

Dan K. Thomasson: Sotomayor vote: a matter of mistaken principle

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WASHINGTON — A wise and practical man once said that it is all right to stand on principle if the principle you're standing on has a good foundation, otherwise the consequences may be more than you can bear, particularly in politics. That is exactly the dilemma Republicans may face after voting overwhelmingly not to confirm Sonia Sotomayor to the U.S. Supreme Court.

Some 31 GOP senators cast their lot with the most conservative elements of the party and the National Rifle Association, which regards her as an enemy and threatens to downgrade its opinion of those senators who voted aye, in declining to support the nomination although the passage was never in doubt. Nine Republicans joined the majority Democrats in overwhelmingly approving her.

In reality there was nothing terribly unusual in so many of the minority voting against a nominee of a president from the opposing party. Of late that has been the norm rather than the exception. The previous nominee, Samuel Alito, proposed by George W. Bush, was confirmed in 2005 despite the loss of 40 Democrats. A year earlier 22 Democrats voted against Bush's choice for chief justice of the United States, John Roberts, who received 78 votes for easy confirmation. Normally, these votes are like one's numbers on the SATs; no one asks your score after you're admitted. It is enough to know you made it.

The difference here is obvious — gender and ethnicity. Sotomayor is the third woman elevated to the nation's highest bench. But more importantly, she is the first Hispanic and as such a member of an increasingly powerful and prideful voting bloc. Opposing her carried with it a risk that political analysts say goes far beyond whether one thinks her future rulings will be more rooted in empathy originating from her ethnic background than the law, which is the reason the senior Republican on the Judiciary committee, Sen. Jeff Sessions of Alabama, gave for opposing her.

That, of course, is the principle on which Sessions and his buddies stood despite the obvious speciousness of their argument, based partially on a foolish remark she once made and has since recanted about the superiority of Hispanic women and her appeals court vote on the controversial New Haven firefighters case that was recently overturned by her new colleagues on the Supreme Court. More frightening for GOP stalwarts was that this came in the face of clear warnings that their efforts to rejuvenate their party, which has had a reputation of resisting ethnic and ideological inclusiveness, could be further undercut by this shaky stance. Hispanics, it was argued, would not forget at the polls. The party clearly in this case had nothing to gain and everything to lose.

So why do it? Sotomayor's opponents could not have believed for one minute that Barack Obama would name someone to their liking anymore than liberal Democrats expected George Bush to nominate candidates who would satisfy them. He didn't, of course. In this instance the philosophical nature of the court is not expected to change. A retiring liberal vote, Justice David Souter, is replaced by a liberal, Sotomayor, preserving the court's current division.

The game, thus, becomes one of letting your constituents know you are fighting for their principles, whatever they are, no matter how hopeless or potentially self-destructive that may be. There is always hope — bolstered by several instances in this political shell game — that one might actually find something that ends the nomination or comes close enough to forever tarnish the winner, fairly or unfairly, as in the case of Justice Clarence Thomas. Often this has nothing to do with the nominee's actual qualification for the job.

In the case of Sotomayor there was nothing apparent to disturb her march to confirmation. But the commitment to the philosophy of opposition no matter what was blindly followed despite the political peril. Hispanic voters drifted away from the Republicans in the last election, and the GOP efforts to reject one of their own for the Supreme Court isn't likely to bring many of them back. The question is how many more will give up on the Grand Old Party because of a perception that opposition was based on something other than qualifications and judicial philosophy?

Republicans have a job to do.

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