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Senate Overwhelmingly Approves Two Nominees for Supreme Court

by Carlos Navarro
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In late November, the Senate overwhelmingly confirmed two candidates proposed by President Felipe Calderón to replace Justices Guillermo Ortiz Mayagoitia and Sergio Aguirre Anguiano on Mexico’s high court (Suprema Corte de Justicia de la Nación, SCJN). The two retiring justices both completed their 15-year terms. Their replacements, Alfredo Gutiérrez Ortiz Mena and Alberto Gelacio Pérez Dayán, will assume their new posts on Dec. 1, the same day that President-elect Enrique Peña Nieto will be inaugurated. Pérez Dayán will replace Ortiz Mayagoitia, while Gutiérrez Ortiz Mena will take the spot vacated by Aguirre Anguiano.

The selection of the new justices was not free of controversy. The upper house twice failed to garner sufficient votes for Pérez Dayán, whose name was submitted each time along with other candidates. The rejections—and the ensuing delays in naming new justices—prompted speculation that the Senate might not be able to ratify new members by Nov. 30, which is when Ortiz Mayagoitia and Aguirre Anguiano complete their terms. The concerns came from the sitting SCJN members themselves, who warned that the court might not be able to function properly if it did not have a full complement of 11 justices.

"If there are only nine of us, there will certainly be repercussions on any vote, especially in cases when we have ties," Justice Olga Sánchez Cordero said in early November, shortly after the Senate had failed to garner sufficient votes to ratify any of the candidates submitted by Calderón during one of the early rounds. At that time, Cordero also raised concerns about a possible increase in workload if the court were forced to go a few weeks without a full number of justices.

Nominees replace two retiring justices

The concerns of Cordero and other justices were allayed when the Senate managed to approve the two new justices a full week before the completion of the terms of Ortiz Mayagoitia and Aguirre Anguiano. But critics said the move was the result of a deal between legislators from Calderón’s Partido Acción Nacional (PAN) and Peña Nieto’s Partido Revolucionario Institucional (PRI). While Calderón had submitted several prominent judges for the two posts—including Vicente Monroy, Andrea Zambrana, and Rosa María Temblador Vidrio—it appeared that Pérez Dayán was the one he was promoting most heavily. The president also nominated Pérez Dayán in 2011 to replace the late Justice José de Jesús Gudiño Pelayo, but the Senate instead selected Jorge Mario Pardo Rebollo for the seat on the SCJN (SourceMex, Feb. 23, 2011).

To gain support of the PRI senators for Pérez Dayán this year, the president had to submit the name of a candidate heavily favored by the incoming party: Gutiérrez Ortiz Mena.

"Pérez Dayán now has strong prospects of being ratified, since Alfredo Gutiérrez Ortiz Mena has been proposed for the other post, and he has strong support from PRI legislators," the regional newspaper Cambio said shortly before the most recent vote.
Gutiérrez Ortiz Mena, who has worked primarily in the area of tax law, has strong academic credentials, obtaining law degrees from the Universidad Nacional Autónoma de México (UNAM) and Harvard University. For his US degree, he specialized in international tax rights.

"The PRI legislators not only recognize Alfredo Gutiérrez Ortiz Mena as a high-profile tax attorney but support him because he is the grandson of one of the PRI icons—Antonio Ortiz Mena," said Cambio. Ortiz Mena served a finance secretary under ex-Presidents Adolfo López Mateos (1958-1964) and Gustavo Díaz Ordaz (1964-1970) and as president of the Inter-American Development Bank (IDB) in the 1970s and 1980s.

But the strong influence of the PRI and the PAN in determining the two new SCJN justices raised some concerns among the center-left parties. Sen. Manuel Camacho Solís, a member of the Partido de la Revolución Democrática (PRD), said major changes were needed to the process by which justices are selected. "We have to reform the Constitution to change a selection method that is clearly obsolete," said the PRD legislator.

And PRD Sen. Dolores Padierna decried what she described as a "high-level agreement" to ensure that Pérez Dayán became one of the new justices. During a question-and-answer session, Padierna raised concerns about Pérez Dayán’s close relationship with Calderón and wondered whether he would be sufficiently independent from the conservative positions that the president had taken.

In particular, critics were concerned about Pérez Dayán views on social issues. The justice had made it clear that he opposes abortion. Still, at a hearing he promised to have a balanced vision that puts the needs of Mexico first. "I reaffirm my conviction and offer my pledge that I will always place a priority on the common good," Pérez Dayán said in testimony before the Senate.

In the end, most members of the PRD backed both candidates, who were each ratified with 103 and 104 votes, out of the 112 votes cast.

Observers see the potential for a less-conservative court, even though one of the new justices could eventually join the conservative wing of the SCJN. "The departure of two members of the conservative wing of the SCJN, and the arrival of their replacements, could serve to bring more balance to the high court, which was divided between the conservative and progressive wings," said the Mexico City daily newspaper El Universal.

The newspaper said the conservative wing comprises Aguirre Anguiano, Ortiz Mayagoitia, Margarita Luna Ramos, Jardo Rebolledo, and José Fernando Franco González Salas.

Among those identified as members of the progressive wing were Justices Sánchez Cordero, Juan Silva Meza, José Ramón Cossío Díaz, and Arturo Zaldívar Lelo de Larrea. Justices Sergio Armando Valls Hernández and Luis María Aguilar Morales were not identified with either wing, since they took conservative or progressive positions, depending on the case, said El Universal.

But El Universal said judicial experts believe Pérez Dayán could eventually become part of the conservative bloc, based on positions he presented during Senate testimony.

The assessment of Gutiérrez Ortiz Mena’s stance was a bit less certain. "The majority of experts who were consulted said they did not have sufficient information on Alfredo Gutiérrez Ortiz to place him in either bloc," said El Universal. But the newspaper said some experts on constitutional
law said Gutiérrez Ortiz Mena’s expertise in tax law will be an asset for the SCJN, as tax and fiscal matters are among the issues that most frequently come up before the high court.

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