

Testimony of
JoAnne Epps

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My name is JoAnne Epps. I am the Dean of Temple University Beasley School of Law and Co-Chair of the Committee for the Evaluation of Supreme Court Nominees of the National Association of Women Lawyers ("NAWL"). On behalf of NAWL, I thank you for the opportunity to appear before you today in support of the confirmation of Judge Sotomayor as an Associate Justice of the Supreme Court.

After careful evaluation of Judge Sotomayor's background and qualifications, NAWL has concluded that Judge Sotomayor is highly qualified for this position. She has the intellectual capacity, the appropriate judicial temperament and respect for established law and process needed to be an effective Supreme Court Justice. She is mindful of a range of perspectives that appropriately should be considered in rendering judicial decisions, and if confirmed will clearly demonstrate that highly qualified women have a rightful place at the highest levels of the profession. We therefore encourage your vote in favor of her confirmation.

Founded over 100 years ago, and with thousands of members from all 50 states, NAWL is committed to supporting and advancing the interests of women lawyers and women's legal rights. From campaigning in the early 1900's for women's voting rights and the right of women to serve on juries, to supporting in 2009 the Lilly Ledbetter Fair Pay Act, NAWL has been a supporter of the interests of women. As such, NAWL cares deeply about the composition of the Supreme Court and insuring that it includes the perspectives of all Americans, especially those of women, not just because most of our members are women, but because all of our members care about issues that affect women.

NAWL's recommendation today is based on the work of NAWL's Committee for the Evaluation of Supreme Court Nominees. In accordance with NAWL procedures, the Committee independently evaluated the qualifications of Judge Sotomayor to serve as an Associate Justice of the Supreme Court. Special emphasis was placed on matters regarding women's rights or that have a special impact on women. The 18 Committee members, appointed by the President of NAWL, include law professors and a law school dean, appellate practitioners and lawyers concentrating in litigation. I co-chaired the committee together with Trish Refo, a partner at Snell and Wilmer in Phoenix, Arizona.

The work of the Committee was divided into two categories. We read a large selection of Judge Sotomayor's opinions, and we interviewed more than fifty people who know Judge Sotomayor in a variety of capacities. Those interviewed included former law clerks, former colleagues, professional acquaintances, former classmates, individuals who appeared before Judge Sotomayor, as well as co-counsel and opposing counsel from when Judge Sotomayor was engaged in the private practice of law. The purpose of the interviews was to obtain information regarding Judge Sotomayor's legal abilities, legal philosophy, and judicial temperament, as well as other issues of importance to NAWL, such as how Judge Sotomayor has treated women, including her female employees and colleagues and, as a judge, those appearing before her. The interviews also sought information on the following topics: Women and the Workplace; Women

and the Criminal Justice System; Women and Health Care; Women and Education; Women and Family; Women in the Military; Women and Finance; Women and Retirement; Policies and Laws Impacting Multicultural Women; Enforcement of Statutes regarding Women's Rights; Federal versus State Law Relief; and any other issues with likely impact on women.

Those interviewed describe Judge Sotomayor as open-minded, but respectful of precedent, which is consistent with her judicial opinions. She is courteous and respectful to all those with whom she has professional interactions, including those who do not occupy positions of status or influence. She has treated litigants, attorneys and court personnel, and, in particular for the Committee's review, women in the courts, with the utmost respect and professionalism in and out of the courtroom. Those who have interacted with Judge Sotomayor in other capacities, both before and after she was appointed to the bench, describe her as a good colleague, a team player, and supportive of institutional goals. This information is important to NAWL, in that it discloses more than a nominee's intellectual capacity and talent as a lawyer or judge; it demonstrates the extent to which the nominee respects the full range of humanity, from whose ranks come the people whose cases the Supreme Court will decide.

Our review of Judge Sotomayor's writing included majority opinions, concurrences, dissents and opinions that she wrote or joined in that were reviewed by the United States Supreme Court. Although some cases were of particular importance to women, the review included a wide range of criminal and civil issues. From that review, NAWL has concluded that Judge Sotomayor has consistently displayed a superior intellectual capacity, a comprehensive understanding of the issues with which she was presented and a thorough and firm grasp of the legal issues that have come before her. She excels in her ability to analyze statutory and case law and her judicial reasoning is supported by sound legal interpretation. A hallmark of her writing is clarity. She is disciplined, thorough and shows no inclination to disregard precedent in order to rule in favor of a particular party.

As a judge, Judge Sotomayor has been sympathetic to litigants coming before her and has conscientiously ensured that their claims, particularly of those representing themselves, are carefully considered. Indeed, by focusing on the specific facts of the case, rather than overall ideology, Judge Sotomayor is able to understand how the law impacts the lives of ordinary people and apply the law in its proper context. While Judge Sotomayor is not afraid to disagree with her colleagues if her legal analysis leads her to do so, a strong preference to follow judicial precedent and consistent respect for the rule of law are far more consistent themes. For example, Judge Sotomayor has displayed great knowledge and understanding of the impact of gender and race-based comments and behavior in the workplace, although her sensitivity to the plight of the plaintiffs in these cases did not translate necessarily into findings favoring those individuals, except where a solid basis in law existed to do so. Similarly, in NAWL's view, Judge Sotomayor has firmly demonstrated a lack of gender, racial, ethnic or religious bias, exhibiting instead a firm willingness to maintain an open mind. We wish to emphasize, however, that while we find Judge Sotomayor open-minded regarding issues of importance to women, we do not find her outcome-oriented or otherwise improperly biased on such issues. Rather, she prefers to decide cases on the record before her. She does not, therefore, deserve the label "judicial activist".

Based on its review of both Judge Sotomayor's opinions and those with whom she has had professional contact, NAWL has concluded that Judge Sotomayor is highly qualified to serve as an Associate Justice of the Supreme Court. She is highly intelligent and well-educated, she is mindful of issues of significance to women, and her appointment would advance the very important message that women have a contribution to make at the highest levels of decision-

making.

Finally, NAWL supports the confirmation of Judge Sotomayor for the important message it conveys. NAWL does not believe Judge Sotomayor should be confirmed solely because she is a woman or a Latina. But the fact is that Judge Sotomayor is, as ultimately we all are, a product of her experiences, and for her those experiences include life as a woman and a Latina. Both perspectives will be welcome additions to the Court's deliberations. As a nation, we have come a long way. But we still have much to do. Women are nearly half of this nation, but a mere 1/9 of the Supreme Court. The disparity of representation is not trivial in effect. In the legal profession, although women have comprised 50% or more of graduating law school classes for more than two decades, they continue to be markedly under-represented in leadership roles in the profession and on the federal bench. As of last year, women were only 16% of equity partners (owners) in this country's largest law firms. 99% of law firms reported that their highest paid lawyer was a man. In 2008, the salaries of women lawyers were just 80.5% of men lawyers' salaries. Just 23% of federal district and circuit judges were women. Women of color face additional barriers, making up just 1.9% of all law firm partners. 19% of this nation's law firms have not one lawyer of color. Your confirmation of Judge Sotomayor will, therefore, send a strong message to law firms, corporations, government and academia that we must - and can - eliminate the persistent barriers to the advancement of women attorneys. It will reinforce what should be a standard expectation: that women of diverse ethnic backgrounds should, of course, occupy positions of parity with men in the legal and other professions.

As others this week have said, I long for the day when it would not even occur to anyone to mention Judge Sotomayor's gender and ethnicity, those matters having become non-noteworthy. But that time is not yet here. With this vote, you can send a message; no, you will send a message. You have the chance to tell everyone, but most especially the wonderful women and girls in your life not just that they matter, but that issues of concern to them matter, and that their voices and perspective are important in shaping our world.

Judge Sotomayor is eminently qualified for this position, but not simply because she is a woman. She has the intellectual capacity, the appropriate judicial temperament and respect for established law and process needed to be an effective Supreme Court Justice. She is appropriately mindful of the human component of law. And she symbolizes the triumph of intelligence, hard work and compassion. Accordingly, NAWL strongly supports the confirmation of Judge Sotomayor to be Associate Justice of the United States Supreme Court.