

Wednesday, May 27, 2009

# Sotomayor reversed 60% by high court

[Stephen Dinan](#) ([Contact](#))

With Judge Sonia Sotomayor already facing questions over her 60 percent reversal rate, the Supreme Court could dump another problem into her lap next month if, as many legal analysts predict, the court overturns one of her rulings upholding a race-based employment decision.

Three of the five majority opinions written by Judge Sotomayor for the 2nd Circuit Court of Appeals and reviewed by the Supreme Court were reversed, providing a potent line of attack raised by opponents

Tuesday after President Obama announced he will nominate the 54-year-old Hispanic woman to the high court.

"Her high reversal rate alone should be enough for us to pause and take a good look at her record. Frankly, it is the Senates duty to do so," said Wendy Wright, president of Concerned Women for America.

But opponents have an uphill battle.

## RELATED STORIES:

- Obama names first Hispanic to high court
- Sotomayor battled bias in D.C.
- Sotomayor would be court's 6th Catholic
- Sotomayor deflected Republicans before

Judge Sotomayor already has been confirmed for the federal bench twice: unanimously in 1992,

when President George H.W. Bush nominated her to a district court, and by a vote of 67-29 in 1998, after President Clinton nominated her to the appeals court. Seven Republicans who voted for her in 1997 are still in the Senate, and White House press secretary Robert Gibbs said "they're certainly well positioned to support her again."

Mr. Gibbs dismissed questions about Judge Sotomayor's reversal rate, saying she wrote 380 majority opinions during her 11 years on the appeals court. Of those 380 opinions, the Supreme Court heard five of the cases and overturned her on three.

"The totality of the record is one that's more important to look at, rather than, like I said, some out-of-context or clipped way of looking at it," Mr. Gibbs said.

While Democratic senators were quick to back Judge Sotomayor, Republicans took a wait-and-see approach, saying they will judge her by her answers at her confirmation hearing before the Senate Judiciary Committee.

Still, Republicans will be under pressure from conservative and libertarian activist groups, who say the questions are mounting. The activists are looking forward to the Supreme Court's expected ruling next month in the Ricci case on race-based employment promotions.

Court watchers predict a majority of justices will rule in favor of New Haven, Conn., firefighters who said the city discriminated against them after it tested them for promotions, then scrapped the results after it realized a disproportionate number of whites would be promoted. Judge Sotomayor was part of a unanimous three-judge panel that issued an unsigned opinion ruling against the firefighters and in favor of the city.

"Given the way she recently all but dismissed the Ricci case ... and the expectation, based on oral argument, that the Supreme Court will reverse the 2nd Circuit decision, there will likely be an extremely contentious confirmation battle ahead," said Roger Pilon, vice president for legal affairs at the Cato Institute. "If confirmation hearings are scheduled for summer, they will follow shortly upon the Courts decision in that explosive case."

The White House was cognizant of the danger that case could present. An administration official, briefing reporters after the announcement, said Judge Sotomayor was not specifically asked about the case since it may come back before the Supreme Court with her as a member.

But the official said Judge Sotomayor's reading of the law in the case was well founded and defensible.

"It was a unanimous decision by the panel that she sat on, it applied 2nd Circuit law very faithfully and did rely upon what was a very thoughtful, well-written district court opinion and adopted that opinion," the administration official said. The White House refused to allow the official to be quoted by name.

Maybe more so than her judicial rulings, Judge Sotomayor can expect to be asked about her temperament as a judge and about her remarks during speeches and conferences.

The Almanac of the Federal Judiciary lists a series of quotes from lawyers praising her legal ability, but she also drew barbs from lawyers who said she is abusive in the courtroom: "She really lacks judicial temperament," one lawyer told the publication.

In 2002, in a speech in California, Judge Sotomayor said race or sex does affect a judge's rulings, and said because of that, a minority woman is a better decider than a white man: "I would hope that a wise Latina woman with the richness of her experience would more often than not reach a better conclusion than a white male who hasnt lived that life."

Three years later, at a panel discussion at Duke Law School, she seemed to endorse judicial activism on the appeals courts, telling students considering clerkships: "Court of Appeals is where policy is made. And I know - I know this is on tape, and I should never say that because we don't make law. I know."

A clip of the Duke comment on YouTube has been widely accessed by conservative activists.

Mr. Gibbs said the YouTube clip does not do justice to the context of Judge Sotomayor's comments, and said her record on the courts will be her answer to critics.

"The president is very convinced that people will look at the full context of this and not rely on, as I said, a small, short, out-of-context YouTube clip, and more importantly look at the basis of her entire record. I think you come to a broader understanding of who she is and what she meant," Mr. Gibbs said.

- Kara Rowland and Tom LoBianco contributed to this report.

**Ads by Google** 

[Supreme Court Cases](#)

[Free Court Records](#)

[Federal Courts](#)

[District Courts](#)

[Federal Trial](#)