



[Blog](#) | [Talk Radio Online](#) | [Columnists](#) | [Your Opinion](#) | [The News](#) | [Photos](#) | [Cartoons](#) | [Books & Movies](#) | [Issues](#) | [Action Center](#)

**Tuesday, July 14, 2009**

---

## Don't Label Me, Bro

Posted by: [Townhall.com Staff](#) at 7:00 PM

**Guest blog post by Ilya Shapiro.**

Senator Schumer ripped apart Judge Alito by running through case after case where he ruled against poor plaintiffs whose attempts to recover for discrimination or harms by large corporations... Oh, I'm sorry, Schumer actually led Judge Sotomayor through those cases to show that her "empathy" still allowed her to make pro-defendant rulings. But can you imagine if it were Alito sitting there, with that line of cases?

Schumer also asked whether the rule of law would always triumph in Sotomayor's courtroom, and the nominee answered in the affirmative. Well, that settles it, folks...

After the Schumer lovefest—which also touched on the interlocutors' mutual love of the New York Yankees—Senator Graham began what has thus far been the most interesting part of the hearings. He first got Sotomayor to say she was not a "legal realist"—the theory that there is no objective law, with lawyers and judges viewing legal issues on the basis of their personality quirks and policy preferences. Indeed, apparently Sotomayor rejects all jurisprudential labels, though she misunderstood originalism to involve the *intent* of the Founders rather than the original public meaning of their words.

Most interestingly, Graham teased out of Sotomayor that the right to abortion comes from a "broad provision" of the Constitution—I think she meant a broad interpretation of certain provisions—and tied that comment to her "wise Latina" speech. What Graham was getting at is a lawless method of interpretation, which allows a judge to read into the Constitution whatever he or she wants, based solely on that judge's understanding of "justice."

I'll never understand why liberal jurists cling to the "penumbras and emanations" view of unenumerated rights. The Constitution clearly protects rights that aren't specifically listed there—because the Bill of Rights was an afterthought, and it's not like the Founders thought the unamended document protected no rights. We can argue what those natural rights are, but the provision that protects them is the Ninth Amendment, not some undefined shadows.

*Ilya Shapiro is a Senior Fellow in Constitutional Studies at the CATO Institute and Editor-in-Chief of the Cato Supreme Court Review.*

Copyright © 2009 Salem Web Network. All Rights Reserved.

**Flagpoles at Night**

Flagpoles With Down Lighting Big Power Savings, LED Lighting

[www.flagpolewarehouse.com](http://www.flagpolewarehouse.com)

**Local Radio Stations**

Find radio stations in your area - news, music, talk, Spanish.

[Radio.YellowPages.com](http://Radio.YellowPages.com)

**Free Internet Radio**

Listen To Your Favorite Stations On Your Desktop w/ Free Radio Toolbar

[Radio.alot.com](http://Radio.alot.com)

Ads by Google