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Bad On Guns

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President Obama's nominee to the U.S. Supreme Court, 2nd Circuit Judge Sonia Sotomayor, owes the American people an explanation on her view of the Second Amendment.

Most nominees come before the Senate Judiciary Committee and refuse to answer questions about hot-button issues such as abortion, gay marriage, gun rights and the death penalty. The nominee usually says something about not wanting to prejudge future decisions that may come before the High Court.

But Sotomayor shouldn't be allowed to skirt the Second Amendment issue, because she cosigned a decision in a case earlier this year that exhibited a dismissive and hostile view of the right to bear arms. If Sotomayor's view becomes the view of the Supreme Court, your right to own the weapon of your choice in your home may be taken away.

Because of this decision, Sotomayor may have a problem getting confirmed by the Senate. If the Sotomayor nomination becomes a referendum on the Second Amendment, it's unlikely she'll be confirmed.

After all, during the past few months the Senate has voted three times on pro-gun legislation. Each of these legislative amendments passed with overwhelming bipartisan margins. Clearly, the view that the Second Amendment protects an individual's right to own and carry a weapon is held by more Senators than the view that the Second Amendment is an empty phrase.

Back in January, the 2nd Circuit issued a decision in *Maloney v. Cuomo* that upheld New York's complete ban on the possession of a chuka stick (or nunchukas). James Maloney had been arrested at his home in 2000 for possessing the weapon. He argued that his Second Amendment rights were violated by the state of New York, because he had arms in his home (the nunchukas) for the protection of his family.

The decision, coauthored by Sotomayor, was dismissive of Maloney's 2nd Amendment claims. Sotomayor and two other justices held that the "statute neither interferes with a fundamental right or singles out a suspect classification." They held that a state legislature has the right to pass a complete ban on weapons in the home, because the Second Amendment does not apply to the states.

David Kopel of the Cato Institute, a Second Amendment scholar, argues that the position supported by Sotomayor was "oddly evasive" and gave "short shrift to Maloney's argument." Kopel told Human Events, "The Sotomayor opinion does not even acknowledge the legally serious argument that was relevant to this case: that under modern Supreme Court doctrine, the Due Process clause of 14th Amendment has made most provisions of the Bill of Rights applicable to the states, and the Supreme Court's standards for which portions of the Bill of Rights are 'incorporated' by the 14th Amendment strongly indicate that the Second Amendment is incorporated." In short, Sotomayor doesn't seem to have given any meaningful constitutional weight to the Second Amendment rights of all Americans, nor the natural right of people to protect themselves.

This nominee's interpretation of the Second Amendment is of particular importance in the confirmation battle because of the Senate's track record on gun issues. In February the Senate voted 62-36 for an Amendment offered by Sen. John Ensign (R-NV) to restore the Second Amendment rights to District of Columbia residents. In the wake of the Supreme Court's striking down the District of Columbia's oppressive gun-control laws, *D.C. v. Heller*, and holding that the Second Amendment is an individual right, the Senate passed an Amendment to restore the gun rights of the residents of D.C.

The D.C. gun rights vote was a preview of two other Senate votes. The Senate voted on guns again in April by a 63-35 margin for an Amendment by Sen. Roger Wicker (R-MS) to ensure that law-abiding Amtrak passengers are allowed to securely transport firearms in their checked baggage. This Amendment was necessary to remove an Amtrak ban on guns in checked luggage.

The third Senate vote on gun rights was May 12th when the Senate voted 67-29 for an Amendment by Sen. Tom Coburn (R-OK). This Amendment, known as the "Guns in Parks" language, restored the gun rights of law abiding Americans -- subject to state law restrictions -- in our nation's national parks.

Sixteen Democrats voted for all three gun amendments, including Max Baucus and Jon Tester of Montana, Evan Bayh of Indiana, Mark Begich of Alaska, Michael Bennet and Mark Udall of Colorado, Robert Casey and Arlen Specter of Pennsylvania, Byron Dorgan of North Dakota, Russ Feingold of Wisconsin, Kay Hagan of North Carolina, Mary Landrieu of Louisiana, Blanch Lincoln of Arkansas, Ben Nelson of Nebraska, Harry Reid of Nevada, and Jim Webb of Virginia. All of these Democrats will be on the hot seat if the Sotomayor nomination becomes a referendum on whether the Second Amendment is a fundamental right of all Americans.

If Sonia Sotomayor refuses to explain her rationale for holding that Maloney's fundamental right to own a weapon for the protection of his family was not infringed by the state of New York, many Democrats who would usually give deference to the President's choice of a Supreme Court nominee may instead be overcome by concerns about confirming a justice who seems prone to ignore a freedom that Americans hold dear.

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