

# Sotomayor's record on religion issues brief, unlikely to stir controversy

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WASHINGTON (ABP) — Supporters of separation between church and state reacted cautiously May 26 to President Obama's selection of Sonia Sotomayor as his nominee to replace retiring Justice David Souter on the Supreme Court.

Despite an extensive record on the bench, the judge for the New York-based 2nd U.S. Circuit Court of Appeals has ruled on only a handful of cases involving the First Amendment's religion clauses. Two church-state legal experts said May 26 the few cases there are don't point to any extraordinary beliefs about religious freedom.

Sonia Sotomayor meets with President Obama prior to being nominated to the Supreme Court. (PHOTO/White House)

"The Senate Judiciary Committee should thoroughly question Supreme Court nominee Sonia Sotomayor to determine her views on church-state separation," said a [statement](#) on the nomination from Americans United for Separation of Church and State. "It appears that Sotomayor has not written widely on church-state issues, meaning the committee has an obligation to ascertain her views."

The Baptist Joint Committee for Religious Liberty also released a [statement](#). The Washington-based group said it "looks forward to learning more about Judge Sotomayor by carefully reviewing her record" but hoped she would rule on religion issues in a fashion similar to the justice she is

slated to replace.

“More than any other justice, Justice Souter has reflected the Baptist Joint Committee's understanding of the proper interpretation of the religion clauses and how they apply to contemporary church-state issues,” said BJC Executive Director Brent Walker.

In an [entry](#) posted on the Religion Clause blog shortly after Sotomayor's nomination was announced, blogger Howard Friedman pointed to a handful of instances where the judge has ruled on cases related to the First Amendment's two clauses dealing with religion. A few come from her time on the 2nd Circuit. Several more are from her tenure as a New York federal district judge before that.

Her most significant opinion on church-state issues was a dissent from the 2006 *Hankins v. Lyght* [decision](#). In that case, a three-judge panel of the 2nd Circuit ruled 2-1 that the Religious Freedom Restoration Act applied to a Methodist minister's age-discrimination lawsuit against the New York Annual Conference of the United Methodist Church.

Sotomayor disagreed, saying the federal law could not be applied to disputes between private parties, but only to government attempts to limit or burden the free exercise of religion.

In two other 2nd Circuit cases involving prisoners' rights to the free exercise of religion, Sotomayor authored opinions in favor of inmates who contended that prison officials had violated their rights.

In the 2003 *Ford v. McGinnis* [decision](#), Sotomayor said New York prison officials did not prove their denial of an Islamic holy meal to prisoner Wayne Ford was merely a minimal infringement of his religious free-exercise rights.

Likewise, in the 1999 *Salahuddin v. Mead* [decision](#), Sotomayor said a lower

court could not dismiss, on procedural grounds, a Muslim prisoner's complaint that prison officials repeatedly denied his requests to receive spiritual counseling from a chaplain.

She also sat on 2nd Circuit panels that ruled on other religion cases — many involving prisoner religious rights as well as other issues related to the First Amendment's Free Exercise Clause and Establishment Clause.

In one well-known case, the 2002 *Fifth Avenue Presbyterian Church v. City of New York* [decision](#), Sotomayor joined her colleagues in affirming a prominent Manhattan congregation's right to allow homeless people to sleep on its property. The 2nd Circuit upheld a lower court's injunction finding that then-New York Mayor Rudy Giuliani would not likely succeed in his attempts to evict the homeless whom the church had allowed to sleep in the entryways to its buildings.

Robert Tuttle, a church-state expert and professor at George Washington University Law School, said Sotomayor's record on cases dealing with the free exercise of religion "reflects widespread judicial consensus about the relevant standards" applying to such cases.

"In other words, I think her free exercise cases are about right down the middle of the bell curve," he said.

Tuttle's George Washington colleague and fellow religion-law expert, Chip Lupu, said he had not read all of the relevant cases and was hesitant to draw broad conclusions about whether Sotomayor places a higher value on the free exercise of religion than her judicial colleagues.

However, he did note that, "It is frequently easy for judges to rule against prisoner free exercise claims, so it does say something about her attitude toward religious freedom that she has ruled for prisoners on several occasions."

However, Lupu concluded, “I will say with some confidence that there is nothing in her record that suggests her view on religion-clause issues is going to be important in the confirmation process.”

Sotomayor’s nomination was immediately questioned by many social conservatives, who accused her of embracing a philosophy of race-based decision-making and advocating legislating from the bench. They also accused Sotomayor of being out of step with the court she hopes to join, noting that many of her decisions as a federal judge have been overturned by the Supreme Court.

If confirmed by the Senate, she would be the first Latina — and only the third woman — to serve on the nation’s highest court.

If she replaces Souter, Sotomayor would also be one of six Catholics on the Supreme Court. Souter and Justice John Paul Stevens are the only Protestants currently on the panel, which also contains five Catholics and two Jews.

President Obama is reportedly asking the Senate to complete her confirmation hearings and vote before the chamber’s August recess, currently scheduled to begin Aug. 7.