

New York Court Watcher

Research & Commentary on the Supreme Court, the New York Court of Appeals, More

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FRIDAY, JUNE 1, 2012

Part 8: Focus on Justice Sotomayor. (Supreme Court: How Partisan? Ideological? Activist? --with graphs!)



Justice Sonia Sotomayor.
Appointed by President Obama.
Her votes on guns? Gays? God?
Immigrants? Campaign finance?
Just guess!
And you'd probably guess right.

We looked at Sotomayor's record when she was nominated and being confirmed for the Supreme Court.

We looked at her voting and her opinions as a federal appeals judge.

Republicans were insisting she was unsuitable, and even a racist, because of her "wise Latina" comment.

Democrats were insisting she was a "moderate" without an ideological bent.

She was insisting that her role as a Justice would simply be to "apply the law" and not to make law or policy.

Of course, what both the Republicans and the Democrats were saying was pure nonsense.

And what she was saying was at least as preposterous.

We discussed all of that on **New York Court Watcher** in a series of posts. Among other things, we examined Sotomayor's record on the 2d Circuit Court of Appeals. It was pretty revealing. Indeed, it was pretty plain for anyone willing to take a look.

And for anyone who bothered to take a look--or simply to read the discussions and look at the graphs on **New York Court Watcher!**--there would be no surprise with what Sotomayor's record on the Supreme Court would be.

Her record was one of a political, ideological liberal, and, of course, she voted to make law and policy just as every appellate judge does.

[For the examinations of Sotomayor's record on the 2d Circuit, see Sotomayor--Let's Put the Cards on the Table (The Good, The Bad, & The Ugly [Opinions]), June 23, 2009; (Some Common Threads in Her Opinions), June 5, 2009; (Versus Her Colleagues), June 3, 2009; (Ideological Patterns in Her Opinions), June 2, 2009; (First, Some Prefatory Comments), May 28, 2009.) See also Sotomayor--Let's Put the Cards on the Table (SS on the 2d Amendment), Aug. 4, 2009.



VIN BONVENTRE

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- Funeral Protests
- Garcia_Michael
- Garland_Merrick
- Gay Rights
- Gender Equality
- Gerrymandering

For discussions of her confirmation hearings, see *Sotomayor--Let's Put the Cards on the Table (Judiciary Committee Approves the Dreadful Success)*, July 30, 2009: (*More on the Dreadful Success: SS on Judging*), July 20, 2009; (*A Dreadful Success at the Hearings*), July 19, 2009.]

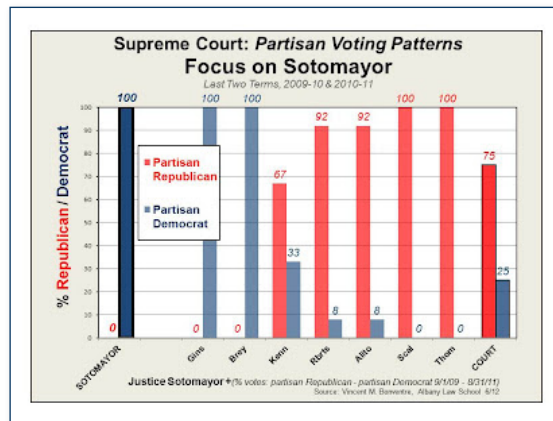
So let's look at Sotomayor's record at the Supreme Court. Just as we have for the other members of the Court we've already focused on in this series.

As I've previously suggested: no surprise.

Here's what her record looks like in those highly partisan-charged cases.

([click to enlarge](#))

GRAPH 1



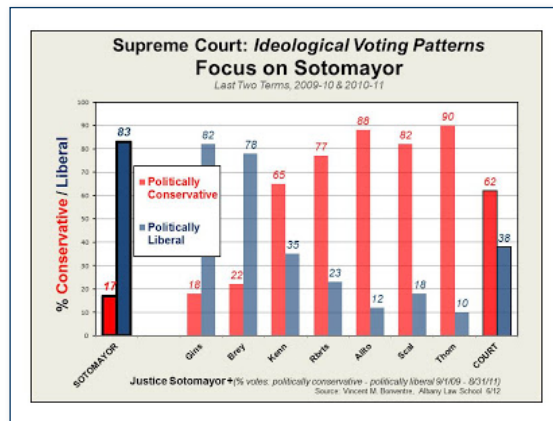
100% partisan. Sotomayor voted in every one of the highly partisan cases like a **liberal Democratic politician**.

So, for example, **against** gun ownership being a fundamental right, **against** the display of a Christian cross on government land, **against** state enforcement of immigration restrictions, **for** federal and state restrictions on campaign finance, and **for** state enforcement of equal rights for gays and lesbians. Yes, as perfectly partisan as the records of liberal Justices Ginsburg and Breyer, and conservative Justices Scalia and Thomas.

Sotomayor's overall record in the generally ideologically-laden cases? Take a look.

([click to enlarge](#))

GRAPH 2



83% voting like a **political liberal**. As ideologically slanted as the records of liberal Justice Ginsburg and conservative Justice Scalia. In fact, although Thomas's and Alito's voting may be THE the most ideologically lopsided on the Court, their records are just slightly more

- The Nature of Cardozo's Process: Testing it in Schloendorff and MacPherson
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- Goats
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- Great Women_Great Chiefs
- Guest Post
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- Holmes_Oliver W
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- Jackson_Robert
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- Jones_Theodore
- Journalist Privilege
- Joyce_Sister Maureen
- Judicial Activism
- Judicial Decisionmaking
- Judicial Experience
- Judicial Federalism
- Judicial Output
- Judicial Restraint
- Judicial Review
- Judicial Selection
- Juvenile Justice
- Kagan_Elena
- Kavanaugh_Brett
- Kaye_Judith
- Kennedy_Anthony
- Korematsu decision
- Lehman_Irving
- Lethal Injection
- Levine_Howard
- Lippman_Jonathan
- Literalism
- Madison_James
- Malone_Bernard
- Marshall_Margaret

conservative than hers is liberal.

Sotomayor did vote with the conservatives in a few cases. For example, she voted with them to invalidate a state law that interfered with the marketing of prescription drug records, and to approve a method for calculating good time credit that is less favorable to inmates than an alternative method would be.

On the other hand, she overwhelmingly joined her liberal colleagues to vote for the **politically liberal** side of issues. On occasion, she voted for the politically liberal position despite some of her liberal colleagues' voting the other way.

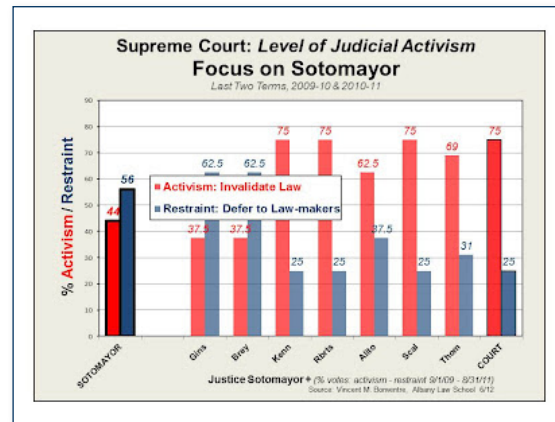
In one such case, she dissented, alone with Justice Stevens, against the Court's *per curiam* approval of a warrantless entry of a home based on a claimed emergency. In another, she dissented, alone with Justice Breyer, against the Court's expanded restrictions on whistleblower lawsuits.

Overall, she has been a reliable, **politically liberal** vote on the Court.

What about activism versus restraint?

[\(click to enlarge\)](#)

GRAPH 3



Like the other liberal Justices, Sotomayor's voting was more restrained than activist. Before drawing any general conclusions about liberals being judicial restraintists and conservatives judicial activists, however, we must consider the nature of the laws at issue.

As noted earlier in this series, most of the laws at issue were ones that **political liberals** would favor. They were laws that **politically liberal judges** would prefer to uphold. Hence, the restraintist voting records of the liberal Justices seem merely to comport with the **ideological** preferences of those Justices. Not any preference for judicial restraint *per se*. And vice-versa for the conservative Justices.

Accordingly, Sotomayor--whose record unmistakably places her on the **politically liberal** end of the Court's spectrum--voted to **uphold** several state laws easing consumer litigation, to **uphold** federal and state laws restricting campaign spending, and to **uphold** a federal law used to fight corruption in business. She voted to **invalidate** a state law aiding religious schools, to **invalidate** a federal law accommodating a Christian cross on public land, to **invalidate** a state law enforcing immigration restrictions, and to **invalidate** a state law allowing life-sentences for juveniles.

She strayed from the liberal Justices in one case. She voted with the conservatives to **invalidate** a state law that restricted the collection

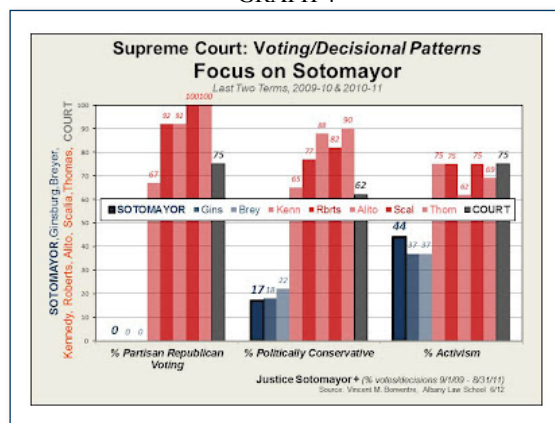
- Marshall_Thurgood
- Martin_Trayvon
- Mayberger_Robert
- McGregor
- Mens Rea
- Minors/Children
- Miranda
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- Muslim Travel Ban
- Napravnik_Rosie
- Nomination
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- Pigott_Eugene
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- Privacy Rights
- Proposition 8
- Prosecutorial Ethics
- Racial Discrimination
- Read_Susan
- Reasonable Doubt
- Recess
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- Rehnquist_William
- Religion and the Law
- Right to Counsel
- Right to Die
- Right to Silence
- Rivera_Jenny
- Roberts Court
- Roberts_John
- Rogers_Chase
- Russia Investigation
- Same-Sex Marriage
- Saratoga Highlights

of drug prescription data by marketers.

Now for the cumulative (and definitely crowded at this point) graphs.

[\(click to enlarge\)](#)

GRAPH 4

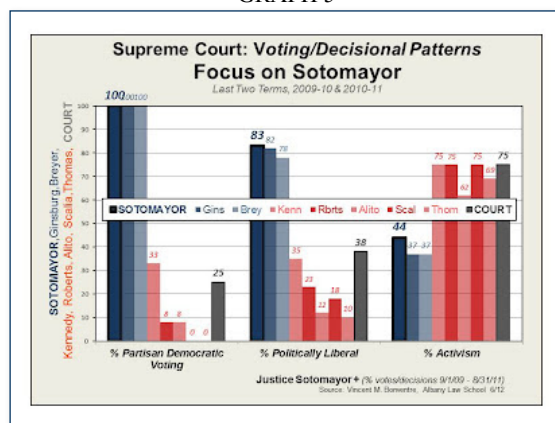


0% Republican and 17% conservative voting. No Justice's record is less like a Republican *politician* or an *ideological* conservative than Sotomayor's. As for activism, her 44% record made her much less activist than any of the conservative Justices--i.e., she voted to invalidate fewer laws than they did.

Flipping the partisan and ideological figures:

[\(click to enlarge\)](#)

GRAPH 5



100% voting like a *Democratic politician* and 83% overall like a *political liberal*. Sotomayor's record in the highly charged cases is utterly partisan, and in the cases generally is highly ideological.

Indeed, to sum up Sotomayor's voting record:

Partisan: utterly--no one on the Court is more so.

Ideological: extremely--no one on the Court is more so.

Activist: restrained when dealing with politically liberal laws, but activist when dealing with politically conservative ones.



Next post: focus on Justice Kagan.

[For posts on New York Court Watcher focusing on the other Justices mentioned in this one, see Supreme Court: How Partisan? Ideological? Activist? (Part 1: Focus on Scalia) --with graphs!, May 1, 2012; Part 2: Focus on Justice Kennedy, May 3, 2012; Part 3: Focus on Justice Thomas, May 6, 2012; Part 4: Focus on Justice Ginsburg, May 10, 2012; Part 5: Focus on Justice Breyer, May 14, 2012; Part 6: Focus on Chief Justice Roberts, May 18, 2012; Part 7: Focus on Justice Alito,

- Scalia and Thomas
- Scalia_Antonin
- Search and Seizure
- Sears_Leah Ward
- Second Amendment
- Section 1983
- Self-incrimination
- Sex Discrimination
- Simons_Richard
- Smith_Malcolm
- Smith_Robert
- Sotomayor_Sonia
- Souter_David
- Souter's possible replacements
- Standing
- State Constitutional Commentary
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- Statutory Interpretation
- Stein_Leslie
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- Stevens' possible replacements
- Stop and Frisk
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- SupCt
- SupCt (2011-12)
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- SupCt Highlights (2007-08)
- SupCt Highlights (2008-09)
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- SupCt Highlights (2013-14)
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- SupCt Highlights (2017-18)
- SupCt Nominations
- SupCt Workload
- SupCt: Crim Law
- SupCt: Discrimination
- Technology
- Ternus_Marsha
- Textualism
- Thomas_Clarence
- Titone_Vito

May 25, 2012.

As stated in previous posts, this series is based on my research over the last several weeks. The pool of cases on which my findings are based is explained at the end of each of 3 previous posts on New York Court Watcher. See Supreme Court: How Partisan? Ideological? Activist? (Part 1: Focus on Scalia) --with graphs!, May 1, 2012; Part 2: Focus on Justice Kennedy, May 3, 2012; Part 3: Focus on Justice Thomas, May 6, 2012]

Labels: Judicial Activism, Judicial Decisionmaking, Judicial Restraint, Sotomayor_Sonia, SupCt Highlights (2009-10), SupCt Highlights (2010-11)

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