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Update from Soto Hearing

Posted by: [Townhall.com Staff](#) at 12:34 PM

Guest post from Ilya Shapiro

Now, after yesterday's bloviating—much reduced by Joe Biden's departure from the committee—today we've gotten into some good stuff. Sotomayor is obviously well-prepared. She speaks in measured, dulcet tones, showing little emotion.

Judiciary Committee Chairman Leahy gave her the opportunity to explain herself on *Ricci* and on the "wise Latina" comment—which she has repeated in public speeches at least six times going back 15 years—and then built up the nominee's background as a prosecutor and trial judge. Ranking Member Sessions and Senator Hatch (himself a former chairman of the committee) pounded Sotomayor on *Ricci*, asking her how she reconciles a race-based decision with clear Supreme Court precedent—and how her panel decided the case in two paragraphs despite the weighty statutory and constitutional questions.

Sessions in particular pointed out the inconsistency between her statement yesterday that she was guided by "fidelity to the law" and her history of calling the appellate courts as being the place where "policy is made" and profession of inability to find an objective approach of the law divorced from a judge's ethnicity or gender. Sotomayor's responses were not convincing; rather than agreeing with Justice O'Connor's statement that a wise old man and a wise old woman would come out the same way on the law, the "wise Latina" comment plainly means the exact opposite.

And so the back-and-forth continues. One refreshing thing I will note is that only twice has the nominee said she can't answer a question or elaborate on a response: on abortion, saying *Griswold*, *Roe*, and *Casey* are settled law; and on guns, declining to discuss whether the constitutional right to bear arms can be used to strike down state (as opposed to federal) laws. The former is a clear—but not unexpected—cop-out because, unlike a lower court judge, the Supreme Court justice revisits the nature and scope of rights all the time. The latter is actually the correct response in light of the three cert petitions pending before the Court in the latest round of Second Amendment litigation. Still, her discussion of the Second Amendment left much to be desired given her ruling in *Maloney*; as Jillian Bades [pointed out recently](#), you can't discuss incorporation without a solid understanding of *Presser*.

Ilya Shapiro is Senior Fellow in Constitutional Studies at the Cato Institute and Editor-in-Chief, Cato Supreme Court Review

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Hugh Hewitt