

DEBORAH L. MCKENNA

## Best Pick For High Court Would Be Working Mother

May 17, 2009 The Hartford Courant  
Op-Ed

President Barack Obama should appoint a working mother to replace Justice David Souter, who plans to retire in June after two decades on the U.S. Supreme Court.

Following Souter's announcement on May 1, the president said he would look for a candidate who understood the "daily realities of people's lives — whether they can make a living and care for their families; whether they feel safe in their homes and welcome in their own nation." Empathy, understanding and identifying with people's hopes and struggles are some of the qualities that the president identified as being important for a Supreme Court justice.

Indeed, who better than a working mother to offer perspective on the daily realities of people's lives, especially on issues such as whether they can support themselves or their families? Women, and working mothers in particular, have long worked to balance the needs of their families with the needs of their employers — often against very difficult odds.

The Equal Employment Opportunity Commission reported that as of 2007 women made up nearly half of the U.S. labor force; mothers of young children are almost twice as likely to be employed today as they were 30 years ago; and income from women's work makes up more than one-third of the income in families where both parents work.

Even with the prevalence of women in the labor market, women are still the primary caretakers for children and a growing number also have responsibility for their own parents as well. Despite this, a 2007 study conducted by the American Association of University Women titled "Behind the Pay Gap" shows that having children results in a greater pay disparity between male and female workers. Women with children earn approximately 63 cents to a male's worker's \$1, and men with children earn more than men without children.

The Equal Employment Opportunity Commission notes there are many steps an employer can take to help its employees balance the competing concerns of work and family, such as flexible work schedules and ensuring its managers have received training on caregiver responsibility and discrimination. However, pay disparities and stereotypes exist across all socioeconomic lines, affecting workers from bus drivers to doctors.

As a result of the persistence of discriminatory attitudes, claims of discrimination on the basis of pregnancy or family responsibilities have increased steadily over the years. Almost any woman who has worked while pregnant or with small children has at least one example of when her boss or co-workers openly questioned her commitment to her job or her competence simply because she was a mother.

Comments such as "you won't want to work after you have the baby" and "you can't do that job if you have children" occur, along with suggestions that a woman not speak about her children at work. Additionally, many women are discouraged from taking protected family leave or using an employer's purportedly flexible work policies. Given the present economic difficulties, there is an added pressure not to use these policies. Workers fear that if they are out of the workplace, their employers will deem them expendable. Stereotypes and fear allow discrimination against working mothers to flourish.

By appointing a justice who is or has recently been a working mother, President Obama will add an individual to the court who has invaluable insight into the very real challenges women currently face. Additionally, by making such an appointment, President Obama would send a

strong message that he does not ascribe to the unfounded negative stereotypes about the abilities and commitment of working mothers.

Appointing a working mother would benefit not only working women and girls by providing them with a positive role model but all Americans by adding a justice to the court who understands the "daily reality of the lives" of the citizens she is to serve.

**•Deborah L. McKenna is a lawyer in Stamford and has a particular interest in issues related to sex discrimination in the workplace.**