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The Sotomayor Nomination: An Opportunity for Republicans to Reestablish Their Identity

Submitted by Roger Pilon on Tue, 05/26/2009 - 20:17

President Obama's nomination of Judge Sonia Sotomayor to replace Justice David Souter on the Supreme Court will pose difficulties for Republicans on the Senate Judiciary Committee. Judge Sotomayor's personal story is deeply compelling, and she is the first Latino nominee to the High Court. Republicans need to reach out to that important voting block. But they also need to reestablish their identity, which has been rooted, from the time of Lincoln, not in the "identity politics" that has so dominated the Democrats' agenda in recent years but in the fundamental idea that every American should be treated as an individual, nowhere more clearly captured than in our national motto, *E Pluribus Unum*—from many, one.

Here is an opportunity for Republicans to reestablish that identity, if they handle it smartly, because there is much in Judge Sotomayor's record to suggest that she subscribes to identity politics. She has made statements to that effect that will have to be explained, which if made by white men would be roundly and rightly condemned. And the **Ricci case** (<http://www.cato-at-liberty.org/2009/04/22/ricci-v-destafano/>) that the Supreme Court will hand down next month, just before Senate confirmation hearings are likely to begin, will tee the issues up nicely. The case was brought by a sympathetic plaintiff, suffering from dyslexia, who studied hard for a neutral fireman's promotion exam, only to be told by the city of New Haven, after he had scored well, that the results would be thrown out because they were racially unbalanced. The appellate panel reviewing the district court's decision, on which Judge Sotomayor sat, summarily upheld the district court's dismissal of the complaint, refusing to grapple with the constitutional issues at stake. If ever a case cried out for "empathy," this was it—not for Mr. Ricci, who was asking for no empathy, but for the principle of equality before the law, on which he staked his claim of racial discrimination against the city.

But Democrats too should be raising those questions, because equality before the law and the rule of law are indifferent to party. Tragically, however, the judicial confirmation process has been thoroughly politicized in recent years. After the stormy confirmation hearings in 1987 and 1991 for Judges Bork and Thomas, President Clinton's nominations of Judges Ginsburg and Breyer sailed through the confirmation process with little opposition and even less acrimony. With the return of Republican nominees after the election of George W. Bush, however, Senate Democrats resumed their scorched earth practices, starting with appellate court nominees and continuing to the nominations of Judges Roberts and Alito to the High Court. Hearings were never held, filibusters were threatened, and reputations were tarnished. In such a climate, it is difficult to have reasoned discussion of the issues. If past history is any guide, we can expect Democrats on the Senate Judiciary Committee will fully support Judge Sotomayor. It will fall to Republicans, therefore to draw out both the judicial and the constitutional philosophy of the nominee.

And they will have much to work with. Not only has Judge Sotomayor made what can only be called **reckless statements** (<http://www.nationaljournal.com/njmagazine/openingargument.php>) about the role that race and gender does and should play in judicial decisionmaking, but many of her decisions bring that out. Then too there are cases that may give some "Red State" Democrats pause, like the per curiam **decision** (http://lawprofessors.typepad.com/conlaw/files/07-0581-cv_opn.pdf) last January of the Second Circuit panel on which Judge Sotomayor sat, which held that the Second Amendment's right to keep and bear arms does not apply against the states. Throw in the likely challenges ahead to President Obama's sweeping assertions of power over the economy, and there is more than enough to keep Senators busy as they carry out their responsibilities to advise and consent.

Still, it is Republicans especially who will be tested by these hearings—tested to see what, if anything, they stand for.

Roger Pilon (<http://www.cato.org/people/roger-pilon>) is the Director of the Center for Constitutional Studies at the Cato Institute.

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Your rating: None Average: 2.3 (3 votes)

Comments

That's fine... ([/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29855](http://roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29855))

Submitted by Cahnman on Tue, 05/26/2009 - 20:27.

...however, her line about the Court of Appeals setting policy should be the foundation of our opposition.

To say that the Appeals Courts make policy ([/roger-pilon/the-sotomayor-](http://roger-pilon/the-sotomayor-)

[nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29856](#)

Submitted by NextRightNando on Tue, 05/26/2009 - 20:39.

To say that the Appeals Courts makes policy is to say the sun rises in the east. It is where the vast bulk of decision making about unclear laws (and there are many) is done.

[There Is A Method To Obama's Madness \(/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29869\)](#)

Submitted by Betsy Ross on Tue, 05/26/2009 - 21:40.

There is a method to Obama's madness in this selection, and an agenda.

From all accounts, he is going to make a major push for amnesty again this year for the illegal immigrants, and what better way to use for the public than his "new" Supreme Court justice and what a shining example of what type of citizens all those illegals will eventually make.

Why do you think he traveled to Arizona TWICE already, a state that is demanding that the fencing be secured, and whose very lives are on the line now every single day. A state with the highest automobile theft rate and identity theft in the nation, and in which many have been made homeless due to the property thefts and crime this situation has created since the first Reagan amnesty in the 80's. Insurance rates are now sky high for auto and home insurance property. Phoenix is now the kidnaping capitol of the world. And last week the cartels just busted out 30 cartel members from a Northern Mexico jail.

There will be war in the streets of Arizona if this comes to pass, and he is gearing up for the final blow.....using Ted Kennedy's illness and his new judge as the trump cards. If a suit is filed, guess what, now he has someone in the court to accuse the other justices who might hold with the American citizens rights of "hate speech," and "discrimination" during their en banc session.

What a conniver. This guy is truly, truly unbelievable. And I would like to see his law school diploma at this point, as it doesn't appear he's even read the Constitution, much less is a Constitutional lawyer.

[Let's get mellow \(/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29871\)](#)

Submitted by NoMoreBlatherDotCom on Tue, 05/26/2009 - 21:56.

1. Sotomayor is from Puerto Rico; they're automatically citizens so, all other things being equal, they shouldn't be as supportive of illegal activity as almost all Mexican-American leaders. And, she's not going to appeal to other Hispanics except out of pan-Hispanic ethnic nationalism grounds. That should be discouraged.
2. The only reason there's illegal immigration in the first place is because people refuse to do things in an effective way. If you want to do something effective, [push this plan \(http://24ahead.com/s/question-authority\)](http://24ahead.com/s/question-authority).

[Betsy, neither Repub's or dem's care... \(/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29893\)](#)

Submitted by Darwin Dowdy on Wed, 05/27/2009 - 08:11.

... about our plight down here in the border states. I have to laugh at **VP Cheney's monumental hypocrisy** (<http://www.bloggernews.net/120998>) as of late when he attempts to beat the drum of National Security. Accusing the Obama admin (and rightfully so) of being lax in that area. When he and his former boss apprehended and then released tens of thousands of OTM's (Other Than Mexican) from states that sponsored terrorism, no less. Released them out into our society of which they're still out roaming about causing whatever mischief they will. Neither party cares. We should face that hard reality.

Regarding Sotomayor, this will separate out all the rino's. There is no good reason for any Republican to vote for this nominee. Sen. Obama opposed both of Bush's nominees and so should all Republicans. Lets see who among them still has a backbone. DD

[Arizona? i'm sorry, I know people there. \(/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29903\)](#)

Submitted by Maleficent on Wed, 05/27/2009 - 08:43.

who built all those bloody expensive houses? illegal and legal immigrants.

They're gone now. no work.

Kennedy's illness somehow plays a part in a war? you're konked.

[A comparison \(/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29872\)](#)

Submitted by FlyingScot on Tue, 05/26/2009 - 21:57.

In the world of politics, it's turning out that "Slick" Willy Clinton has nothing over "Greasy" Barak Obama.

This is an opportunity . . . (/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29898)

Submitted by cr on Wed, 05/27/2009 - 08:28.

Sotomayor will be confirmed, and Republicans should do so without significant fight. This is a chance for Republicans to show deftness of touch by raising important issues but not being overt obstructionists.

I wouldn't bet money on it actually happening, though. It may happen in certain parts. It'll be interesting if the leadership takes that stance but base does not. What then?

It's a good chance for the leadership to gain credibility beyond the base. As the post has said, confirmation hearings have been rocky since Bork. I, personally, would like to see Reps do better than Dems during Alito and Roberts. It's hard to be the example, rather than fall back on relying on Cheney to stoke the fire at the base.

This is less about Dems (she's exactly who the Dems would naturally pick) than about Rep reaction to a shrewed decision by Obama.

REPS . . . DON'T TAKE THE BAIT!

good point (/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29909)

Submitted by xc1148 on Wed, 05/27/2009 - 09:02.

about getting credibility beyond the base. i would say 99% of americans wouldn't be able to name the current supreme court judges, let alone the last 4 supreme court decisions. To the average american: Obama picked a Hispanic woman, that woman graduated at the top of her class from princeton, and apparently, since she is replacing souter, won't switch the court's balance. in other words: blah. during a recession, with social issues on the back burner, no one really cares....

except the base. do republicans want to be viewed as "obstructionists" just to please 10% of the voting population that will consistently vote republican anyway?

You are correct (/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29914)

Submitted by Repack Rider on Wed, 05/27/2009 - 10:13.

She will be confirmed. But not before a few people jump at the option of looking like idiots instead of keeping their mouths shut and looking statesmanlike. Politicians do not understand that Google can find everything you ever said.

Get ready for the "Up or down vote" that Jeff Sessions demanded for Alito, to be thrown back in his face.

Get ready to hear how George H.W. Bush praised Clarence Thomas in part for his "empathy."

And then get ready for these originally Republican ideas to be denied by their authors.

yes, and ... (/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29923)

Submitted by cr on Wed, 05/27/2009 - 11:51.

I think it's really b.s. to think that court nominations aren't purely political. In theory, the US has (should have) a good field of candidates for this position; however, just like CEOs of a company, a presidential nominee

1. Has basic qualifications and **experience** (Think Harriet Mayers).
2. Fits the presidents ideology of direction in the country is going.

OR

3. Serves some political purpose.

At that level, judges **interpret** the law. If something gets to the supreme court, that case by way of process and substance (the supreme court has the option of choosing cases) has something relevant beyond the letter of the law.

All other issues are political play. I just can't believe that Robert's age wasn't a factor in putting him as chief justice. That doesn't mean he's not qualified, just it was a factor that put him above the other qualified judges. Obama picked Sotomayor because she was qualified and her being a woman and hispanic makes her a political poison pill to attack.

A truly beautiful pick handed to Obama by Republicans. And as long as the current conditions exist, he can keep pursuing this strategy. He can do it on the lower courts as well though not as blatantly.

Maybe that's the bigger lesson here: an obstructionist strategy only works for inclusive minorities? Ahh, maybe.

Here we go again!!!!!! (/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29900)

Submitted by gunthestops on Wed, 05/27/2009 - 08:33.

The right wing lunatics are out roaming around like zombies ready to attack anything that looks like a democrat —lol. The circular firing squads are starting to assemble, and the de facto leader Rush Limbaugh calls President Obama and Judge Sonia Sotomayor racists and hopes they both fail--- Go Rush go! The party of small ideas and shrinking numbers is out trying to work their magic again to make more and more voters disappear from their ranks. Will this be the cataclysmic event that drives the republicans to extinction like the dinosaurs?

They can't resist (/roger-pilon/the-sotomayor-nomination-an-opportunity-for-republicans-to-reestablish-their-identity#comment-29902)

Submitted by skayne on Wed, 05/27/2009 - 08:40.

The conservative base and special interest groups can hardly resist the bait. Attacking Judge Sotomayor is going to bring in a lot of fundraising dollars.

But there are several republicans in the senate who grasp the implications of attacking Judge Sotomayor. They will vote for confirmation despite the screaming howls of the base.