



“Is the Constitution color-blind?”

Context: In 2001, Judge Sotomayor gave a speech at Berkeley’s annual cultural diversity lecture series, which was later printed in the *La Raza Journal*, containing the now infamous “wise Latina” remark. While acknowledging that some of the nation’s most significant advancements toward racial equality were done at the behest of white men, Judge Sotomayor went on to say that she “would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.” See Sonia Sotomayor, *A Latina Judge's Voice*, 13 *Berkeley La Raza L.J.* 87 (2002).

Republican Attacks: Today, Senators have suggested that her statement—taking into account the unique life circumstances of being a minority in both gender and race—somehow indicates she will not be able fairly decide cases. Specifically, Senator Cornyn has written, “[t]he Constitution is color-blind. In the upcoming hearings, I hope Judge Sotomayor will explain whether she agrees with Justice Harlan or whether she has a different view of the Constitution.”

Cornyn cites Justice Harlan’s famous dissent in *Plessy v. Ferguson*, 163 U.S. 537 (1896), a decision upholding the constitutionality of racial segregation, where he stated that "our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law." *Id.* at 559. Without question, people should not be treated differently on account of their race, color, or national origin. But to ameliorate pervasive discrimination, the kind abhorred by Justice Harlan in *Plessy*, our Constitution was amended to explicitly recognize race as an important factor to consider when remedying wrongs. The Fourteenth Amendment was designed to authorize race-conscious remedies during the post-civil war Congress. Moreover, many laws passed since 1964 require race to be taken into account. From conducting the national census, to awarding federal contracts, to remedying disparate impacts our framework recognizes the unique and important role race plays in our society.

Judge Sotomayor’s Record: There is no evidence of any racial bias in any of the hundreds of decisions Judge Sotomayor has written. To the contrary, her jurisprudence in cases involving claims of racial discrimination is very much like her jurisprudence in other areas of the law. She is deliberate, measured, and adheres closely to precedent.