

# Matt Yglesias

Today at 2:24 pm

## [At Last, Someone to Stand up for the White Man!](#)

One issue I'm interested in with regard to the Supreme Court is civil liberties and executive power. On most issues, I basically assume that anyone who Obama picks is going to have views I'm satisfied with. But Democratic presidents are, you know, presidents and often don't worry too much about presidential power run amok. So I thought I'd look and see what the libertarian Cato Institute has to say about Sonia Sotomayor's record, since they follow these issues closely.

Well, Roger Pilon [slams her](#) as “the most radical of all the frequently mentioned candidates before him.” In the course of his condemnation he mentions her ruling in just one case, *Ricci*, and makes no effort to mount an argument on the merits against her position. In a second Cato post on Sotomayor, Ilya Shapiro [slams her](#) as an “Identity Politics over Merit” pick. In the course of his condemnation he mentions her ruling in just one case, *Ricci*, and makes no effort to mount an argument on the merits against her position.

Thank God there's a think tank looking out for the white men of the world.

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Filed under: [Cato Institute](#), [SCOTUS](#),

## 48 Responses to “At Last, Someone to Stand up for the White Man!”

1. *raff* Says:

[May 26th, 2009 at 2:38 pm](#)

Please, won't someone think of the (white) children?!?

2. *DTM* Says:

[May 26th, 2009 at 2:39 pm](#)

She may not have seen much in the way of executive power cases in the SDNY and Second Circuit. Still, you could at least try to extrapolate a bit from something like police cases, which I am sure she has seen.

3. *MD* Says:

[May 26th, 2009 at 2:44 pm](#)

Matt doesn't even mount a defense on the merits of her argument in *Ricci*. This is a fun game!

4. *pseudonymous in nc* Says:

[May 26th, 2009 at 2:48 pm](#)

*Still, you could at least try to extrapolate a bit from something like police cases, which I am sure she has seen.*

Absolutely: and in contrast, Strip-search Sammy Alito (and Roberts, for that matter) have continued their history of sucking up to authority. The most recent 5-4, [which came through today](#), was about the rights of police to interrogate suspects without an attorney present. Scalia, of course, pooh-poohed the idea that people might be “badgered” into answering questions without a lawyer present.

5. *Rich in PA* Says:

[May 26th, 2009 at 2:48 pm](#)

The Cato Institute is all about the rational pursuit of self-interest, and since virtually all libertarians are white men, what else do you expect from them? If there’s someone who’s guaranteed never to make a “statement against interest,” it’s a libertarian.

6. *Toady* Says:

[May 26th, 2009 at 2:50 pm](#)

The talking points are pretty clearly Ricci, Ricci, Ricci. For some reason, NPR interviewed “National Review legal correspondent” Bill Whalen this morning, and he got all huffy about Ricci and nothing else.

7. *Josh E.* Says:

[May 26th, 2009 at 2:52 pm](#)

After all, Steve Sailer can’t do all the necessary looking-out all by himself.

8. *mcd* Says:

[May 26th, 2009 at 2:56 pm](#)

As Chris Rock once said: If white people are losing, who the hell is winning?

9. *anonymous* Says:

[May 26th, 2009 at 3:00 pm](#)

If white people are losing, who the hell is winning?

Democrats.

10. *Joe Strummer* Says:

[May 26th, 2009 at 3:05 pm](#)

It’s pretty unbelievable. I had read somewhere that, of the possible picks, Elena Kagan was more in favor of an expansive view of presidential power, and Diane Wood was somewhat on the other side. So based on that very limited information, I was hoping for someone like Diane Wood. Roberts, Scalia, and Alito are disasters when it comes to civil liberties - not just Gitmo stuff, but also the exclusionary rule which is not ideal, but about all we have to prevent police from completely running amok.

Knowing nothing about Sotomayor, I wanted to find out what the libertarians say about her views of police power or executive power.

Frankly, who gives a crap about affirmative action these days. Is this really important?

Also, Stuart Taylor was pretty awful on Diane Rehm show this morning, pooh-poohing the idea of diversity on the court. "Are we going to look for a female, handicap, hispanic justice?" was his line of attack on the very reasonable position that having a court of all white males (or of 8 white males) is bizarre.

Anyhow, what you'll find on most "libertarian" sites is

11. *Dusty Says:*

[May 26th, 2009 at 3:07 pm](#)

Matt doesn't even mount a defense on the merits of her argument in Ricci. This is a fun game!

Of course, Matt's not critiquing Sotomayor with this post. He's critiquing the Cato Institute's arguments against Sotomayor and their use of a single decision to back up those arguments. So what Matt thinks of Sotomayor's argument in *Ricci* isn't really relevant.

12. *Den Valdron Says:*

[May 26th, 2009 at 3:12 pm](#)

I knew a guy who everyone thought was a manic depressive, obsessive compulsive, paranoid schizophrenic with delusions of grandeur and random phobias.

Turned out he was just a libertarian.

13. *Poptarts Says:*

[May 26th, 2009 at 3:16 pm](#)

*The talking points are pretty clearly Ricci, Ricci, Ricci. For some reason, NPR interviewed "National Review legal correspondent" Bill Whalen this morning, and he got all huffy about Ricci and nothing else.*

Christina Ricci? She was good as the uber-serious Wednesday Addams in the Addams Family and Addams Family Values. Then she got all indie-artsy-fartsy.

14. *bperk Says:*

[May 26th, 2009 at 3:17 pm](#)

Really, I hope they have more ammunition than just Ricci. A panel that she is a part of deferred to the city and the district court on a complex issue. She didn't even write an opinion on that case. She must be clean as a whistle if that is all they can muster.

15. *Bob Oso Says:*

[May 26th, 2009 at 3:17 pm](#)

The Ricci trial court [decision](#) was affirmed in the 3 page per curiam [decision](#) by Justices Pooler, Sack, and Sotomayor.

The original opinion is a pretty long read but will give you a lot better background than I have seen in the MSM. It is also a little ironic that conservatives are bent out of shape because some plaintiffs got poured out on summary judgment.

16. *ron* Says:

[May 26th, 2009 at 3:18 pm](#)

Progressives should go on the offensive and fight for repeal of Buckley v. Valeo.

17. *gregor* Says:

[May 26th, 2009 at 3:19 pm](#)

With critics like these, the Obama pick does not need any admirers. She will do fine just on the basis of the ramblings of her detractors.

18. *Rob Mac* Says:

[May 26th, 2009 at 3:19 pm](#)

Hat tip to Den Valdron for the best description of your average libertarian that I have ever read.

19. *some lurker* Says:

[May 26th, 2009 at 3:21 pm](#)

Reason's hit & run blog is critical of her position on eminent domain.

<http://www.reason.com/blog/show/133709.html>

20. *Dusty* Says:

[May 26th, 2009 at 3:22 pm](#)

Also, Stuart Taylor was pretty awful on Diane Rehm show this morning, pooh-poohing the idea of diversity on the court. "Are we going to look for a female, handicap, hispanic justice?" was his line of attack on the very reasonable position that having a court of all white males (or of 8 white males) is bizarre.

There's this whole weird notion underlying these complaints that there's one and only one clear candidate for the next open SCOTUS slot and we should find that person and give them the job. Of course, it's not true. There's a wide variety of people who could do a perfectly respectable job on the Court. Some of them are white males, but some of them are Hispanic females or homosexual or Muslim.

If white Christian males can look past their race and gender and religion to form judicious opinions, then so can qualified options from other identity groups, so what difference does it make to Stuart Taylor if Obama wants to throw a bone to Hispanics and the ladies? It's a symbolic gesture that gives non-white-male Americans more of a feeling that the Court is receptive to their concerns. Unless Taylor wants to argue that only white males can be totally objective.

21. *James Robertson* Says:

[May 26th, 2009 at 3:24 pm](#)

Had a white candidate asserted that being a white male meant that he would make better decisions than a female hispanic, would you be so cavalier about it?

22. *Steve LaBonne* Says:

[May 26th, 2009 at 3:26 pm](#)

How many blogs you going to push this dumbass talking point on, Robertson?

23. *Adam* Says:

[May 26th, 2009 at 3:26 pm](#)

*Unless Taylor wants to argue that only white males can be totally objective.*

Not in so many words, but yes, I think that's pretty clearly the implication of what he will argue. Anybody who's a non-white, non-male is pretty clearly going to rule in favor of their ethnic group, or minorities in general. Or hey, maybe not *all* of them, but certainly this one based on a tortured reading of an out-of-context line. Better to just be safe and stick with the white males. They're the ones who really know what's best for everyone.

24. *Adam* Says:

[May 26th, 2009 at 3:28 pm](#)

*Had a white candidate asserted that being a white male meant that he would make better decisions than a female hispanic, would you be so cavalier about it?*

If a white male asserted that growing up in a wealthy suburb and going to exclusive all-white prep schools while coasting through college on his dad's dime and getting a job through his dad's contacts and moving up the ladder through social contacts he made playing golf with exclusively other white males makes him a better decision-maker than those silly poor minorities...

Then I think we know what the reaction would be. And it's rather telling that you think that's the parallel of what she said in that statement. So utterly, incredibly out of touch you are.

25. *Eric k* Says:

[May 26th, 2009 at 3:29 pm](#)

Robertson, Will Allen and Al all pushing the same talking point, so which of your overlords fed it to you?

To answer your question since she didn't actually say what you are all implying she did it is pretty much a non issue either way.

26. *anonymous* Says:

[May 26th, 2009 at 3:30 pm](#)

Matt doesn't even mount a defense on the merits of her argument in Ricci.

[Yes he does.](#)

27. *Stooart Taylor* Says:

[May 26th, 2009 at 3:36 pm](#)

how come teh browns always get teh brakes. even tho their so mass dumb.

28. *DTM* Says:

[May 26th, 2009 at 3:38 pm](#)

*Reason's hit & run blog is critical of her position on eminent domain.*

With this and many other similar issues, the problem is that the Courts of Appeals have to follow the Supreme Court, and this decision appears consistent with *Kelo*, and indeed the Supreme Court denied cert. So it really is not necessarily her position on eminent domain, but more the Supreme Court's, Reason is complaining about.

29. *SLC Says:*

[May 26th, 2009 at 3:38 pm](#)

Hey folks, I understand that the Ricci decision is on appeal to the Supreme Court. I don't know if it will be decided this term. If not, Judge Sotomayer will get a second bite at the apple, assuming she is confirmed.

30. *James Robertson Says:*

[May 26th, 2009 at 3:42 pm](#)

Yes, it is rather telling - it means that we think some groups are morally (possibly intellectually) superior to others based on a set of criteria.

How that's not wrong is an exercise left to progressives, who used to oppose such things. All I'm saying is, assertions of superiority based on gender or ethnic origin are bad things, regardless of what direction they come from or go in.

31. *Marlowe Says:*

[May 26th, 2009 at 3:45 pm](#)

*There's this whole weird notion underlying these complaints that there's one and only one clear candidate for the next open SCOTUS slot and we should find that person and give them the job.*

Isn't there? I was under the impression that if you asked the Bat-computer in the Batcave who was the most qualified candidate to be appointed to the Supreme Court, it would whirr and flash for a few moments and then spit out a key punch card with the name of that individual. Or so Adam West told me. Or failing that, just ask the magic mirror on the wall (of Federalist Society HQ, of course) who is the most qualified SCOTUS nominee of them all.

32. *Poptarts Says:*

[May 26th, 2009 at 3:46 pm](#)

*Had a white candidate asserted that being a white male meant that he would make better decisions than a female hispanic, would you be so cavalier about it?*

That's not what she said. How much you want to bet James Robertson is a white guy, arguing on behalf of the "tribe?"

If there was an alternate dimension where the country had been dominated by female latinas and all the Presidents, business leaders, Supreme court judges etc were female latinas, then I'd say hey it's weird all the people in power are female latinas and maybe a white male should nominated to the court as long as he isn't a complete moron.

33. *Rob Mac Says:*

[May 26th, 2009 at 3:47 pm](#)

*Hey folks, I understand that the Ricci decision is on appeal to the Supreme Court. I don't know if it will be decided this term. If not, Judge Sotomayer will get a second bite at the apple, assuming she is confirmed.*

She was almost certainly recuse herself.

*All I'm saying is, assertions of superiority based on gender or ethnic origin are bad things, regardless*

*of what direction they come from or go in.*

You know what else is bad? Taking things people said out of context and pretending they mean something they don't.

For example, I could pretend that James Robertson was engaged in a full-throated defense of the various racist decisions of the early 20th century Supreme Court. But I won't.

34. *Rob Mac* Says:

[May 26th, 2009 at 3:48 pm](#)

*She was almost certainly recuse herself.*

Grrr. She *will* . . .

35. *SLC* Says:

[May 26th, 2009 at 3:48 pm](#)

Rather interesting the assertion that this is an identity nomination. Of course, the nomination of Clarence my favorite movie actor is Long John Silver Thomas was nothing of the sort. For anyone who believes that, I have a nice bridge, less then 2 years old, I'd like to sell them. It connects Prince Georges Co., Maryland with Alexandria, Va.

36. *Rob Mac* Says:

[May 26th, 2009 at 3:51 pm](#)

SLC, if you're going to keep repeating this trash, at least get it right. The "actor's" "name" was Long **Dong** Silver. And anyway, these kinds of attacks on Thomas are equally as despicable as similar right wing attacks on non-white Democrats. Hate Thomas for his jurisprudence. Leave this other shit alone.

37. *Jack* Says:

[May 26th, 2009 at 3:52 pm](#)

Just a few quick points.

She is very well qualified and should be confirmed quickly.

The New Haven ruling is absurd.

Her statement about Latinas making better decisions than white men is at best poorly worded and at worst racist.

38. *ben* Says:

[May 26th, 2009 at 3:56 pm](#)

*Hey folks, I understand that the Ricci decision is on appeal to the Supreme Court. I don't know if it will be decided this term. If not, Judge Sotomayer will get a second bite at the apple, assuming she is confirmed.*

I imagine she'd recuse herself. That's what Roberts did when the SC heard [Hamdan v. Rumsfeld](#).

That said, I think its interesting that the Sotomayor's decisions were attributed directly to her. I'm not a lawyer, but don't appeals courts decide cases in a completely different way than the original trial courts that originally heard them? Appeals court cases seem to be much more about the merits of the legal



procedure that produced the decision rather than the merits of the original case (or am I wrong here?).

39. *DTM* Says:

[May 26th, 2009 at 4:14 pm](#)

*Appeals court cases seem to be much more about the merits of the legal procedure that produced the decision rather than the merits of the original case (or am I wrong here?).*

In the federal courts almost everything that happened below is potentially contestable on appeal, but there are different kinds of appellate review depending on the nature of the issue. For legal issues the review is “de novo”, which is Lawyer-Latin for the appellate court deciding the legal questions using its own judgment and not deferring to the lower court. In contrast, the lower court’s factual findings are reviewed for “clear error”, which puts a higher burden on the appealing party (to demonstrate this “clear error”), and is more deferential to the lower court. And so on.

40. *Moral Panicker* Says:

[May 26th, 2009 at 4:28 pm](#)

The following comment is not really related to anything, as opposed to me being an narcissistic know-it-all who is committed to proving himself to anonymous blog commenters I would like to revisit the actual hiring practices for firefighters based on a hypothetical test, inspired by the Ricci affair. You can still believe that the test (like many standardized tests) is a useful predictor of ability as a leader of firefighters (or whatever) but that a hypothetical city would be right to ignore the results for diversity reasons.

The issue is that the rules the city was using at the time were too strict in deciding who “passed” and who “failed.” The test itself would be fine, but the standards would be adjusted so that more people, and many more African-Americans would pass. (Not to say that any of this actually applies in the case of Ricci.)

41. *Jeffrey Davis* Says:

[May 26th, 2009 at 4:28 pm](#)

Sure, Christina Ricci was good, but Peter MacNicol, a neglected white man, was just as good.

42. *joe from Lowell* Says:

[May 26th, 2009 at 4:31 pm](#)

How that’s not wrong is an exercise left to progressives, who used to oppose such things.

Let’s run that through the translator:

I’ve seen the rebuttals to my race card, and I don’t have a ghost of a chance of answering them credibly, so I’m pretending to be above such things.

43. *pseudonymous in nc* Says:

[May 26th, 2009 at 4:36 pm](#)

*All I’m saying is, assertions of superiority based on gender or ethnic origin are bad things, regardless of what direction they come from or go in.*

What James “That’s Mighty White Of You” Robertson pretends not to know is that when Americans talk about race, they’re often talking about class, and that lots of cases that go to the SCOTUS are basically studies in class and power dynamics.



It's ironic, really, since Roberts and Alito don't give much of a fig about the rights of the individual against institutional authority, unless it's TAKIN' MAH GUNS AWAY, which means that if the cops bust down the door on the Robertson compound and shot his dog, they'd approach it under the assumption that it was done in the line of duty.

44. *Will Allen* Says:

[May 26th, 2009 at 4:36 pm](#)

Let me be clear. I have no reason to think Sotomayor will suck any worse than the other 8 goons.

45. *Nathan* Says:

[May 26th, 2009 at 4:37 pm](#)

With this and many other similar issues, the problem is that the Courts of Appeals have to follow the Supreme Court, and this decision appears consistent with *Kelo*, and indeed the Supreme Court denied cert. So it really is not necessarily her position on eminent domain, but more the Supreme Court's, Reason is complaining about.

As the comments point out, *Kelo* established precedent for the city to steal land for another purpose. In this case the city is taking land from someone building a CVS and giving it to someone building a Walgreens. Now if we take the societal good as the reasoning for eminent domain, can you really argue that a Walgreens provides more social good than a CVS?

46. *joe from Lowell* Says:

[May 26th, 2009 at 4:45 pm](#)

As the comments point out, *Kelo* established precedent for the city to steal land for another purpose.

1. *Kelo* didn't establish anything. It upheld existing law going back decades. The *Kelo* case was effort to overturn existing precedent, which failed.

2. I've had things stolen from me. People who steal your things don't give you a check for their market value.

Now if we take the societal good as the reasoning for eminent domain, can you really argue that a Walgreens provides more social good than a CVS?

I don't know. I doubt you've accurately characterized the city's claim, but that's not really relevant. What IS relevant is that judges reviewing eminent domain cases don't substitute their judgement for the city's, or state's, about whether the taking promotes a public good. That's not their call.

47. *Will Allen* Says:

[May 26th, 2009 at 4:52 pm](#)

Nathan, that is the logical conclusion to *Kelo*. If a legislative body can conclude they would rather have wealthy condo owners occupying land instead of a lower middle class citizen, why can't a legislative body decide that Walgreens' prospects are better than that of CVS, and decide to give the land to Walgreens?

48. *joe from Lowell* Says:

[May 26th, 2009 at 4:56 pm](#)

A good rule of thumb for judging someone's intellectual honesty is how accurately they portray the arguments of people with whom they disagree.

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