NATIONAL CATHOLIC REPORTER
Published on *National Catholic Reporter* (http://ncronline.org)

Sotomayor mixed record on church-state disputes

Adelle M. Banks Religion News Service | Jul. 15, 2009

WASHINGTON -- As a federal judge, Sonia Sotomayor sided with Santeria prisoners who wanted to wear religious beads and Muslim inmates who wanted to break the fast during the holy month of Ramadan.

At the same time, she ruled against Muslims who wanted a Muslim crescent and star added to post office holiday displays that featured Christmas and Hanukkah symbols.

As the Senate holds confirmation hearings on the woman who hopes to be the newest member of the U.S. Supreme Court, experts who monitor church-state cases say -- as on other matters -- that Sotomayor's past decisions indicate that she's hard to pigeonhole.

"They're certainly not totally predictable in terms of her siding with one side or another," said Howard M. Friedman, a retired law professor at the University of Toledo, whose Religion Clause blog tracks church-state legal developments. "She looks pretty carefully at all the facts."

Church-state legal groups, including Americans United for Separation of Church and State and the Baptist Joint Committee, have issued legal analyses of Sotomayor's lower court decisions as they seek clues to how she might rule if confirmed to the nation's highest court.

The Rev. Barry Lynn, executive director of Americans United, said Sotomayor seems to seriously consider the First Amendment's protections for the "free exercise" of religion, along with other legal principles.

"Certainly on the free exercise side she is nuanced," he said. "She does clearly believe that claims of religious freedom are to be taken seriously, but that doesn't always mean that the religious person making the claim wins."

Other church-state experts found evidence of Sotomayor's sensitivity to religious minorities in prison cases. K. Hollyn Hollman, general counsel of the Baptist Joint Committee, pointed to Sotomayor's decision in a case involving two New York inmates who wanted to wear beads related to their Santeria faith, which combines Catholic and traditional African practices.

"She recognized explicitly that the plaintiffs' beliefs, even if unfamiliar, deserve First Amendment protection from overly broad rules that burden the practice of non-mainstream religion," Hollman wrote in her analysis.

In addition to prisoner cases, Sotomayor joined colleagues on the 2nd U.S. Circuit Court of Appeals in a 2002 ruling supporting New York's Fifth Avenue Presbyterian Church, which fought the city for the right of homeless people to sleep on its steps.

"She was essentially vindicating the church's ability ... to enact its ministry," said Nathan Diament, director of public policy for the Union of Orthodox Jewish Congregations of America.

Experts say Sotomayor's potential rulings on the First Amendment's Establishment Clause -- which prohibits a

governmental establishment of an official religion -- may be even harder to gauge.

Jesse Galef, a spokesman for the Secular Coalition for America, said his organization sent questions to the Senate Judiciary Committee in hopes of finding some clarity. His office has been particularly interested in a 1993 case from White Plains, N.Y., in which Sotomayor rejected a city's resolution that prevented a rabbi from placing a menorah in a city park during Hanukkah.

"She did say that she understands the city's concerns that it could be taken as their speech," Galef said. "In more flagrant violations, I think that could come down more on our side."

Church-state watchdogs are especially concerned about Sotomayor's seat on the Supreme Court because she is poised to replace Justice David Souter, who ruled against Ten Commandments displays in Kentucky courthouses because of their religious purpose.

"Justice Souter turned out to be a giant in church-state understanding, a person who really understood that government had no business resolving religious disputes or in any way promoting religious doctrine or ideas," Lynn said.

But legal observers, including Greg Baylor, director of the Center for Law and Religious Freedom at the Christian Legal Society, admit there is no way to know how Sotomayor would rule as Supreme Court justice.

"There's nothing in her religion cases themselves that suggest to me that ... she has decided or analyzed cases inappropriately but ... these cases are of limited value in determining what she's going to do on the Supreme Court," he said.

Friedman noted that in a case involving age discrimination, Sotomayor may have inadvertently answered, years ahead of time, critics who now voice concern about possible "judicial activism" on her part.

In the case of a minister who sued a United Methodist regional conference over its compulsory retirement age, she wrote in a 2006 dissent that her fellow jurists "unnecessarily" considered the 1993 Religious Freedom Restoration Act, in part because that statute did not apply to disputes between private parties.

"It's sort of interesting that she emphasizes judicial restraint," he said, "in light of some of the criticisms that have been leveled at her."

See main story: **Sotomayor, senators, delve into legal philosophy** [1]

The Next Step FORWARD [2]

DONATE NOW [2]

Enjoy this article?
Help support more like it by **donating today!** [2]

Source URL (retrieved on *06/30/2015 - 07:48*): http://ncronline.org/news/politics/sotomayor-mixed-record-church-state-disputes

Links:
[1] http://ncronline.org/node/14049
[2] http://ncrnews.org/webathon/donate/article-end