

claims, Judge Sotomayor did not even cite a precedent.

Moreover, she herself joined an en banc opinion of the Second Circuit that said the issues in the case were “difficult.” So, to quote the National Journal’s Stuart Taylor, the way Judge Sotomayor handled the important legal issues involved in this case was “peculiar” to say the least. And it makes one wonder why her treatment of these weighty issues differed so markedly from the way every other court has treated them and whether her legal judgment was unduly affected by her personal or political beliefs.

Second, all nine Justices on the Supreme Court said that Judge Sotomayor got the law wrong. She ruled that the government can intentionally discriminate against one group on the basis of race if it dislikes the outcome of a race-neutral exam and claims that another group may sue it. Or, as Judge Cabranes put it, under her approach, employers can “reject the results of an employment examination whenever those results failed to yield a desired racial outcome, i.e., failed to satisfy a racial quota.”

No one on the Supreme Court, not even the dissenters, thought that was a correct reading of the law.

Justice Kennedy’s majority opinion said that before it can intentionally discriminate on the basis of race in an employment matter, the government must have a “strong basis in evidence” that it could lose a lawsuit by a disgruntled party claiming a discriminatory effect of an employment decision. And even Justice Ginsburg and the dissenters said that before it intentionally discriminates, the government must have at least “good cause” to believe that it could lose a lawsuit by the disgruntled party.

Not Judge Sotomayor. She evidently believes that statistics alone allow the government to intentionally discriminate against one group in favor of another if it claims to fear a lawsuit.

Stuart Taylor notes why this is problematic. As he put it, the Sotomayor approach would, “risk converting” Federal antidiscrimination “law into an engine of overt discrimination against high-scoring groups across the country and allow racial politics and racial quotas to masquerade as voluntary compliance with the law.” Under such a regime, Taylor notes, “no employer could ever safely proceed with promotions based on any test on which minorities fared badly.”

It is one thing to get the law wrong, but Judge Sotomayor got the law really wrong in the Ricci case, and the New Haven firefighters suffered for it. To add insult to injury, the perfunctory way in which she treated their case indicates either that she did not really care about their claims, or that she let her own experiences planning and overseeing these types of lawsuits with the Puerto Rican Legal Defense and Education Fund affect her judgment in this case.

As has been reported, before she was on the bench, Judge Sotomayor was in leadership positions with PRLDEF for over a decade. While there, she monitored the group’s lawsuits and was described as an “ardent supporter” of its litigation projects, one of the most important of which was a plan to sue cities based on their use of civil service exams. In fact, she has been credited with helping develop the group’s policy of challenging these types of standardized tests.

Is the way Judge Sotomayor treated the firefighters’ claims in the Ricci case what President Obama means when he says he wants judges who can “empathize” with certain groups? Is this why Judge Sotomayor herself said she doubted that judges can be impartial, “even in most cases”? It is a troubling philosophy for any judge, let alone one nominated to our highest court, to convert “empathy” into favoritism for particular groups.

The Ricci decision is the tenth of Judge Sotomayor’s cases that the Supreme Court has reviewed. And it is the ninth time out of ten that the Supreme Court has disagreed with her. In fact, she is 0 for 3 during the Supreme Court’s last term.

The President says that only 5 percent of cases that Federal judges decide really matter. I do not know if he is right. But I do know that, by necessity, the Supreme Court only takes a small number of cases, and it only takes cases that matter. And I know that in the Supreme Court, Judge Sotomayor’s been wrong 90 percent of the time.

In the Ricci case, her third and final reversal of this term, Judge Sotomayor was so wrong in interpreting the law that all nine justices, of all ideological stripes, disagreed with her. As we consider her nomination to the Supreme Court, my colleagues should ask themselves this important question: is she allowing her personal or political agenda to cloud her judgment and favor one group of individuals over another, irrespective of what the law says?

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business for 1 hour, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the final half, with Senators permitted to speak for up to 10 minutes each.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

SOTOMAYOR NOMINATION

Mr. DURBIN. Mr. President, Republican Senate leader Senator MCCON-

NELL has just completed his leadership statement. I would like to respond to two or three of his points.

I am not surprised that he opposes Sonya Sotomayor, the President’s nominee to the Supreme Court. He has stated that earlier, that he does not believe she should take this important position. I disagree. Sonya Sotomayor comes to us having first been nominated for a Federal judgeship under Republican President George H.W. Bush and then was nominated for a promotion to the circuit level, the next higher bench, by President Clinton. So she has enjoyed bipartisan support in her judicial career. In fact, she brings more experience on the bench to the Supreme Court if she wins the nomination, if it is approved by the Senate, than any nominee in modern memory. So there is no question she was qualified both under a Republican President and a Democratic President. Now she brings that accumulated experience in this effort to be part of the Supreme Court.

I have met her. She has met personally with over 80 Senators and talked to them, answering every question they had about her background, her approach to the law. She is an outstanding candidate.

Her life story is one that is inspiring to all. She was raised in public housing in the Bronx, NY. There has been some mention of the fact that she was a volunteer attorney for the Puerto Rican Legal Defense Fund. It is a fact that she is of Puerto Rican national descent. When she was 9 years old, her father passed away. Her mother, a very strong-willed and energetic person, raised her and her brother. Her brother is a medical doctor. She is an accomplished attorney. She went to Princeton University and graduated with one of the highest academic honors and then went on to Yale Law School, where she also was acknowledged as being one of the most outstanding law students in her class.

This is a person who comes to this job with a resume that, as a lawyer myself, I look at with a great deal of envy. She is an extraordinarily gifted person. There could be questions raised about any judge’s ruling on any case. But the fact is, I believe she has a record that is unparalleled in terms of judicial experience. So I hope those who listened to Senator MCCONNELL’s remarks will also reflect on the fact that Judge Sotomayor is an extraordinarily talented and gifted person. If Senator MCCONNELL is going to oppose her nomination—it sounds as if he will—I hope some on his side of the aisle will join us in a bipartisan effort to make her part of the U.S. Supreme Court.

THE ECONOMY FIT

Mr. DURBIN. Senator MCCONNELL was also critical of President Obama, the President’s attempt to deal with the economy he inherited from the previous President. The economy was in