

Mr. LEAHY. Mr. President, I will speak for a few minutes regarding the debate on Mr. Estrada. The reason I say this, when I came on the floor I heard a great deal of discussion about the Hispanic National Bar Association. I heard from my friends on the other side of the aisle the current president of the Hispanic National Bar Association has led the support of this organization for Mr. Estrada's nomination, which is so. However, it jogged my memory that this morning I received a letter from 15 former presidents of the Hispanic National Bar Association. These 15 take an entirely different position than the current president: 15 well-respected former national leaders of this important bar association. They date back to the founding of it in 1972.

They have written to the Senate to oppose this nomination. They wrote to Senator HATCH and they wrote to Senator FRIST, as well as to Senator DASCHLE and myself. I am sure the speakers earlier this morning, when they spoke of the importance of the position of the president of the Hispanic National Bar Association, were probably not aware that but one is in favor of Mr. Estrada and 15 were opposed. It is very weighty opposition for 15 prior presidents of the Hispanic National Bar Association, based on the criteria to evaluate judicial nominees that this association has formally used since 1991, which has been the practical standard for the past 30 years, to make this assessment.

In addition to the candidate's professional experience and temperament, the criteria for endorsement includes the extent to which a candidate has been involved, supportive of, and responsive to the issues, needs, and concerns of Hispanic Americans and, secondly, the candidate's demonstrated commitment to the concept of equal opportunity and equal justice under the law.

In the view of the overwhelming majority of the living past presidents of the Hispanic National Bar Association, Mr. Estrada's record does not provide evidence that meets those criteria. But they say his candidacy "falls short in these respects."

They conclude:

We believe that for many reasons including: his virtually non-existent written record, his verbally expressed and un rebutted extreme views, his lack of judicial or academic teaching experience (against which his fairness, reasoning skills and judicial philosophy could be properly tested), his poor judicial temperament, his total lack of any connection whatsoever to, or lack of demonstrated interest in the Hispanic community, his refusals to answer even the most basic questions about civil rights and constitutional law, his less than candid responses to other straightforward questions of Senate Judiciary Committee members, and because of the Administration's refusal to provide the Judiciary Committee the additional information and cooperation it needs to address these concerns, the United States Senate cannot and must not conclude that Mr. Estrada can be a fair and impartial appellate court judge.

This is a significant letter because during the tenure of these past presidents, the Hispanic National Bar Association has had a fair nonpartisan record of following its criteria, and endorsing or not endorsing or rejecting nominees, regardless of whether the nominee is Republican or Democrat. They follow the same criteria for Republicans and Democrats. The HNBA has been at the forefront of the effort to increase diversity on the Federal bench and improve the public confidence among Hispanics and others in the fairness of the Federal courts. They have supported Republican nominees as well as Democratic nominees. But these 15 individuals, who devoted a great deal of time in their legal careers to advancing the careers of Hispanics in the legal community, have felt compelled publicly to oppose the Estrada nomination, although they publicly supported both Democrats and Republicans before. This one they opposed.

I ask unanimous consent the letter that was sent to me, to Senator HATCH, to Senator FRIST, and to Senator DASCHLE be printed in the RECORD.

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

HNBA'S PAST PRESIDENTS' STATEMENT,
FEBRUARY 21, 2003

We the undersigned past presidents of the Hispanic National Bar Association write in strong opposition to the nomination of Miguel A. Estrada to a judgeship on the Court of Appeals for the District of Columbia Circuit.

Since the HNBA's Establishment in 1972, promoting civil rights and advocating for judicial appointments of qualified Hispanic Americans throughout our nation have been our fundamental concerns. Over the years, we have had a proven and respected record of endorsing or not endorsing or rejecting nominees on a non-partisan basis of both Republican and Democratic presidents.

In addition to evaluating a candidate's professional experience and judicial temperament, the HNBA's policies and procedures governing judicial endorsements have required that the following additional criteria be considered:

1. The extent to which a candidate has been involved in, supportive of, and responsive to the issues, needs and concerns of Hispanic Americans, and

2. The candidate's demonstrated commitment to the concept of equal opportunity and equal justice under the law.

Based upon our review and understanding of the totality of Mr. Estrada's record and life's experiences, we believe that there are more than enough reasons to conclude that Mr. Estrada's candidacy falls short in these respects. We believe that for many reasons including: his virtually non-existent written record, his verbally expressed and un-rebutted extreme views, his lack of judicial or academic teaching experience, (against which his fairness, reasoning skills and judicial philosophy could be properly tested), his poor judicial temperament, his total lack of any connection whatsoever to, or lack of demonstrated interest in the Hispanic community, has refusals to answer even the most basic questions about civil rights and constitutional law, his less than candid responses to other straightforward questions of Senate Judiciary Committee members, and because of the Administration's refusal to

provide the Judiciary Committee the additional information and cooperation it needs to address these concerns, the United States Senate cannot and must not conclude that Mr. Estrada can be a fair and impartial appellate court judge.

Respectfully submitted,

Signed by 15 past HNBA presidents.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the hour of 3:30 p.m. having arrived, the Senate will now return to legislative session.

PROSECUTORIAL REMEDIES AND
TOOLS AGAINST THE EXPLOITATION
OF CHILDREN ACT OF
2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consider S. 151, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 151) to amend title 18, United States Code, with respect to the sexual exploitation of children.

The Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with amendments, as follows:

[Strike the parts shown in boldface brackets and insert the parts shown in italic.]

S. 151

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003" or "PROTECT Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Obscenity and child pornography are not entitled to protection under the First Amendment under *Miller v. California*, 413 U.S. 15 (1973) (obscenity), or *New York v. Ferber*, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. "The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance," *New York v. Ferber*, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. *Osborne v. Ohio*, 495 U.S. 103, 110 (1990).

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. "[T]he most expeditious if not the only practical method of law