

His 15-year term on the Court combined with recent constitutional history provide a clear example of that fidelity to the Constitution and to precedent. In the 1976 case of *National League of Cities v. Usery*, the Court found that the 1974 amendments extending the Fair Labor Standards Act to State and local governments unconstitutionally infringed on State sovereignty protected by the 10th amendment.

Justice Rehnquist clearly stated the Court's majority position, firmly adhering to the dictates of the 10th amendment. The opinion stated that, "There are attributes of sovereignty attached to every State government which may not be impaired by Congress, but not because Congress may lack an affirmative grant of legislative authority to reach the matter but because the Constitution prohibits it from exercising the authority in that manner." Nine years later, the Court reversed itself on this principle in *Garcia v. San Antonio Metropolitan Transit Authority*, by overturning a lower court ruling precluding the transit authority from adhering to the overtime pay requirements of the Fair Labor Standards Act.

Significantly, the majority placed little emphasis on the 10th amendment protection of State and local sovereignty on which Justice Rehnquist had based his early opinion in *National League of Cities*. Justice Rehnquist joined Justice O'Connor, and that reminds me: I should have said the way a Justice wears his, or her robe without a stain—Justice Rehnquist joined Justice O'Connor in a dissenting opinion which reflected the total consistency of his constitutional interpretation.

The dissent stated that, "The States have legitimate interests which the national government is bound to respect, even though its laws are supreme."

In his own dissenting opinion, Justice Rehnquist spoke of the principle from the *National League of Cities* case, which would, "in time again command the support of a majority of this Court."

As I said, Mr. Chairman, it is a special privilege and a keen honor to have before us a man who wholly adheres to those qualities identified by Senator McClellan. I urge my colleagues to give him their strongest support and to approve his nomination as the 16th Chief Justice of the United States. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. The able and distinguished Senator from Pennsylvania, Mr. Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. Justice Rehnquist, I join in welcoming you and your family to these proceedings.

I have observed your career since 1969, when our first contact occurred, when you were an Assistant Attorney General and I was a district attorney. You have had a very distinguished career.

The Constitution gives this committee, and the Senate, a heavy responsibility in the advice and consent function, and that responsibility is heavier when it is a Supreme Court Justice, and especially the Chief Justice, because the Supreme Court must be the final arbiter of the Constitution.

Now, I intend to listen very carefully and to evaluate these proceedings very closely. I think that the Senators who have spoken before me have outlined the factors to be considered.

I think the time now has come to hear from the witnesses, and to see what proceeds in this hearing room. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much. The able and distinguished Senator from Kentucky, Mr. McConnell.

**STATEMENT OF HON. MITCH McCONNELL, A U.S. SENATOR FROM
THE STATE OF KENTUCKY**

Senator McCONNELL. Thank you, Mr. Chairman. Being in the same Judiciary Committee hearing room with Justice Rehnquist gives me a sense of *déjà vu*. We have both been here before, going back to 1969, when I was an assistant to a Senator on this committee and you were Assistant Attorney General.

We were working on what some would argue were rather controversial Supreme Court nominations in those days, leading to an article that I published in a Kentucky law journal with which I believe Justice Rehnquist is familiar, in which I outlined my own views about what the appropriate criteria are for the Senate in advising and consenting to nominations for the Supreme Court.

Mr. Chairman, I would like to ask unanimous consent that that be included in the record at this point.

The CHAIRMAN. Without objection, so ordered.

[The document follows:]