

Senator SPECTER. I very much appreciate that, Mr. Chairman. I thought that, being a Senator, I had been a member of that club for some time. [Laughter.]

The CHAIRMAN. No. You have been a member of a different—I won't characterize what the club is you are a member of. Welcome back.

Senator SPECTER. Thank you very much. Thank you.

#### OPENING STATEMENT OF CHAIRMAN BIDEN

The CHAIRMAN. On a more serious note, today the Senate Judiciary Committee welcomes Judge Ruth Bader Ginsburg, the President's nominee to be Associate Justice of the U.S. Supreme Court.

This is a very familiar setting for us. Since I became chairman of this committee 7 years ago, we have now convened hearings on five nominees for the U.S. Supreme Court.

The Constitution states clearly that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint \* \* \* judges of the Supreme Court." Clearly the appointment of a Supreme Court Justice is not a Presidential prerogative. The Senate is an equal partner in the process and has significant obligations attendant to its responsibilities. These confirmation hearings are a major part, though not the only part, of the process by which we attempt to fulfill our constitutional responsibility.

The nomination of a Supreme Court Justice signals the renewal of a national debate over the meaning of our Constitution—a debate, I might add, that has been going on for over 200 years, without end, and that will go on for another 200 years, I suspect.

How will the broad principles embodied in the Constitution—phrases like due process, equal protection, rights retained by the people—how will these and other ennobling phrases in the Constitution be applied to the realities of everyday life? That is the issue which we have been debating and will continue to debate.

Profound questions with practical implications have and will continue to confront us, as the judge only knows too well, questions such as:

Does religious freedom mean that Jewish-American soldiers cannot wear a yarmulke while on duty despite Army prohibition? Which, obviously, they can now, with certainty.

Does liberty mean that each of us can decide, without the Government deciding for us, whom we shall marry, whether we shall marry, where we will live, or whether to have children or choose not to have children?

Does the right to own property mean that the Government may not, without compensation, prohibit a property owner from polluting the stream that flows through his or her land?

These and hundreds of other thorny issues have no easy answers. There are not even any right answers in the usual sense of that word, but there are valid and varied constitutional approaches to answering them, applied over the last 200 years by Justices on the Court. The constitutional answers to such questions flow from the interpretive method judges apply to cases that come before them.

Over the more than two centuries in which our constitutional democracy has endured, our understanding of individual freedom has

expanded. This trend is not new. The expansion of notions of liberty and equality began with the birth of this Republic.

Our understanding of the Constitution has not been static; rather, it has flowed consistently in the direction of broadening the freedom that Americans have as individuals.

The document has remained, as its writers intended, in my view, a flexible and dynamic instrument. Throughout our history, each evolutionary change, though, has brought controversy. Each expansion of individual liberty has ignited resistance from those who prefer the status quo. But in every instance, moving ahead on liberty has proved to be the right thing to do.

Removing the barriers of race to full equality generated enough conflict in the 19th century to fuel a bitter and bloody civil war, and resistance has been carried on into our own time. But today it is generally acknowledged, even where it was once most resisted, that reducing the barriers of race has strengthened American society.

The granting of more equal rights under the Constitution to women, a change that owes much to the lawyer who is our nominee today, has been similarly controversial. But today, with that process not yet complete, most Americans agree that it has been a change for the better in the life of this society.

The Voting Rights Act, which has extended the practical right to vote to millions of formerly disenfranchised Americans, was and remains a source of controversy, even on the Supreme Court itself. But today there are hundreds of minority women and men holding public office where formerly there were few, even in areas where majority voters dominate the rolls, the entire process bringing us closer to the constitutional goal of representative government.

The controversy that flows inevitably from change has found its way into these hearings in the past, into the confirmation process in the past decade-and-a-half. But it does not alter in any sense what we plan on doing here today.

Our task today, as in all Supreme Court confirmation hearings, is to consider the character and qualities and the judicial philosophy of Ruth Bader Ginsburg.

Judge Ginsburg comes before the committee with her place already secured in history. In the 1970's, Judge, you argued a series of landmark cases that changed the way our laws could distinguish legally between women and men, and you have significantly narrowed the circumstances under which distinctions among Americans may be made. You have already helped to change the meaning of equality in our Nation.

Now, as you face a new opportunity to help shape the future of America, we welcome you, and we invite you—and I personally invite you, Judge, to share with us and the American people your vision of the shape of the future of America.

[The prepared statement of Chairman Biden follows:]

#### PREPARED STATEMENT OF CHAIRMAN BIDEN

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