

Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
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Statement of U.S. Senator Russ Feingold on the Nomination of Sonia Sotomayor to be an Associate Justice of the Supreme Court of the United States

The scrutiny to be applied to a president's nominee to the Supreme Court is the highest of any nomination. The Supreme Court, alone among our courts, has the power to revisit and reverse its precedents, and so I believe that anyone who sits on that Court must not have a pre-set agenda to reverse precedents with which he or she disagrees, and must recognize and appreciate the awesome power and responsibility of the Court to do justice when other branches of government infringe on or ignore the freedoms and rights of our citizens. This is the same standard I applied to the nominations of both Chief Justice Roberts and Justice Alito.

What we saw over four days of hearings on the nomination of Judge Sotomayor was a thoughtful, intelligent, and careful judge, a person committed to her craft and to the law, someone whose remarkable life story and varied experience will add diversity and perspective, which the Court sorely needs. Not only will Judge Sotomayor become the first Latina Justice, and only the third woman, to serve on the Court, but she will be the only Justice who has served as a trial court judge, and she will have more judicial experience at the outset of her service on the Court than any of her colleagues did. There is no doubt she is highly qualified, and I think we saw during those four days of hearings that she has an admirable judicial temperament and demeanor that will serve her well on the Court.

Judge Sotomayor's record and testimony satisfied me that she understands the important role of the Court in protecting civil liberties, even in a time of war. She sat on a Second Circuit panel that struck down portions of the National Security Letter statute that was so dramatically expanded by the Patriot Act. And when I asked her how September 11 changed her view of the law, she gave the following answer:

"The Constitution is a timeless document. It was intended to guide us through decades, generation after generation, to everything that would develop in our country. It has protected us as a nation. It has inspired our survival. That doesn't change."

Later, when we discussed the Korematsu case, she said: "A judge should never rule from fear. A judge should rule from law and the Constitution." Those words give me hope that she will have the courage to defend the liberties of the American people from an overreaching executive or legislative branch.

At the same time, she appreciates the deference the judiciary must give to the legislature as it seeks to solve the problems facing the American people. I don't see in her record or in her public statements a burning desire to overturn precedent or to remake constitutional law in the image of her own personal preference, and I certainly don't see bias of any kind. I was also impressed with her record and statements during the hearing on judicial ethics. Judge Sotomayor seems to understand that the extraordinary power she will wield as a Justice must be accompanied by

extraordinary care to guard against any apparent conflict of interest.

Mr. Chairman, all that being said, I do want to express a note of dissatisfaction. Not with you certainly, or with my colleagues, and not with Judge Sotomayor, but with a nominations process that I think fails to educate the Senate or the public about the views of potential Justices on the Supreme Court. I've said before that I do not understand why the only person who cannot express an opinion on virtually anything the Supreme Court has done in recent years is the person from whom the American public most needs to hear. It makes no sense to me that the current Justices can hear future cases notwithstanding the fact that we know their views on a legal issue because they wrote or joined an opinion in a previous case that raised a similar issue, but nominees for the Court can refuse to tell us what they think about that previous case under the theory that doing so would compromise their independence or their ability to keep an open mind in a future case.

I remain unconvinced that the dodge that all nominees now use - "I can't answer that question because the issue might come before me on the Court" - is justified. These hearings have become little more than theater, where Senators try to ask clever questions and nominees try to come up with cleverer ways to respond without answering. This problem certainly did not start with these hearings or this nominee, but perhaps it is inevitable. The chances of the Senate rejecting a nominee who adopts this strategy are very remote, based on the recent history of nominations. Nonetheless, I do not think it makes for meaningful advice and consent.

So I cannot say that I learned everything about Judge Sonia Sotomayor that I would have liked to learn. But what I did learn about her makes me believe that that she will serve with distinction on the Court, and that I should vote in favor of her confirmation.