

# Sotomayor Hearing, Day 4 (07/16/2009), Parts 1 to 20

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SENATE-HRG-SOTOMAYOR -01

SENATE COMMITTEE ON THE JUDICIARY HOLDS A HEARING ON THE NOMINATION OF JUDGE SONIA SOTOMAYOR TO BE AN ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

JULY 16, 2009

SPEAKERS: SEN. PATRICK J. LEAHY, D-VT. CHAIRMAN SEN. HERB KOHL, D-WIS. SEN. DIANNE FEINSTEIN, D-CALIF. SEN. RUSS FEINGOLD, D-WIS. SEN. CHARLES E. SCHUMER, D-N.Y. SEN. RICHARD J. DURBIN, D-ILL. SEN. SHELDON WHITEHOUSE, D-R.I. SEN. BENJAMIN L. CARDIN, D-MD. SEN. RON WYDEN, D-ORE. SEN. AMY KLOBUCHAR, D-MINN. SEN. EDWARD E. "TED" KAUFMAN, D-DEL. SEN. ARLEN SPECTER, D-PA. SEN. AL FRANKEN, D-MINN.

SEN. JEFF SESSIONS, R-ALA. RANKING MEMBER SEN. ORRIN G. HATCH, R-UTAH SEN. CHARLES E. GRASSLEY, R-IOWA SEN. JON KYL, R-ARIZ. SEN. LINDSEY GRAHAM, R-S.C. SEN. JOHN CORNYN, R-TEXAS SEN. TOM COBURN, R-OKLA.

WITNESSES: JUDGE SONIA SOTOMAYOR, NOMINATED TO BE AN ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

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[\*] LEAHY: Judge, thank you. Judge Sotomayor, welcome back to the committee for a fourth day. If this seems long, it is a day more than either Chief Justice Roberts or Justice Alito was called upon to testify, but you seem to have weathered it well, and I hope the senators have, too.

Yesterday, we completed the extended first round of questions for an additional eight senators that are approximately halfway through a follow-up round. This morning, we can continue and, hopefully, conclude.

Senator Kyl is recognized next for 20 minutes. And -- or as I say with hope springing eternal -- I keep

saying up to 20 minutes. Nobody is required to use the full 20 minutes, but they -- I would hasten to add if everybody is certainly entitled to it.

Senator Kyl?

KYL: Mr. Chairman, before I begin, for those who are watching this on television, I would just note that I don't think we put Judge Sotomayor on the hot seat with our questions, but we certainly did with the temperature in this room yesterday.

(LAUGHTER)

And for that, I apologize. And I note that it could get a little steamy this morning, too. I know it's cold back there, but it's not at all cool where we are.

LEAHY: If I can respond to... KYL: If there's ever a question about Judge Sotomayor's stamina in a very hot room, that question has been dispelled without any doubt whatsoever.

(LAUGHTER)

LEAHY: If I might -- and I'll have to set the clock back for 20 minutes so this doesn't go into your time -- but it -- it is really an interesting thing because anybody that's gone up where the press are, it's like an icebox up there. And I'm hoping we can get this -- at least the microphone is working. I want to thank Senator Sessions for offering me his microphone yesterday, but that didn't work.

And I want to thank Senator Franken for letting me use his. So if we start clock back over so I don't take this out of Senator Kyl's time.

Senator Kyl, please go ahead.

KYL: Thank you, and good morning, Judge.

SOTOMAYOR: Good morning.

KYL: In response to one of Senator Sessions' questions on Tuesday about the Ricci case, you stated that your actions in the case were controlled by established Supreme Court precedent. You also said that a variety of different judges on the appellate court were looking at the case in light of established Supreme Court and Second Circuit precedent.

And you said that the Supreme Court was the only body that had the discretion and the power to decide how these tough issues should be decided. Those are all quotations from you.

Now, I've carefully reviewed the decision, and I think the reality is different. No Supreme Court case had decided whether rejecting an employment test because of its racial results would violate the civil rights laws.

Neither the Supreme Court's majority in Ricci nor the four dissenting judges discussed or even cited any cases that addressed the question. In fact, the court, in its opinion, even noted -- and I'm quoting here -- that this action presents two provisions of Title 7 to be interpreted and reconciled with few, if any, precedents in the court of appeals discussing the issue.

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SENATE-HRG-SOTOMAYOR -03

XXX against the parties.

KYL: And, secondly, that there was no Supreme Court precedent that required that result. And I'm not sure what the 2nd Circuit precedent is. The Supreme Court said few, if any. And I -- I -- I don't know what the precedent would be. I mean, I'm not necessarily going to ask you to cite the case. But was there a case? And if so, what is it?

SOTOMAYOR: It was the ones that we discussed yesterday, the bushy line of cases that talked about the prima facie case and the obligations of the city in terms of defending lawsuits claiming disparate impact. And so, the question then became how do you view the city's action. Was it a -- and that's what the district court had done in its 78-page opinion to say you've got a city facing liability...

KYL: OK, all right. So -- so you contend that there was 2nd Circuit precedent. Now, on the en banc review, of course, the question there is different because you're not bound by any three-judge panel decision in your circuit. So what precedent would have bound -- and yet, you took the same position in the en banc review.

For -- for those who aren't familiar, a three-judge court decides the case in the first instance. In some situations, if the case is important enough, judges on -- the other judges on the circuit -- there may be nine or 10 or 20. I think in the 9th Circuit there are like 28 judges in the circuit. And you can request an en banc review. The entire circuit would sit.

And in that case, of course, they're not bound by a three-judge decision because it's the entire circuit sitting of 10 or 12 or 20 judges. So what precedent then would have bound in -- bound the court in the en banc review?

SOTOMAYOR: The panel acted in accordance with its views by setting forth and incorporating the district court's analysis of the case. Those who disagreed with the opinion made their arguments. Those who agreed that en banc certification wasn't necessary voted their way. And the majority of the court decided not to hear the case en banc.

I can't speak for why the others did or did not take the positions they did. They -- some of them have issued opinions. Others joined opinions.

KYL: But you felt you were bound by precedent? SOTOMAYOR: That was what we did in terms of the decision, which was to accept the rule -- the -- not accept, but incorporate the district court's decision analyzing the case and saying we agreed with it.

KYL: Understood. But the district court's decision is not binding on the circuit court. And the en banc review means that the court should look at it in light of precedents that are stronger than a three-

judge decision. So I'm still baffled as to what precedent you're -- you're -- you're speaking of.

SOTOMAYOR: Perhaps it's -- just one bit of background needs to be explained. When a court incorporates as we did in a purcurean (ph), a district court decision below, it does become the court's precedent. And, in fact, the...

KYL: The three judges?

SOTOMAYOR: Yes, but when I was on the district court, I issued also a lengthy decision on an issue, a constitutional issue, direct constitutional issue that the circuit had not addressed and very other few courts had addressed on the question of whether etbus (ph) statute of limitations on habeas (ph)...

KYL: OK. If you excuse me, we're -- I apologize for interrupting, but I've now used half of my time. And you -- you will not acknowledge that even though the Supreme Court said there was no precedent, even though the district court judgment and a three-judge panel judgment cannot be considered precedent binding the en banc panel of the court, you still insist that somehow there was precedent there that you were bound by.

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XXX were bound by.

SOTOMAYOR: As I explained, when the circuit court incorporated the district court's opinion, that became the court's holding.

KYL: Of course.

SOTOMAYOR: So, it did become circuit holding. With respect ...

KYL: By three judges.

SOTOMAYOR: With respect -- yes, sir. I'm sorry.

With respect to the question of precedent, it must be remembered that what the Supreme Court did in Ricci was say, "There isn't much law on how to approach this should we adopt a standard different than the circuit did," because it is a question that we must decide how to approach this issue to ensure that two provisions of Title VII are consistent with each other.

That argument of adopting a different test was not the one that was raised before us, but that was raised clearly before the Supreme Court. And so that approach is different than saying that the outcome that we came to was not based on our understanding of what it make out a prima facie case.

KYL: Well, if it's a matter of first impression, do judges on the Second Circuit typically disposed of important cases of first impression by a summary one-paragraph order per curiam opinion?

SOTOMAYOR: Actually, they did in one case I handled when I was a district court judge.

KYL: Would that be typical?

SOTOMAYOR: I don't know how you define typical, but if the district court opinion, in the judgment of the panel, is adequate and fulsome and persuasive, they do. In my *Rodriguez v. Artus* (ph) case, when I was at district court on the constitutionality of an act by Congress with respect to the suspension clause of the habeas provision, the court did it in less than a paragraph. They just incorporated my decision as the law of the circuit, or the holding of the circuit.

KYL: Well, let me quote from Judge Cabranas' dissent. He said, "The use of pro curiam opinions of this sort, adopting in full the reasoning of a district court without further elaboration, is normally reserved for cases that present straightforward questions that do not require exploration or elaboration by the court of appeals. The questions raised in this appeal cannot be classified as such, as they are indisputably complex and far from well settled."

I guess legal analysis -- analysts are simply going to have to research and debate the question of whether or not the cases of first impression or complex important cases are ordinarily dispensed of that way.

Let me just say that the implications -- the reason I address this is the implications of the decision are far-reaching. I think we would all agree with that. It's an important decision, and it can have far-reaching implications.

Let me tell you what three writers, in effect, said about it and get your reaction to it. Here is what the Supreme Court said in *Ricci* about the decision, about the rule that the -- that your court endorsed.

It said that the rule that you endorsed, and I'm quoting now, "Allowing employers to violate the disparate treatment prohibition based on a mere good-faith fear of disparate impact liability would encourage race-based action at the slightest hint of disparate impact." This is the Supreme Court. "Such a rule," it said, "Would amount to a de facto quota system in which a focus on statistics could put undue pressure on employers to make hiring decisions on the basis of race. Even worse, an employer could discard test results or other employment practices with the intent of obtaining the employer's preferred racial balance."

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SENATE-HRG-SOTOMAYOR -05

XXX preferred racial balance."

KYL: Your colleague on the Second Circuit, Judge Cabranas, said, that, under the logic of your

decision -- I quote again -- "municipal employers could reject the results of an employment examination whenever those results failed to yield a desirable racial income." In other words, failed to satisfy a racial quota.

That's why the case is so important. I mean, I would imagine you would hope that that result would not pertain. I guess I can just ask you that, that you would not have rendered this decision if you felt that that would be the result.

SOTOMAYOR: As I argued -- argued -- as I stated earlier, the issue for us, no, we weren't endorsing that result. We were just talking about what the Supreme Court recognized, which was that there was a good-faith basis for the city to act. It set a standard that was new, not argued before us below, and that set forth how to balance those considerations.

That is part of what the court does is in the absence of a case previously decided that sets forth the test. And what the court there said is good faith is not enough.

KYL: Understood.

SOTOMAYOR: Substantial evidence is what the city has to rely on. Those are different types of questions.

KYL: Of course. And the point is you don't endorse the result that either Judge Cabranes or the Supreme Court predicted would occur had your decision remained in effect. I'm sure that you would hope that result would not pertain.

SOTOMAYOR: Yes. But I didn't -- that wasn't the question we were looking at. We were looking at a more narrow question which was could a city, in good faith, say we're trying to comply with the law. We don't know what standard to use. We have good faith for believing that we should not certify.

Now, the Supreme Court has made clear what standard they should apply. Those are different issues.

KYL: Well, I'm just quoting from the Supreme Court about the rule that was -- that you endorsed in your decision and, again, it said the Supreme Court said about your rule that such a rule would amount to a de facto quota system in which a focus on statistics could put undue pressure on employers to make hiring decisions on the basis of race. Even worse, an employer could disregard test results or other employment practices with the intent of obtaining an employer's preferred racial balance.

I guess we both agree that that is not a good result. Let me ask you about a comment you made about the dissent in the case. A lot of legal commentators have noted that, while the basic decision was five to four, that all nine of the justices disagreed with your panel's decision to grant some rejudgment; that all nine of the judges believed that the court should have been -- that the district court should have found the facts in the case that would allow it to apply a test. Your panel had one test. The Supreme Court had a different test. The dissent had yet a different test.

But in any case, whatever the test was, all nine of the justices believed that the lower court should have heard the facts of the case before some rejudgment was granted. I heard you to say that you disagreed with that assessment. Do you agree that the way I stated it is essentially correct?

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XXX is essentially correct?

SOTOMAYOR: It's difficult because there were a lot of opinions in that case. But the engagement among the judges was varied on different levels. And the first engagement that the dissent did with the majority was saying if you're going to apply this new test, this new standard, then you should give the circuit court an opportunity to evaluate the evidence...

KYL: Judge, I have to interrupt you there. The court didn't say, "If you're going to apply a new standard, you need to send it back." All nine justices said that summary judgment was inappropriate, that the case should have been decided on the facts.

There were three different tests: the test from your court, the test of the majority of the Supreme Court, and the test of the dissent. Irrespective of what test it was, they said that the case should not have been decided on summary judgment. All nine justices agreed with that, did they not?

SOTOMAYOR: I don't believe that's how I read the dissent. It may have to speak for itself, but I -- Justice Ginsburg took the position that the Second Circuit's panel opinion should be affirmed. And she took it by saying that, no matter how you looked at this case, it should be affirmed. And so I don't believe that that was my conclusion reading the dissent, but obviously, it will speak for itself.

KYL: Well, it -- it -- it will. And I guess commentators can -- can opine on it.

I could read commentary from people like Stuart Taylor, for example, who have an opinion different from yours. But let me ask you one final question in the minute-and-a-half that I have remaining.

I was struck by your response to a question that Senator Hatch asked you about yet another speech that you gave in which you made a distinction between the justice of a district court and the justice of a circuit court, saying that the district court provides justice for the parties, the circuit court provides justice for society.

Now, for a couple of days here, you've testified to us that you believe that not only do district and circuit courts have to follow precedent, but that the Supreme Court should follow precedent.

So it's striking to me that you would suggest -- and this goes back to another comment you made perhaps flippantly about courts of appeals making law -- but it -- it would lead one to believe that you think the circuit court has some higher calling to create precedent for society.

In all of my experience, you have Smith v. Jones in a district court. The court says, "The way we read the law, Smith wins." It goes to the court of appeals. The court has only one job to decide: Does Smith win or does Jones win?

It doesn't matter what the effect of the case is on society; that's for legislators to decide. You have one job: Who wins, Smith or Jones, based on the law? And you decide, "Yes, lower court was right. Smith wins."

You're applying precedent, and you're deciding the case between those parties. You're not creating justice for society, except in the most indirect sense, that any court that follows precedent and follows the rule of law helps to build on this country's reliance on the rule of law.

SOTOMAYOR: I think we're in full agreement. When precedent is set, it's set -- it follows the rule of law. And in all of the speeches where I've discussed this issue, I've described the differences between the two courts as one where precedents are set, that those precedents have policy ramifications, but not in the meaning that the legislature gives to it.

The legislature gives it a meaning in terms of making law. When I'm using that term, it's very clear that I'm talking about having a holding, it becomes precedent, and it binds other courts. You're following the rule of law when you're doing that.

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SENATE-HRG-SOTOMAYOR -07

XXX you're doing that.

KYL: Mr. Chairman, I'm over the time, but just a final follow-up question, if I could.

You yourself noted that you have created precedent as a district court judge. Both district courts and circuit courts create precedent simply by deciding a case, but they're both required to follow precedent, isn't that correct?

SOTOMAYOR: Yes.

LEAHY: Only because the -- the senator went over I would note the district court in that case did cite the Rees (ph) case, which is 2000 Supreme Court -- year 2000 Supreme Court case as -- as precedent and a binding 2nd Circuit court case, the Hayden case as precedent. And as the judge has noted, she incorporated the district court, as they often do in per curiam decision, incorporated the district court decision.

Senator Feinstein?

FEINSTEIN: Thank you very much, Mr. Chairman.

I have great respect for Senator Kyl. I've worked with him, I guess, for about 12 years now on the subcommittee of this committee. But I think there is a fundamental misreading of the Supreme Court decision, if I understand it.

It's my understanding that the court was five-to-four. Is that correct?

SOTOMAYOR: It was.

FEINSTEIN: And that the four dissenters indicated that they would have reached the same conclusion as the 2nd Circuit did. Is that correct?

SOTOMAYOR: That was my understanding.

FEINSTEIN: Thank you. Let me clear one thing up. I'm not a lawyer. And I've had a lot of people ask me, particularly from the West Coast who are watching this, what is per curiam. Would you please in common, every day English explain what through the court means?

SOTOMAYOR: It's essentially a unanimous opinion where the court is taking an act that -- where it's not saying more than what either incorporating a decision by the court below because it's not adding anything to it.

FEINSTEIN: Right.

SOTOMAYOR: In some cases, it's when there's, as Judge Cabranes in his dissent pointed out, in some cases, it's simply used to denote that an issue is so clear and unambiguous that we're just going to state the rule of law. It can be used in a variety of different ways. But it's generally where some -- where you're doing something fairly -- in a very cursory fashion, either because a district court judge has done a thorough job...

FEINSTEIN: Which was the case in this case.

SOTOMAYOR: Yes.

FEINSTEIN: It was a very voluminous opinion that, I believe, was over 50 pages long. Is that correct?

SOTOMAYOR: I keep saying 78 because that's what I reviewed.

FEINSTEIN: Right, well, over 50, in any event.

SOTOMAYOR: But -- and as I said, my circuit did that in a case where I addressed as a district court judge a case of first impression on a constitutional, direct constitutional issue, the suspension clause. Or it can have -- one of the meanings can be that given by Judge Cabranes.

FEINSTEIN: Right. Now, my understanding also is that there is precedent in other courts. I'm looking at a decision, *Oakley v. the City of Memphis* written by the circuit court. And essentially what it does is uphold the lower court that did exactly the same thing. Are you familiar with that case?

SOTOMAYOR: I am.

FEINSTEIN: It's an unpublished opinion, I believe. Is that correct?

SOTOMAYOR: Yes.

FEINSTEIN: And it was a racially mixed group of male and female lieutenants, took the test. The

results came in. The test was canceled. And the court upheld the cancellation.

SOTOMAYOR: Yes.

FEINSTEIN: So this -- your case is not starkly out of the mainstream. And the reason I say this is going back to my days of mayor, particularly in the 1980s when there were many courts and many decisions involving both our police and fire departments. And it was a very controversial area of the law.

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SENATE-HRG-SOTOMAYOR -08

XXX of the law.

FEINSTEIN: But the point I wanted to make is there is precedent, and this is certainly one of them.

SOTOMAYOR: I would agree that it was precedent. I won't choose to quarrel with the Supreme Court's decision.

FEINSTEIN: Right. I'm not asking you to. Right.

Now, many have made comments regarding your Latina -- "wise Latina" comment. And I'd like to just take a moment to put your comments in the context of the experiences of women. And this country is built on very great accomplishments. We forged a new country. We broke away from the British. We wrote documents that have stood the test of time. The Declaration of Independence, the Constitution, the Bill of Rights.

But we also have a history of slavery, segregated schools, of employment discrimination, of hate crimes, and unspoken prejudices that can make it very hard for individuals to be treated fairly or even to believe that they can do well in this society.

So I understand empowerment and the role that it plays. And everything has been hard fought. We, as women, didn't have the right to vote until 1920. And that was after a tremendous battle waged by a group of very brave women called suffragettes. And when you graduated law school in 1979, there had never been a woman on the Supreme Court.

Today, women represent 50.7 percent of the population, 47 percent of law school graduates, and 30 percent of American lawyers. But there are only 17 women senators, and only one woman is currently serving on the Supreme Court, and we still make only \$0.78 on the dollar that a man makes.

So we're making progress, but we're not there yet, and we should not lose sight of that. My question is, as you have seen this -- and you must have seen how widely broadcast this is -- that you become an instant role model for women. And how do you look at this -- your appointment to the court -- affecting empowerment for women? And I'd be very interested in any comments you might make. And

this has nothing to do with the law.

SOTOMAYOR: I chose the law because it's more suited to that part of me that's never sought the kind of attention that public figures -- other public figures -- get. When I was in law school, some of my friends thought I would go into the political arena not knowing that what I sought was more the life of a judge, thinking, involved in that, and the process of the rule of law.

My career as a judge has shown me that, regardless of what my desires were, that my life, what I have accomplished, does serve as an inspiration for others. It's a sort of awesome sense of responsibility. It's one of the reasons that I do so many activities with people in the community, not just Latinos but all groups because I understand that it is women. It's Latinos, it's immigrants. It's Americans of all kinds and all backgrounds.

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SENATE-HRG-SOTOMAYOR -09

XXX and all backgrounds.

SOTOMAYOR: Each one of us faces challenges in our life. Whether you were born rich or poor, of any color or background, life's challenges place hurdles every day. And one of the wonderful parts of the courage of America is that we overcome them. And I think that people have taken that sense that, on some levels, I've done some of that at various stages in my life.

And so, for me, I understand my responsibility. That's why I understand and have tried as much as I can to reach out to all different kinds of groups and to make myself as available as much as I can.

Often, I have to say no; otherwise I'd never work. But I meet my responsibilities and work very hard at my job, but I also know I have a responsibility to reach out.

FEINSTEIN: Well, for whatever it's worth, I think you're a walking, talking example of the best part of the United States of America. And I just want to say how very proud I am that you are here today.

And it is my belief that you are going to be a great Supreme Court justice. And I just wanted to say that to you directly and publicly.

Thank you.

Thank you, Mr. Chairman.

LEAHY: Thank you. That was great.

FEINSTEIN: Thank you.

LEAHY: Senator Graham?

GRAHAM: Thank you, Mr. Chairman.

And something I would like to say to you directly and publicly and with admiration for -- for your life's story is that a lot of the wrongs that have been mentioned, some have been righted, some have yet to come, Judge, I hope you understand the difference between petitioning one's government, and having a say in the electoral process, and voting for people that if you don't like, you can get rid of, and the difference of society being changed by nine unelected people who have a lifetime appointment.

Do you understand the difference in how those two systems work?

SOTOMAYOR: Absolutely, sir. I understand the Constitution.

GRAHAM: And the one thing I can tell you -- this will probably be the last time we get to talk in this fashion. I hope to have a chance to get to know you better, and we'll see what your future holds, but I think it's going to be pretty bright.

The bottom line is, one of the problems the court has now is that Mr. Ricci has a story to tell, too. There are all kinds of stories to tell in this country, and the court has, in the opinion of many of us, gone into the business of societal change not based on the plain language of the Constitution, but based on motivations that can never be checked at the ballot box.

Brown v. Board of Education is instructive in the sense that the court pushed the country to do something politicians were not brave enough to do, certainly were not brave enough in my state. And if I had been elected as a senator from South Carolina in 1955, the year I was born, I would be amazed if I would have had the courage of a Judge Johnson in the political arena.

But the court went through an analysis that separate was not equal. It had a basis in the Constitution after fact-finding to reach a reasoned conclusion in the law and the courage to implement that decision. And society had the wisdom to accept the court's opinion, even though it was contentious and literally people died.

We're going to talk about some very difficult societal changes that are percolating in America today, like who should get married, and what boundaries are on the definition of marriage, and who's best able or the most capable of making those fundamental decisions?

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SENATE-HRG-SOTOMAYOR -10

XXX those fundamental decisions?

GRAHAM: The full faith and credit clause, in essence, says that when a valid enactment of one state

is entered into, the sister states have to accept it. But there's a public policy exception in the full faith and credit clause. Are you aware of that?

SOTOMAYOR: I am. Applied in different situations.

GRAHAM: Some states have different age limits for marriage. Some states treat marriage differently than others. And the court defer based on public policy. The reason these speeches matter and the reasons elections matter is because people now understand the role of the court in modern society when it comes to social change.

That's why we fight so hard to put on the court people who see the world like us. That's true from the left, and that's true from the right. And let me give you an example of why that's important.

We've talked a lot about the Second Amendment, whether or not it is a fundamental right. We all know agree it is an individual right. Is that correct?

SOTOMAYOR: Correct.

GRAHAM: Well, that's groundbreaking precedent in the sense that just until a few months ago, or last year I guess, that was not the case. But it is today. It is the law of the land by the Supreme Court that the Second Amendment is an individual right. And you acknowledge that, that's correct?

SOTOMAYOR: That was...

GRAHAM: The Heller case.

SOTOMAYOR: ... the decision. And it is what the court has held, and so it is unquestionably an individual right.

GRAHAM: But here's the next step for the court. You will have to, if you get on the court, with your fellow justices, sit down and discuss whether or not it is a fundamental right to the point that it is incorporated through the due process clause of the 14th Amendment and applied to every state.

Isn't it fair to say, Judge, that when you do that, not only will you listen to your colleagues, you will read whatever case law is available, you're going to come down based on what you think America is all about? SOTOMAYOR: No, sir.

GRAHAM: So what binds you when it comes to a fundamental right?

SOTOMAYOR: The rule of law. And...

GRAHAM: Isn't the rule of law, when it comes to what you consider to be a fundamental right, your opinion as to what is fundamental among all of us?

SOTOMAYOR: No. In fact the question that you raise is it fundamental in the sense of the law.

GRAHAM: Right.

SOTOMAYOR: That's a legal term. It's very different. And it is important to remember that the

Supreme Court's precedent on the Second Amendment predated its...

GRAHAM: I hate to interrupt, but we have -- is there sort of a legal cookbook that you can go to and say this is a fundamental right, A, and B is not?

SOTOMAYOR: Well, there's not a cookbook, but there's precedent that was established after the older precedent that has talked and described that doctrine of incorporation. That's a set of precedents that...

GRAHAM: Are you talking about the 1890 case?

SOTOMAYOR: Yes. Well, no. The 1890 case was the Supreme Court's holding on this issue. But since that time, there has been a number of decisions discussing the incorporation doctrine applying it to different provisions of the Constitution.

GRAHAM: Is there any personal judgment to be relied upon by a Supreme Court justice in deciding whether or not the Second Amendment is a fundamental right?

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XXX a fundamental right?

SOTOMAYOR: Well, you hire judges for their judgment, not their personal views or what their sense of what the outcome should be. You hire your point judges for the purpose of understanding whether they respect law, whether they respect precedent and apply it in a ...

GRAHAM: I don't doubt that you respect the law, but you're going to be asked, along with eight other colleagues, if you get on the court, to render a decision as to whether or not the Second Amendment is a fundamental right shared by the American people. There is no subjective judgment there?

SOTOMAYOR: The issue will be controlled by the court's analysis of that question in the case, fundamental as defined by incorporation in -- likely will be looked at by the court in a case that challenges a state regulation. At that ...

GRAHAM: I have -- go ahead.

SOTOMAYOR: I'm sorry.

At that point, I would presume that the court will look at its older precedent in the way it did in Heller, consider whether it controls the issue or not. It will decide, even if it controls it, whether it should be revisited under the doctrine of stare decisis. It could decide it doesn't control it, and that would be its

decision. It could decide it does control, but it should revisit it.

In revisiting it, it will look at a variety of different factors, among them have there been changes in related areas of law that would counsel questioning this. As I've indicated, there was a lot of law after the older cases on incorporation. I suspect, but I don't know, because I can't prejudge the issue that the court will consider that with all of the other arguments that the parties will make.

GRAHAM: Well, maybe I've got it wrong, then. Maybe I'm off base here. Maybe you've got the Seventh Circuit talking about the Heller case did not decide the issue of whether it should be incorporated to the states, because it's only dealt with the District of Columbia.

You've got the Ninth Circuit -- and I never thought I'd live to hear myself say this -- look at the Ninth Circuit. They have a pretty good rationale as to why the Second Amendment should be considered a fundamental right. And they talked about the longstanding relationship of the English man -- and they should have put woman. At least in South Carolina that would have applied -- to gun ownership. They talked about it was this right to bear arms that led to our independence. It was this right to bear arms that put down a rebellion in this country. And they talked about who we are as a people and our history as a people.

And Judge, that's why the Supreme Court matters. I do believe, at the end of the day, you're not going to find a law book that tells you whether or not a fundamental right exists vis-a-vis the Second Amendment, that you're going to have to rely upon your view of America, who we are, how far we've come and where we're going to go in our relationship to gun ownership. That's why these choices are so important.

And here's what I'll say about you. And you may not agree with that, but I believe that's what you're going to do, and I believe that's what every other justice is going to do.

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XXX going to do.

GRAHAM: And here's what I will say about you. I don't know how you're going to come out on that case, because I think fundamentally, Judge, you're able, after all these years of being a judge, to embrace a right that you may not want for yourself, to allow others to do things that are not comfortable to you, but for the group, they're necessary. That is my hope for you.

That's what makes you, to me, more acceptable as a judge and not a activist, because an activist would be a judge who would be champing at the bit to use this wonderful opportunity to change America through the Supreme Court by taking their view of life and imposing it on the rest of us.

I think and believe, based on what I know about you so far, that you're broad-minded enough to

understand that America is bigger than the Bronx, it's bigger than South Carolina.

Now, during your time as an advocate, do you understand identity politics? What is identity politics?

SOTOMAYOR: Politics based simply on a person's characteristics, generally referred to either race or ethnicity or gender, religion. It is politics based on...

GRAHAM: Do you embrace identity politics personally?

SOTOMAYOR: Personally, I don't as a judge in any way embrace it with respect to judging. As a person, I do believe that certain groups have and should express their views on whatever social issues may be out there. But as I understand the word "identity politics," it's usually denigrated because it suggests that individuals are not considering what's best for America.

GRAHAM: Do you think...

SOTOMAYOR: That's my -- and that I don't believe in. I think that whatever a group advocates, obviously, it advocates on behalf of its interests and what the group thinks it needs, but I would never endorse a group advocating something that was contrary to some basic constitutional right as it was known at the time...

GRAHAM: Do you...

SOTOMAYOR: ... although people advocate changes in the law all the time.

GRAHAM: Do you believe that your speeches properly read embrace identity politics?

SOTOMAYOR: I think my speeches embrace the concept that I just described, which is, groups, you have interests that you should seek to promote, what you're doing is important in helping the community develop, participate, participate in the process of your community, participate in the process of helping to change the conditions you live in.

I don't describe it as identity policies, because -- politics -- because it's not that I'm advocating the groups do something illegal.

GRAHAM: Well, Judge, to be honest with you, your record as a judge has not been radical by any means. It's, to me, left of center. But your speeches are disturbing, particularly to -- to conservatives, quite frankly, because they don't talk about, "Get involved. Go to the ballot box. Make sure you understand that America can be whatever you'd like it to be. There's a place for all of us."

It really did, to suggest -- those speeches to me suggested gender and racial affiliations in a way that a lot of us wonder, will you take that line of thinking to the Supreme Court in these cases of first precedent?

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XXX of first precedent?

GRAHAM: You have been very reassuring here today and throughout this hearing that you're going to try to understand the difference between judging and whatever political feelings you have about groups or gender.

Now, when you were a lawyer, what was the mission statement of the Puerto Rican Legal Defense Fund?

SOTOMAYOR: To promote the civil rights and equal opportunity of Hispanics in the United States.

GRAHAM: During your time on the board -- and you had about every job a board member could have -- is it a fair statement to say that all of the cases embraced by this group on abortion advocated the woman's right to choose and argued against restrictions by state and federal government on abortion rights?

SOTOMAYOR: I didn't -- I can't answer that question because I didn't review the briefs. I did know that the fund had a health care docket...

GRAHAM: Judge?

SOTOMAYOR: ... that included challenges to certain limitations on a woman's right to terminate her pregnancy under certain circumstances.

GRAHAM: Judge, I -- I may be wrong, but every case I've seen by the Puerto Rican Legal Defense Fund advocated against restrictions on abortion, advocated federal taxpayer funding of abortion for low- income women. Across the board when it came to the death penalty, it advocated against the death penalty. When it came to employment law, it advocated against testing and for quotas.

I mean, that's just the record of this organization. And the point I'm trying to make is that whether or not you advocate those positions and how you will judge can be two different things. I haven't seen in your judging this advocate that I saw or this board member. But when it came to the death penalty, you filed a memorandum with the Puerto Rican Legal Defense Fund in 1981 -- and I would like to submit this to the record -- where you signed this memorandum.

LEAHY: Without objection.

GRAHAM: And you basically said that the death penalty should not be allowed in America because it created a racial bias and it was undue burden on the perpetrator and their family. What led you to that conclusion in 1981?

SOTOMAYOR: The question in 1991...

GRAHAM: '81.

SOTOMAYOR: I misspoke about the year -- was an advocacy by the fund taking a position on whether legislation by the state of New York outlawing or permitting the death penalty should be

adopted by the state. I thank you for recognizing that my decisions have not shown me to be an advocate on behalf of any group. That's a different, dramatically different question than what -- whether I follow the law. And in the one case I had as a district court judge, I followed the law completely.

GRAHAM: The only reason we -- I mention this is when Alito and Roberts were before this panel, they were asked about memos they wrote in the Reagan administration, clients they represented. A lot to try to suggest that if you wrote a memo about this area of the law to your boss, Ronald Reagan, you must not be fit to judge. Well, they were able to explain the difference between being a lawyer in the Reagan administration and being a judge. And to the credit of many of my Democratic colleagues, they understood that.

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XXX they understood that.

GRAHAM: I'm just trying to make the point that when you are an advocate, when you are on this board, the board took positions that I think are left of center. And you have every right to do it. Have you ever known a low-income Latina woman who was devoutly pro-life?

SOTOMAYOR: Yes.

GRAHAM: Have you ever known a low-income Latina family who supported the death penalty?

SOTOMAYOR: Yes.

GRAHAM: So the point is there are many points of view within groups based on income. You have, I think, consistently, as an advocate, took a point of view that was left of center. You have, as a judge, been generally in the mainstream.

The Ricci case, you missed one of the biggest issues in the country or you took a pass. I don't know what it is. But I am going to say this, that, as Senator Feinstein said, you have come a long way. You have worked very hard. You have earned the respect of Ken Starr. And I would like to put his statement in the record.

And you have said some things that just bugged the hell out of me.

SOTOMAYOR: May I...

GRAHAM: The last question on the "wise Latina woman" comment. To those who may be bothered by that, what do you say?

SOTOMAYOR: I regret that I have offended some people. I believe that my life demonstrates that that

was not my intent to leave the impression that some have taken from my words.

GRAHAM: You know what, Judge? I agree with you. Good luck.

LEAHY: Thank you.

Senator Durbin has actually responded to my so far vain request that senators may want to pass on the basis that all questions may have been asked, not everybody has asked them, but Senator Klobuchar, yesterday, had some very serious and succinct areas that she was asking. I know time ran out, and I'd like to yield to Senator Klobuchar because she may want to follow on those.

KLOBUCHAR: Thank you very much, Mr. Chair.

And thank you again, Judge. I think they've turned the air conditioning on, so this is good.

(LAUGHTER)

I just had two quick follow-ups following Senator Graham's question. The first is that the only death penalty case that I know of -- there may be another one that you ruled on -- the Heatley case -- you, in fact, sustained the death penalty in that case. Is that correct?

SOTOMAYOR: I sustained -- or a rejected the challenges of the defendant that the application of the death penalty to him was based on race, yes.

KLOBUCHAR: OK. Thank you. And then just the second one, Senator Graham mentioned the issues of Justice Roberts and the difference between an advocate and a judge. And I just came across the quote that Justice Roberts gave about his work during the Reagan administration.

And he said I can give the commitment that I appreciate that my role as a judge is different than my role as a staff lawyer for an administration. As a judge, I have no agenda. I have a guide in the Constitution and the laws and the precedents of the court. And those are what I would apply with an open mind after fully and fairly considering the arguments and assessing the considered views of my colleagues on the bench.

Would you agree with that statement?

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XXX with that statement?

SOTOMAYOR: Wholeheartedly.

KLOBUCHAR: All right. Thank you.

There were some letters that have not yet been put on the record, and there are quite a collection of letters. I considered reading them all on the record but thought better of that. I thought I would ask the chair if I could put these letters on the record.

And these are letters of support for you from, first of all, the National Fraternal Order of Police, in support of your nomination, the Police Executive Research Forum, the national enforcement of black law enforcement executives, the National Latino Peace Officers Association, the New York State Law Enforcement Council, the National District Attorneys Association, the Association of Prosecuting Attorneys, the National Association of Police Organizations, the National Sheriffs' Association, the Major City Chiefs Association, the Detectives Endowment Association, and then also a letter from 40 of your past colleagues in the Manhattan D.A.'s office, former district attorney colleagues.

And all of these groups have given you their support. And I did want to note just two very brief portions from the letter.

The one from the Police Executive Research Forum reads, "Sonia Sotomayor went out of her way to stand shoulder to shoulder with those of us in public safety at a time when New York City needed strong, tough and fair prosecutors."

And then, also, the letter from your colleagues I found very enlightening. It was much more personal. It said that, "She began as a rookie in 1979, working long hours, prosecuting an enormous caseload of misdemeanors before judges managing overwhelming dockets. Sonia so distinguished herself in this challenging assignment that she was among the very first in her starting class to be selected to handle felonies."

"She prosecuted a wide variety of felony cases, including serving as co-counsel at a notorious murder trial. She developed a specialty in the investigation and prosecution of child pornography case. Throughout all of this, she impressed us as one who was singularly determined in fighting crime and violence."

"For Sonia, service as a prosecutor was a way to bring order to the streets of a city she dearly loved. We are proud to have served with Sonia Sotomayor. She solemnly adheres to the rule of law and believes that it should be applied equally and fairly to all Americans."

"As a group," your former colleagues say, "we have different world views, and political affiliations, but our support for Sonia is entirely nonpartisan. And the fact that so many of us have remained friends with Sonia over three decades speaks well, we think, of her warmth and collegiality." Pretty nice letter.

In reading these letters from these law enforcement groups, there was just one follow-up case that you had that I wanted to allow you to enlighten the country about. And this is one that a former New York police detective, Chris Monino (ph) spoke about recently in an article, and he spoke about a case you worked on as district attorney.

He talked about the child pornography case, how he had gone to various prosecutors to try to get them interested in the case, and he couldn't get them interested. And I have some guesses. Some of these cases, as you know, can be very involved with a lot of evidence and sometimes computer forensics and things like that. But he wasn't able to interest them in taking on the case.

But you were the one that was willing to take on the case, and it led to the prosecution of two

perpetrators. Could you talk a little bit about that case, why you think others didn't and why you decided to take on the case?

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XXX on the case?

SOTOMAYOR: Well, I can't speak to why others decided to pass on the case. I can talk to you about my views at the time.

The New York Court of Appeals had invalidated the New York statute on child pornography on the grounds of a constitutional violation, federal constitutional violation, that the statute did not comport with the federal Constitution. Supreme Court took that case directly from the Court of Appeals, as is its right to review all issues of federal constitutional law, and reversed the New York Court of Appeals and reinstated the statute.

My sense is, because there were still so many open questions about both the legality of the statute and the question of the difficulty in proving the particular crime at issue, that involved two men who worked in a change of -- chain of adult bookstores in the then-Times Square area. Times Square has changed dramatically since that time.

It was mostly circumstantial. We had some tapes, but their knowledge of what those tapes contained, their intent to sell and distribute child pornography involving children below a certain age, it was a difficult, difficult legal and factual case, but it was clear that it was a serious case. We're talking about the distribution of films that show children who were anywhere from 8 years old to 12 years old being explicitly sexually abused.

And it seemed to me that, regardless of the outcome of the case, whether I secured the convictions or not, whether it was held up on appeal or not, that the issues it raised had to be presented in court because of the importance of the crime.

And so I brought the prosecution. I had a co-counsel in that case who was second-seating me in that case, meaning she was assisting me. And the case took a while at trial, because, as I said, it was circumstantial. The jury returned a verdict against both defendants. They were sentenced quite severely, and the cases held up on appeal.

It was an enormously complicated case. I assisted in the appeal because it was so complicated that one of the heads of the Appeals division of the New York County District Attorney's Office had to become involved in it. But the convictions were sustained.

And so the effort resulted in a conviction of two men who were distributing films that had the vilest of sexual acts portrayed against children. KLOBUCHAR: And one last case I wanted to ask you about, which the chairman had briefly mentioned in his opening, and it was a troubling case because it

involved an elected official. It was U.S. v. Giordano, and this case when you -- happened when you were a judge.

And it involved very troubling facts with the mayor of Waterbury, Connecticut in a variety of crimes stemming from his repeated sexual abuse of a minor daughter and a niece and of a prostitute. And you wrote for the majority in that case. There was actually a dissent from one of your fellow judges on the Second Circuit.

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XXX the Second Circuit.

KLOBUCHAR: And you held, in part, that the mayor could, in fact, be charged with the separate crime of violating the young girl's civil rights under color of state law. And I think -- and I don't want to put words in your mouth, but the reason you were able to use that theory is that you note how frequently the mayor reiterated to his young victims that they would be in trouble with law enforcement if they didn't submit to what he wanted them to do.

Could you talk about how that case fits in to your overall approach to judging?

SOTOMAYOR: As I have indicated, the role of a judge is to look at Congress' words in a statute and discern its intent. And in cases that present you facts, you must take existing precedents and apply the teachings of those precedents to those new facts.

In the Giordano case, that had been another situation quite like this one. This was a mayor who, working through a woman, secured sexual acts by very young girls that were taking place in his office. And through the woman he was working with and also through his own exhortations, don't tell anybody or you'll get into trouble, and the woman's exhortations to the child, the person he was conspiring with, that they would get in trouble with the police because the police wouldn't believe them. They would believe him because he was a mayor.

The question for the court became is that acting under color the state law. Is he using his office to promote this illegal activity against these young girls? The majority viewing these facts said yes, that's the principles we discern from precedent about what the use of state law -- of acting color of state law means.

The dissent disagreed, and it disagreed using its own rationale about why the law should not be read that way. But these are cases that rely upon an understanding both of what the words say and how precedent has interpreted them. And that's what the majority of the panel did in that case.

KLOBUCHAR: Thank you very much. And I think it's been enlightening for people to hear about some of your views on these criminal cases. And I'd just like to ask one last question then. It's the exact question that my friend and colleague, Senator Graham, asked Chief Justice Roberts as his

confirmation hearing.

And he asked: What would be like history to say about you when all is said and done?

SOTOMAYOR: I can't live my life to write history's story. That will be the job of historians long after I'm going. Some of them start now, but long after I'm gone.

(LAUGHTER)

In the end, I hope it will say I'm a fair judge, that I was a caring person, and that I lived my life serving my country.

KLOBUCHAR: I think you can't say much more than thank you. Thank you very much, Judge.

LEAHY: Thank you, Judge. I appreciate that.

Thank you, Senator Klobuchar.

Senator Cornyn, who, as I mentioned yesterday, is a former Supreme Court justice of Texas as well as former attorney general, valued member of this committee.

Senator Cornyn?

CORNYN: Thank you, Mr. Chairman.

Good morning, Judge.

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SENATE-HRG-SOTOMAYOR -18

XXX Good morning, Judge.

SOTOMAYOR: Good morning, Senator.

CORNYN: Judge, when we met the first time, as I believe I recounted earlier, I made a pledge to you that I would do my best to make sure you were treated respectfully and this would be a fair process. I just want to ask you upfront: Do you feel like you've been given a chance to explain your record and your judicial philosophy to the American people?

SOTOMAYOR: I have, sir. And every senator on both sides of the aisle that have made that promise to me have kept it fully.

CORNYN: And, Judge, you know, the test is not whether Judge Sonia Sotomayor is intelligent. You are. The test is not whether we like you. I think, speaking personally, I think we all do. The test is not

even whether we admire you or we respect you, although we do admire you and respect what you've accomplished.

The test is really, what kind of justice will you be if confirmed to the Supreme Court of the United States? Will you be one that adheres to a written Constitution and written laws, that -- and respect the right of the people to make their laws through their elected representatives, or will you pursue a -- some other agenda, personal, political, ideological, that is something other than enforcing the law?

I think those are the -- that is really the question.

And, of course, the purpose of these hearings is -- as you've gone through these tedious rounds of questioning, is to allow us to clear up any confusion about your record and about your judicial philosophy, yet so far I find there's still some confusion.

For example, in 1996, you said the idea of a stable, quote, "capital L Law" was a public myth. This week, you said that fidelity to the law is your only concern.

In 1996, you argued that indefiniteness in the law was a good thing because it allowed judges to change the law. Today you characterized that argument as being only that ambiguity can't exist and that it is Congress's job to change the law.

In 2001, you said that innate physiological differences of judges would or could impact their decisions. Yesterday, you characterized that argument as being only that innate physiological differences of litigants could change decisions. In 2001, you disagreed explicitly with Justice O'Connor's view of whether a wise man and wise woman would reach the same decision. Yet, during these hearings, you characterized your argument as being that you agreed with her.

A few weeks ago, in your speech on foreign law to the American Civil Liberties Union, you rejected the approach of Justices Alito and Thomas with regard to foreign law, and yet it seems to me, during these hearings, you have agreed with them.

So, Judge, what should I tell my constituents who are watching these hearings and saying to themselves, "In Berkeley and other places around the country, she says one thing, but at these hearings, you are saying something which sounds contradictory, if not diametrically opposed, to some of the things you've said in speeches around the country"?

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XXX around the country"?

SOTOMAYOR: I would tell them to look at my decisions for 17 years and note that, in every one of them, I have done what I say that I so firmly believe in. I prove my fidelity to the law, the fact that I do not permit personal views, sympathies or prejudices to influence the outcome of cases, rejecting the

challenges of numerous plaintiffs with undisputably sympathetic claims, but ruling the way I have on the basis of law rejecting those claims, I would ask them to look at the speeches completely, to read what their context was and to understand the background of those issues that are being discussed.

I didn't disagree with what I understood was the basic premise that Justice O'Connor was making, which was that being a man or a woman doesn't affect the capacity of someone to judge fairly or wisely. What I disagreed was with the literal meaning of her words because neither of us meant the literal meaning of our words. My use of her words was pretty bad in terms of leaving a bad impression. But both of us were talking about the value of experience and the fact that it gives you equal capacity.

In the end, I would tell your constituents, Senators, look at my record and understand that my record talks about who I am as a person, what I believe in and my judgment and my opinion. But following the rule of law is the foundation of our system of justice.

CORNBYN: Thank you for that -- for your answer, Judge. You know, I actually agree that your judicial record strikes me as pretty much in the mainstream of -- of judicial decision making by district court judges and by court of appeals judges on the federal bench. And while I think what is creating this cognitive dissidence for many of us and for many of my constituents who I've been hearing from is that you appear to be a different person almost in your speeches and in some of the comments that you've made. So I guess part of what we need to do is to try to reconcile those, as I said earlier.

You said that -- I want to pivot to a slightly different subject and go back to your statement that the courts should not make law. You've also said that the Supreme Court decisions that a lot of us believe made law actually were an interpretation of the law.

So I'm -- I would like for you to clarify that. If the Supreme Court in the next few years holds that there is a constitutional right to same-sex marriage, would that be making the law? Or would that be interpreting the law? I'm not asking you to classify -- excuse me. I'm not asking you to prejudge that case or the merits of the arguments, but just to characterize whether that would be interpreting the law or whether that would be making the law. SOTOMAYOR: Senator, that question is so embedded with its answer, isn't it? Meaning if the court rules one way and I say that's making law, then it forecasts that I have a particular view of whatever arguments may be made on this issue, suggesting that it's interpreting the Constitution. I understand the seriousness of this question. I understand the seriousness of same-sex marriage.

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XXX of same-sex marriage.

SOTOMAYOR: But I also know, as I think all America knows, that this issue is being hotly debated on every level of our three branches of government. It's being debated in Congress. And Congress has passed an act relating to same-sex marriage. It's being debated in various courts on the state level.

Certain higher courts have made rulings.

This is the type of situation where even the characterizing of whatever the court may do as one way or another suggests that I have both prejudged an issue and that I come to that issue with my own personal views suggesting an outcome. And neither is true. I would look at that issue in the context of the case that came before me with a completely open mind.

CORNBYN: Forget the same-sex marriage hypothetical. Is there a difference, in your mind, between making the law and interpreting the law? Or is this a distinction without a difference?

SOTOMAYOR: Oh, no. It's a very important distinction. Laws are written by Congress. It has -- it makes factual findings. It determines, in its judgment, what the fit is between the law it's passing and the remedy. It's -- that it's giving as a right.

The courts, when they're interpreting, always have to start with what does the Constitution say, what are the words of the Constitution, how has precedent interpreted those, what are the principles that it has discussed govern a particular situation.

CORNBYN: How do you reconcile that answer with your statement that courts of appeals make policy?

SOTOMAYOR: In both cases in which I've used that word in two different speeches -- one was a speech, one was a remark to students -- this is almost like the discussion fundamental -- what does it mean to a non-lawyer and fundamental, what it means in the context of Supreme Court legal theory.

CORNBYN: Are you saying it's only a discussion that lawyers could lot of?

SOTOMAYOR: Not love. But in the context in both contexts, it's very, very clear that I'm talking about completely the difference between the two judgments and that circuit courts, when they issue a holding, it becomes precedent on all similar cases.

In both comments, those -- that statement was made absolutely expressly that that was the context of the kind of policy I was talking about, which is the ramifications of a precedent on all similar cases. When Congress talks about policy, it's talking about someone totally different. It's talking about making law, what are the choices that I'm going to make in law -- in making the law.

Those are two different things. I wasn't talking about courts making law. In fact, in the Duke speech, I said -- I used making policy in terms of its ramifications on existing cases. But I never said in either speech we make law in the sense that Congress would.

CORNBYN: Let me turn to another topic. In 1996, when you -- after you'd been on the federal bench for four years, you wrote a law review article -- the Suffolk University Law Review. And this pertains to campaign financing.

You said, quote, "Our system of election financing permits extensive private, including corporate, financing of candidates' campaigns raising again and again the question of whether -- of what the difference is between contributions and bribes and how legislators or other officials can operate objectively on behalf of the electorate."

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