STATEMENT OF THEODORE M. SHAW IN SUPPORT OF JUDGE SONIA SOTOMAYOR IN SUPPORT OF HER NOMINATION AS ASSOCIATE JUSTICE TO THE SUPREME COURT OF THE UNITED STATES

I have known Sonia Sotomayor for over forty years. We first met in 1968, as freshmen at Cardinal Spellman High School in the Bronx. There we were among a modest number of black and Latino students, perhaps ten per cent of the school's population, in what was one of the most academically challenging high schools in New York City. It was a time of great change and upheaval – 1968 was the year that Martin Luther King, Jr. and Robert F. Kennedy were assassinated, and our cities, including New York, were sites of urban unrest. Many of the minority students at Spellman, including Sonia and I, came from the public housing projects of Harlem or the Bronx; or from the tenement houses that surrounded them. We were shaped by those extraordinary times and by the communities from which we came, for better or worse. During that time, the light of opportunity began to shine into corners of society that were long neglected for reasons of race and poverty. Many of us were beneficiaries of what has come to be known as "affirmative action", *i.e*, conscious efforts to open opportunities to individuals from groups that had been discriminated against and excluded from mainstream American life. Some people will immediately seize upon that description to talk about "unqualified" individuals. Affirmative action, properly structured and implemented, lifts qualified individuals from obscurity rooted in unearned inequality. In spite of her brilliance, there was a time when someone like Judge Sotomayor would routinely be left out of the mainstream of opportunities we have come to associate with someone with her capabilities and credentials.

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Sonia was at the top of our class at Cardinal Spellman High School. Everyone - white, black, Latino, Asian - ranked behind her. She was studious, independent-minded, mature beyond her years, thoughtful, and was not easily influenced by what was going on around her. Sonia walked her own path. To be sure, Sonia was comfortable in her own skin and proud of her community and her heritage. She did not run from who or what she was and is. Still, Sonia was not one to be easily swayed by peer pressure, fad, or the politics of others around her. She approached any issue from the standpoint of a fierce intellectual curiosity and integrity. In fact, she was an intellectual powerhouse. Sonia was a leader at Cardinal Spellman. She was active in school governance and on the debate team. But more than anything, Sonia led by her excellence. Sonia Sotomayor set the pace at which others wanted to run.

Sonia did not live a life of privilege. She lost her father at a very young age. She also had been diagnosed as diabetic before she was in high school. It was not something I remember her talking about. Sonia simply carried herself with an air of dignity, seriousness of purpose and a sense that she was going somewhere. In my four years at Spellman, I never saw Sonia interact with anyone in a disrespectful or antagonistic manner. Her temperament was – even then – judicious. In short, although I never told her, and although she did not know it – I envied her intellectual capacity, her discipline, and her unquestionable integrity. I admired her.

After graduating from high school at the top of our class and as valedictorian, Sonia was off to Princeton, and I, somewhat further down in the rankings, was fortunate enough to be off to Wesleyan. We did not stay in touch over many of the ensuing years, but I followed Sonia in the way one follows a star from one's high school orbit. I may have seen her once in a while, but perhaps not. Eventually, while I was at Columbia Law School, I heard she was at Yale Law School. Those who knew her there always confirmed that Sonia was on the path on which she

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started years ago – intellectual excellence and academic achievement, thoughtful, balanced and careful (in the most literal sense) in all she did. Sonia excelled academically at Princeton and at Yale, performing at the top of her class at every level. One could not have stronger credentials. And she comes to this nomination with more judicial experience than any other Supreme Court nominee in at least the last one hundred years. But for the politics of judicial nominations, Sonia Sotomayor's qualifications for the Supreme Court would be a "no brainer". I have faith that this Committee and the Senate will not let politics get in the way.

My career has been as a civil rights lawyer. I have been in the midst of ideological warfare on contentious issues. I have been unabashed about my point of view. I am conscious of the fact that as I testify about Sonia, there will be some who may project my thoughts and beliefs onto Sonia. Some have already attempted to label her as an activist, outside of the political mainstream. (To be sure, I consider those who work for racial justice and other civil rights to be a vital part of mainstream America). But Sonia's life has not been lived on the battlefield of ideology or partisanship where many of us who are labeled or who label ourselves as "liberal" or "conservative" have locked horns. Indeed, Judge Sotomayor's record defies simplistic labels. She began her legal career as a prosecutor, in a job not ordinarily thought of as a bastion of liberal activism. At the same time, Sonia Sotomayor served as a board member of the Puerto Rican Legal Defense Fund (PRLDEF). Her service on the PRLDEF Board both speaks to the strength of that organization and the range of her interests, from prosecution to civil rights. In any event, her service on that Board is commendable. In fact, this range of experience and commitment places Judge Sotomayor in the middle of mainstream America, for surely Americans are concerned about the prosecution and punishment of those who engage in criminal activities as well as the protection of civil rights and the elimination of invidious discrimination.

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In her judicial career, Judge Sotomayor has been moderate. In race discrimination cases, as in all of her cases, whether she has ruled for plaintiffs or for defendants has been the function of the application of law to the facts of each case. Her approach to criminal law issues is similarly dependent on the application of governing law to the facts. I cannot say with certainty that Judge Sotomayor, if confirmed to the U.S. Supreme Court, would always rule in a way with which I would agree. What I can say is that I know she would be fair and open-minded, and that she would apply the law with intellectual integrity. That is all that any of us has a right to expect. Judge Sotomayor's career on the bench is the best guide to what kind of Justice she will be if confirmed by the Senate. Her record, intellect and achievements are her best arguments in favor of confirmation.

Let me turn back to the significance of this nomination and in doing so make a few observations concerning some of the issues that have been raised during these hearings. Our Nation is 233 years old, and has seated 110 Justices on the Supreme Court. All except two African Americans and two women have been white males. Lest I be misunderstood, many white men, including some of whom I count as heroes, have served our Nation well. But it is nonetheless striking that in 2009, at a time when we have moved so far and accomplished so much, we are still accomplishing "firsts"- the extraordinary election of our first African American President, the appointment of our first African American Attorney General, and if this Committee and the full Senate sees fit, the appointment of the first Latino or Latina to the Supreme Court. Moreover, as far as I am aware, no American who has grown up in public housing has ever served on the U.S. Supreme Court. Does an individual who is Latina and who grew up in public housing bring something different and of value to the Court that other Justices, however extraordinary, may not bring? I think about a case the Supreme Court grappled with a

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few years ago. In 2002, in *HUD v. Rucker*, 535 U.S. 125 (2002), the Court upheld a statutorily authorized HUD policy allowing eviction of innocent public housing tenants for the drug related actions of family or household members even if those drug activities were unknown or not under the innocent tenant's control. Like Judge Sotomayor, I grew up in a public housing project in which drugs destroyed or took many of the lives of my childhood and adolescent friends. I yield to no one in my abhorrence of the damage the scourge of drugs has done to our communities. But I wonder what the discussion of this case was like in the Supreme Court conference room. I wonder if any Justice knew what it was like to live in a public housing project in which innocent grandmothers and mothers struggling to raise families are evicted because of their children's or grandchildren's use of marijuana or other drugs. I wonder if any Justice pointed out that the governmental subsidy for those living in puhlic housing that many people think distinguishes those tenants from those of us who own our own homes may not be as powerful a distinction as we believe, since our mortgage tax deductions are a form of governmental subsidy. Drugs, tragically, are ubiquitous, even among the middle and upper classes and across all races and ethnicities. Middle-class and wealthy families are not evicted from their homes or stripped of their mortgage interest deductions because a family member uses drugs.

Isn't it possible that the life experiences of an individual who grew up in public housing and who is from a racial or ethnic group that does not use drugs in higher proportions than the majority community, but that is nonetheless grossly over-incarcerated, might bring some additional wisdom to the table?

To be sure, a white male or female from a more privileged background or a conservative African American might have raised that issue in conference. And to be sure, it may be that the awareness or perspective of which I speak may ultimately be legally irrelevant

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because the Court is bound, in the absence of a constitutional violation (which may beg the question), to defer to Congress even if its policies are occasionally ill-considered or unfair. But it seems much more likely that the discussion would be better informed by the participation of one whose life experiences go beyond those who have been traditionally represented on the Court.

When the late Justice Thurgood Marshall announced his retirement from the Court among the many plaudits he received from his colleagues were a series of comments from across the spectrum of judicial philosophies. Justice O'Connor famously wrote and spoke about what Justice Marshall brought to the Court as a consequence of his background and experiences. Justice O'Connor said, "Although all of us come to the Court with our own personal histories and experiences, Justice Marshall brought a special perspective.... At oral argument and conference meetings, in opinions and dissents, Justice Marshall imparted not only his legal acumen but also his life experiences, constantly prodding us to respond not only to the persuasiveness of legal arguments but also to the power of moral truth." If Judge Sotomayor brought nothing more to the Supreme Court than the power of her intellect and the qualities of being a judge that she developed during her prior service on the federal bench, she would add significantly to the Court. But as it is, she would bring, as Justice O'Connor observed that every Justice does, her own personal history and experience, and may bring, as Justice Marshall did, "a special perspective".

Sonia Sotomayor has served our Nation for seventeen years as a federal district court and appellate judge with great distinction. Now she is being considered for appointment as Associate Justice on the United States Supreme Court. Candor compels me to admit that I swell with pride when I contemplate the possibility of my high school classmate ascending to the highest Court.

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But quite aside from petty and undeserved pride on the part of one who was merely a high school classmate, there are millions of Americans who see, for the first time, the possibility that someone who looks like them, or who comes from a background like theirs, may serve on the United States Supreme Court - someone who is supremely qualified by any measure. It is a great honor for Judge Sotomayor that President Obama has nominated her to the United States Supreme Court. It would be an even greater honor for our Nation if she were to be confirmed and were to serve.

Respectfully submitted,

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