

July 23, 2009

To the Members of the United States Senate:

We, the undersigned 156 conservative and constitutional cause leaders, activists and other concerned citizens, respectfully submit a statement in opposition to the confirmation of Judge Sonia Sotomayor to the United States Supreme Court.

## **Even President Obama's Supreme Court Nominee Rejects His Views on the Constitution**

### **But Confirmation Conversions Are Not Acceptable for Lifetime Appointments**

It is historic, as far as we know, that a nominee to the Supreme Court has gone on record at her confirmation hearing to reject the underlying judicial philosophy of the President who made the nomination.

- President Obama said his judicial nominee would be someone with “empathy” and “who understands that justice isn't about some abstract legal theory or footnote in a casebook.” **“That's the criteria by which I'm going to be selecting my judges,”** he said.
- Top presidential advisor David Axelrod said in a May 26, 2009 interview that President Obama nominated Judge Sotomayor because **“he wanted someone whose philosophy of judging was his,”** which as applied to the law and constitutional principles was to “be ready to adapt them to a modern context.”
- In his opening statement at the Senate Judiciary Committee confirmation hearings, Sen. Jeff Sessions said, "I will not vote for and no senator should vote for an individual nominated by any president who believes it is acceptable for a judge to allow their personal background, gender, prejudices or sympathies to sway their decision in favor of or against the parties before the court. In my view, such a philosophy is disqualifying."
- In response to questioning from Sen. Jon Kyl about whether she agreed with the president's judicial philosophy, Judge Sotomayor replied, “No, sir, I wouldn't approach the issue of judging the way the president does. Judges can't rely on what's in their heart. They don't determine the law. Congress makes the laws. The job of a judge is to apply the law.”
- Some observers noted that judge Sotomayor appeared to have a “confirmation conversion” about following the law, not personal preferences.

Voters will have their chance to render their judgment about President Obama and his views of governing at the polls. If Judge Sotomayor were confirmed for the Supreme Court, however, her appointment would be for life.

We the undersigned believe that Judge Sotomayor did have a confirmation conversion, perhaps based on her realization that the judicial philosophy she shares with President Obama is in fact disqualifying for confirmation to our highest court, or perhaps because that judicial philosophy is unpopular. It is not an objectionable judicial philosophy that judges may check constitutional abuses by the other branches. However, a judicial philosophy that goes beyond the authority granted by Article III of the Constitution should be disqualifying.

Given that an appointment to the Supreme Court is for life, the statements by the President and his advisors, and Judge Sotomayor's pre-confirmation statements that conflicted with her confirmation testimony, we believe her judicial philosophy is indeed one that should disqualify her from appointment to the Supreme Court.

This is a matter of whether the nominee has demonstrated that she will abide by the role of the judiciary consistent with, and as constrained by, the Constitution.

Judge Sotomayor's rulings, whether dealing with the 1<sup>st</sup> Amendment, 2<sup>nd</sup> Amendment, private property rights, criminal law, use of foreign law, race, equal protection and other areas of law, demonstrate that if she is consistently "empathetic" at all, it is in favor of government power, even beyond constitutional constraints.

Americans are witnessing how much more ideological President Obama is in office compared to "candidate" Obama. He has shown a disturbing disregard for the constitutional limits on presidential and other government power. While we do not hold Judge Sotomayor responsible for her sponsor's ideology, we do believe the Constitution would be placed in further jeopardy if she were confirmed to a lifetime position on the Supreme Court.

We urge the Senate to reject Judge Sotomayor. Judge Sotomayor should remain a judge on the Second Circuit Court of Appeals where her decisions would be subject to the check of the Supreme Court.

President Obama should nominate another candidate whose views of judicial power are demonstrably consistent with Article III of the Constitution. That means the next nominee's views of the judiciary should be demonstrably inconsistent with the President's, whose views are not consistent with Article III, even before that nominee's confirmation hearings.

Respectfully,

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