

Edwards and Lloyd Cutler, reported that during the period of Republican control of the Senate judicial nominees who were ethnic minorities or women took longer to get considered by the Senate, were less likely to be voted on and less likely to be confirmed—if they were considered at all by the Republican-controlled Senate Judiciary Committee.

I recall all too well the months and years it took for the Republican-controlled Senate to confirm Hispanic judicial nominees like Judge Sotomayor, Judge Paez, and Judge Tagle, in addition to other women or minorities like Judge Margaret Morrow, Judge Marsha Berzon, Judge Ann Aiken, Judge Margaret McKeown, and Judge Susan Oki Mollway. I also recall the numerous women and people of color who were nominated to the federal bench by President Clinton but who were never given hearings by the Republicans, like Judge Roger Gregory, Judge Helene White, Jorge Rangel, Enrique Moreno, and Kathleen McCree Lewis. Judge White of the Michigan Court of Appeals waited over 1,500 days but was never given a hearing or a vote. Still others, like Bonnie Campbell, were given a hearing but never given a vote on their nominations. These are just a few of the women and minorities whose confirmations were delayed or defeated through delay.

President Clinton worked hard to increase the diversity of the federal bench and 12 percent of his appointments to the circuit courts were Latino. It would have been closer to 16 percent if all of his Hispanic nominees to the circuit courts had been accorded hearings and votes. By contrast, President Bush has nominated only one Hispanic to the dozens of circuit court vacancies that have existed during his term. Thus, as of today, 3 percent of this President's circuit court nominees are Hispanic. Between the circuit vacancies that were blocked by Republicans and the new ones that have arisen during the past 15 months, President Bush has had the opportunity to choose nominees for 41 vacancies on the circuit courts—13 of these have already been confirmed. This President has chosen only one Hispanic to fill any of these 41 vacancies, and none to any of the following vacancies: the four vacancies in the Tenth Circuit, which includes Colorado and New Mexico, among other States; the three vacancies on the Fifth Circuit, which includes Texas; the six vacancies on the Ninth Circuit, which includes California and Arizona, among other States; none to the three vacancies in the Second Circuit, which includes New York; and none to the three vacancies on the Third Circuit, which includes New Jersey and Pennsylvania.

If this White House had looked a little harder and were not so focused on packing the circuit court bench with a narrow ideology, it could have found many qualified nominees, like Enrique Moreno, Jorge Rangel, Christina Arguello and others to fill these vacancies. Instead, President Bush did not choose to re-nominate these individuals who had been unfairly blocked by members of his party, and he also withdrew the nomination of Enrique Moreno to the Fifth Circuit, a nomination that the ABA had rated "Well Qualified."

So when Republicans try to take credit for President Clinton's Hispanic nominees and try to blame Democrats for the lack of Hispanic nominees by President Bush, they should be confronted with the facts and asked why they opposed so many of President Clinton's qualified Hispanic nominees and why so many of them voted against Judge Paez and Judge Sotomayor and Judge Barkett, and why so many Hispanic nominees were delayed for years and why so many were never given hearings or votes. Of course the facts have not prevented unfounded accusations by critics of the Democratic majority. The Republican press conference accusing Senate Democrats of being anti-Hispanic was an example of such inflammatory and baseless accusations.

As the Congressional Hispanic Caucus meets this week with Hispanic leaders from across the country, I welcome their views on the few Hispanic judicial nominees sent to the Senate by the President and their help in encouraging this White House to work more closely with Senators from both political parties to nominate qualified, mainstream Hispanic nominees to the federal bench.

Our diversity is one of the great strengths of our Nation, and that diversity of background should be reflected in our federal courts. Race or ethnicity and gender are, of course, not substitutes for the wisdom, experience, fairness and impartiality that qualify someone to be a federal judge entrusted with lifetime appointments to the federal bench. White men should get no presumption of competence or entitlement. Hispanic and African American men and women should not be presumed to be incompetent. All nominees should be treated fairly, but no one is entitled to a lifetime appointment to preside over the claims of American citizens and immigrants in our federal courts. We must, of course, carefully examine the records of all nominees to such high offices, but we know well the benefits of diversity and how it contributes to achieving and improving justice in America.

VOTE EXPLANATION

Mr. BUNNING. Mr. President I was necessarily absent for the vote in executive session on September 9, 2002. Therefore, I did not formally vote on the nomination of Kenneth A. Marra, of Florida, to be United States District Judge for the Southern District of Florida. Had I been present for that vote, I would have voted "yea" to confirm Mr. Marra for this position.

CBO COST ESTIMATE—S. 1971

Mr. BAUCUS. Mr. President, the Committee on Finance filed a report on S. 1971 without the Congressional Budget Office cost estimate. I ask unanimous consent that the CBO cost estimate be printed in the RECORD.

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE
S. 1971—National Employee Savings and Trust
Equity Guarantee Act

Summary: S. 1971 would make several changes to both the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA) that would affect the operations and taxation of private pension plans. These include changing the requirements for diversification options, providing information to assist participants in making investment decisions, and changing the premiums paid to the Pension Benefit Guaranty Corporation (PBGC). In addition, S. 1971 would modify the tax treatment of certain executive compensation and make other changes.

The Joint Committee on Taxation (JCT) estimates that the bill would increase governmental receipts by \$437 million over the 2003–2007 period, and by \$221 million over the 2003–2012 period. Most of the revenue increase would occur in 2003 (\$578 million), and the bill would result in a loss of revenue from 2005 through 2010.

CBO estimates that the bill would increase direct spending by \$36 million over the 2003–2007 period and by \$89 million over the 2003–2012 period. Discretionary spending would also increase by \$4 million over the 2003–2007 period, assuming appropriation of the necessary amounts. Because S. 1971 would affect revenues and direct spending, pay-as-you-go procedures would apply.

JCT has determined that the revenue provisions of the bill do not contain any mandates. CBO has determined that the other provisions contain no intergovernmental mandates, but they do contain several mandates on sponsors, administrators, and fiduciaries of private pension plans. CBO estimates that the direct cost of those new requirements on private-sector entities would exceed the annual threshold specified in the Unfunded Mandates Reform Act (\$115 million in 2002, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of the bill is shown in the following table.

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
CHANGES IN REVENUES					
Executive compensation provisions	182	95	68	40	19
Change in interest rate for calculating plans' funding requirement	397	-54	-119	-97	-65
Voluntary early retirement incentive plans	-1	-4	-7	-10	-10