



Written by [Steven Yates](#) on July 15, 2009

Sotomayor Confirmation Hearings Enter Day Three

She carefully set out the context in which she made the remark and attempted to explain that the basis for a judge deciding cases is quite different. We also learned that she regards both the right to privacy and the legality of abortion as “settled law,” which means she would almost assuredly not vote to overturn *Roe v. Wade*. She handled intense questioning with confidence, never seeming impatient or temperamental. Occasionally we saw flashes of humor, as when following the expulsion of a pro-life protestor she laughed in response to Sen. Charles Grasseley’s deadpanned comment that “I always said I had the ability to turn people on.”



Today’s public hearings have brought us no surprises either. Eight more members of the committee were scheduled to question Sotomayor prior to the closed portion of the hearing — that portion where the Senate Judiciary Committee instructs both the press and members of the public to leave, in order to review the nominee’s secret FBI background check. This is routine procedure; every nominee has had to suffer through it. It includes the result of the FBI having interviewed past associates, friends, family members, etc. — examining the nominee’s professional history — just to see if anyone missed anything. Chances are, they did not.

As for the questioning, Sen. John Cornyn (R-Texas) led the way, walking a tightrope: he pressed her for more clarification on her “wise Latina” remark, her views on gun rights, abortion, equal protection under the law, and whether government may seize private property for private development instead of public goods (the issue before the court in its controversial *Kelo v. New London, Conn.* decision). Yet Cornyn did not want to go too far, because his state’s Hispanic population is up to 36 percent, and it was not really a surprise that Patrick Leahy had a stack of letters of support from Hispanic groups. (Jeff Sessions had a reposte: a letter from National Rifle Association headquarters expressing worry about Sotomayor’s stance on the Second Amendment.)

She continued to parry questions on abortion, telling Cornyn, “I follow the law.”

Later, Sen. Tom Coburn (R-Okla.), an avid foe of abortion, began with a disarming apology for the behavior of the pro-life group whose members were arrested outside the hearings yesterday. She did not flinch as Coburn went on to grill her on abortion law. He asked, “If a woman is 38 weeks pregnant, and doctors discover the child will have spina bifida, is it legal to abort the fetus?”

Sotomayor returned, “I can’t answer that question in the abstract. I would have to look at what the state’s law was on that issue. Is the state regulation an undue burden? I can’t look at it as an abstract. I’m sure that situation might well arise before the court.”

On gun rights, she faced this question from Coburn: “Do I have a right to personal self-defense?”



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She answered, "That is an abstract question."

"That's what the public wants to know," Coburn pressed. "Yes or no? Do we have that right?"

Sotomayor drew on her experiences as a New York prosecutor: "If there's a threat of serious injury you can use force. How imminent is the threat? If the threat is in this room and I go home get a gun and come back and shoot you, that may not be legal under New York law."

Coburn then told her, "What the American people want to see is what your gut says."

Again she parried, "That's not how judges decide cases."

Democrats tended to lob softballs her way — sometimes allowing her to speak extemporaneously. For example, Sen. Benjamin Cardin (D-Md.) praised her for her 1995 ruling that ended the worst strike in Major League Baseball's history, followed up with a few questions for her on voting rights and environmental laws, and finally this: "Tell me a little bit about your passion for protecting the right to vote."

That was the way the day went. When push comes to shove, the final vote will likely be along predictable partisan lines with Democrats supporting her unanimously and Republicans opposing her — although some Republicans might cross party lines and vote to confirm her. Lindsay Graham (R-S.C.) is the most likely example. If this is the case, then Sotomayor's confirmation as the first Hispanic Justice on the U.S. Supreme Court will be assured.

On the other hand, Thursday's session will again raise the specter of her degree of support for affirmative action, as the Senate Judiciary Committee hears from the Frank Ricci of *Ricci v. DiStefano*, the New Haven case she participated in deciding which the Supreme Court reversed last month. Affirmative action understood as racial/ethnic preferences is still a sticking point for many people, and ties back into what Sotomayor actually meant by her "wise Latina" remark and how to interpret this remark in light of what she might do on the Supreme Court. While her chances (as we said yesterday) might be better than 50-50, Sonia Sotomayor's appointment to the U.S. Supreme Court might not be a shoo-in just yet.

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