

Statement of

The Honorable Benjamin L. Cardin

United States Senator
Maryland
July 13, 2009

U.S. SENATOR BENJAMIN L. CARDIN (D-MD)
CONFIRMATION HEARING FOR JUDGE SONIA SOTOMAYOR
TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
OPENING STATEMENT – AS DELIVERED
JULY 13, 2009

Judge Sotomayor, welcome to the United States Senate. I think you you'll find that each member of this Committee and each member of the United States Senate wants to do what's right for our country. Now we may differ on some of our views, as will come out during this hearing, but I think we all share a respect for your public service. Thank you for your willingness to serve on the Supreme Court of the United States and thank your family for the sacrifices they have made.

I am honored to represent the people of Maryland in the U.S. Senate, and to serve on the Judiciary Committee, as we consider one of our most important responsibilities – whether we should recommend to the full Senate the confirmation of Judge Sonia Sotomayor to be an Associate Justice of the Supreme Court of the United States.

The next term of the Supreme Court that begins in October is likely to consider fundamental issues that will impact the lives of all Americans. In recent years, there have been many important cases decided by the Supreme Court by a 5-4 vote. Each Justice can play a critical role in forming the needed consensus in our nation's highest court. A new Justice could – and very well may – have a profound impact on the direction of the court.

Supreme Court decisions affect each and every person in our nation. I think of my own family's history. My grandparents came to America more than 100 years ago. I am convinced that they came to America not only for greater economic opportunities, but because of the ideals expressed in our Constitution, especially the First Amendment guaranteeing religious freedom. My grandparents wanted their children to grow up in a country where they were able to practice their Jewish faith and fully participate in their community and government. My father, one of their sons, became a lawyer, state legislator, circuit court judge and President of his synagogue. And now his son serves in the U.S. Senate.

While our Founding Fathers made freedom of religion a priority, equal protection for all races took longer to achieve. I attended Liberty School No. 64, a public elementary school in Baltimore City. It was part of a segregated public school system that – under the law – denied

every student in Baltimore the opportunity to learn in a classroom that represented the diversity of our community.

I remember with great sadness how discrimination was not only condoned but, more often than not, actually encouraged against Blacks, Jews, Catholics, and other minorities in the community. There were neighborhoods that my parents warned me to avoid for fear of my safety because I was Jewish. The local movie theater denied admission to African Americans. Community swimming pools had signs that said "No Jews, No Blacks Allowed." Even Baltimore's amusement parks and sports clubs were segregated by race. Then came Brown v. Board of Education and, suddenly, my universe and community were changed forever.

The decision itself moved our nation forward by correcting grievous wrongs that were built into the law. It also brought to the forefront of our nation's consciousness a great future jurist from Baltimore – Thurgood Marshall. Marshall had been denied admission to the University of Maryland Law School due to the color of his skin but went on to represent the plaintiffs in the 1954 landmark Brown vs. Board of Education. And in 1967, it was Marshall – the grandson of a slave – who was appointed by President Lyndon Johnson as the first African American to serve on the Supreme Court.

The nine justices of the United States Supreme Court have the tremendous responsibility of safeguarding the framers' intent and the guiding values of our Constitution, while ensuring the protections and rights found in that very Constitution are applied to and relevant to the issues of the day. At times, the Supreme Court has and should look beyond popular sentiment to preserve these basic principles and the rule of law. The next justice, who will fill Justice Souter's place on the court, will be an important voice on these fundamental issues.

It is my belief that the Constitution and Bill of Rights were created to be living documents that stand together as the foundation for the rule of law in our nation. Our history reflects this. When the Constitution was written, African Americans were considered property and counted only as three-fifths of a person. Non-whites and women were not allowed to vote. Individuals were restricted by race as to whom they could marry. Laws passed by Congress and decisions by the Supreme Court undeniably moved our country forward, continuing the progression of Constitutional protections that have changed our Nation for the better.

Before the Court ruled in Brown vs. Board of Education that "separate was not equal," the law permitted our society to have separate facilities for black and white students. Before the Court ruled in Loving vs. Virginia, a state could prohibit persons from marrying based on race. Before the Court ruled in Roe vs. Wade, women had no constitutional implied right to privacy. These are difficult questions that have come before the Court, and that the Framers could not have anticipated. New challenges will continue to arise but the basic framework of protections remains.

I want to complement President Obama in forwarding to the United States Senate a nominee, Judge Sonia Sotomayor, who is well qualified for our consideration. Her well-rounded background, including extensive experiences as a prosecutor, trial judge and appellate judge, will prove a valuable addition to our nation's highest court.

As a relatively new member of the Senate Judiciary Committee, as I prepared for this week, I considered a few key standards that apply to all judicial nominations. First, I believe nominees must have an appreciation for the Constitution and the protections it provides to each and every American. She (or he) must embrace a judicial philosophy that reflects mainstream American values, not narrow ideological interests. They should have a strong passion to continue the Court's advancements in Civil Rights. There is a careful balance to be found here: our next Justice should advance the protections found in our Constitution, but not disregard important precedent that has made our society stronger by embracing our civil liberties. I believe judicial nominees also must demonstrate a respect for the rights and responsibilities of each branch of government. These criteria allow me to evaluate a particular judge and whether she or he might place their personal philosophy ahead of the responsibility of the office.

As this Committee begins considering the nomination of Sonia Sotomayor, I want to quote Justice Thurgood Marshall, who said, "None of us got where we are solely by pulling ourselves up by our bootstraps." Judge Sotomayor is a perfect example of how family, hard work, supportive professors and mentors, and opportunity all can come together to create a real American success story.

She was born in New York, to a Puerto Rican family, and grew up in a public housing project in the South Bronx. Her mother was a nurse and her father was a factory worker with a third-grade education. She was taught early in life that education is the key to success, and her strong work ethic enabled her to excel in school and graduate valedictorian of her high school. She attended Princeton University, graduating cum laude and Phi Beta Kappa, and she received the highest honors Princeton awards to an undergraduate. At Yale Law School, she was editor of the Law Review, where she was known to stand up for herself and not to be intimidated by anyone.

Nominated by both Democratic and Republican presidents, for 17 years she has been a distinguished jurist and now has more federal judicial experience than any Supreme Court nominee in the last hundred years.

This week's hearings are essential. With some understanding of the context of Judge Sotomayor's life and the role that she potentially is about to fill on the Supreme Court, I believe it is particularly important during this confirmation hearing to question Judge Sotomayor on the guiding principles she would use on reaching decisions. For example, it is important for me to understand her interpretation of "established precedent" on protecting individual Constitutional rights. I believe it would be wrong for Supreme Court Justices to turn their back on landmark Court precedents protecting individual Constitutional rights.

It is likely that the Supreme Court will consider important protections in our Constitution for women, our environment and consumers, as well as voting rights, privacy, and the separation of church and state, among others, in coming years. The Supreme Court also has recently been active in imposing limits on executive power. It will continue to deal with the Constitutional rights in our criminal justice system, the rights of terror detainees and the rights of non-citizens.

All of these issues test our Nation's – and the Supreme Court's – commitment to our founding

principles and fundamental values. For this reason, we need to know how our nominee might approach these issues and analyzes these decisions.

Mr. Chairman, I look forward to hearing from Judge Sotomayor on these issues and I expect that she will share with this Committee, and the American People, her judicial views and her thoughts on the protections in our Constitution.

Once again, I want to thank Judge Sotomayor for her public service and readiness to take on this great responsibility for our Nation. And again, I also wish to thank her family for their clear support and sacrifice that has brought us to this hearing today.