

New Haven Supreme Court ruling helps, not hurts, Sotomayor nomination

Michael Sean Winters | Jun. 29, 2009 NCR Today

The Supreme Court ruled in favor of a group of white firefighters in New Haven today. Just so, Sonya Sotomayor took one giant step towards becoming the sixth Catholic justice on the Court. That's right. The decision by the Supreme Court to overturn a ruling by Sotomayor and two of her colleagues on the Appeals Court will make it more, not less, likely that she is confirmed.

By now, everyone is familiar with the broad outlines of the New Haven case. A test was administered to a group of firefighters and, for whatever reason, the results showed a noticeable racial difference. Therefore, the city of New Haven concluded that the test itself was suspect and threw out the results.

The Appeals Court, following previous Supreme Court rulings, agreed with the city. Today, the Supreme Court said that the city was wrong and, implicitly, that its prior jurisprudence was less open to such tampering with results than Sotomayor and her colleagues thought.

Some Republicans in the Senate may try to argue that this overturning of one of Sotomayor's cases shows she is not fit for the High Court. But that is a tough and complicated argument to make. And, you certainly can't make that case and, at the same time, make the case that Sotomayor was some kind of activist judge. The original ruling was a paragraph long. The Appeals Court clearly thought they were applying Supreme Court precedent, no more or no less.

The only way Sotomayor might have been derailed would have been if Frank Ricci had come before the confirmation hearings as a still aggrieved witness. Ricci studied long and hard to overcome his learning disability so as to perform better on the test. His struggle to overcome his learning disability is just as compelling as Sotomayor's story of overcoming poverty and the barriers that have heretofore kept a Latina of the High Court. If Ricci had come before the Senate Judiciary Committee and told his story, her nomination might have been in trouble. He may still testify, but now Sotomayor has an easy response: "If the Supreme Court's ruling today had been on the books, I would have decided the New Haven case differently but it wasn't on the books. Next question."

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