

June 30, 2009

The Honorable Patrick Leahy  
 Chairman  
 United States Senate Judiciary Committee  
 433 Russell Senate Office Building  
 Washington, DC 20510

The Honorable Jeff Sessions  
 Ranking Member  
 United States Senate Judiciary Committee  
 335 Russell Senate Office Building  
 Washington, DC 20510

Dear Senators Leahy and Sessions:

As professors of Disability Law, Disability Rights Law, and Special Education Law from across the country, we write to express our support for the confirmation of Judge Sonia Sotomayor for appointment to the United States Supreme Court.

A review of Judge Sotomayor's record on disability law issues indicates that she has an excellent understanding of the various laws' application to people with disabilities in various contexts, including disability civil rights, employment, special education, Social Security, Medicaid, and guardianship.

Judge Sotomayor's record shows that she takes a balanced, thoughtful approach to disability issues. Her analysis is consistently thorough, practical and respectful of individual rights. In close cases, she does not appear to follow any particular ideology or activist agenda.

*Definition of Disability*

With the passage of the Americans with Disabilities Amendments Act of 2008, Congress repudiated much of the way that the Supreme Court has interpreted the Americans with Disabilities Act's definition of disability. Notwithstanding this flux in the law, Judge Sotomayor's opinions in this area stand out as being careful and reasoned, as she has engaged in searching inquiries into the nature of plaintiffs' impairments to determine whether they meet the functional and legal definition of disability. (See *Bartlett v. New York State Board of Law Examiners*, 2001 WL 930792 (S.D.N.Y. 2001).

Judge Sotomayor has not been reluctant to dissent in cases where the law was being applied overly narrowly, particularly on the issue of coverage based on an employer's perceptions of disability ("regarded as"). (See *EEOC v. J.B. Hunt Transp., Inc.*, 321 F.3d 69, 78 (2d Cir. 2003) (Sotomayor dissenting)). After the passage of the ADA Amendments Act, Judge Sotomayor's interpretation of the "regarded as" prong of disability now has been adopted as consistent with congressional intent.

*Discrimination*

Judge Sotomayor has authored decisions holding, as a matter of first impression in the Second Circuit, that "mixed motive" analysis (allowing discrimination claims where there are both discriminatory and non-discriminatory motives for a challenged action) applies in ADA employment discrimination claims

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(See *Parker v. Columbia Pictures Industries*, 204 F.3d 326 (2d Cir. 2000)). Her opinion fully analyzed, and was consistent with, precedents in other jurisdictions and the demonstrated intent of Congress.

*Reasonable Accommodation*

Judge Sotomayor has participated in several cases reversing grants of summary judgment for ADA defendants where there were questions of fact regarding whether plaintiff's requested accommodations were reasonable. Judge Sotomayor wrote a decision reversing a jury verdict against the plaintiff for failure to give a jury instruction indicating that, in determining whether reassignment to a vacant position is a reasonable accommodation, an offer of an inferior position is not reasonable when a comparable, or lateral, position is available. (See *Norville v. Staten Is. Univ. Hosp.*, 196 F.3d 89 (2d Cir. 1999)).

*Education*

Judge Sotomayor's education opinions reflect an appropriate concern for parents' procedural rights, recognizing that, only by ensuring parents' rights to hearings and records can their children's substantive educational rights be ensured, while also balancing states' rights under the "cooperative federalism" envisioned by the Individuals with Disabilities Education Act (IDEA). (See *Taylor v. Vermont Dep't of Educ.*, 313 F.3d 768 (2d Cir. 2002)). She has also written opinions recognizing that the IDEA exhaustion requirement is not so inflexible as to require parents to engage in futile efforts. (See *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195 (2d Cir. 2002)).

*Constitutionality of Federal Civil Rights Legislation*

Judge Sotomayor has resisted judicial attempts to artificially limit federal legislative authority to articulate and enforce individual rights. While demonstrating respect for precedent, she has not interpreted the Constitution to prevent Congress from recognizing individual and civil rights. (See *Hayden v. Pataki*, 449 F.3d 305 (2d Cir. 2006) (Sotomayor joining dissent from en banc decision); *Connecticut v. Cahill*, 217 F.3d 93 (2d Cir. 2000) (Sotomayor dissenting)). Her opinions reflect a deference to Congress and to the plain language of the Constitution.

The Supreme Court is the guardian of our rights and freedoms. As such, we recognize the importance of each nomination to the Court. Based on her record as a district court judge and as a judge on the Second Circuit Court of Appeals, we believe Judge Sotomayor has demonstrated appropriate respect for the rule of law and the importance of individual rights. Therefore, we urge you to confirm the nomination of Judge Sonia Sotomayor to the U.S. Supreme Court.

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