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Public Law & Finance

SUPREME COURT CONFIRMATION PROCESS AFFECTS US ALL

President Obama's pick of Judge Sonia Sotomayor to replace Justice David Souter on the U.S. Supreme Court adds yet another agenda item to this year's Legislative calendar--one that is already jammed packed with comprehensive Healthcare, Energy and Appropriation bills slated for the fast track. The nomination of Judge Sotomayor has resulted in the predictable political "demonizing" of the nominee from certain interest groups and the glowing testimonials in response from her most ardent supporters. The vitriolic attacks are unlikely to cease despite widespread belief that Judge Sotomayor will be confirmed later this summer. The real question for the country is how the "political fight" about Judge Sotomayor's nomination may affect the relationships between the White House and Congress as they work together on many other important issues.

Judge Sotomayor's educational background and experience on the bench, including over a decade as a Judge on the U.S. Court of Appeals suggests that she is "qualified" to serve on the Supreme Court. Yet its her personal story--both pro and con--that has received most of the attention. An Hispanic woman, raised by a single mother in the housing projects of the Bronx, who attended and excelled at two of our nation's top universities and law schools, before going on to a career as a prosecutor and in private

practice, and then twice nominated to the Federal bench--first by President George H.W. Bush (1992) and then President Clinton (1998), would appear to be beyond political attack.

However, opposition groups have suggested that her "empathy" for certain minority, socio-economic, and/or gender related organizations will be so significant that she will try to "create policy" from the bench. Her supporters point to a track record which they argue demonstrates a "pragmatic" judge who carefully applies the law to the facts with no evidence of "political gamesmanship" to be found.

Recognizing that many interest groups, pro and con, use a Supreme Court nomination process to gin up fundraising for their respective causes, it is unlikely that the polarizing attacks and equivalent retorts can be avoided. However, in the interest of the other major issues the White House and Congress must address, we call on all sides to avoid over politicizing the confirmation process.

We favor a vigorous debate on the selection of a Supreme Court Justice, but seek to ensure that the debate is intellectually honest and substantive on pertinent matters. Michelle Waller and I recently authored an article for *INTER ALIA*, the Ohio Federal

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Bar Association Newsletter in which we challenged our peers in the legal profession to actively “raise the level of debate” during the confirmation process. See [*\(Intellectual Hero or Fanatical Villain--How Sonia Sotomayor's Confirmation Process Will Say More About Us Than Her\)*](#).

We would encourage others to make your “voice of reason” heard on this process. If you are interested we can provide assistance in communicating your message to our Congressional leaders and/or the White House.

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