

As a matter of fact, in just 2 years, these same nominees have either disregarded or overturned precedent in at least eight other cases: A case involving assignments to attain racial diversity in school assignments; a case overruling 70 years of precedent on the Second Amendment and Federal gun control law; a case which increased the burden of proof on older workers to prove age discrimination; a case overturning a 1911 decision to allow manufacturers to set minimum prices for their products; a case overruling two cases from the 1960s on time limits for filing criminal appeals; a case reversing precedent on the Sixth Amendment right to counsel; a case overturning a prior ruling on regulation of issue ads relating to political campaigns; and a case disregarding prior law and creating a new standard that limits when cities can replace civil service exams that they may believe have discriminated against a group of workers.

So I do not believe that Supreme Court Justices are merely umpires calling balls and strikes. Rather, I believe that they make the decisions of individuals who bring to the Court their own experiences and philosophies.

Judge Sotomayor, I believe you are a warm and intelligent woman. I believe you are well studied and experienced in the law with some 17 years of Federal court experience involving 3,000 appeals and 450 trial cases.

So I believe you, too, will bring your experiences and philosophies to this highest Court, and I believe that will do only one thing—and, that is, to strengthen this high institution of our great country.

Thank you Mr. Chairman.

Chairman LEAHY. Thank you, Senator Feinstein.

Senator Grassley.

**STATEMENT OF HON. CHARLES GRASSLEY, A U.S. SENATOR
FROM IOWA**

Senator GRASSLEY. Judge Sotomayor, I notice how attentive you have been to everything we are saying. Thank you very much. Congratulations on your nomination to be Associate Justice and welcome to the Judiciary Committee, and a warm welcome to you and your family and friends. They are all very proud of you, and rightly so.

You have a distinguished legal and judicial record. No doubt it is one that we would expect of any individual nominated to the Supreme Court. 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 have been on the Federal bench as a district court and appellate court judge since 1992. These are all very impressive legal accomplishments which certainly qualify you to be on the Supreme Court.

However, an impressive legal record and superior intellect are not the only criteria that we on this Committee have to 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 the Constitution

without bias or prejudice. This is the most critical qualification of a Supreme Court Justice—the capacity to set aside one’s own feelings so that 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 is even more important for the Senate to ascertain whether you can resist the temptations to mold the Constitution to your own personal beliefs and preferences. It is 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 in the land so that they are not as constrained, as you know, to follow precedent to the same extent as district and 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 policymakers. That is a role properly reserved to legislators, who can be voted out of office if people do not like what they legislate, unlike judges not being voted out of office.

The Supreme Court is meant to be a legal institution, not a political one. But some individuals and groups do not 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 is not what our great American tradition envisioned. Those battles are appropriately fought in our branch of Government, the legislative branch.

So it is incredibly important that we get it right and confirm the right kind of person for the Supreme Court. Supreme Court nominees should respect the constitutional separation of power. 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 that 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 constitutional law constrains judges every bit as much as it constrains legislators, executives, and our whole citizenry. 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 am 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 poli-

tics, feelings, and preferences. This is contrary to what most of us understand to be the role of the judiciary.

President Obama clearly believes that you measure up to his empathy standard. That worries me. I have 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 that it is a disservice both to law and society for judges to disregard personal views shaped by one's "differences as a woman or man 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 man and a wise old woman 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 experience when deciding cases. Unfortunately, I fear they do not 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.

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

Finally—or 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 am looking to support a restrained jurist committed to the rule of law and the Constitution. I am not looking to support a creative jurist who will allow his or her background and personal preferences to decide cases.

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.

So I will be asking questions about your judicial qualifications. However, like all of my colleagues, I am committed to giving you a fair and respectful hearing as is appropriate for Supreme Court nominees.

I congratulate you once again.

Chairman LEAHY. Thank you, Senator Grassley.

Senator Feingold, I would yield to you.