apologize. They do tend to break one's concentration. But if we don't show up when those buzzers ring, it tends to break our longevity in the Senate.

The Senator from Massachusetts, Senator Kennedy.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. Good morning, Judge Souter. I don't know how you are enjoying it up until now, but it will get better later on. [Laughter.]

Today, the Senate begins one of the most important tasks entrusted to it under the Constitution: consideration of a nomination to the Supreme Court. In this remarkable time when democracy is spreading through Eastern Europe and Latin America, the Constitution stands more than ever as a timeless ideal for peoples throughout the world, a charter that protects the fundamental rights and liberties that are essential to human dignity. And it is more important than ever that we uphold these values in our own country.

The Constitution itself is silent on what standard the Senate should apply in weighing a Supreme Court nomination. The very notion of Senate confirmation of judicial nominees selected by the President was a last minute compromise reached by the Framers. Those who drafted the Constitution had originally proposed that the Senate alone select judicial nominees. The final compromise, which assigns shared responsibility to the President and the Senate, was adopted as one of the key checks and balances to assure that neither the President nor the Senate would have excessive influence over the Supreme Court and other Federal courts.

The true genius of the modern Constitution and Bill of Rights is also apparent in the establishment of an independent Federal judiciary, sworn to protect the fundamental rights and liberties of individuals against the excesses of government. The Supreme Court has the last word on the meaning of the Constitution, and its decisions have a profound impact on all our lives.

In the past half century, the Supreme Court has played a central role in the effort to make America a better and fairer land. The Court outlawed segregation in the schools, removed barriers to the right to vote, strengthened the basic rights of minorities, and took major steps to end the second-class status of women in our society.

In considering a Supreme Court nomination, the Senate must make two inquiries. The first is a threshold issue: Does the nominee have the intelligence, integrity, and temperament to meet the responsibilities of a Supreme Court Justice?

But that is not the only inquiry. The Senate must also determine whether the nominee possesses a clear commitment to the fundamental values at the core of our constitutional democracy.

In this second inquiry, the burden of proof rests with those who support a nomination. Our constitutional freedoms are the historic legacy of every American. They are too important, and the sacrifices made to protect those freedoms have been too great, to be entrusted to judges who lack this clear commitment. If a Senator is left with substantial doubts about a nominee's dedication to these

core values, our own constitutional responsibility requires us to oppose the nomination.

This is not to suggest any single-issue litmus test. Nominees should be judged on their overall approach to the Constitution. I have frequently supported nominees whose views on particular constitutional issues are very different from my own. But the Senate should not confirm a Supreme Court nomination unless we are persuaded that the nominee is committed to upholding the essential values at the heart of our constitutional tradition.

Recent developments at the Supreme Court have increased the importance of this inquiry by the Senate. Over the past few years, the Court has retreated from its historic role in protecting civil rights and civil liberties. In case after case, the Court has adopted narrow and restrictive interpretations of important civil rights laws. The Senate is entitled to ensure that nominees to the Nation's highest court share Congress' view that these laws must be interpreted generously, to provide effective remedies to eliminate unfair discrimination in all of its forms.

Judge Souter has a distinguished intellectual background, and he has spent the great majority of his legal career in public service. But aspects of his record on the bench and while serving in the New Hampshire attorney general's office raise troubling questions about the depth of his commitment to the indispensable role of the Supreme Court in protecting individual rights and liberties.

While on the New Hampshire Supreme Court, Judge Souter wrote a dissenting opinion arguing that the meaning of the State constitution should be confined to the specific intent of those who drafted it in the 18th century. Applied to the U.S. Constitution that view would have prevented the Supreme Court from outlawing school segregation in 1954. It would effectively stop the Court today from applying the Constitution to protect our fundamental rights from government intrusions not anticipated by the Framers two centuries ago. In this day and age our constitutional freedoms are too important to entrust to Justices who would turn back the clock on these basic issues.

While Judge Souter was serving in the New Hampshire Attorney General's office, he took a number of very troubling positions.

He argued that Congress does not have the constitutional authority to ban State literacy tests for voting, even though such tests place needless barriers on the exercise of the most important right in a democracy—the right to vote.

He argued that Congress did not have the constitutional authority to require employers to file reports with the Federal Equal Employment Opportunity Commission showing the overall racial composition of their work force—reports that are vitally important in investigating claims of discrimination.

He questioned the standard adopted by the Supreme Court to ban most forms of sex discrimination.

He referred to abortion as the "killing of unborn children" and opposed the repeal of an unconstitutional State abortion statute.

He defended the constitutionality of an order by the Governor of New Hampshire that flags on State buildings must be lowered to half-mast on Good Friday—an order enjoined by the courts because

it clearly violated the constitutional requirement of separation of church and state.

In a commencement speech, Judge Souter, stated that affirmative action programs are affirmative discrimination and suggested that the Government should not be involved in promoting such programs.

It is true that all but the last of these positions were taken by Judge Souter while serving in the New Hampshire Attorney General's Office in the course of defending actions taken by the State government, and the views that he expressed as the State's lawyer are not necessarily his own.

But these positions are troubling. There is little in his record that demonstrates real solicitude for the rights of those who are weakest and most powerless in our society, and who have historically had the most difficulty in obtaining these rights from the majorities that rule the legislatures in our democracy.

It is the responsibility of this committee to find out whether Judge Souter is committed to these rights and to the other basic values enshrined in the Constitution. It is these values that make America America and that determine the kind of country that we will be in the years ahead.

That is why these hearings on Judge Souter's nomination are so important and I look forward to his testimony.

The CHAIRMAN. Thank you, Senator.

The Senator from Utah, Senator Hatch.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

I would like to welcome you, Judge Souter, to our committee and I hope that your hearing goes well. Having met you, and having chatted with you and having looked at you for better than 3 years now, or about 2½ years, I want to tell you that I am very impressed with your impeccable educational and legal background, and also with your experience in both the executive and judicial branches of government, at least State government at that time.

We have already heard, and of course we are going to hear some more today about your distinguished legal career.

Judge Souter, incidentally, is the first Supreme Court Justice or nominee from New Hampshire in 145 years. This is rather surprising given New Hampshire's prominent role every 4 years in the first step in the judicial selection process—namely the selection of the President.

I might add that people across the political spectrum in New Hampshire have told me of their high regard for you as both a man and as a jurist. I share President Bush's view that a Supreme Court Justice should interpret the law and not legislate his or her own policy preferences from the bench. The role of the judicial branch is to enforce the provisions of the Constitution and the laws that we enact in Congress, among other things, as their meaning was originally intended by those who framed those laws. That does not necessarily mean that they cannot adjust to the needs of a modern society.