

Sotomayor has pragmatic record in business cases

By CHRISTOPHER S. RUGABER – 19 hours ago

WASHINGTON (AP) — Sonia Sotomayor, President Barack Obama's choice for the Supreme Court, has compiled a balanced record on business issues that is hard to pin down, legal experts said.

As with David Souter, the justice she would replace if approved by the Senate, Sotomayor's stances as an appeals court judge are unpredictable and sometimes defy expectations of both supporters and critics, they said.

"She has not been consistently ... on one side of the spectrum or the other," said Evan Tager, a partner at the law firm Mayer Brown, who has reviewed her decisions as a judge on the 2nd U.S. Circuit Court of Appeals.

Still, some conservative critics argue that her stances in high-profile affirmative action and securities litigation cases show she'll bend the law to favor employees and consumers over business.

Other analysts note, though, that Sotomayor has supported limiting damages in lawsuits against companies and will dismiss discrimination claims if she finds they aren't supported by the law.

Tager said some of the positions she's taken in damage awards cases, in particular, should hearten the business community.

Sotomayor dissented in a 2000 case when the appeals court ruled that the 1996 crash of TWA Flight 800 off the coast of Long Island occurred within U.S. territorial waters. That ruling allowed victims' families to sue TWA, Boeing Co. and a parts manufacturer for damages that would have been barred if the crash had happened in international seas.

Sotomayor argued for a different interpretation of the law that would have limited the damages. Her view, Tager said, was that "it's unfortunate for these victims, but the law's the law."

Business groups have pushed for years to get the Supreme Court to enact strict limits on the financial awards plaintiffs can win in lawsuits. They argue that the emotional nature of many such cases can produce huge punitive damages that are inconsistent from case to case.

Sotomayor also supported reducing the damages awarded in a case involving rail company CSX Corp., Tager said. Her record suggests she thinks that "damages should be kept under control," he said.

Meanwhile, Carl Hittinger, a lawyer with DLA Piper based in Philadelphia, said Sotomayor has a surprisingly pro-business record in the area of antitrust. In nearly every case in which she was one of three judges considering a dispute, the court sided against the plaintiff bringing an antitrust complaint, he said.

Her approach "reminds me a lot" of Justice Samuel Alito, he said. Alito, appointed by President George W. Bush in 2006, is considered one of the more pro-business members of the court.

The U.S. Chamber of Commerce did not take a position Tuesday on Sotomayor's nomination, saying it looks forward to "closely examining" her credentials.

But some analysts have targeted her support — as part of a three-judge panel — for a decision by New Haven, Conn. officials to dismiss the results of a promotional exam for firefighters. In its decision, the panel found that too few minorities had scored high enough.

Roger Pilon, vice president for legal affairs at the libertarian Cato Institute, said that ruling suggests Sotomayor will usually side against business in discrimination cases.

"This one case speaks volumes about her mindset," he said.

In addition, Jim Copland, a legal analyst at the Manhattan Institute, criticized her opinion in 2005 that allowed a securities fraud lawsuit against Merrill Lynch to proceed. Copland said the case should have been barred by legislation Congress passed in 1998 intended to curb such claims.

The law places restrictions on suits that allege fraud involving the "purchase or sale" of securities. But the 2nd Circuit ruled that the plaintiff in the case was a "holder" of securities, rather than a buyer or seller. As a result, the court decided, the complaint could proceed.

Her opinion "created a hole in that statute you could drive a Mack truck through," Copland said. She was overruled in a subsequent 8-0 Supreme Court decision.

But Patricia Millett, the co-chair of the Supreme Court practice at Akin, Gump Strauss Hauer & Feld, pointed out that two Republican appointees on the court agreed with Sotomayor.

Millett, like other experts, noted that many business cases don't produce the same neat ideological divides that hot-button issues such as abortion or free speech do. As a result, it can be hard to predict how any justice will rule.

In the 2007-2008 term, for example, Chief Justice John Roberts and Alito supported a racial discrimination case against Cracker Barrel restaurants. It was one of several employment-law rulings that went against business interests in that term.

Many analysts expect Sotomayor will be similarly unpredictable.

"There's nothing in her record that suggests she's ... hostile to business," said Tom Goldstein, a veteran Supreme Court watcher who has argued before the justices 21 times. "She'll fit comfortably in (Souter's) seat."

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