



Myth vs. Fact: Conservative Attacks on Judge Sonia Sotomayor

Conservative Claims Fall Short

By Ian Millhiser

Before Judge Sonia Sotomayor's nomination was announced, her right-wing opponents threw every baseless claim they could imagine, hoping that something would stick. Yet Sotomayor is increasingly popular days before her confirmation hearings, and conservatives have failed to leave even the slightest mark. Nevertheless, the right appears to have settled on five myths as their last-ditch attempt to keep Sotomayor off the Supreme Court. None of their claims have any basis in reality.

Myth #1: Sotomayor bent the law to benefit minority firefighters.

Fact: Sotomayor followed then-existing law when she decided the Ricci firefighters case. The Supreme Court's 5-4 decision reversing her created new law.

In *Bushey v. New York State Civil Service Commission*,¹ a case which is factually almost identical to the Ricci firefighters case, Judge Sotomayor's court held that employers have sweeping authority to reconsider a promotion test when minorities underperform white applicants. This broad authority was reaffirmed just 10 years ago in *Hayden v. County of Nassau*.² As a lower court judge, Sotomayor is required to follow these binding precedents until they are overruled by a higher authority, despite conservative claims that she should have ignored the law governing the Ricci case.

Myth #2: Sotomayor is hostile to the Second Amendment.

Fact: Sotomayor followed a binding Supreme Court precedent when she rejected a Second Amendment challenge to a New York state law.

Until very recently two Supreme Court decisions limited the scope of the Second Amendment. The first held that the Second Amendment only protects a limited right

to participate in militias;³ the second held that the Second Amendment “is a limitation only upon the power of Congress and the national government, and not upon that of the state.”⁴ Although the Supreme Court overruled the first of these precedents in its recent *Heller* decision,⁵ it has so far left the second precedent intact. Sotomayor was thus required to follow this binding Supreme Court precedent, and she did so when she held that the Second Amendment does not apply to state laws.⁶ Once again, her conservative critics are attacking her because she refused to overstep her own limited power.

Myth #3: Sotomayor is hostile to property rights.

Fact: Sotomayor rejected a land developer’s claim because the developer waited until two years after the statute of limitations had passed to file his claim.

A landowner named Bart Didden learned in 1999 that a nearly worthless plot of land that he owned would be zoned into a government-sponsored redevelopment project, causing the price of the land to skyrocket.⁷ Didden was informed at the same time that his land was subject to seizure under eminent domain, meaning the government would buy the land from him at the new, inflated price. Although Didden objected, he waited until 2004 to file suit—two years after the three-year statute of limitations had passed.⁸ Nevertheless, conservatives are attacking Sotomayor for her decision in *Didden v. Village of Port Chester*—a decision which was joined by two George W. Bush appointees—which held simply that Didden has to comply with the same statute of limitations as everyone else.

Myth #4: Sotomayor rewrote the Voting Rights Act to benefit felons.

Fact: Sotomayor criticized her colleagues for inventing a new exception to federal voting rights law out of thin air.

The Voting Rights Act, or VRA, permits “[n]o voting qualification . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,” and it contains no exceptions. However, in a case called *Hayden v. Pataki*,⁹ a majority of the Second Circuit’s judges created a new exception to this law, holding that felony disenfranchisement laws are immune to scrutiny under the VRA. Judge Sotomayor dissented, explaining that she does “not believe that Congress wishes us to disregard the plain language of any statute or to invent exceptions to the statutes it has created.” True to form, conservatives are attacking her for this dissent, claiming that she was wrong to insist that judges follow the letter of the law.

Myth #5: Sotomayor sat on the board of an “extreme” organization.

Fact: Sotomayor sat on the board of a “highly regarded nonprofit organization” that is under attack by a right-wing senator with a history of unfounded allegations against civil rights organizations.

Perhaps the most bizarre attack on Judge Sotomayor is the claim—spearheaded by Senator Jeff Sessions (R-AL)—that her service on the board of the Puerto Rican Legal Defense and Education Fund, or PRLDEF, makes her unsuitable for the bench because PRLDEF “took extreme positions.”¹⁰ Sessions’ baseless attacks on PRLDEF sparked a stern rebuke by New York Mayor Michael Bloomberg, who said that “[o]nly in Washington could someone’s many years of volunteer service to a highly regarded nonprofit organization that has done so much good for so many be twisted into a negative.”¹¹

Indeed, the only person whose judgment is called into question by Sessions’ attack is Jeff Sessions. In 1986, Sessions’ nomination to the federal bench was rejected by the Senate, in part because of Sessions’ claims that the NAACP is a “Communist-inspired” and “un-American” organization.¹² Twenty-three years later, civil rights organizations such as the NAACP and PRLDEF are still well within the mainstream of American society, but Jefferson Beauregard Sessions III has not changed one bit.

Endnotes

1 733 F.2d 220 (1984).

2 180 F.3d 42 (1999).

3 *Miller v. United States*, 307 U.S. 174 (1939).

4 *Presser v. Illinois*, 116 U.S. 252 (1886).

5 *District of Columbia v. Heller*, 478 F.3d 370 (2008).

6 Ian Millhiser, “Factcheck: Judge Sotomayor’s Real Record On The Second Amendment,” *The Wonk Room*, June 3, 2009, available at <http://wonkroom.thinkprogress.org/2009/06/03/sotomayor-second-amendment/>

7 Ian Millhiser, “How Not To Report On The Supreme Court,” *The Wonk Room*, June 15, 2009, available at <http://wonkroom.thinkprogress.org/2009/06/15/didden-nyt/>

8 Ian Millhiser, “No, Judge Sotomayor Does Not Want To Take Your Land,” *The Wonk Room*, June 5, 2009, available at <http://wonkroom.thinkprogress.org/2009/06/05/no-judge-sotomayor-does-not-want-to-take-your-land/>

9 449 F.3d 305 (2006).

10 “Sessions Comments on PRLDEF Document Delays,” available at http://sessions.senate.gov/public/index.cfm?FuseAction=PressShop.NewsReleases&ContentRecord_id=3d45588c-fff7-dd97-6eec-850b0ae959f5&Region_id=&Issue_id=

11 Glenn Thrush, “Bloomberg slams Sessions’ baseless’ attack on S’mayor,” *Politico*, July 2, 2009, available at http://www.politico.com/blogs/glennthrush/0709/Bloomberg_slams_Sessions_baseless_attack_on_Smayor.html

12 Sarah Wildman, “Closed Sessions: The Senator Who Is Worse Than Lott,” *The New Republic*, December 30, 2002, available at <http://www.tnr.com/politics/story.html?id=8dd230f6-355f-4362-89cc-2c756b9d8102>