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help people"



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From the Los Angeles Times

## REACTIONS

### Legal experts' views on the Sotomayor hearing

The Supreme Court nominee answers questions about her 'judicial philosophy' on issues including abortion and gun control.

July 16, 2009

Sonia Sotomayor deftly dodged conservative senators' efforts to pin her down on her "judicial philosophy" on issues like abortion and gun control Wednesday, leaving those on both sides of the issues frustrated, said legal experts following the Senate Judiciary Committee confirmation hearing on her nomination to the U.S. Supreme Court. But her restraint drew praise from some as evidence that she is a moderate judge who will decide cases on the facts, not preconceived opinions.

#### Ilya Shapiro

Senior fellow at the conservative-libertarian Cato Institute and editor of its Supreme Court Review

"I don't know if she assuaged anybody's fears on the big issues. She took a little bit of heat from pro-choice groups about where she stood in the abortion context, and several times the issue came up. . . . She began every answer with 'the court has said,' and went on with explanations of Supreme Court precedents, saying here is the state of the law. That is nonresponsive.

"The senators have a right to ask what your interpretation of the Constitution is, what your judicial philosophy is, how she understands questions about abortion rights and property rights. Again and again she talks about precedent in painstaking detail. Either she hasn't thought more deeply about her overall judicial philosophy and just kind of wings it, or she was being disingenuous. I'm not criticizing her about whether she has a wrong or right view of policy on abortion but about what is obfuscation at best and at worst a lack of intellectual edifice on constitutional interpretation.

"The larger issue I think everybody is concerned about with her 2nd Amendment case, *Maloney* [vs. *Rice*, in which New York banned a martial arts weapon], what has everybody concerned, is her description of nunchucks as very dangerous and therefore she had less of a problem banning or restricting them. If you applied that standard, that a government can act whenever an implement is dangerous -- all weapons are dangerous. That's no standard at all. There were some very worrying things there."

#### Kimberly West-Faulcon

Constitutional law professor at Loyola Law School

"What I think she has been consistent about is the notion of fidelity to the law. What she is demonstrating is that she takes a moderate approach to judging. Where she's been criticized, she's being criticized for showing judicial restraint. Sens. [Sheldon] Whitehouse [D-R.I.] and [Al] Franken [D-Minn.] made the observation that the use of the term 'judicial activism' has become code for judicial outcomes that somebody doesn't like. Sotomayor takes a moderate approach, as opposed to an activist one, in deciding what modern law is and applying that in her decisions.

"To the extent that there is judicial activism, it exists on both sides of the political spectrum. There are conservative activist judges, and there are liberal activist judges. To me, Sotomayor doesn't appear to be either one. What she is showing is a type of judicial restraint, and that's true across the board, whether she is asked about 2nd Amendment cases or abortion, she's going to be faithful to the precedent.

"For those who are critical and find problematic the holding in *Roe vs. Wade*, I don't think she could have said anything that would please those senators. She was saying she is going to apply the law as it is. What you have is both sides [in the abortion issue] wanting assurances from her. She's saying she is going to apply current precedent, which means the status quo. She hasn't gone farther in setting out what would be the standard for changing the law, and that could be frustrating for those who want her to acknowledge how long [a woman's right to choose] has been Supreme Court precedent."

#### Erwin Chemerinsky

Constitutional law scholar, dean of UC Irvine School of Law and former visiting professor at Duke University School of Law

"What was most telling was her exchange with Sen. [Tom] Coburn [R-Okla.]. I think she did a masterful job of drawing a distinction between her own personal views and what she would do as a justice, explaining why her personal views don't matter, and that what she would do as a justice would depend on the facts of the cases that would come before her, that she couldn't articulate a general policy on positions she would take.

"I think she said all that she possibly could say on the 2nd Amendment cases. She said in the 2nd Amendment case that came before her circuit that the 2nd Amendment didn't apply to the states, and that was based entirely on a 19th century decision of the Supreme Court that the court of appeals was obliged to follow. You can't read her decision as anything other than that of a good judge following Supreme Court precedent.

"She did what every nominee since Robert Bork has done in not giving any indication of what she is likely to do on the issues before her, and this carries forward on the most hot-button issues like abortion and guns.

"She did great. She came off as composed and poised through the whole thing, as well as very knowledgeable. She basically followed the script. I think she did exactly what she needed to do to get confirmed."

-- *Carol J. Williams*

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