

Right Wing Attacks on Sotomayor Gain Little Traction

As Supreme Court nominee Judge Sonia Sotomayor moves toward confirmation, Right Wing attack machine goes into overdrive

Introduction

Right-wing leaders geared up months ago to oppose any Supreme Court nominee that the Obama administration might have an opportunity to make, and they have doggedly followed their script through the announcement of David Souter's intention to resign, the announcement of Judge Sonia Sotomayor's nomination, and her confirmation hearing before the Senate Judiciary Committee. Their efforts to undermine her nomination have been an utter failure given the strength of the nominee and the emptiness of their cause. For all their professed concern about the "politicization" of the judiciary, right-wing leaders have been planning since before President Obama's inauguration to treat any Supreme Court nominee primarily as a chance to begin political attacks on red and purple state Democrats with an eye to elections in 2010 and 2012.

The Right's Political Attack Plan: a Brief Review

In February, we called attention to the fact that ideological attacks on Obama nominees to the Justice Department were really a dry run for political campaigns against eventual judicial nominees. Right-wing leaders said as much.

Then in May, after Justice David Souter announced his intention to resign, we noted that the Right was sticking to its deceptive script, insisting that any Obama nominee would be by definition a radical activist who would make decisions based on their feelings rather than the law. Some right-wing pundits immediately began to mock the goal of increased diversity on the Supreme Court.

Here's some of what we saw from the Right on the very day Judge Sotomayor's nomination was announced:

- shameless distortion of President Obama's stated desire for judges with the character trait of empathy along with excellent legal qualifications and

commitment to the rule of law

- calling the first Hispanic Supreme Court nomination "identity politics" while accusing Sotomayor of racism for talking about drawing on her life experience as a Latina woman
- repeating anonymous claims that Sotomayor doesn't have the intellectual ability to serve on the Court, despite graduating at the top of her class at Princeton and serving on the law review at Yale
- distorting the Ricci case in order to portray her as a political activist when in fact she was part of a court majority that followed legal precedent
- repeating standard right-wing insults for judges who do not hew to the Scalia-Roberts-Thomas-Alito ideological standard and insisting that Sotomayor is a radical judicial activist
- threatening to use the issue of guns and the Second Amendment to turn the nomination into a political weapon against Democratic senators from more conservative states

Sound familiar? Anyone who watched the confirmation hearings or followed the right-wing punditocracy before, during, and after the hearings, knows that the script hasn't changed since that first day. In fact, the Right's behavior during and since the Sotomayor hearings has hewed closely to the political script written months ago by conservative GOP strategists: use the confirmation process to grossly distort the position of President Obama and his nominee in an effort to create political opportunities for Republican candidates.

Here's some of what we saw during the confirmation hearings:

- distortion of Obama praising empathy as a desired trait for a judge and insisting that "empathy" is a

progressive code word for ignoring the Constitution and law altogether

- claims that Judge Sotomayor is the kind of ignore-the-law activist Obama supposedly sought
- attacks on Judge Sotomayor as an “affirmative action nominee” committed to “identity politics”
- insistence that Sotomayor (and President Obama) are enemies of gun owners and threats to use her confirmation as a weapon against Democrats in 2010 and 2012

The Right’s strategy looking forward was helpfully if crassly summed up by disgraced former Christian Coalition head Ralph Reed. Reed’s memo on the suggested political use of Judge Sotomayor’s nomination made it clear that his own attempted political comeback will reflect all the integrity and class of his former political machinations. His memo, headlined “Sotomayor Hearings Give Republicans Opportunities Against Red And Purple State Democrats,” telegraphs the kind of smears that will be used by GOP strategists, including the claim that Sotomayor “has placed foreign law on the same level as the U.S. Constitution in matters of jurisprudence” and “embraces judicial activists and rejects judicial restraint.” Reed also suggests attacks based on affirmative action, abortion, and guns. Reed concludes: “Republicans can reap significant political benefits by voting against her confirmation and making her an issue in key races next year. Any Democratic Senator facing the accountability of voters in 2010 and 2012 will be giving their imprimatur for these issues if they vote to confirm Judge Sotomayor.”

Plenty of others approached this nomination primarily as an exercise in political positioning. Former presidential candidate Mike Huckabee, who blasted Sotomayor early as “from the far left” even lent his voice to robocalls in Iowa to find out how well GOP primary voters there might react to a paid advertising campaign against Sotomayor’s confirmation. His daughter told USA Today that although the robocalls used Huckabee’s voice, the campaign was being run by Americans United for Life, an anti-abortion group which was among Sotomayor’s most vocal critics and whose president testified against her during the confirmation hearings.

As our earlier memos made clear, right-wing groups began distorting President Obama’s remarks about judicial nominations last year during the presidential campaign, and after the election made it clear that they would continue to spread those distortions to portray him and any of his

nominees as radical judicial activists unmoored to the Constitution and laws. The spate of attacks on President Obama during GOP Senators’ opening statements made it clear that strategy would continue.

The record is vast and readily available. Here are a few examples:

Attacks on Obama

For right-wing strategists, a primary goal for the confirmation process has been to portray President Obama as a dangerous radical who is a threat to the Constitution and rule of law. This is part of an ongoing effort to undermine the effectiveness of his administration.

The Family Research Council offered a particularly snide opinion on President Obama’s respect for the Constitution: “The Constitution is quite empathetic without the President’s efforts to put people on the bench who will follow his philosophy of judges not as constitutionalists but jurisprudential therapists.” From the same blog post:

The Founders...realized that without a document that clearly defined rights and duties, the federal government would become authoritarian, arbitrary and arrogant – much like Barack Obama’s Supreme Court will look if, unchained to true constitutional moorings, the subjective experiences and personal beliefs of our top jurists become the final arbiters of federal law.

Richard Viguerie, the direct-mail godfather of the right wing, praised Republican Senators who used the confirmation hearings to attack President Obama:

“Led by Senator Jeff Sessions, Republicans on the Senate Judiciary Committee are starting to do what the McCain campaign and the Republican Party failed to do in the 2008 election: defining Barack Obama, his ideology, and his unconstitutional, authoritarian approach to governing.

“By making the Sotomayor confirmation hearings about President Obama’s governing philosophy—including his beliefs that judges should change constitutional principles and the law--Senate Republicans are showing that Obama’s views are radical and dangerous. As Senator Sessions said at the hearings, those views are so inconsistent with the Constitution that they could be ‘disqualifying’ for Obama’s judicial nominee.

“Win, lose, or draw in this confirmation battle, that

approach will pay huge dividends for Republicans. Exposing the President in these hearings will help Americans better understand that, constitutionally speaking, Obama cannot be trusted.

“Identity Politics” Attacks on Judge Sotomayor

Much of the attacks on Judge Sotomayor from Republican Senators and right-wing activists focused on one speech and one case to argue that Judge Sotomayor is so committed to “identity politics” that she cannot judge fairly, and is actually committed to using the law to discriminate against white men.

Judge Sotomayor repeatedly explained that the “wise Latina” speech was not an assertion of ethnic or racial superiority but a recognition that judges bring their lives and backgrounds to their understanding of the law. And she and others repeatedly noted that in the Ricci case, which the Right has used to portray her as a law-ignoring racist, she was part of a unanimous three-judge panel, and her panel’s decision was supported by a majority of the federal judges who reviewed the case. The Supreme Court overruled that decision by a narrow 5 to 4 vote.

None of this mattered to the Right, which stuck to the script they had prepared before her nomination was announced.

Among the anti-Sotomayor panelists was former Reagan administration official and former Senate candidate Linda Chavez, who testified:

It is clear from Judge Sotomayor’s record that she has drunk deep from the well of identity politics. I know a lot about that well, and I can tell you that it is dark and poisonous. It is, in my view, impossible to be a fair judge and also believe that one’s race, ethnicity, and sex should determine how someone will rule as a judge. Yet, Judge Sotomayor has repeatedly said that race, ethnicity and gender are determinants of one’s point of view.

Robert Knight challenged Sen. Leahy’s defense of Judge Sotomayor’s adherence to the rule of law this way:

Really? Then why did Sotomayor summarily dismiss the reverse racism claim in the Ricci case from New Haven, Conn. white firefighters (and even one Hispanic) who had scored high enough but were denied promotions simply because of their skin color? Should they have spent more time in the tanning booth?

Right-wing activist Eugene Delgaudio was among the fringier figures jockeying for a little publicity by distorting the Ricci case. Delgaudio’s group, Public Advocate, put on a little “street theater” designed, he said to “mock” Sotomayor and “show what a world according to Judge Sonia Sotomayer would look like if she were a Supreme Court judge.

Lifeguards who can’t swim. A doctor who flunked med school. A 3rd grade university president. Blind train conductors. Cooks who can’t boil water. Lawyers who did not pass the bar exam but who are now judges.

Longtime right-wing political operative and pundit Pat Buchanan outdid himself with racially charged diatribes against Judge Sotomayor – “whose career bespeaks a lifelong resolve to discriminate against white males” -- in a column and on Rachel Maddow’s MSNBC, the latter vituperative enough to draw a rare post-mortem rebuke by Maddow.

But the pinnacle of irresponsible attacks on Sotomayor came from the Committee for Justice, which created an ad suggesting that Sotomayor supports anti-American terrorism:

Remember Barack Obama’s buddy Bill Ayers, the unrepentant terrorist who bombed American buildings in the 70’s? Turns out President Obama’s done it again – picked someone for the Supreme Court – Judge Sonia Sotomayor – who led a group supporting violent Puerto Rican terrorists. Is this radical judge the type of person America needs sitting on our highest court? What was he thinking? What was she thinking? Call your senators. Tell them to stop Sonia Sotomayor. Paid for by the Committee for Justice.

In interviews with radio host Alan Colmes and the New York Times, the Committee for Justice’s Curt Levey admitted the ad was a “caricature” and that he doesn’t really believe Sotomayor supports violent terrorists but defended the ad as an effort to stimulate debate. The Times picks apart his tortured defense of the ad’s claims and noted:

Mr. Levey said the ad was written by Chris LaCivita, who also helped create the Swift Boat Vets for Truth ads against Senator John F. Kerry, the 2004 Democratic presidential nominee. The Swift Boat ads were riddled with unsubstantiated charges and led to a new political term for smearing a political opponent with lies: “swift-boating.”

Guns as a Political Weapon

Ken Blackwell, the former Ohio Secretary of State and failed Senate candidate who has become a full-time right-wing activist, jumped out early, pronouncing on the day that President Obama introduced Judge Sotomayor that her nomination was “a declaration of war against America’s gun owners and the Second Amendment to our Constitution. . . . President Obama has nominated a radically anti-Se cond Amendment judge to be our newest Supreme Court justice.” Blackwell, who served on the board of the National Rifle Association, may have gotten out a little bit ahead of the script, as he was quoted during the week of the hearing saying that “the Senate Judiciary Committee has an obligation to find out where Judge Sotomayor truly stands on this right” and saying that the NRA, in not taking a position before the hearings concluded, was taking “the measured, responsible approach.” So does Blackwell think his earlier statement was irresponsible? Probably not. As soon as the hearings were over, the NRA announced its opposition to her confirmation.

It should be noted that in *Maloney*, the gun-rights case that the Right complained about most loudly, Judge Sotomayor was clearly applying precedent as had two well-known conservative jurists, Judge Posner and Easterbrook, in a similar case in the Seventh Circuit. Here too, as in the *Ricci* case, right-wing leaders exposed the emptiness of their claims to want judges who follow the law rather than make it. Turns out they want judges who will give them the kind of rulings they want regardless of what the law and precedent have to say.

No Right Answer for the Right

Right-wing groups decided before her nomination was even announced that they would portray Judge Sotomayor as a radical activist and they stuck to that script:

Here’s the Southern Baptist Convention’s Richard Land:

Sonia Sotomayor’s record reveals that she is perfectly willing to lift the blindfold of justice to achieve her desired result. She is a judge with a terribly flawed view of the judicial system at best or a judge who simply doesn’t care what the law says at worst. She has constantly shown her lack of deference to the Constitution. She is the type of justice who instead of applying the law neutrally will redefine the law to conform to her policy preferences.

Land’s claim flies in the face of nearly universal recognition that her 17-year record as a federal judge is that of a fair and thoughtful jurist. More than one Republican Senator

acknowledged during her confirmation hearing that her judicial record is clearly within the mainstream.

But no answer would take the Right off script. After demanding that Republican senators ask her about her judicial philosophy, and hearing that she was committed to “fidelity to the law,” they simply rejected her answers, and suggested that her long record as a judge should be ignored in favor of the Right’s interpretation of some of her speeches.

Dissatisfaction with Republicans

Some right-wing leaders have been demanding for months that Republican senators take a hard line against Obama’s judicial nominees. Sen. Sessions’ indication that he would not try to delay or block a vote on the nomination was greeted with objections from a number of right-wing leaders, and from the *Washington Times* editorial board, which complained that Republican senators had “gone soft” on Sotomayor, outlandishly, insisting that they delay confirmation to “force an examination of whether the judge may have perjured herself during her testimony.”

Future Nominees

Right-wing activist Manuel Miranda, who helped mobilize right-wing attacks on Harriet Meyers and pushed for confirmation of John Roberts and Samuel Alito, is aggressively pushing a new claim: because Sotomayor pledged fidelity to the law, Miranda says, Republicans can claim that future progressive nominees “don’t meet the Sotomayor test.” So, in other words, Republicans should simultaneously vote against Sotomayor’s confirmation and use her testimony as a standard against future nominees. Nice try.