



Judge Sonia Sotomayor: Confirmation Hearing Questions

General Questions

- 1) *Stare decisis* is a long-established legal principle that represents the weight that should be given to legal precedent. The strong emphasis the legal system gives to following precedent is meant to protect society from jarring changes to settled law. As a federal district court and federal appeals court judge, you were bound to follow Supreme Court precedent. The role of a Supreme Court justice, however, is different from that of a lower court judge. During your tenure on the federal bench, what has been your approach to *stare decisis*? Do you anticipate altering your approach if you are confirmed to the Supreme Court?
- 2) If confirmed to the Supreme Court, you will be only the third woman justice in United States history and the first Hispanic justice as well. As you may know, the number of woman judges on our federal courts is low. As of May 2009, only 47 of the nation's 164 federal appeals court judges were women – less than 30 percent. An even smaller percentage of women judges, roughly 25 percent, constituted the makeup of federal district courts in 2008. Justice Ruth Bader Ginsberg has stated on several occasions that another woman justice would strengthen the Court. Do you agree or disagree and why?

Reproductive Rights

- 1) The U.S. Supreme Court's 1973 ruling in *Roe v. Wade* legalized abortion for all women and found abortion to be constitutionally protected within the right to privacy as established by *Griswold v. Connecticut*. In your view, was *Roe v. Wade* correctly decided?
- 2) In 1994, in *Madsen v. Women's Health Center*, the Supreme Court upheld a Florida injunction creating a 36-foot buffer zone outside the entrance of an abortion clinic and prohibited excessive noise that could be heard inside the clinic. In your view, did the Court render a correct judgment? And do you agree with the various ruling by multiple federal courts of appeals that have upheld that constitutionality of the Freedom of Access to Clinic Entrances (FACE) Act that was signed into law that same year?

Employment Discrimination

- 1) In *Ricci v. DeStefano*, you upheld the decision made by the city of New Haven, CT to throw out the results of a promotional exam it administered to firefighters after the results showed that only two Hispanics and no African-American candidates received qualifying scores. You agreed with the reasoning that because the exam had a disparate impact on minority candidates, any promotional decisions based on the exam results would be a

violation of Title VII of the 1964 Civil Rights Act, which bars discrimination in employment based on race and sex, among other protected classes. Can you talk about how you reached this conclusion? As a judge, can you elaborate on your views vis-à-vis disparate impact cases, and how they affect not only minorities but working women as well?

- 2) In an April 2009 speech to the Black, Latino, Asian Pacific American Law Alumni Association of New York University School of Law, you made the following observation: “Almost every historic change in the law has come through the vision provided by someone who has been supported by many. Seminal decisions in race and sex discrimination have come from Supreme Courts composed exclusively of white males. The people who argued the cases before the Supreme Court that have changed the legal landscape, however, were mostly people of color and women, aided by people of many races and of both sexes ... Justice Ginsburg, with other women and men attorneys, was instrumental in advocating and convincing courts that equality of work requires equality in the terms and conditions of employment.” Can you give a few examples of the particular race and sex discrimination cases decided by the Supreme Court that in your view have been “seminal” and discuss their impact?

Title IX

- 1) Title IX of the Education Amendments of 1972 is the federal statute prohibiting sex discrimination in education programs and activities that receive federal financial assistance. Title IX affects all areas of education, and has made it possible for women to pursue careers as lawyers, doctors, mechanics, scientists and professional athletes. Title IX applies to institutions receiving federal funds and addresses such important areas as access and admission to higher education, equity in educational subjects, athletics, and sexual harassment. In 2005, the Court decided *Jackson v. Birmingham Board of Education*, in which Roderick Jackson, a high school women’s basketball coach, claimed he was fired for complaining that his team was denied equal treatment by their school district. Jackson sued under Title IX, arguing that the school district unlawfully retaliated against him for reporting sex discrimination against his players. The Court agreed, finding that individuals who protest sex discrimination may sue under Title IX if their schools retaliate against them, even if the reporting individual was not the direct target of such discrimination. Do you agree with that Title IX protects whistleblowers such as Mr. Jackson?

Pay Equity

- 1) In 2007, the Supreme Court decided the case of *Ledbetter v. Goodyear Tire & Rubber Co.* As you may know, Lilly Ledbetter worked for nearly two decades for Goodyear. Despite receiving top performance awards, she discovered that she had been paid significantly less than male co-workers with the same job. After her November 1998 retirement, she filed suit under Title VII of the Civil Rights Act of 1964 and was awarded



back pay and other remedies in a jury trial. The verdict was appealed and eventually reached the Supreme Court. In a 5-4 decision, the Court not only erased Ledbetter's award, but also left women, minorities, and others in Ledbetter's situation with virtually no recourse to pay discrimination. Earlier this year, Congress passed and President Obama signed a law overturning this harmful decision, restoring the paycheck accrual rule and the ability of those who suffer from pay discrimination to have their day in court. Had you been a justice when the Supreme Court heard this case, how would you have ruled?