

a Supreme Court Justice, he dissented in cases that refused to extend Miranda more broadly. He abandoned the views that he had previously expressed in a brief because they weren't his views. They were the views of the United States. And I fully expect that Judge Roberts also knows the differences in these roles in our legal system.

Third, I have been particularly troubled about suggestions in the media that he may harbor bias against women, and I say this because I know firsthand that he was very interested in promoting equal opportunity for women. He actually recruited me to the Office of Solicitor General in 1991. There was a vacancy for the deputy slot. There are only four deputies in the office at any given time. This is a highly coveted position. And he called me, he encouraged me to come and apply for that job. He supported me. I got the job and, as a result, was one of the very few women in history to serve in that position.

A year later, a vacancy came open on the Eastern District of Virginia, the Federal court, and he again encouraged me to apply. He helped shepherd me through that nomination process, and as you indicated, for some reason the Committee forgot to get me confirmed. But, really, these were things that Judge Roberts did not just for me but for other women who all admire and respect him and have absolutely no doubt that he harbors no bias.

In sum, I think that he is particularly well suited to succeed the Chief Justice. They both share some incredible traits, really exquisite intelligence, an abiding sense of modesty, charming wit, and I think that the Chief above all understood that the role of a judge is to serve, not to rule. And I think that there is no question that Judge Roberts learned that lesson well, and he ought to be confirmed as the next Chief Justice.

Thank you very much.

[The prepared statement of Ms. Mahoney appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Ms. Mahoney. Demonstrating your skills as an appellate advocate, ending precisely on time.

[Laughter.]

Ms. MAHONEY. I was worrying about that.

Senator SESSIONS. One second over. I was watching.

Chairman SPECTER. Precisely on time.

Our next witness is Hon. Carol Browner, former distinguished Administrator of the Environmental Protection Agency, used to be a member of the Senate family when she served as legislative director to Senator Albert Gore when he was here, a graduate of the University of Florida, both undergrad and law school, and currently is a member of the Albright Group. Thank you for joining us, Ms. Browner, and the floor is yours.

STATEMENT OF CAROL M. BROWNER, FORMER ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, AND PRINCIPAL, THE ALBRIGHT GROUP, WASHINGTON D.C.

Ms. BROWNER. Thank you, Mr. Chairman and members of the Committee. Thank you for the opportunity to appear here today, and I ask that my full statement be placed in the record.

Chairman SPECTER. Without objection, your statement will be made a part of the record, as will all statements.

Ms. BROWNER. Thank you. Mr. Chairman, as you just noted, I have spent most of my professional life involved in our country's efforts to protect the air we breathe, the water we drink, the health of our communities, the health of our children. Our environmental laws and regulations have allowed us to make steady progress in this country toward cleaner air, cleaner water, a healthy environment.

While it is not always a perfect system, a dismantling of this system could leave our country without any sensible way to address ongoing environmental problems such as mercury, the disappearance of our wetlands, and the reality of global warming.

Briefly, I want to speak to three issues: the Commerce Clause, the power of Congress to delegate to the executive branch, and citizen standing.

More than 40 years ago, Congress realized that individual States often lack the power or the will to do the job of lessening and reducing pollution. Congress recognized that pollution doesn't stop at political boundaries. Dirty air blows across the country without regard for where it originates, and polluted water inevitably flows downstream. Relying on its Commerce Clause authority, Congress passed a whole body of environmental legislation.

The Supreme Court's decisions in *Lopez* and *Morrison* have triggered an effort to undermine Congress's use of its Commerce Clause authority in a number of environmental statutes, including the Clean Water Act. In the *SWANCC* decision, a case involving wetlands, the petitions argued that Congress lacked the authority under the Commerce Clause to protect isolated wetlands. Well, as we have all been recently reminded with Katrina, wetlands are a very important part of nature's efforts to protect us from flooding, to cleanse our waters, to provide important habitat.

While the Court avoided ruling on the Commerce Clause challenge in *SWANCC*, it is troubling that the majority did note "significant constitutional questions regarding the authority of Congress to protect certain types of wetlands, even those used by migratory birds."

I want to quote from Justice Kennedy. Although he joined with the majority, he noted in *Lopez*, "The Court as an institution and the legal system as a whole have an immense stake in the stability of our Commerce Clause jurisprudence as it has evolved to this point." While Judge Roberts's dissenting opinion from denial of rehearing in *Viejo*, the case that is now referred to as the "hapless toad" case, is not definitive as to his position on the Commerce Clause, it is certainly worth noting that a three-judge panel had rejected a Commerce Clause argument with respect to the Endangered Species Act.

Lower-court judges have also attempted to restrict the authority of Congress to delegate certain powers to the executive branch. In a case I was personally involved with about my decision to set air pollution standards for ozone and smog, the lower court struck down a key section of the Clean Air Act as unconstitutional, citing the non-delegation doctrine, which had been rejected by courts for more than 50 years. For decades, Congress has asked EPA, told

EPA to do this job, to do it based on the best available science, to do it to protect the public health. These are sort of fundamental principles embedded in many of our environmental statutes that have allowed us to make the kind of progress that we have made to date.

Finally, Congress has frequently recognized the right of individual citizens to seek enforcement of our country's environmental laws. When I was the head of the EPA, I was frequently asked, Well, wouldn't you like Congress to prevent those lawsuits from being filed against you, those lawsuits from being filed against your agency? And my answer was always no. Citizen suits are an essential part of how we have gone about this work of clean air and clean water. If Congress tells an agency of the executive branch to do something and they fail to do it, the citizens of this country should have the right to go to our courts and see that Congress's laws are upheld.

A key role and responsibility of Government is to protect those things we all hold in common—our air, our water, the public health of our communities. The Nation's environmental laws are based on a set of shared values, and they rest on principles embraced by Congress over many, many years. The High Court should respect the broad authority of Congress under the Constitution and well-established precedents that allow for a robust Federal role in protecting our environment. The Court should continue to recognize the right of Congress to delegate to the executive branch the day-to-day work, to set pollution standards, to enforce those standards, and the Court must ensure the opportunity for individual citizens to step in when the executive branch fails to do what Congress has directed.

Thank you.

[The prepared statement of Ms. Browner appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Ms. Browner.

Our next witness is Professor Kathryn Webb Bradley, senior lecturing fellow at the Duke University School of Law, graduate of Wake Forest and the University of Maryland, first in her class, clerked for Justice White, later became a litigator at Hogan and Hartson.

We thank you very much for coming in today, Professor Bradley, and we look forward to your testimony.

STATEMENT OF KATHRYN WEBB BRADLEY, SENIOR LECTURING FELLOW, DUKE LAW SCHOOL, DURHAM, NORTH CAROLINA

Ms. BRADLEY. Thank you very much. Mr. Chairman, members of the Committee, thank you for allowing me to be here today.

I have been a Democrat since I was old enough to vote. But while the President has not enjoyed my personal support, his nominee has my full and enthusiastic support today. I have known John Roberts since 1990 when I was privileged to serve as law clerk to Justice Byron White. As a law clerk, I watched then-Deputy Solicitor General Roberts argue several cases before the Court. While I was fortunate to see many talented advocates that year, John Roberts stood out in my mind as simply the best.