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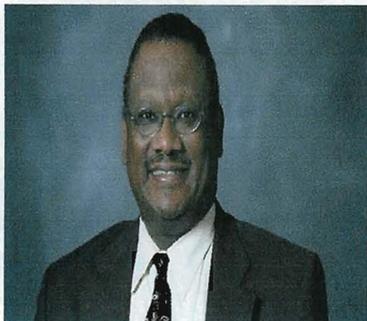
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Obama's Second Chance to Make History

By José F. Anderson



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(May 27, 2009) - With President Barack Obama's nomination of federal circuit Judge Sonia Sotomayor to the Supreme Court, his judicial appointment team has been presented with an early introduction to what has become one of the most challenging areas of presidential governance over the last several decades.

The nominations to the nation's highest court have generated controversies going back to Ronald Reagan's failed attempt to elevate the highly controversial federal Judge Robert Bork to the court in the late 1980s. Those hearings, which delved deeply into the political and social beliefs of Judge Bork, transformed the nomination process for all time and assured that in the future no Supreme Court nominee would go on the court without the "strict scrutiny" which the Court must sometimes apply when it decides cases.

President Obama should be thanking Justice David H. Souter not only for his service on the high court but for providing a Supreme Court appointment so early in his first term.

By announcing his resignation from the court at the end of its most recent term, Souter will allow the president to test the Senate waters with a Democratic majority for the first of possibly several Supreme Court appointments.

Judge Sotomayor, a longtime federal jurist, was first appointed to the federal bench by Republican George H. W. Bush in 1991 and then to the Circuit Court by Bill Clinton. She provides an ideal first test case for the Obama administration. It allows him to add two diversity factors to the court—potentially adding the first Hispanic justice while replacing the gender imbalance lost when Justice Sandra Day O'Connor resigned in 2006—while having a nominee that has survived two prior confirmation processes.

What will be left to scrutinize will be the judge's record of written opinions, speeches and other material that may bring into view her political ideology. The obvious point of this scrutiny will be an effort for conservatives and liberals alike to attempt to predict how she will vote on controversial issues like abortion, affirmative action and gay marriage.

But, predicting what a Supreme Court justice will do on the court is a hazardous activity indeed. Judge Sotomayor's predecessor, William Souter was a disappointment to his conservative supporters, often voting for liberal causes. Justice Hugo Black, a former member of the Ku Klux Klan in his younger days, went on to become one of the great civil rights liberals on the court during the Warren Court years of the '60s and '70s.

However, as the hearings unfold this time one thing is clear—Judge Sotomayor's personal story, like that of the president who nominated her, is compelling. From the projects of the Bronx, N.Y., to the Ivy League, she is a true reminder of the continuing, though all too occasional, access to the American dream for us all.

We will have to wait and see whether her nomination will succeed. Unlike lower court judges or cabinet members, a Supreme Court candidate is a more fragile political parcel to be handled with care. Both Presidents Nixon and Reagan had failed nominees among their proposed appointments, and President George H.W. Bush was able to have Justice Clarence Thomas elevated to the Supreme Court after contentious hearings by the narrowest Senate margin in United States history.

Still, one thing is sure, if Judge Sotomayor is confirmed by the Senate, President Obama will have made history at least twice in 2009.

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