

**NEW YORK
CITY BAR**

PATRICIA M. HYNES
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
phynes@nycbar.org

June 30, 2009

Hon. Patrick J. Leahy
433 Russell Senate Office Building
Washington, DC 20510

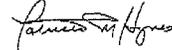
RE: Evaluation of Nomination Judge Sonia Sotomayor

Dear Senator Leahy:

The Association of the Bar of the City of New York reviewed and evaluated the nomination of Judge Sonia Sotomayor to be a Justice of the United State Supreme Court. The Association found Judge Sotomayor to be Highly Qualified for that position.

A report detailing our findings can be found at:
http://www.nycbar.org/pdf/report/11693606_3.pdf

Sincerely,



Patricia M. Hynes

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 West 44th Street, New York, NY 10036-6689

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

June 30, 2009

Page Four

(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.

Michael Waterstone
Professor of Law
Associate Dean of Academic Programs
Loyola Law School, Los Angeles

Peter Blanck
University Professor
Chairman, Burton Blatt Institute
Syracuse University

June 30, 2009

Page Three

Michael Stein
Executive Director
Harvard Law School Project on Disability
Professor of Law
William and Mary Law School

Mark C. Weber
Vincent de Paul Professor of Law
DePaul University College of Law

Deirdre M. Smith
Assoc. Professor of Law and
Director of the Cumberland Legal Aid Clinic
University of Maine School of Law

Robert Dinerstein
Professor of Law
American University
Washington College of Law

Carrie Griffin Basas
Assistant Professor of Law
University of Tulsa College of Law

Arlene S. Kanter, Professor of Law
Laura J. and L. Douglas Meredith Professor
Director, Disability Law and Policy Program
Co-Director, SU Center on Human Policy, Law,
and Disability Studies
Syracuse University College of Law

Wendy E. Parmet
Matthews Distinguished University
Professor of Law
Northeastern University School of Law

Michael L. Perlin
Professor of Law
Director, International Mental Disability Law
Reform Project
Director, Online Mental Disability Law Program
New York Law School

Marianne Engelman Lado
Visiting Assistant Professor
Seton Hall University School of Law

Ani B. Satz, Ph.D., J.D.
Associate Professor
Emory University School of Law
Rollins School of Public Health

Ruth Colker
Distinguished University Professor and Heck-
Faust Memorial Chair in Constitutional Law
Michael E. Moritz College of Law
The Ohio State University
Columbus, Ohio

Michael A. Schwartz
Associate Professor of Law
Director, Disability Rights Clinic
Syracuse University College of Law

Arlene Mayerson
Adjunct Professor
University of California, Berkeley
Boalt Hall School of Law

Paula Pearlman
Visiting Associate Professor
Loyola Law School

Paul M. Secunda
Associate Professor of Law
Marquette University Law School

Elizabeth Pendo
Professor of Law
Saint Louis University School of Law
Center for Health Law Studies

Elizabeth F. Emens
Associate Professor of Law
Columbia Law School

June 30, 2009

Page Four

Simeon Goldman
Adjunct Professor of Law
Albany Law School

Jan C. Costello
Professor of Law
Loyola Law School

Jeanette Cox
Assistant Professor of Law
University of Dayton School of Law

Laura Rothstein
Professor and
Distinguished University Scholar
Louis D. Brandeis School of Law
University of Louisville

****All institutions for identification purposes only****