

Statement of

# **The Honorable Charles E. Schumer**

United States Senator  
New York  
July 13, 2009

Thank you, Mr. Chairman and Ranking Member Sessions.

And welcome to the many members of Judge Sotomayor's family, who I know are exceptionally proud to be here today in support of her historic nomination.

Our presence here today is about a nominee who is supremely well-qualified, with experience on the district court and 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. I think that 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 your Republican colleagues 95 percent of the time;
- She has ruled for the government in 83 percent of immigration cases;
- She has ruled for the government in 92 percent of criminal cases;
- She has denied race claims in 83 percent of cases;
- She has split evenly in a variety of employment cases.

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 of her cases in a variety of areas. In case after case after case, Judge Sotomayor 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.

And, in hot-button cases such as ones involving professional sports, she carefully adheres to the facts before her. She upheld the NFL's ability to maintain certain player restrictions, and she also ruled in favor of baseball players to end the Major League Baseball strike.

I'd rather have a Supreme Court justice whose clear and obvious agenda is to examine each case than one whose covert goal is to change the way that courts decide cases.

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."

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 has called pitches as they come -- or has 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 actually be modest. This is because she does not adhere to a philosophy that dictates results over the facts that are presented.

So, 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.