

Statement of

The Honorable Herb Kohl

United States Senator
Wisconsin
July 28, 2009

I want to congratulate Chairman Leahy and Senator Sessions, and your staffs on Judge Sotomayor's confirmation hearings. The proceedings were fair to all members and most importantly to the nominee.

Today, I am pleased to cast my vote for Judge Sotomayor, an individual whose life story is an inspiration to millions of Americans. A child of immigrants with modest means, Judge Sotomayor has risen by dint of exemplary academic accomplishment and hard work, to the cusp of confirmation to our nation's highest court.

But Judge Sotomayor is much more than just a story of accomplishment. She has shown herself to be a judge truly worthy of elevation to the Supreme Court. Both on the bench and before this Committee, Judge Sotomayor has proved that she has the necessary character, competence and integrity to serve on the Supreme Court. Judge Sotomayor's distinguished 17 year judicial record demonstrates her commitment to fair and impartial application of the law, and respect for the values which make up our Constitution.

At her hearing, Judge Sotomayor assured us that she will listen with an open mind to all sides of an argument and that she will be mindful of the very real impact her decisions will have on each and every American. She pledged fidelity to the Constitution and to the Court's precedent, as well as a responsibility to cautiously review precedent when justice requires.

As we conclude our Committee's action on Judge Sotomayor's nomination, we need to reflect upon the role that confirmation hearings play in the Senate's duty to "advise and consent." While I have no reservations about my support for Judge Sotomayor, I share the concerns expressed by many Americans, legal commentators and others about our Committee's ability to have candid and substantive conversations with nominees about the issues Americans care about.

We all know that the confirmation process is crucial - it is the public's only opportunity to learn about a nominee before he or she serves for life on the highest court in our land. But, for many years we have seen a familiar pattern from nominees - Democratic and Republican alike - who have learned that the path of least resistance is to limit their responses and cautiously cloak them in generalities.

Understandably, nominees don't want to risk their confirmation by saying anything that might provoke potential opponents. And we cannot ask nominees to disclose how they would vote on cases that might come before them. But it is reasonable for us to ask them to speak more openly about past Supreme Court decisions and how they would decide cases that are close calls -- what reasoning they would use and what factors they would consider.

The concerns I raise do not reflect any personal criticism about Judge Sotomayor. I think she responded to our questions with great intellect and sincerity, and that she has rightly earned bipartisan praise.

However, going forward, Mr. Chairman, I hope that together our Committee can explore ways to achieve the greater candor that the confirmation process demands and the American people

deserve. For example, we could convene a bipartisan group of committee members, members of the bar, constitutional scholars, and perhaps members of the media who have experience following the court and our hearings to help us determine what specific questions we can and should expect substantive answers about. If we can do this, then the Committee's unique opportunity to engage nominees in the great legal questions facing our nation will more effectively fulfill the Senate's constitutional duty.

In the meantime, I commend President Obama for nominating Judge Sotomayor - a woman of great ability who has demonstrated an enduring commitment to public service and to the law. I look forward to her tenure on the Court.