

Justice Sotomayor

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ABSTRACT

The same tendency raised its head in Judge Sotomayor's belief that it is appropriate for U.S. courts to use international and foreign law as a source of "good ideas" when deciding cases.

FULL TEXT

Sonia Sotomayor was confirmed yesterday by a Senate vote of 68-31 to be an Associate Justice of the Supreme Court. As President Obama's first nominee, her confirmation process has been a worthy exemplar of the Senate's duty of advise and consent.

All but nine Republicans opposed her confirmation, but the confirmation process was conducted respectfully and with a cool-tempered focus on her Constitutional philosophy. That marks a departure from many modern confirmation battles, most recently over Justice Samuel Alito, who was confirmed on a more partisan vote than Judge Sotomayor and was subjected to far more discourteous treatment by Vermont's Pat Leahy and other interrogators on the Judiciary Committee. She and the country can thank Judiciary's ranking Republican Jeff Sessions, who once faced nasty confirmation treatment himself.

Through the process, Republican concerns about Judge Sotomayor's confirmation were directed at the evidence that as a judge she had shown too great a willingness to seek extra-Constitutional sources for her decisions. Her repeated comment that a "wise Latina" could make better decisions than a white man troubled less because of racial pride than because it presaged a belief that a judge may bend the law to her own values. That worry was heightened by her behavior in *Ricci v. deStefano*, where the judge's decision to deny a racial bias claim by white firefighters was overturned by the Supreme Court last month.

The same tendency raised its head in Judge Sotomayor's belief that it is appropriate for U.S. courts to use international and foreign law as a source of "good ideas" when deciding cases. As Chief Justice John Roberts noted in his confirmation hearing, this treats the law like a global buffet, where Justices can pick and choose countries based on whatever supports the decision they want to reach. These positions make clear that Justice Sotomayor will join the Court's liberal wing on nearly all major legal disputes, and these principles are what Republicans appropriately cited in voting against her.

She nonetheless now becomes the nation's first Hispanic Justice, and on that score we also can't help but contrast her treatment with the way Democrats smeared and filibustered appellate-court nominee Miguel Estrada in 2001. He might otherwise have become the first Hispanic Justice in George W. Bush's second term. But elections have consequences and Judge Sotomayor's confirmation is a rightful source of pride to the Puerto Rican community. We wish her good judgment.

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