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Senate Elects Former Prosecutor Eduardo Medina Mora to Supreme Court

by Carlos Navarro

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In what some critics described as "an act of arrogance," President Enrique Peña Nieto managed to impose Eduardo Medina Mora—a candidate with no judicial experience—as the next justice of the Mexican high court (Suprema Corte de Justicia de la Nación, SCJN). Despite receiving signatures from more than 52,000 citizens opposing the former prosecutor, the Mexican Senate ratified Medina Mora in a vote that was never in doubt. The former Mexican ambassador to the US and ex-director of two security agencies easily obtained the 83 votes needed to gain the nomination to the high court. Members of the governing Partido Revolucionario Institucional (PRI), the conservative Partido Acción Nacional (PAN), and the Partido Verde Ecologista de México (PVEM) all hinted beforehand that they would support Peña Nieto's chosen candidate. The three parties control 99 of the 128 seats in the upper house.

Peña Nieto's decision to submit Medina Mora's name as the next SCJN justice came under intense criticism from legal experts and journalists, who pointed out that the nominee had not served a single day on the bench at any level of the judicial system ([SourceMex, March 4, 2015](#)). Two other nominees with more extensive judicial experience received very little support during the Senate vote. Horacio Hernández Orozco, a magistrate in the Quinto Tribunal Colegiado en Materia Penal del Primer Circuito, received only 15 votes. Felipe Fuentes Barrera, who has served as a federal district judge and as a magistrate in the Tercer Tribunal Colegiado en Materia Civil del Segundo Circuito, obtained a scant four votes.

Another 16 votes were considered null and void, meaning that these senators used a procedural maneuver to abstain.

The disproportionate support for Medina Mora left no doubt that Peña Nieto had exerted strong influence on the process. "The PRI's strong support for the nominee was not surprising, as the close relationship between the new SCJN justice and Enrique Peña is well-known," journalist Ricardo Alemán said in his online news and opinion site *La Otra Opinión*.

The PVEM has been a close ally of the PRI, and the support of most if not all nine senators from the green party were virtually guaranteed.

Anti-abortion stance wins over PAN

Sen. Javier Corral, the lone PAN dissident, said many senators from his party voted for Medina Mora, a staunch Roman Catholic, because of his opposition to abortion. "I am among those who view life as beginning at the time of conception, but I would not be disposed to bring my personal beliefs to the Supreme Court," Corral said in a speech opposing Medina Mora.

Other PAN senators confirmed that Medina Mora's pro-life stance was an important consideration for members of the party. "Let's be clear," said Sen. Gabriel Ávila Ruiz. "The PAN will vote in favor

of Medina Mora because he has defended the right to life, and this is a matter of principles and values."

While the political leanings of the SCJN justices are often not very easy to define because of mixed votes on a variety of issues, some experts like physician Juan Miguel Alcántara Soria believe that their stance on abortion separates the conservative from the progressive justices.

In an interview with *La Otra Opinión*, Alcántara Soria said the PAN's stance is not surprising, since Medina Mora has made his position on abortion very public.

Some observers noted that Medina Mora was a strong choice for both the PAN and the PRI, having served under both ex-President Felipe Calderón and current President Peña Nieto. This was evident in statements that PAN Sen. Javier Lozano made at the confirmation hearing. "Medina Mora has said that he does not belong to any political party, but has also indicated that his ideology is closest to that of the PAN," said Lozano. "Even though his values make him close to our party, he has worked very comfortably with the Peña Nieto government."

Regardless of the nominee's position on abortion and other social issues, Corral found Medina Mora's lack of judicial experience troubling. "This is an affront to the judicial branch," noted the PAN senator, who said the vote is another insult to a country suffering myriad problems.

Critics question Medina Mora's competence

Senators from the center-left Partido de la Revolución Democrática (PRD) also stood up to denounce Medina Mora. "With his nomination, we are rewarding incompetence, impunity, and the violation of human rights," said Sen. Dolores Padierna, in reference to allegations that Medina Mora acted with impunity in his roles as attorney general, public safety secretary, and director of the Centro de Investigación y Seguridad Nacional (CISEN).

Critics also pointed out that the president's direct involvement in defining the composition of the court was a serious breach of the separation of powers and the concept of independent branches of government. "This is a return to the imperial presidency," said Sen. Padierna.

Just before the floor vote, two opposition senators, Angélica de la Peña of the PRD and Manuel Bartlett of the PT, introduced a motion to suspend the proceedings because the justice committee (Comisión de Justicia) had not conducted an adequate background check on the qualifications of the candidates and also had not taken into account the more than 50,000 citizens who signed a petition opposing Medina Mora and the opinions of lawyers' associations, magistrates, judges, and specialists who suggested that the nomination of the ex-prosecutor was ill-advised.

The petition—which included signatures from 52,000 scholars, lawyers, and human rights advocates—was presented to the Senate by a delegation led by respected academic and political columnist Denise Dresser.

'An arrogant move'

Peña Nieto's choice of Medina Mora was also broadly criticized in the media, and few columnists defended this choice. Syndicated columnist Sergio Sarmiento, whose views are generally on the conservative side, said he would not have a problem if the president nominated and lobbied hard for a qualified nominee. However, the president's active push for a candidate with no experience was nothing short of arrogance, argued Sarmiento. "Medina has never been a judge, and there

is no track record on where he would stand," the columnist said in a piece published in the daily newspaper Reforma.

"If the president has pushed for a respected jurist with a long career [in the judicial system], there would not have been any controversy," added Sarmiento.

The critics of Medina Mora's nomination included an association of judges and magistrates (Asociación Nacional de Magistrados de Circuito y Jueces de Distrito del Poder Judicial de la Federación), which sent a letter to the Senate ahead of the vote. In the letter, the jurists said "judicial autonomy was at risk" if the senators selected a "candidate without merits," a clear reference to Medina Mora.

Former SCJN president Juan N. Silva Meza, however, chastised the judges for taking such an active stance in opposing a nominee. Silva Meza, who was the chief justice from 2011 to 2014, said it was not the place of the judges to criticize nominees. "Those of us who sit on the bench do not have the right to display our emotions publicly or to incite controversy," said Silva Meza, who retired at the end of 2014. "Our obligation is to contribute to the peace and tranquility of everyone."

Some observers noted that, even though the Medina Mora rise to the SCJN was a *fait accompli*, there were lessons to be learned from the situation.

"In the first place, it is important that there be absolute clarity regarding future nominees," said Miguel Carbonell, a researcher at the Instituto de Investigaciones Jurídicas at the Universidad Nacional Autónoma de México (UNAM).

"Our Constitution requires that anyone seeking to become a SCJN minister must have resided in Mexico during the two years prior to the nomination. Medina Mora did not meet that requirement, and he was nominated anyway," Carbonell wrote in an opinion piece in the daily newspaper *El Universal*, in reference to the nominee's recent residence in Washington, DC, where he served as Mexico's ambassador to the US. "In the second place, the debate about Medina Mora should encourage a reflection on the type of justices we want on the court."

While many suggested that the nominee should have been an individual with a long judicial career or a renowned jurist, said Carbonell, no one thought it was a good idea to appoint a politician to the post.

"The lesson we must learn is that we do not want politicians serving as judges, no matter their party affiliation," said the UNAM expert. "The judicial bodies should remain clean of the influence of political parties. There are few spaces in the Mexican political state that should remain immune from political negotiation, and the Supreme Court is one of them."

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