

# **SOTOMAYOR CONFIRMATION HEARINGS, DAY 3, PART V**

Feingold: Capertown v. Massey. Most states have rules to protect judicial impartiality. In your opinion what additional steps to ensure judiciary held to highest standards.

SS: Inappropriate to make suggestions to Congress. Judicial code has a code of conduct. Many states doing what I spoke about—passing regulations. Capertown. Taken under supervisory issues over courts. At issue is that judges and lawyers must abide by highest standards of conduct. Law is minimum one must do.

Feingold: Roberts and Alito hate campaign finance, and believe corporations ought to be able to donate. Legal advantages that allow them to amass great wealth. If court overrules Austin. Unlimited corporate spending not seen since 19th century. What precedents provide about state of elections.

SS: Attempted to answer every question. You have noted that Citizens United for September. If confirmed it would be first case I would participate in. Given that case, I think it would be inappropriate to speak about that area of the law. Suggest I'm going into that process with some prejudgment about precedent. I appreciate what you have said, special circumstance.

Feingold: I probably would say the same thing.

Grassley: I assume I can have Feingold's time?

Leahy: Given that you turn people on, no. Up to 20 minutes.

Grassley: Never asked before in this hearing. Want to say there's SCOTUS decision Baker v Nelson, 1972. Federal Courts lack jurisdiction

to hear state marriage laws. Do you believe Court can speak about marriage?

SS: Pending in many courts.

Grassley: Yesterday you said these are precedents. Are you saying Baker v. Nelson is not a precedent.

SS: I don't know what status is. I will apply precedent to facts of new situation that implicates it.

Grassley: Tell me process you'd go through over whether Baker is precedent or not.

SS: Two sides will come in. One side will say Baker applies, another will say another precedent applies. They'll argue about what applies. And then court will look at what state has done and decide which precedent controls this outcome. It's not that I'm attempting not to answer. Process that would be used.

Grassley: Following what you said yesterday that certain things are precedent. You didn't seem to compromise or hedge. Why are you hedging on this.

SS: Its holding is a holding. It's been a while since I looked at that case.

Grassley: I would like to have you answer me further after you've studied Baker. 1996 Congress passed DOMA. Both provisions have been challenged, courts have upheld. Do you agree with federal courts which have held that DOMA does not violate Full Faith and Credit.

SS: ABA rules would not permit me to comment on case in pending before SCOTUS. SCOTUS has not addressed constitutionality of that statute. It is an impending case.

Grassley: Have you made any ruling on Full Faith and Credit Clause.

Grassley: You believe judges should take into account gender, race and ethnicity. How is being impartial a disservice to law and society.

SS: I do not believe that judges should use personal beliefs and value system.

Grassley: Further accept that our experiences as women and people of color, personal experiences affect the facts that judges choose to see.

[blah blah blah blah Didden Didden Didden]

Cardin: Kohl's question on cert.

9:30 tomorrow. Starts with Kyl or Graham or someone—so drink plenty of coffee or come late!