

Statement of

The Honorable Charles Grassley

United States Senator
Iowa
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Prepared Statement of Senator Chuck Grassley
Senate Committee on the Judiciary
Nomination Hearing of Sonia Sotomayor
to be an Associate Justice on the United States Supreme Court
Monday, July 13, 2009

Judge Sotomayor, congratulations on your nomination to be an Associate Justice on the Supreme Court of the United States. Welcome to the Judiciary Committee. I extend a warm welcome to your family and friends. They must all be very proud of your nomination, and rightfully so.

Judge Sotomayor, you have a distinguished legal and judicial record. No doubt it's one we'd expect of any individual nominated to be a Supreme Court Justice. You made your start from very humble beginnings. You overcame substantial obstacles and went on to excel at some of the nation's top schools. You became an Assistant District Attorney and successful private practice attorney in New York City. You've been on the federal bench as a district court and appellate court judge since 1992. These are all impressive legal accomplishments which certainly qualify you as Supreme Court material.

However, an impressive legal record and a superior intellect are not the only criteria we consider. To be truly qualified, the nominee must understand the proper role of a judge in society. That is, we want to be absolutely certain that the nominee will faithfully interpret the law and Constitution without personal bias or prejudice. This is the most critical qualification of a Supreme Court Justice – the capacity to set aside one's own feelings so he or she can blindly and dispassionately administer equal justice for all.

So the Senate has a constitutional responsibility of "advise and consent" to confirm intelligent, experienced individuals anchored in the Constitution, not individuals who will pursue personal and political agendas from the bench. Judge Sotomayor, you are nominated to the highest court of the land which has the final say on the law. As such, it's even more important for the Senate to ascertain whether you can resist the temptation to mold the Constitution to your own personal beliefs and preferences.

It's even more important for the Senate to ascertain whether you can dispense justice without bias or prejudice. Supreme Court Justices sit on the highest court of the land, so they aren't as constrained to follow precedent to the same extent as district or circuit judges.

There is a proper role of a judge in our system of limited government and checks and balances. Our democratic system of government demands that judges not take on the role of policy makers. That's a role properly reserved to legislators. The Supreme Court is meant to be a legal institution, not a political one. But some individuals and groups don't see it that way. They see the Supreme Court as ground zero for their political and social battles. They want Justices to implement their political and social agenda through the judicial process. That's not what our great American tradition envisioned – those battles are appropriately fought in the legislative branch. So it's incredibly important that we confirm the right kind of person to be a Supreme Court Justice.

Supreme Court nominees should respect the constitutional separation of powers. They should understand that the touchstone of being a good judge is the exercise of judicial restraint. Good judges understand that their job is not to impose their own personal opinions of "right" and "wrong." They know their job is to say what the law "is," rather than what they personally think it "ought to be." Good judges understand that they must meticulously apply the law and the Constitution, even if the results they reach are unpopular. Good judges know that the Constitution and the laws constrain judges every bit as much as they constrain legislators, executives and citizens. Good judges not only understand these fundamental principles, they live and breathe them.

President Obama said that he would nominate judges based on their ability to "empathize" in general and with certain groups in particular. This "empathy" standard is troubling to me. In fact, I'm concerned that judging based on "empathy" is really just legislating from the bench.

The Constitution requires that judges be free from personal politics, feelings and preferences. President Obama's "empathy" standard appears to encourage judges to make use of their personal politics, feelings and preferences. This is contrary to what most of us understand to be the role of the judiciary.

Judge Sotomayor, President Obama clearly believes you measure up to his "empathy" standard. That worries me. I've reviewed your record and have concerns about your judicial philosophy. For example, in one speech, you doubted that a judge could ever be truly impartial. In another speech, you argued it'd be a "disservice both to the law and society" for judges to disregard personal views shaped by one's "differences as women or men of color." In yet another speech, you proclaimed that the court of appeals is where "policy is made." Your "wise Latina" comment starkly contradicts a statement by Justice O'Connor that "a wise old woman and a wise old man would eventually reach the same conclusion in a case." These statements go directly to your views of how a judge should use his or her background and experiences when deciding cases. Unfortunately, I fear they don't comport with what I and many others believe is the proper role of a judge or an appropriate judicial method.

The American legal system requires that judges check their biases, personal preferences and politics at the door of the courthouse. Lady Justice stands before the Supreme Court with a blindfold holding the scales of justice. Just like Lady Justice, judges and Justices must wear blindfolds when they interpret the Constitution and administer justice.

Judge Sotomayor, I'll be asking you about your ability to wear that judicial blindfold. I'll be asking you about your ability to decide cases in an impartial manner and in accordance with the law and Constitution. I'll be asking you about your judicial philosophy, whether you allow biases and personal preferences to dictate your judicial method.

Ideally, the Supreme Court shouldn't be made up of men and women who are on the side of one special group or issue. Rather, the Supreme Court should be made up of men and women who are on the side of the law and the Constitution. I'm looking to support a restrained jurist committed to the rule of law and the Constitution. I'm not looking to support a creative jurist who will allow his or her background and personal preferences to decide cases.

Judge Sotomayor, the Senate needs to do its job and conduct a comprehensive and careful review of your record and qualifications. You are nominated to a lifetime position on the highest court. The Senate has a tremendous responsibility to confirm an individual who has superior intellectual abilities, solid legal expertise, and an even judicial demeanor and temperament. Above all, we have a tremendous responsibility to confirm an individual who truly understands the proper role of a Justice.

I'll be asking questions about your judicial qualifications. However, I'm also committed to giving you a fair and respectful hearing, as is appropriate of all Supreme Court nominees.

Again, Judge Sotomayor, I congratulate you on your nomination.