where he stated ''a reasonable jury could easily find that the City's real reason for scrapping the test results was not a concern about violating the disparate impact provision of Title VII, but a simple desire to please a politically important racial constituency.'' As such, ''Petitioners were denied promotions for which they qualified because of the race and ethnicity of the firefighters who achieved the highest scores on the City's exam.'' As to Judge Sotomayor's expressed empathy for ruling against the firefighters, Justice Alito wrote:

> the dissent grants that petitioners' situation is ''unfortunate'' and that they ''understandably attract this Court's sympathy.'' But ''sympathy'' is not what petitioners have a right to demand. What they have a right to demand is evenhanded enforcement of the law—of Title VII's prohibition against discrimination based on race. And that is what, until today's decision, has been denied them.

At the hearing, I wasn't persuaded by Judge Sotomayor's claims that she followed precedent in reaching her decision. I also was not convinced with Judge Sotomayor's explanation about why she dismissed this case with no legal analysis. I was left with the impression that Judge Sotomayor either she didn't understand the importance of the claims before her, or she issued a ruling based on her own personal biases.

Some colleagues argue that her critics can only point to one controversial case over a 17-year career on the Federal bench. That is not quite accurate, because there are several of her decisions that raise concerns.

For example, Judge Sotomayor issued another troubling decision in Didden v. Village of Port Chester, where Mr. Didden presented evidence that local government officials attempted to extort him in exchange for not seizing his property. When Mr. Didden refused to be extorted, the Village took his property and gave it to another private developer. This case was on the heels of the Supreme Court's decision in Kelo v. City of New London, which held that the government is not ''allowed to take property under the mere pretext of a public purpose, when its actual purpose is to bestow a private benefit.'' Yet Judge Sotomayor dismissed Mr. Didden's claim with a one paragraph opinion.

I asked Judge Sotomayor about the Didden case, but wasn't satisfied with her answers. First, she inaccurately characterized the Supreme Court's holding in Kelo. I was also troubled with her failure to understand that her decision expanded the ability of State, local, and Federal governments to seize private property under the Constitution. Further, she told me that she had to rule against Mr. Didden because he was late in filing his claim. Mr. Didden had 3 years to file his claim. He filed it January 2004, 2 months after he was approached with what he classified as an extortion offer. Judge Sotomayor told us that Mr. Didden should have filed his claim in July 2002, before he was extorted and before he knew the city was going to take his property in November 2003. This is simply not a believable outcome, especially in a one paragraph opinion, where it was never explained to Mr. Didden why the government could take his property. I specifically asked her how Mr. Didden could have filed his claim before he knew he had a claim. Judge Sotomayor did not answer this question directly, but the net result is, as Professor Somin stated, property owners in this situation will never be able to have their day in court:

> the panel's ruling that [the plaintiffs] were required to file their claims before their property was actually condemned creates a cruel Catch–22 dilemma . . . If [the plaintiffs] had filed a Takings Clause claim before their property was condemned, it would have been dismissed because it was not yet ''ripe''). . . It is surely both perverse and a violation of elementary principles of due process to rule that the government can immunize unconstitutional condemnations from legal challenge simply by crafty timing.

There might not be a decision more disturbing than Judge Sotomayor's summary dismissal in Maloney v. Cuomo. If this summary dismissal is allowed to stand, the right to bear arms as provided for in the second amendment will be eviscerated. Instead of carefully considering whether the District of Columbia v. Heller case properly left open the question of whether owning a gun is a fundamental right, Judge Sotomayor in one paragraph held that it is settled law that owning a firearm is not a fundamental right. The Supreme Court noted in Heller that it declined to address the issue of whether owning a firearm was a fundamental right. At the hearing, I was concerned with Judge Sotomayor's explanation of her holding that the second amendment is not ''fundamental'' and her refusal to affirm that Americans have a right of self-defense. In my mind, and I think anyone who reads the second amendment, when the Supreme Court does consider this issue, we will find that Judge Sotomayor was once again on the wrong side of an opinion.

So based on her answers at the hearing and her decisions, writings and speeches, I am not convinced that Judge Sotomayor has the right judicial philosophy for the Supreme Court. I am not convinced that she will be able to set aside her personal biases and prejudices and decide cases in an impartial manner based upon the Constitution. I am concerned about Judge Sotomayor's dismissive handling of claims raising fundamental constitutional rights—I am not convinced that she will protect those rights, nor am I convinced that she will refrain from creating new rights. For these reasons, I must vote against her nomination.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 9:56 p.m., adjourned until Wednesday, August 5, 2009, at 9:30 a.m.

NOMINATIONS

Executive nomination received by the Senate:

DEPARTMENT OF THE INTERIOR

MARCIA K. MCNUTT, OF CALIFORNIA, TO BE DIRECTOR OF THE UNITED STATES GEOLOGICAL SURVEY, VICE MARK MYERS, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate, Tuesday, August 4, 2009:

DEPARTMENT OF STATE

PATRICIA A. BUTENIS, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF MALDIVES.

CHARLES AARON RAY, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ZIMBABWE.

GAYLEATHA BEATRICE BROWN, OF NEW JERSEY, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BURKINA FASO.

PAMELA JO HOWELL SLUTZ, OF TEXAS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BURUNDI.

PATRICIA NEWTON MOLLER, OF ARKANSAS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF GUINEA.

JERRY P. LANIER, OF NORTH CAROLINA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF UGANDA.

ALFONSO E. LENHARDT, OF NEW YORK, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE UNITED REPUBLIC OF TANZANIA.

SAMUEL LOUIS KAPLAN, OF MINNESOTA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF MOROCCO.

JAMES B. SMITH, OF NEW HAMPSHIRE, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF SAUDI ARABIA.

MIGUEL HUMBERTO DIAZ, OF MINNESOTA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE HOLY SEE.

FAY HARTOG-LEVIN, OF ILLINOIS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF THE NETHERLANDS.

STEPHEN J. RAPP, OF IOWA, TO BE AMBASSADOR AT LARGE FOR WAR CRIMES ISSUES.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.