

Statement of Richard J. Feldman, Esq.

On Judge Sonia Sotomayor's
Nomination to the United States Supreme Court
July 16, 2009

Chairman Leahy and Members of the Senate Judiciary Committee:

It is a pleasure to submit this testimony today in support of President Obama's choice for the United States Supreme Court, Judge Sonia Sotomayor of the Second Circuit Court of Appeals.

I will address the issue of firearm civil rights, a field I have dedicated my career to protecting and preserving.

By way of reference, I served as the Northeast political and legislative representative for the National Rifle Association in the mid 1980's and for almost a decade as the Executive Director of the American Shooting Sports Council, the firearm industry's legislative trade group from 1990 until 1999.

Swirling about Judge Sotomayor's nomination is an all too predictable controversy generated by the organized gun community whose underlying motivations and relationships are detailed in my recent book, *Ricochet Confessions of a Gun Lobbyist*, (Wiley, 2007).

It's a controversy fed by fundraiser rhetoric and press release hyperbole being cranked out by the consultants and senior leaders of the gun lobby. Of course, it is always possible that their litany of allegations may be correct, since none of us knows the future, but her critics would have to be mind readers capable of probing her innermost thoughts and personal opinions to credibly make those claims based upon the evidence available to all of us.

No evidence exists that supports the characterization of Judge Sotomayor as an "anti-gun radical." The *Maloney v Cuomo* decision that has been cited as proof of her anti-gun bias upheld the conviction of a New York resident for possession of nunchakus. The three-judge panel (including Sotomayor) issued a unanimous decision that states, "It is settled law, however, that the

Second Amendment applies only to limitations the federal government seeks to impose on this right.” That decision followed established precedent in stating that the Second Amendment, as interpreted in *Heller*, is not applicable against the State of New York.

Members of the Committee, as unhappy as I am with this as the state of the law as interpreted today in America, and as much as I would like to see the Supreme Court revisit *Presser*, *Cruikshank* and *Miller*, the *Maloney* court followed established precedent as they were required to do. The mandates of the principle of stare decisis dictated the outcome of the *Maloney* case.

Judge Frank Easterbrook, Chief Judge of the 7th Circuit Court of Appeals, an individual with impeccable intellectual and conservative judicial credentials, supported the *Maloney* decision. Last month, in the *NRA v. City of Chicago* Judge Easterbrook stated, “We agree with *Maloney*,” and further noted, “that *Cruikshank* is open to reexamination by the Justices themselves when the time comes”.

Judge Easterbrook found that the *Maloney* decision made the same exact point that, “the Court of Appeals should follow the case which directly controls, leaving to the Supreme Court the prerogative of overruling its own decisions.”

I’ve spent twenty-five years defending the rights of American citizens to keep and bear arms, and I can state without reservation that neither the *Maloney* decision nor the words of Judge Easterbrook demonstrate bias against the right of Americans to bear arms.

Both, in fact, endorse the concept of judicial restraint; a concept generally accepted and promoted by conservatives.

An overwhelming majority of gun owners want justices who are intelligent, thoughtful, have integrity and experience, are faithful to the rule of law, and most of all, sensitive to civil rights and liberties as enumerated and provided for in the Constitution, especially in the Bill of Rights. The country needs justices who are attentive to the historical, moral and philosophical rationale for the governing constitutional provisions.

Judge Sotomayor has proven herself to be an individual who supports the Constitution, follows established principles of law, and is a thoughtful and

restrained jurist. Her adherence to precedent and her recognition of her duties and responsibilities in her role as a Circuit Court judge are compelling evidence that she will interpret and remain faithful to the Constitution and the Bill of Rights.