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# Supreme Court Nominee Sonia Sotomayor: Four Concerns

By Curtis Coleman  
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Any capable businessman or businesswoman will tell you that he or she will resist the pressure to make a hasty decision before having all the information necessary to make a good one. "A compelling life story" notwithstanding (Clarence Thomas had an equally compelling life story), Arkansans should have grave concerns and demand meticulous answers about Supreme Court nominee Sonia Sotomayor's judicial record. But an ad hominem examination will provide little if any useful information for an intelligent conclusion on this critical decision. Americans recognize and appropriately value the difference between the denigration of a person's character and the examination of a person's positions.

Most serious among those concerns:

1. **Her inclination to limit the rights guaranteed by the Second Amendment.**

In January 2009 (*Maloney v. Cuomo*), Sotomayor signed an opinion of the U.S. Court of Appeals for the Second Circuit that said that states do not have to obey the Second Amendment's commandment that the right to keep and bear arms shall not be infringed.

In reaching her opinion, she ignored the 2008 Supreme Court's decision in *Heller v. District of Columbia*, in which the high court said that the right to keep and bear arms was a natural right of all Americans and that the Second Amendment guaranteed that right to everyone.

2. **Her potential propensity to use her judicial power to make new "law".**

With good reason, we'll continue to hear her 2005 statement in which she describes the role appellate justices have in forming "policy":

"All of the legal defense funds out there, they are looking for people with court of appeals experience because the court of appeals is where policy is made. And I know this is on tape and I should never say that because we don't make law. I know. Okay, I know. I'm not promoting it. I'm not advocating it. I know."

On the other hand, under pressure from Sen. Jeff Sessions (R-Ala.) during her 1997 United States Court of Appeals for the 2nd Circuit confirmation hearing, Sotomayor said of her judicial philosophy:

"I don't believe we should bend the Constitution under any circumstance. It says what it says. We should do honor to it."

With the President's statements that he finds himself compelled "to side with Justice [Stephen] Breyer's view of the Constitution -- that it is not a static but rather a living document, and must be read in the context of an ever-changing world," it would seem that one would have to give more weight to her 2005 statement than the 1997 description of her judicial philosophy.

### **3. Her questionable opinions on reverse discrimination.**

According to a report by Seth Stern in CQ Politics on May 27, 2009, "In 2008, Sotomayor was one of three judges on a panel of the U.S. Court of Appeals for the 2nd Circuit who upheld a trial court's ruling rejecting the reverse discrimination claims by 19 white firefighters, one of whom was also Hispanic. The plaintiffs claimed that the city of New Haven violated their rights by throwing out the results of an officers' promotion exam in which minority candidates received disproportionately low scores.

"The full court voted not to review the case but Judge Jose A. Cabranes [*a Bill Clinton appointee*] wrote a dissent in which he suggested that Sotomayor's panel 'failed to grapple with the questions of exceptional importance raised in this appeal.'"

This concern is exacerbated by a Sotomayor statement made in a 2001 interview at Berkeley in response to the famous Sandra Day O'Connor quote, "a wise old man and a wise old woman would reach the same conclusion when deciding case," Sotomayor responded, "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life,"

### **4. Her position on the right to life.**

Americans United for Life's analysis of Sotomayor's position on abortion:

"Despite 17 years on the bench, Judge Sotomayor has never directly decided whether a law regulating abortion was constitutional."

However, pro-choice groups have hailed her nomination, with Planned Parenthood declaring that she "understands the importance of ensuring that our

Supreme Court justices respect precedent while also protecting our civil liberties."

