



National
Democratic
Policy
Committee

P.O. Box 17729 • Washington, D.C. 20041-0729

Senator Joseph Biden,
Chairman, Senate Judiciary Committee
224 Dirksen Building
Washington, D.C.

RE: CONFIRMATION OF JUDGE ANTHONY M. KENNEDY
AS ASSOCIATE JUSTICE OF THE SUPREME COURT

Dear Senator:

I submit herewith my testimony on the confirmation proceedings.

The nomination of Judge Kennedy occurs at a point the world is in the opening phases of the biggest financial collapse in history. If the follies of the Hoover administration and Congress, during the years 1929-1932, were to be repeated, the magnitude of the financial collapse will reach levels by sometime during not later than 1989, plunging the world into an economic depression comparable to that Europe has not suffered since the fourteenth century, with a potential impact on the United States comparable to that which afflicted Weimar Germany during the years 1929-1932.

It is commonly assumed, from legends of the 1930s, that a deep economic depression must follow such a deep financial collapse, as night follows day. That assumption is in error. Financial collapses do not cause economic depressions; rather, depressions are caused by the blunders, both of commission and omission, committed by governments in response to a financial crash.

The United States has suffered financial calamities before; indeed, our present form of Federal government was first inaugurated in the midst of what seemed to many a virtual state of national bankruptcy. We have escaped from each of these crises, to levels of prosperity greater than ever before.

There is no reason that the present financial collapse should be an exception to that. Each time, we met and overcame the crisis without proof of need to tamper with any provision of our Constitution, or by any abrogation of our liberties. There is no need to do so now.

Nonetheless, in the sheer magnitude of the present crisis, there is a danger. The danger is, on the one hand, that some may be tempted to copy forms of austerity seen during the last years of Germany's Weimar Republic, leading our nation down the road to some hideous tyranny, as occurred in Germany then. The second danger is, that the three branches of our Federal government might become engaged in a quarrel over required measures, and that out of the floundering into which we might be plunged so, a combination of actions and inactions might foster that spirit of desperation in which some tyrannical folly might be fostered.

In such circumstances, more than ever before during the post-war period to date, we require an appropriate composition of the justices of our Supreme Court. I set forth summarily, the manner in which I see this connection more concretely.

Any crisis of the sort into which we have entered now, is, by its very nature, the outcome of an accumulation of wrong policies by our government up to the point at which the crisis has erupted. The challenge to government at such a point, is either to uproot and replace the policies which have fostered the calamity, or to attempt to defend those wrong policies, and thus plunge the nation into disaster. So, government is faced with the choice, either to make such relatively drastic changes in long-embedded policy, and that in a brief span of time, or to court incalculable disaster for refusing to do so.

Any such sudden reversal in the mass of accumulated monetary, economic, and fiscal policies over the recent twenty years, threatens to become a constitutional crisis. Although, in the present instance, no innovations are needed which are contrary to the clear intent of the founders of our republic, the mere fact that we have become accustomed to present monetary, economic, and fiscal policies for so long, tends to color them with an assumed force of precedent in constitutional law. The next President, and the next Congress will be confronted with the latter form of crisis.

In this circumstance, it is urgent that the composition of the justices of our Supreme Court tend to view the matter in the way I have indicated. In short, they must place the lesser weight on precedents of the recent twenty years, and find the preponderance of authority in the traditions which preceded the past twenty years, our original and prolonged tradition as a nation committed to scientific and technological progress in a capital-intensive, energy-intensive mode.

There are three leading errors in policy-making, accumulated over the recent twenty years, whose correction, or absence of such correction will decide whether our nation avoids a deep economic depression, or slides into the worst calamity in our history. These are the introduction of a

neo-malthusian drift toward what is often called "post-industrial society," the replacement of the pre-1968 form of a gold-reserve monetary system of relatively stable parities, by what is called a "floating exchange-rate" monetary system, and an anti-scientific, anti-technology bias contributed by a growing radical counterculture. Many precedents in statute and judicial decisions have embedded these three innovations into our official practice and doctrine; these are the precedents which are threatening to destroy our nation during the period ahead.

If justices of the Supreme Court view these matters so, and also view these matters from the standpoint of intent of our Declaration of Independence and Federal Constitution, that Court will be no obstacle to the necessary actions of President and Congress, to the degree these necessary actions are indeed consistent with the original intent of the law of our republic. If the Court is of a contrary opinion, that contrary view could foster a national catastrophe.

Judge Kennedy appears a man qualified in his profession and of good character, I know of no fault in him on that account. His appointment to that body must be assessed on two principal grounds. First, his philosophy of constitutional law: does he embrace the elaboration of natural law embodied in the Declaration of Independence and Constitution, and with such efficiency that he were disposed to uphold the overriding of faulty precedents accumulated during the past twenty years? Second, is he likely to become an effective advocate of that persuasion among his peers on the Court?

Ordinarily, great weight must be given to a President's nomination of a justice of our Supreme Court. However, at this juncture our President remains a stalwart advocate of those policies which have brought us into the present financial crisis, to such a degree that his views on these matters must tend to color his judgment in selecting an appointment. This matter must be examined, in the view that we can not mortgage the future to those ideological habits from the recent past now being discredited in fact. As the Preamble of our Constitution instructs all who take the oath, it is to our posterity we are indebted as much as to present and recent opinion.

Respectfully Yours,

Lyndon H. LaRouche, Jr.
Chairman Emeritus
Advisory Council, NDPC