

SUMMARY OF JUDGE SONIA SOTOMAYOR'S IDEOLOGY

The Ethics & Religious Liberty Commission

By: Brian J. Barnes and Jesse Williams

Edited by Barrett Duke

July 10, 2009

Sanctity of Human Life

While none of Judge Sotomayor's cases have dealt directly with the issue of abortion, she has taken some positive positions in cases indirectly dealing with pro-life issues. She participated in *Center for Reproductive Law and Policy v. George W. Bush* (2002), a case concerning the Mexico City Policy, which prohibits sending taxpayer dollars to groups that promote and perform abortions in other nations. In that case she sided with the Bush administration saying the President has the right to favor the pro-life position over the abortion rights position. In *Lin v. US Department of Justice* (2007) she criticized colleagues on the Court who said that only women, and not their husbands, could seek asylum based on China's abortion policy, providing evidence that she does not view abortion as only a woman's issue. In *Port Washington Teacher's Association v. Board of Education* (2007), she joined an opinion supporting a school rule to require the school counselor to encourage the student to notify parents if they are pregnant. Finally, in *Amnesty America v. Town of West Hartford* (2004), she wrote an opinion overturning, in part, a district court's grant of summary judgment against a group of anti-abortion protestors in West Hartford, CT, saying that they deserved their day in court.

There is tangential evidence that Judge Sotomayor **supports** *Roe v. Wade*. "First, there are the White House assurances to that effect. Second, several pro-choice senators declared after meeting with Sotomayor that they were sure she agrees with them, and third, her entire jurisprudential approach broadly construes anything characterized as favoring "women's rights."¹

More direct evidence can be gleaned from her actions as a board member for the Puerto Rican Legal Defense and Education Fund. "From 1980 until October 1992, Judge Sotomayor served on the board -- at times as vice president and at times as chairman of the litigation committee. The New York Times in 1992 described her as "a top policy maker on the board." During that time period, the fund filed briefs in not one, not two, but at least six prominent court cases in strong support of "abortion rights." The cases began with an abortion-funding case, *Williams v. Zbaraz*, just as she joined the board, and they continued through the landmark cases of *Rust v. Sullivan*, *Webster v. Reproductive Health Services*, and *Planned Parenthood v. Casey*. Especially in the Webster case, in which all nine justices joined at least part of the decision saying that states need not provide public funds for abortions, the fund supported positions far more pro-abortion than the court itself did. Also, in the case *Ohio v. Akron Center*, the fund wrote that it "opposes any efforts to overturn or in any way restrict the rights recognized in *Roe v. Wade*." No statement could be more categorical. The Puerto Rican Legal Defense and Education Fund thus presumably would oppose any restriction, including those on late-term abortions, partial-birth abortions, abortions for minors and the like. It is possible to serve on the board of a group while not being responsible for a single random legal brief. However, Judge Sotomayor's group filed such suits at least six times - and as the New York Times reported on May 28 (while discussing a different case), "The board monitored all litigation undertaken by the fund's lawyers, and a number of those lawyers said Ms. Sotomayor was an involved and ardent supporter of their various legal efforts." *Id.*

Furthermore, "in her meeting with Senator DeMint, he asked her whether or not an unborn child had any rights whatsoever, to which she responded that she had never thought about it. Huh? Never "thought" about it? That says (at least) one of two things about Sonia Sotomayor: 1) she's lying and she has "thought" about it, but doesn't want anyone to know what she "thinks" about it, for fear that it could cost her a seat on the Supreme Court, or 2) she never really has "thought" about such a weighty issue, which indicates either a lack of mental and philosophical depth or at least a lack of preparedness to be a Supreme Court Justice."²

Bottom Line: While Sotomayor has come down on the right side on some of her peripheral cases dealing with pro-life issues, she has never dealt with a pro-life case directly. Thus her personal record is much weightier than her judicial record in determining where she stands on the issue. The assurances from those close to her and her many years working with the Puerto Rican Legal and Education Fund suggests that she is very pro-choice. This combined with the fact President Obama, who supports unfettered abortion, has nominated her makes a strong case against Sotomayor's pro-life potential. The core question is whether she thinks abortion is a Constitutional right. It is likely that Sotomayor would not favor a case that would overturn *Roe v. Wade*.

Church-State Separation / Free Exercise of Religion

Hankins v. Lyght (2006)³

- Sotomayor heard this case while on the Second Circuit Court of Appeals. The Methodist Church dismissed Hankins, a 70 year old minister, because of his age. He sued under the Age Discrimination in Employment Act (ADEA). The district court ruled that ADEA did not apply because of the “ministerial exception” which states that it is not the court’s place to interfere in religious matters. The case was appealed and remanded saying that the district court had mistakenly not applied the Religious Freedom Restoration Act (RFRA).
- Sotomayor dissented from the majority opinion of the appeals court. “The Religious Freedom and Restoration Act (“RFRA”) is not relevant to this dispute. First, appellees have unambiguously indicated that they do not seek to raise a RFRA defense, and the statute’s protections, even if otherwise applicable, are thus waived. Second, the statute does not apply to disputes between private parties. Third, we should affirm the judgment of the district court without reaching the RFRA issue on the ground that Supreme Court and Second Circuit precedent compels a finding that the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., does not govern disputes between a religious entity and its spiritual leaders. The majority’s opinion thus violates a cardinal principle of judicial restraint by reaching unnecessarily the question of RFRA’s constitutionality. For these reasons, I respectfully dissent.”
- Judge Sotomayor correctly ruled that the Methodist Church can determine their own rules for employment rather than the courts.

Okwedy v. Molinari (2003)

- Sotomayor sat on a three-judge panel that upheld a lower court’s ruling (from 2001) against Keyword Ministries and its pastor, Kristopher Okwedy. The ministry had purchased billboard advertisements featuring Bible verses that condemned homosexuality. The advertisements featured various translations of Leviticus 18:22, which reads in the King James Version, “Thou shall not lie with mankind as with womankind: it is an abomination.” Posted in the New York City borough of Staten Island, the messages were taken down after Guy Molinari, the borough president, sent a letter condemning them to PNE Media, LLC, which owned the billboards.
- Sotomayor’s panel stated: “Plaintiffs have alleged no facts that suggest that Molinari’s purpose or the purpose of the New York law was to single out plaintiffs’ religious expression. In fact, plaintiffs acknowledge that Molinari acted pursuant to the general policy against ‘intolerance’ and ‘bigotry’ expressed in New York law and the New York City Administrative Code § 8-101. ... Therefore, because plaintiffs have not shown that Molinari lacked a rational basis for enforcing that policy, the district court correctly dismissed the Free Exercise Clause claim.”⁴
- Sotomayor’s panel completely ignored the Constitution's protection of free exercise of religion. This blatant disregard for the Constitution’s free exercise clause is very troublesome and reveals Sotomayor’s willingness to censor religious speech.

Flamer v. City of White Plains (1993)⁵

- While on the US District Court for the Southern District of New York, Sotomayor heard Rabbi Flamer's claim that he was banned from displaying a menorah in the city park. In her majority opinion, Sotomayor said that the city violated Rabbi Flamer's first amendment rights of religious expression and free exercise. Since other groups, both religious and secular, were free to display material in the park Rabbi Flamer should have been allowed to display his menorah.
- Sotomayor: "This case involves the interplay between two of our nation's most cherished values: freedom of expression and freedom of religion. Over the years, a wide array of expressive activity by private groups and individuals has occurred in both Tibbits and Main. A prime arena for political expression, Main has been used by numerous political and social activist organizations for demonstrations, rallies and vigils, around issues as diverse as Middle East peace, the United States' invasion of Panama, abortion rights and nuclear disarmament." To the City's argument that the public display of the menorah would be interpreted as the City's endorsement of that religion, Sotomayor said, "For the reasonable observer, the private religious fixed display should be no different from other fixed displays erected by private speakers. This observer should understand that the public forum is the public's expressive playground, and that private speakers with a religious message, like any other member of the public, will resort to this forum to convey their particular messages."

Bottom Line: Sotomayor's record suggests that she understands that it is vitally important for the government to not interfere. Her ruling in *Hankins* reveals a respect for the right of religious groups to govern themselves without federal interference. Her *Flamer* decision reveals that she can take an accommodationist position on church/state relations. These cases suggest that Sotomayor understands the church/state principles in the First Amendment. However, we should be cautioned by the fact that so much of Sotomayor's other rulings are reasoned based upon her personal feelings rather than what the Constitution actually says. How she would rule on more complicated "establishment" cases is unclear. The *Okwedy v. Molinari* decision should deeply concern religious free speech advocates.

The Assault on Traditional Marriage and the Homosexual Agenda

Sotomayor has no judicial record on these crucial issues. Lisa Keen writes, "Long-time gay legal activist Paula Ettelbrick said she met Sotomayor in about 1991 when they both served on then-New York Governor Mario Cuomo's advisory committee on fighting bias. "Nobody wanted to talk to the queer person at that time," said Ettelbrick, who represented Lambda Legal Defense and Education Fund. "She was the only one [on the advisory committee] who made a point to come over and introduce herself. *She was totally interested [in gay civil rights issues] and supportive.*"⁶

Bottom Line: It is very unsettling that there are no rulings or materials that give an indication as to how Sotomayor would rule on these important social issues. In addition to directly breaking God's law, allowing same sex marriage would open the door to polygamy and other additions to the definition of marriage. If we tolerate this redefinition of marriage, what grounds would we have for not tolerating polygamy? Legalized same sex marriage would be the most destructive force in crushing the traditional family unit which is foundational to society. Statistics show that children who grow up in a traditional family unit (one man and one woman marriages) grow up to be more productive citizens and more positive participants in society. Watering down marriage by including all sorts of combinations devalues this most basic structure that God created.

Eminent Domain

Didden v. Village of Port Chester (2006)⁷ – This is a story where the individual was defeated and the big government agenda furthered. Mr. Didden owned a piece of property in Port Chester. He intended to build a CVS Pharmacy, but the city slated the land for condemnation and commercial redevelopment. After the city's

plans went through, the land was turned over to a developer who built a Walgreens Pharmacy on the exact same plot. Sotomayor ruled in favor of the city because the plaintiffs in the case had allowed the statute of limitations to expire before bringing suit. Additionally, had the statute of limitations not expired, it is likely that Sotomayor would have been bound by Supreme Court precedent established in the *Kelo v. City of New London* case where the court said that condemnation for commercial redevelopment was allowable.

*Brody v. Village of Port Chester (2005)*⁸ – Again, a case where the city of Port Chester condemned private property for commercial redevelopment. Sotomayor voted with the majority in stating that while Mr. Brody’s due process rights were violated (based on lack of notice), the lower court would have to ascertain whether or not his damages were more than nominal. Brody’s property, where he rented space to four different businesses, was taken by the city’s developer and turned into a mall parking lot.

*Krimstock v. Kelly (2002)*⁹ – Sotomayor’s opinion in this case was squarely on the side of property owners. Her ruling overturned the NYPD policy of seizing and holding vehicles of suspected criminals without due process. The city had been retaining the vehicles for years at a time without allowing the defendants to challenge the seizures. By doing this the city had violated the Due Process Clause of the Fourteenth Amendment.

Bottom Line: The Supreme Court has shown a willingness to ignore the Constitutional protection of property rights, (*Kelo*). Sotomayor has ruled in three high profile property rights cases and has come out on opposite sides. While *Krimstock* is a commendable ruling, her judgment in the *Didden* and *Brody* cases still suggests a disconcerting pattern. How she would rule in a takings case involving church property is uncertain.

Second Amendment Rights

*Maloney v. Cuomo (2009)*¹⁰

- Maloney was charged with the crime of possessing a nunchuka (a weapon used in martial arts). He brought suit claiming the New York law against the possession of nunchukas 1) violated his second amendment right to bear arms and 2) the law was a violation of the Fourteenth Amendment because his Second Amendment right to bear arms was a fundamental right. Therefore the law would have no rational basis.
- This opinion was written per curiam which means the court issued a ruling that did not credit authorship of the opinion to anyone on the panel. Essentially, all of the judges were in agreement and collaborated on the opinion. The judges concluded that the New York law was not a violation of the 14th amendment because, in their view, the right to bear arms was not a fundamental right. Thus, they also concluded that the law was not a violation of the 2nd amendment because the amendment only applied to the federal government. Since this was a state law and the law did not violate a fundamental right, the law was acceptable and Maloney lost his case.

Bottom Line: Sotomayor does not believe the 2nd amendment is a fundamental right. This is alarming simply because of the direct evidence in opposition to that view. The effects of taking away our right to bear arms could be devastating. If the government is the only institution allowed to legally possess guns, this will create a citizenry that is powerless to protect itself from crime, oppose tyranny, and create an even greater dependence on the government. This is a direct limitation of our individual rights. If Sotomayor does not acknowledge a right as fundamental as the right to bear arms, then what other rights might she deem invalid?

Civil Rights Issues

Sotomayor’s most recent and famous civil rights case is *Ricci v. DeStefano (2008)* in which the Supreme Court eventually overturned her. Ricci represented a group of white and Hispanic firefighters who passed a

promotional exam but were denied promotion because the examinations the city used had a disparate impact on African American and other minority candidates. Disparate impact is a theory of liability that prohibits an employer from using a facially neutral employment practice that has an unjustified adverse impact on members of a protected class. A facially neutral employment practice is one that does not appear to be discriminatory on its face; rather it is one that is discriminatory in its application or effect.

The lack of judicial consideration and analysis in a case with such weighty constitutional questions and far reaching implications is astonishing. The entirety of the panel's opinion in the case reads, "We affirm, for the reasons stated in the thorough, thoughtful, and well-reasoned opinion of the court below." *Ricci v. DeStefano*, 554 F.Supp.2d 142, 2006 U.S. Dist. LEXIS 73277, 2006 WL 2828419 (D.Conn. Sept. 28, 2006). As Judge Cabranes sums it up: "This per curiam opinion adopted in toto the reasoning of the District Court, without further elaboration or substantive comment, and thereby converted a lengthy, unpublished district court opinion, grappling with significant constitutional and statutory claims of first impression, into the law of this Circuit. It did so, moreover, in an opinion that lacks a clear statement of either the claims raised by the plaintiffs or the issues on appeal. Indeed, the opinion contains no reference whatsoever to the constitutional claims at the core of this case, and a casual reader of the opinion could be excused for wondering whether a learning disability played at least as much a role in this case as the alleged racial discrimination."¹¹ (Judge Jose Cabranes, a Clinton appointee, is one of Sotomayor's colleagues on the Second Circuit.)

The district court hearing the case wrote, "In this case, the Civil Service Board found itself in the unfortunate position of having no good alternatives. We are not unsympathetic to the plaintiffs' expression of frustration. Mr. Ricci, for example, who is dyslexic, made intensive efforts that appear to have resulted in his scoring highly on one of the exams, only to have it invalidated. But it simply does not follow that he has a viable Title VII claim. To the contrary, because the Board, in refusing to validate the exams, was simply trying to fulfill its obligations under Title VII when confronted with test results that had a disproportionate racial impact, its actions were protected."¹²

Edward Whelan of the Ethics and Public Policy Center, quoting McCormack writes, "Sotomayor may have not wanted *un*qualified firefighters to be elevated to the position of captain and lieutenant--she simply wanted *less* qualified firefighters to be placed in charge of the lives of other men in the interests of racial diversity. I wonder what Eddie Ramos would say about that if he were alive today."¹³

"In *Brown v. City of Oneonta*, (2000)¹⁴, Judge Sotomayor joined an opinion dissenting from the denial of rehearing *en banc* that, along with another dissent, set forth what Chief Judge Walker called 'novel equal protection theories that ... would severely impact police protection.' The Second Circuit denied rehearing *en banc*, with five judges, including Sotomayor, dissenting. In his dissent (which Sotomayor joined, except for one part), Judge Calabresi argued that 'when state officers (like the police) ignore essentially everything but the racial part of a victim's description, and, acting solely on that racial element, stop and question all members of that race they can get hold of, even those who grossly fail to fit the victim's description,' the state is 'creating an express racial classification that can only be approved if it survives strict scrutiny.' *Id.*

Bottom Line: In *Ricci*, all Sotomayor and her colleagues did was say we are going to take the District Court's word here. Also unnerving is Sotomayor's failure to recuse herself from the case to begin with. While Sotomayor was a board member for a Puerto Rican legal advocacy organization in the 1980's that organization brought suit against the New York City Police Department ("NYPD") challenging NYPD police promotions exams as discriminatory. She then sat as a judge and heard the *Ricci* case on the exact same issue. She should have recused herself from this case. It is impossible to say that there will never be a case where a judge may have a conflict, however, when the cases are this closely related, the code of judicial conduct suggests you recuse yourself.

- ABA Code of Judicial Conduct:
 - CANON 2: A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
 - CANON 3: A judge shall perform the duties of judicial office impartially and diligently.

These cases combined with her numerous comments in speeches and law review articles (the wise Latina woman comments) show a clear pattern of her preferences in identity politics.

Judicial Activism

“In 1996, Judge Sonia Sotomayor delivered a speech to law students that she then turned into a law-review article (which she co-authored with Nicole A. Gordon), ‘Returning Majesty to the Law and Politics: A Modern Approach’ (30 Suffolk U.L. Rev. 35 (1996)). Sotomayor argues, ‘It is our responsibility’--the responsibility of lawyers and judges—‘to explain to the public how an often unpredictable system of justice is one that serves a productive, civilized, but always evolving, society.’ She identifies--and treats as equally legitimate--four ‘reasons for the law’s unpredictability’: (a) ‘laws are written generally and then applied to different factual situations’; (b) ‘many laws as written give rise to more than one interpretation’; (c) ‘a given judge (or judges) may develop a novel approach to a specific set of facts or legal framework that pushes the law in a new direction’; and (d) the purpose of a trial is not simply to search for the truth but to do so in a way that protects constitutional rights.’¹⁵

- As if Sotomayor's unwarranted celebration of "indefiniteness" weren't enough to alarm anyone who cares about the rule of law, anyone interested in civil-justice reform ought to take note of Sotomayor's criticism that "legislators have introduced bills that place arbitrary limits on jury verdicts in personal injury cases. But to do this is inconsistent with the premise of the jury system." Oh, really? How can it be that legislation can determine when juries should rule for plaintiffs but not limit the amounts they can award? *Id.*
- She doesn't always give support for her conclusions, thus she is more likely to be the type of judge that would ignore the Constitution.
- “First, there are the questions about Sotomayor’s temperament and intellect. Liberal law professor, author and Supreme Court expert Jeffrey Rosen wrote earlier this month in the *New Republic* that, ‘Over the past few weeks, I’ve been talking to a range of people who have worked with [Sotomayor], nearly all of them former law clerks for other judges on the Second Circuit or former federal prosecutors in New York. Most are Democrats ... but nearly none of them raved about her. They expressed questions about her temperament, her judicial craftsmanship, and most of all, her ability to provide an intellectual counterweight to the conservative justices.’ Jonathan Turley, an equally liberal professor of law at George Washington University, reviewed Sotomayor’s opinions and concluded, “[Her opinions] are notable in one thing, in that it’s a lack of depth. There’s nothing particularly profound in her past decisions. ... You can’t say she’s a natural choice for the Supreme Court.” (MSNBC, May 26, 2009)¹⁶

Bottom Line: Sotomayor is on the record stating that Circuit Court judges make policy. She does not distinguish between sources of law and fails to see the proper distinction and roles of the legislative and judicial branches of government in creating and interpreting the law.¹⁷

Creation Care and the Environment

Sotomayor is not a predictable vote for environmentalists, industry, states, or the federal government in environmental cases.¹⁸

Her most recognized environmental ruling is *Riverkeeper v. EPA*, 358 F.3d 174 (2d. Cir. 2004). In that case Sotomayor used a strict interpretation of the statutory language to mandate that companies use the best

technology available to limit the environmental impact of nuclear reactor intakes on fish and aquatic life during their cooling processes. Specifically, her decision mandated that the EPA not engage in a balancing cost benefit analysis that would measure the cost of implementing the technology against the environmental benefit gained. The Supreme Court overturned this decision on appeal stating that Sotomayor's interpretation of the statute was too narrow.

In her other environmental cases she has a mixed record. The only other, major environmental decision authored by Judge Sotomayor on the Second Circuit is *New York v. National Service Industries*, 460 F.3d 201 (2006), a Superfund case in which New York sued a company to recover the state's costs of cleaning up a hazardous waste site. Sotomayor and the Court of Appeals found in favor of the company, concluding that it was not liable for the acts of another, only loosely-related firm.¹⁹

Two other decisions in which Judge Sotomayor didn't write the opinion but voted in the majority are also instructive: in *Environmental Defense v. USEPA*, 369 F.3d 193 (2004), Sotomayor and her colleagues rejected an environmental group's challenge to EPA's approval of New York's plan to attain air quality standards for ozone pollution. And in *Natural Resources Defense Council v. Abraham*, 355 F.3d 179 (2003), her panel sided with a coalition of states and environmental groups that had challenged the Bush Administration's efforts to roll back national energy conservation standards for appliances. *Id.*

Bottom Line: Sotomayor's limited environmental cases are all over the board and we have no clear way of telling how she will vote on any particular cases that come before her. Her decision in *Riverkeeper* reveals a willingness to allow environmental arguments to trump standard economic considerations. Had this decision not been overturned by the Supreme Court, businesses could be laboring under EPA requirements to implement the most effective environmental regimes despite their potential devastating effects on the viability of the company, even for little environmental gain.

Transnationalism

Edward Whelan from The Ethics and Public Policy Center wrote the following about Sotomayor's transnationalist views:

- "A week ago, Senator Cornyn launched an impressive series of daily questions for Judge Sotomayor. His first question in the series--"What is the proper role of foreign and international law in interpreting the United States Constitution?"...Senator Cornyn's account: Judge Sotomayor argued that foreign and international law can be "very important" to American judges as a source of "good ideas" that "set our creative juices flowing." In response to those who oppose judicial consideration of foreign law to determine the limits of democratic decision making, she stated at the 1:08 mark: *How can you ask a person to close their ears? Ideas have no boundaries. Ideas are what set our creative juices flowing. They permit us to think, and to suggest to anyone that you can outlaw the use of foreign or international law is a sentiment that is based on a fundamental misunderstanding. What you would be asking American judges to do is to close their minds to good ideas.* Judge Sotomayor also stated at the 20:48 mark that considering foreign and international law is part of a judge's "freedom of ideas": *To the extent that we as a country remain committed to the concept that we have freedom of speech, we must have freedom of ideas. And to the extent that we have freedom of ideas, international law and foreign law will be very important in the discussion of how to think about the unsettled issues in our legal system. It is my hope that judges everywhere will continue to do this.*"²⁰

Bottom Line: Placing Sotomayor on the court would be a major coup for the transnationalist movement. While Justice Ginsburg already represents the transnationalist view on the court, if President Obama could add a second Justice to the court with transnationalist views it would strike a blow against Constitutional sovereignty. Hillary Clinton, Rahm Emanuel, Harold Koh, Cass Sunstein, and many other high ranking Obama

administration officials favor application of United Nations protocols and international law over the Constitution. Sotomayor believes that use of foreign law can be “very important and a source of good ideas”.

Areas of Concern

High Rate of Reversal: Judge Sotomayor has a very high reversal rate at the Supreme Court. Seven of the cases in which she joined or wrote the majority opinions have been appealed to the Supreme Court. The most recent and arguably most famous being a Title XII challenge by white and Hispanic fire fighters (*Ricci v. City of New Haven*). Of those seven cases, the Supreme Court has reversed five and seriously questioned her reasoning in a sixth which the Court ultimately upheld on other grounds. This demonstrates that Sotomayor’s jurisprudence, at least in the most important cases, has been outside the Supreme Court’s view. Additionally, her stance in the Second Amendment case of *Maloney v. Cuomo* (that the Second Amendment should not be incorporated and that the right to bear arms is not a fundamental right) is even outside the norms of the typically liberal-leaning 9th Circuit Court of Appeals which recently held that the Second Amendment should be incorporated.

Temperament: Judge Sotomayor has elicited critiques that range from "she can be a terror on the bench" and "she is temperamental and excitable" to "she can be a bit of a bully" and "she can get harsh at oral argument." All told, her temperament drew a dozen highly critical comments.²¹

Lack of Detail: Sen. Sessions, the Ranking member of the Judiciary Committee, focused in part on Sotomayor’s pattern of burying her questionable decisions on the Second Amendment and other high-profile issues by brushing over the key questions: “[Sotomayor has] provided a breathtakingly short amount of analysis when confronted with novel and important constitutional questions. . . . Judge Sotomayor’s lack of attention and lack of analysis are troubling. These truncated opinions also suggest a troubling tendency to avoid or casually dismiss difficult Constitutional issues of exceptional importance. Other examples of this [in addition to Second Amendment cases] may include the New Haven Firefighters case, *Ricci v. DeStefano*, which is currently pending before the Supreme Court, and the Fifth Amendment case, *Didden v. Village of Port Chester*.”²²

- Since Sen. Sessions made this statement the Supreme Court did in fact overturn *Ricci v. DeStefano*.

Conclusion

Sonia Sotomayor’s record reveals that she is perfectly willing to lift the blindfold of justice to achieve her desired result. She is a judge with a terribly flawed view of the judicial system at best or a judge who simply doesn’t care what the law says at worst. She has constantly shown her lack of deference to the Constitution. She is the type of justice who instead of applying the law neutrally will redefine the law to conform to her policy preferences. The bottom line is that Sonia Sotomayor is an unpredictable wildcard. Across the issues her record is either far too thin or hidden behind non-published orders and per curium opinions. Simply put, placing Sonia Sotomayor on the highest court in the land jeopardizes our nation’s commitment to equal treatment under the law.

¹ “EDITORIAL: Sotomayor's abortion ties”, The Washington Times Online, June 10,2009.

² McKissick, Drew, “Sotomayor's Problems on Gun Rights and Abortion”, Christian Coalition of America Online, June 19, 2009.

³ *Hankins v. Lyght*, 441 F.3d 96 (2d Cir. 2006)

⁴ Brickley, Adam, “Sotomayor Supported Censoring Biblical Verse on Homosexuality from New York City Billboard,” CNSNews.com online, July 8, 2009, <http://cnsnews.com/public/content/article.aspx?RsrcID=50678>.

⁵ *Flamer v. City of White Plains, N.Y.*, 841 F.Supp. 1365 (S.D.N.Y.,1993.)

⁶ Keen, Lisa, “Obama nominates Sotomayor to Supreme Court”, Bay Windows Online, May 26, 2009.

⁷ *Didden v. Village of Port Chester*, 173 Fed. Appx. 931 (2d Cir. 2006)

⁸ *Brody v. Village of Port Chester*, 434 F.3d 121 (2d Cir. 2005)

⁹ *Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002)

¹⁰ *Maloney v. Cuomo*, 554 F.3d 56 (2d Cir. 2009)

¹¹ Whelan III, M. Edward, "[The Record of Supreme Court Nominee Sonia Sotomayor](#)", Ethics and Public Policy Center Online, June 9, 2009.

¹² *Ricci v. DeStefano*, 530 F.3d 87 (2d Cir. 2008)

¹³ Whelan III, M. Edward, "[The Record of Supreme Court Nominee Sonia Sotomayor](#)", Ethics and Public Policy Center Online, June 9, 2009.

¹⁴ *Brown v. City of Oneonta*, 235 F.3d 769 (2d Cir. 2000)

¹⁵ Whelan III, M. Edward, "[The Record of Supreme Court Nominee Sonia Sotomayor](#)", Ethics and Public Policy Center Online, June 9, 2009.

¹⁶ "[Guns, Intellect & Judgment are Key Sotomayor Issues](#)", Committee for Justice Online, May 27, 2009.

¹⁷ <http://www.youtube.com/watch?v=ug-qUvI6Wfo&NR=1>

¹⁸ Frank, Richard, "[Judge Sotomayor's Environmental Record](#)", The Legal Planet the Environmental Law and Policy Blog, May 28, 2009.

¹⁹ Frank, Richard, "[Judge Sotomayor's Environmental Record](#)", The Legal Planet the Environmental Law and Policy Blog, May 28, 2009.

²⁰ Whelan III, M. Edward, "[The Record of Supreme Court Nominee Sonia Sotomayor](#)", Ethics and Public Policy Center Online, June 9, 2009.

²¹ Doyle, Michael and Marisa Taylor McClatchy, "[Sotomayor's Take-no-guff Demeanor Could Alter Court Dynamics](#)", McClatchy Truth to Power Online, May 27, 2009.

²² Levey, Curt, "[NRA & Senators: Sotomayor Hostile to 2nd Amendment](#)", Committee for Justice Blog, June 25, 2009.