sotomayor has been operating under the restraining influence of a higher authority, the Supreme Court. If confirmed, there will be no such restraint that would prevent her from, to paraphrase President Obama, deciding cases based on her heart-felt views.

Before we can faithfully discharge our duty to advise and consent, we must be confident that Judge Sotomayor is absolutely committed to setting aside her biases and impartially deciding cases based on the rule of law.

Chairman LEAHY. Somewhat differently than normal, Senator Schumer will be recognized for five minutes and will reserve his other five minutes for later on when he will be introducing Judge Sotomayor.

So Senator Schumer, you are recognized for five minutes.

**STATEMENT OF HON. CHARLES SCHUMER, A U.S. SENATOR
FROM NEW YORK**

Senator SCHUMER. Thank you, Mr. Chairman and Ranking Member Sessions.

I want to welcome Judge Sotomayor. We in New York are so proud of you and to your whole family, who I know are exceptionally proud to be here today to support this historic nomination.

Now, our presence here today is about a nominee who is supremely well-qualified with experience on the District Court and the Appellate Court benches that is unmatched in recent history. It is about a nominee who, in 17 years of judging, has authored opinion after opinion that is smart, thoughtful, and judicially modest.

In short, Judge Sotomayor has stellar credentials. There's no question about that. Judge Sotomayor has twice before been nominated to the bench and gone through confirmation hearings with bipartisan support. The first time, she was nominated by a Republican President.

But most important, Judge Sotomayor's record bespeaks judicial modesty, something that our friends on the right have been clamoring for in a way that no recent nominee's has. It is the judicial record, more than speeches and statements, more than personal background, that most accurately measures how modest a judicial nominee will be.

There are several ways of measuring modesty in the judicial record. Judge Sotomayor more than measures up to each of them.

First, as we will hear in the next few days, Judge Sotomayor puts rule of law above everything else. Given her extensive and even-handed record, I am not sure how any member of this panel can sit here today and seriously suggest that she comes to the bench with a personal agenda. Unlike Justice Alito, she does not come to the bench with a record number of dissents.

Instead, her record shows that she is in the mainstream. She has agreed with Republican colleagues 95 percent of the time, she has ruled for the government in 83 percent of immigration cases against the immigration plaintiff, she has ruled for the government

in 92 percent of criminal cases, she has denied race claims in 83 percent of cases and has split evenly on employment cases between employer and employee.

Second, and this is an important point because of her unique experience in the District Court. Judge Sotomayor delves thoroughly into the facts of each case. She trusts that an understanding of the facts will lead, ultimately, to justice.

I would ask my colleagues to do this: examine a sampling, a random sampling of her cases in a variety of areas. In case after case, she rolls up her sleeves, learns the facts, applies the law to the facts, and comes to a decision irrespective of her inclinations or her personal experience.

In a case involving a New York police officer who made white supremacist remarks, she upheld his right to make them. In a case brought by plaintiffs who claimed they had been bumped from a plane because of race, she dismissed their case because the law required it, and she upheld the First Amendment right of a prisoner to wear religious beads under his uniform.

In hot-button cases such as professional sports, she carefully adheres to the facts before her and upheld the NFL's ability to maintain certain player restrictions, but also ruled in favor of baseball players to end the Major League Baseball strike. Third, Judge Sotomayor has hewed carefully to the text of statutes, even when doing so results in rulings that go against so-called sympathetic litigants.

In dissenting from an award of damages to injured plaintiffs in a maritime accident, she wrote, "we start with the assumption that it is for Congress, not the federal courts, to articulate the appropriate standards to be applied as a matter of federal law."

Mr. Chairman, just short of four years ago, then-Judge Roberts sat where Judge Sotomayor is sitting. He told us that his jurisprudence would be characterized by modesty and humility. He illustrated this with a now well-known quote, "Judges are like umpires. Umpires don't make the rules. They apply them."

Chief Justice Roberts was, and is, a supremely intelligent man with impeccable credentials. But many can debate whether during his four years on the Supreme Court he actually called pitches as they come—or whether he tried to change the rules.

But any objective review of Judge Sotomayor's record on the Second Circuit leaves no doubt that she has simply called balls and strikes for 17 years, far more closely than Chief Justice Roberts has during his four years on the Supreme Court.

More important, if Judge Sotomayor continues to approach cases on the Supreme Court as she has for the last 17 years, she will be actually modest judicially. This is because she does not adhere to a philosophy that dictates results over the facts that are presented.

So, in conclusion, if the number one standard that conservatives use and apply is judicial modesty and humility, no activism on the Supreme Court, they should vote for Judge Sotomayor unanimously.

I look forward to the next few days of hearings, and to Judge Sotomayor's confirmation.

Chairman LEAHY. Thank you very much. I am going to recognize Senator Graham and Senator Cardin and then we're going to take a short break.

Senator Graham.

**STATEMENT OF HON. LINDSEY GRAHAM, A U.S. SENATOR
FROM SOUTH CAROLINA**

Senator GRAHAM. Well, thank you. I have learned something already. The Schumer conservative standard. We will see how that works.

No Republican would have chosen you, Judge. That is just the way it is. We would have picked Miguel Estrada. We would all have voted for him. I do not think anybody on that side would have voted for Judge Estrada, who is a Honduran immigrant who came to this country as a teenager, graduated from Columbia magna cum laude, Harvard 1986 magna cum laude and law review editor, a stellar background like yours. That is just the way it was.

He never had a chance to have this hearing. He was nominated by President Bush to the D.C. Circuit Court of Appeals which I think most people agree is probably the second highest court in the land, and he never had this day. So the Hispanic element of this hearing is important, but I don't want it to be lost that this is mostly about liberal and conservative politics more than it is anything else.

Having said that, there are some of my colleagues on the other side that voted for Judge Roberts and Alito, knowing they would not have chosen either one of those. I will remember that.

Now, unless you have a complete meltdown, you are going to get confirmed. I do not think you will, but the drama being created here is interesting. My Republican colleagues who voted against you I assure you could vote for a Hispanic nominee. They just feel unnerved by your speeches and by some of the things that you have said and some of your cases.

Now, having said that, I do not know what I am going to do yet, but I do believe that you as an advocate with a Puerto Rican defense legal fund that you took on some cases that I would have loved to have been on the other side, that your organization advocated taxpayer funded abortion and said in a brief that to deny a poor black woman Medicaid funding for an abortion was equivalent to the *Dred Scott* case. That is a pretty extreme thing to say, but I think it was heartfelt.

I would look at it the other way to take my taxpayer dollars and provide an abortion that I disagree with is pretty extreme. So there is two ways of looking at that.

You were a prosecutor but your organization argued for the repeal of the death penalty because it was unfairly applied and discriminatory against minorities. Your organization argued for quotas when it came to hiring.

I just want my colleagues to understand that there can be no more liberal group in my opinion than the Puerto Rican Defense Legal Fund when it came to advocacy. What I hope is that if we ever get a conservative President and he nominates someone who has an equal passion on the other side that we will not forget this