

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 109 Ex.]

YEAS—95

Akaka	Dole	Lott
Alexander	Domenici	Lugar
Allard	Dorgan	McCain
Allen	Durbin	McConnell
Bayh	Ensign	Mikulski
Bennett	Enzi	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Nickles
Breaux	Graham (FL)	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Cantwell	Harkin	Santorum
Carper	Hatch	Sarbanes
Chafee	Hollings	Schumer
Chambliss	Hutchison	Sessions
Clinton	Inhofe	Shelby
Cochran	Inouye	Smith
Coleman	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Cornyn	Kohl	Stevens
Corzine	Kyl	Sununu
Craig	Landrieu	Talent
Crapo	Lautenberg	Thomas
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wyden
Dodd	Lincoln	

NOT VOTING—5

Baucus	Edwards	Miller
Campbell	Kerry	

The nomination was confirmed.

NOMINATION OF JUDITH C. HERRERA TO BE UNITED STATES DISTRICT JUDGE

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Judith C. Herrera, of New Mexico, to be United States District Judge for the District of New Mexico.

Mr. DOMENICI. Mr. President, I rise in support of a New Mexican named Judith Herrera to be United States District Judge for the District of New Mexico. I believe everyone knows that the administration of justice is one of the most significant pillars of good government. I think in this instance the President has sent us an extraordinary person to be a judge in the District of New Mexico.

We have a vacancy there because of a justice who took senior status. We have a tremendous overload, and I am very pleased that we finally got to the point where we could have another judge. Maybe we can begin to take care

of this enormous overload. I thank everyone who worked on this nomination. Her credentials are impeccable. Every group that needed to recommend her.

Judith Herrera is a resident of Santa Fe, NM. She attended the University of New Mexico.

She then attended the Georgetown University Law Center where she earned her law degree.

We, in New Mexico, are fortunate that Judy decided to return to New Mexico upon completion of her law degree.

She began her career in public service shortly after returning to New Mexico, serving on the Santa Fe City Council from 1981 to 1986.

She continued her service by sitting on the boards of St. Vincent Hospital in Santa Fe, St. Michael's High School Foundation, also in Santa Fe, and the University of New Mexico in Albuquerque.

She has practiced law for more than 20 years in New Mexico, amassing in impressive resume and reputation in the legal community.

I am confident she will be an outstanding member of the federal judiciary.

I look forward to Judy Herrera's tenure on the bench.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I join my colleague, Senator DOMENICI, in urging the Senate to support this nomination. Judith Herrera is very qualified. I compliment the President for nominating her for this position. I compliment my colleague for recommending that nomination. She will serve us well on the district court in New Mexico.

Ms. Herrera began her career as a prosecutor, and has spent many years in private practice. Currently, she is a partner at Herrera, Long, Pound & Komer in Santa Fe, NM. She has also served on the Santa Fe City Council and on the University of New Mexico's Board of Regents. Mrs. Herrera has served with distinction in all of these positions.

I urge my fellow Senators to support her nomination.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of Judith Herrera, who has been nominated to the United States District Court for the District of New Mexico.

Ms. Herrera is an exceptional nominee and has a distinguished record of service in both the private and public sectors. After graduating from Georgetown Law School, Ms. Herrera worked as an Assistant District Attorney in Santa Fe, New Mexico where she prosecuted a variety of misdemeanor and felony offenses. She later entered the private sector and practiced in the areas of education and employment law.

Ms. Herrera distinguished herself as one of the most effective advocates in

New Mexico for employers defending wrongful discharge and discrimination cases. She later founded her own law firm, and currently serves as shareholder and president of that firm. Ms. Herrera has also served the local community of Santa Fe in a variety of ways. She was a member of the Santa Fe City Council, the Board of Trustees for St. Vincent Hospital, and the Board of Regents for the University of New Mexico. Ms. Herrera's broad experience as a trial attorney and her many hours of community service have prepared her for the challenges she will face as a Federal judge. I am confident that she will make a fine addition to the federal bench in the District of New Mexico.

I yield the floor.

Mr. LEAHY. Today the Senate is proceeding to confirm Judith Herrera to the U.S. District Court for the District of New Mexico. Ms. Herrera is a partner with the Santa Fe firm of Herrera, Long, Pound & Komer, which she co-founded in 1987. She appears in court frequently on behalf of employers, and their insurance companies, serving as defense counsel in employment discrimination and wrongful discharge cases. Before starting this practice, she handled education cases and also served briefly as a local prosecutor. She also previously served on the Santa Fe City Council. She has the support of both of her home-state Senators.

Democratic support for the confirmation of Ms. Herrera, an active Republican, is yet another example of our extraordinary cooperation in this Presidential election year. Today's confirmation will make the 180th judicial nominee to be confirmed since this President took office. With 80 lifetime judicial appointments confirmed in just the past year and a half alone, the Senate has confirmed more Federal judges than were confirmed during the all of 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. It also exceeds the 2-year total for the last Congress of the Clinton administration, when Republicans held the Senate. This Senate has now confirmed more Federal judges than were confirmed during either Congress leading to a presidential election with a Democratic President and Republican Senate majority in 1996 and 2000.

This marks the 180th judicial confirmation since President Bush took office. That is more than President Reagan, the acknowledged all-time champion, achieved in his entire 4-year Presidential term from 1981 through 1984 working hand in hand with a Republican Senate majority. It is more than President Clinton was able to achieve in his entire 4-year Presidential term from 1993 through 1996, having to work with a Republican Senate majority during 1995 and 1996.

I have already noted that at the Republican Senate leadership has again chosen to avoid debate of the nomination of J. Leon Holmes and Judge Dora

Irizarry. These two district court nominees have been pending on the Senate floor longer than any of the other pending district court nominees. Just so that there is no confusion, that is the choice of the Republican Senate leadership to skip those nominations.

The Holmes nomination will require significant debate. It was sent by the Judiciary Committee to the floor without recommendation, a highly unusual circumstance. That means that there was not a majority vote in committee to report the nomination favorably. The committee disserved the Senate by not doing its job of fully vetting the nomination and reaching a consensus or even a vote on the merits.

With regard to Mr. Holmes, to excuse widely shared misgivings about this nomination partisan Republicans are falsely claiming that the opposition to him is based on his religion. That is a slander. Nonetheless, right wing groups like the Committee for Justice have run outrageous and false ads and propaganda against Democrats and have posted assertions that Democrats are anti-Catholic.

Ms. Herrera is, of course, another among the scores of judicial nominees we have confirmed who are active in their faith. Ms. Herrera has stated in her Senate questionnaire that she is on the Board of Directors of the St. Michael's High School Foundation, a local Catholic high school, and she is a parishioner at St. Francis Cathedral. It is wrong for Republican partisans to seek political benefit by falsely claiming that Democrats are anti-Catholic and insulting for them to claim that Catholic Democrats are somehow not Catholic enough. Senator DURBIN just released a study this week that shows that Democrats actually vote more often in agreement with the U.S. Conference of Catholic Bishops on domestic and international issues than their counterparts across the aisle. Yet the destructive Republican politics of division persist. These are unfortunate and dangerous schemes that will only further divide our people and our Nation. Anna Quindlen's recent column in *Newsweek*, *Casting the First Stone*, captures the heart of this current tendency to mix religion and politics into a concoction that some Republican strategists hope will help them at the ballot box. I ask unanimous consent that this editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From *Newsweek*, May 31, 2004]

CASTING THE FIRST STONE

(By Anna Quindlen)

It was nearly 25 years ago that Robert Drinan, a member of Congress and an outspoken Jesuit (a redundancy if there ever was one), so enraged the Vatican with his defense of abortion rights that an order came down from Rome demanding priests withdraw from politics.

It appears that someone has had a change of heart.

Or at least that's how it seems now that certain segments of the Roman Catholic hi-

erarchy are behaving like wholly owned subsidiaries of the Republican Party, hellbent on a course that will weaken the church's moral authority and eventually deplete its membership. And all because of abortion, the issue the celibate male leadership is least equipped to personally understand.

To paraphrase a Gospel passage, my Father's house is a house of prayer, but they have made it a den of partisanship. The archbishop of St. Louis announced that if John Kerry, the Democratic candidate, showed up for mass he would be denied communion. After threats from clerics in New Jersey, the pro-choice Democratic governor saved himself the embarrassment of being turned away by saying he would no longer present himself for the sacrament; the Democratic majority leader of the state Senate responded by quitting the church and saying he will likely join the Episcopalians. And in Colorado a bishop went a step further, saying that any Catholic who supports politicians who favor abortion rights, same-sex marriage or stem-cell research should not take communion.

Surely the next step is to put ushers at the door each Sunday with a purity checklist. Adulterer? Out. Gay? Out. Tax cheat? Gossip? Condom in your pocket? Out. Out. Out. My, how empty those pews have grown. And the altar, too, where we learned that too many priests had a secret life of sexual abuse. Why were known pedophiles permitted to give communion for years, while people of conscience at odds with Vatican teaching (not church dogma) are prohibited from receiving it? It brings to mind the always topical injunction that it's he who is without sin who gets to cast the first stone.

Too many bishops seem to have missed key seminary lessons: the ones on the teachings of St. Thomas Aquinas that civil and moral law are often two different things, or those on the tradition in Catholic thought that a good law must be enforceable, not a law like one prohibiting abortion that will be so often broken that it leads to disregard for all laws. Too many bishops seem to have forgotten the notion of the individual examination of conscience. Instead they have decided to examine conscience for us, particularly if we are liberal Democrats.

Leaders of the church began a schism between pew and pulpit in 1968 with the publication of the encyclical *Humanae Vitae*. The majority of the members of a papal commission on contraception recommended that the church change its opposition; the minority members won out, mainly because they based their argument on the primacy of the pope. Even then, power politics overrode the well-being of the people.

But over time there was an unforeseen result of the encyclical. The use of contraception became the church prohibition millions of Catholics ignored, in part because the directive was so out of step with modern life (as the majority report suggested), in part because the issue was so private. Little by little Catholics made their peace with consulting their conscience instead of Father, especially on intimate issues. The intermediaries became increasingly irrelevant, especially when, in recent years, the full extent of priestly sexual predation became known.

These members of the church were derided by conservatives as "cafeteria Catholics," picking and choosing their beliefs. Now we have cafeteria clergy, picking and choosing which prohibitions they emphasize and which politicians they damn. What of the pro-life policies of a living wage or decent housing? The church is opposed to the death penalty, yet no bishop has yet suggested he will deny the sacrament to those who support capital punishment. And sanctions for Democratic candidates have far out-

numbered those for Republicans, even Republicans who favor legal abortion. The timing of all this is curious as well. It coincides with that new Catholic holy day, the feast of the first Tuesday in November, known to secularists as Election Day.

It is one thing to preach the teachings of the church, quite another to use the centerpiece of the faith selectively as a tool to influence the ballot box, that confessional of democracy. Even a member of Congress opposed to abortion complained that church leaders were "politicizing the eucharist." If citizens who are Methodist, Muslim or Jewish begin to suspect that Catholic politicians are beholden first and foremost to Rome, a notion we thought was laughable and bigoted when John F. Kennedy ran for president, who could blame them? Next month American Catholic bishops meet for a retreat in Colorado. There they should speak out against grievous sin, the sin of using communion to punish by those who have not the moral authority to persuade.

Mr. LEAHY. I also want to focus briefly on how Republicans continue to delay consideration of some Hispanic judicial nominees. For some time the only Hispanic nomination of this President to the first 42 circuit court vacancies was the ill-fated nomination of a young man whose record was kept from the Senate by the Bush administration and who was opposed by the Congressional Hispanic Caucus, prominent Latino leaders of the civil rights community and by many others. This single nomination was in sharp contrast to the many Hispanic nominees sent to the Senate by President Clinton. In fact, eight of the Hispanic jurists serving on our circuit courts today were named by President Clinton, and at least three other Clinton Hispanic circuit nominees would be sitting on the bench now if they had not been denied consideration by a Republican-controlled Senate.

When Democratic Senators supported the confirmation of Judge Edward Prado, President Bush's nominee to the U.S. Court of Appeals for the Fifth Circuit, the Senate Republican leadership delayed consideration of that nomination for a month on the floor for no good reason, other than to allow us to vote on this Hispanic nominee would undercut their false charges that Democrats were anti-Hispanic. Judge Prado had a fair record, years of experience as a Federal District Court judge, and broad support from both sides of the aisle. Nonetheless, in order to get Judge Prado a vote, I had to come before the Senate on a number of occasions to urge his consideration because the Republican leadership was delaying final Senate consideration of his nomination.

Now the Republican leadership seems to be returning to its earlier ways and is again passing over Hispanic nominees without explanation. Last October, 7 months ago, the Senate Judiciary Committee favorably reported the nomination of Judge Dora Irizarry of New York to be a United States District Court Judge for the Eastern District of New York. This was not a nomination without some controversy. The

American Bar Association accorded her a majority rating of "not qualified," as it has several of this President's judicial nominees. Nonetheless, the Judiciary Committee held a hearing on her nomination. The Members of the Committee examined the nomination on the merits and reached their own judgment. With the support of Senator SCHUMER of New York, the nomination was favorably reported. While Senate consideration will include some brief debate, there is no reason this matter has not been scheduled and considered in the last seven months. It could easily have been considered during the course of an extended quorum call during any one of the many days when there is no significant business taking place on the Senate floor. As I have reiterated for months, there is no Democratic hold on this nomination. It merits a brief discussion, but we are prepared to vote on it. Republican delay has prevented action on this nomination.

I do not recall this lengthy a delay in scheduling debate on a Latina nominee since the untoward Republican obstruction of Senate consideration of President Clinton's nomination of Judge Sonia Sotomayor to the U.S. Court of Appeals for the Second Circuit in 1999. That nomination of an outstanding judge, who had been appointed to the federal bench by President George H.W. Bush, was delayed for more than 400 days in all and waited 7 months on the Senate floor, before we were able to force action and a vote on her confirmation. According to some accounts, she was delayed over Republican concerns that she would be chosen by President Clinton for the Supreme Court if a vacancy arose.

Likewise, the Senate's Republican leadership has not yet scheduled a vote on the nomination of Ricardo S. Martinez to be a United States District Court Judge for the Western District of Washington or Juan R. Sanchez to be a United States District Court Judge for the Eastern District of Pennsylvania.

Despite Republican delays in the consideration of President Bush's Hispanic nominees, the Senate has already confirmed, unanimously, three of his Hispanic nominees to the circuit courts and 11 to the district courts. Ms. Herrera will be the 12th Latino district court nominee and 15th overall confirmed by the Senate.

Unfortunately this White House's commitment to diversity seems shallow when compared to its devotion to ideological purity. The President has nominated many more members of the Federalist Society than members of the nation's fastest growing ethnic group. The White House has sent over the nominations of more than 45 individuals active in the Federalist Society, which is more than twice as many Latinos as he has nominated. In fact, the President has chosen more individuals involved in the Federalist Society than Latinos, African Americans, and Asian Americans combined.

We have made significant progress over the last three years in reducing Federal judicial vacancies. As of today, there are only 43 total vacancies in the Federal court system. That stands in sharp contrast to the treatment Republicans accorded President Clinton's nominees. Indeed, under Republican leadership, from 1995 to the summer of 2001 the number of vacancies in the federal courts rose from 63 to 110. We have now made up that 67 percent increase in vacancies the Republican Senate leadership had engineered between 1995 and 2001, and we have reduced vacancies from the 1995 level by one third, to the lowest vacancy level in 14 years. In spite of the way more than 60 of President Clinton's nominees were defeated by Republicans' objections, Senate Democrats have cooperated in the consideration and confirmation of 180 of this President's judicial nominations.

We now have 16 vacancies in the circuit courts. That is the number of vacancies that existed when Republicans took majority control of the Senate in 1995. Unfortunately, through Republican obstruction of moderate nominations by President Clinton, those circuit vacancies more than doubled, rising to 33 by the time Democrats resumed Senate leadership in the summer of 2001. We steadily reduced circuit vacancies over the 17 months that Senate Democrats were in charge. Even though since 2001 an additional 15 circuit vacancies have arisen, we have done what Republicans refused to do when President Clinton was in the White House by not only keeping up with attrition but actually working to reduce vacancies. We have now reduced circuit vacancies to the lowest level since before Republican Senate leadership irresponsibly doubled those vacancies in the years 1995 through 2001.

We should recognize the progress we have made. I certainly recognize the entirely different approach to judicial nominations Republicans have taken with a Republican President's nominations in contrast to their systematic obstruction of Senate action on President Clinton's judicial nominations. I would hope that we will be able to find ways to work together without too much more delay to consider the Hispanic nominees to the federal bench who Democrats are supporting.

I congratulate Ms. Herrera and her family on her confirmation today.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Judith C. Herrera, of New Mexico, to be United States District Judge for the District of New Mexico?

Mrs. HUTCHISON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 110 Ex.]

YEAS—93

Akaka	Domenici	Lott
Alexander	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Ensign	McConnell
Bayh	Enzi	Mikulski
Bennett	Feingold	Murkowski
Bingaman	Feinstein	Murray
Bond	Fitzgerald	Nelson (FL)
Boxer	Frist	Nelson (NE)
Breaux	Graham (FL)	Nickles
Brownback	Graham (SC)	Pryor
Bunning	Grassley	Reed
Burns	Gregg	Reid
Byrd	Hagel	Roberts
Cantwell	Harkin	Rockefeller
Carper	Hatch	Santorum
Chafee	Hollings	Sarbanes
Chambliss	Hutchison	Schumer
Clinton	Inhofe	Sessions
Cochran	Inouye	Shelby
Coleman	Jeffords	Smith
Collins	Johnson	Snowe
Conrad	Kennedy	Specter
Cornyn	Kohl	Stabenow
Craig	Kyl	Stevens
Crapo	Landrieu	Sununu
Daschle	Lautenberg	Talent
Dayton	Leahy	Thomas
DeWine	Levin	Voinovich
Dodd	Lieberman	Warner
Dole	Lincoln	Wyden

NOT VOTING—7

Baucus	Corzine	Miller
Biden	Edwards	
Campbell	Kerry	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 3263

Mr. KENNEDY. Mr. President, I send an amendment to the desk on behalf of myself, the Senator from California, Mrs. FEINSTEIN, the Senator from Rhode Island, Mr. REED, the Senator from New Jersey, Mr. LAUTENBERG, and the Senator from Wisconsin, Mr. FEINGOLD, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: