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HEADLINE: EDITORIAL: Switching Souter for Sotomayor

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BODY:

May 29--President Obama surprised some court watchers with his choice of Sonia Sotomayor of the 2nd U.S. Circuit Court of Appeals in New York to replace the retiring Justice David Souter on the Supreme Court. In several respects it was a shrewd choice, although some of the factors that made it shrewd speak poorly of the current state of American politics.

Senate Republicans, for instance, will have a difficult time opposing a person who would be the first Hispanic on the high court since Hispanics are such an important voting bloc. And Judge Sotomayor has a compelling personal story: She is a second-generation Puerto Rican-American raised in Bronx housing projects by a single mother after her father died when she was 9; she graduated second in her class from Princeton and went on to Yale Law School and the federal bench.

Interestingly, some aspects of that story may provide an opening for opponents of the Sotomayor nomination.

President Obama has made no secret of the fact that he views empathy, an ability to identify with different life experiences, as a qualification -- in addition to judicial experience and expertise -- to sit on the high court. With Judge Sotomayor, valid questions have arisen as to whether her sex and/or ethnicity will affect her decision-making.

In a 2001 speech in California, for example, she challenged the notion that a wise old woman and a wise old man will reach the same conclusion in judicial cases. She went so far as to say, "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life."

In 2005 at Duke University, she asserted that a "court of appeals is where policy is made" -- followed by an immediate "we don't make law" backtrack.

Roger Pilon, vice president for constitutional studies at the libertarian Cato Institute, views the Sotomayor

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nomination and record as "identity politics, pure and simple."

There may be bumps along the way, but Judge Sotomayor is President Obama's choice, and, in the end, she is likely to be confirmed.

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