

where the President nominates, the Senate is called upon to confirm or not, and then a Justice takes the Court. When the Constitution was written, article I was meant for the Congress, article II for the executive branch, and article III for the Court. And I believe if the Constitution were to be rewritten today, article I would be for the Court.

The Court has taken the dominant authority under our system in deciding the tough questions, questions of competing authority between the President and the Congress, questions that may involve the Persian Gulf, the big issues of the day. So that when we look forward for the next several decades, perhaps four decades, and we know that the future will hold many 5-to-4 decisions, and Justice Brennan's successor may pass the key votes on matters of overwhelming national and international importance, we are very concerned. And it is an important task we have.

I think you come to this nomination with fine credentials, and part of the picture is filled out by your opinions. But there is a great deal more which we have to find out to make our determination as best we can whether you should be in the position to cast that critical vote for so many years on so many issues of tremendous importance.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

The distinguished Senator from Alabama, Senator Heflin.

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

Senator HEFLIN. Mr. Chairman, once again, our Nation stands at a crossroads, a constitutional crossroads, as the President nominates and the Senate, through its elected membership, must under our Constitution "advise and consent" on the nomination of Judge David Souter to the U.S. Supreme Court. Our task is important, for the future course of the constitutional jurisprudence of this Nation could rest upon the collective judgment of this Senate.

In the Supreme Court term ending this year, 1990, 38 out of a total of 129 written opinions were decided by a 5-to-4 vote. It is my belief that the American public deserves a Justice who evidences a clear commitment to basic constitutional values.

I ascribe wide latitude in our President's right to nominate who he chooses, especially with regard to a nominee's qualifications, integrity, and judicial temperament. These are all hallmarks of a good judge. I believe that all Presidents have endeavored to select nominees that meet these qualifications.

I further believe that Presidents have the right to nominate individuals that belong to the President's political party and that possess his political and philosophical views, even if they differ from the views of most of a Senate controlled by another party. However, our Founding Fathers felt that such a Presidential right to appoint judges should not be unlimited, and provided a check and balance by requiring a role for an element in the legislative branch. That check and balance is the Senate confirmation process.

Historically, the rejection of Presidential nominees has rarely been exercised. Usually, when it has been exercised, arguments for good cause have been made. Nevertheless, the confirmation process

is a constitutional mandate, and for good reason. Federal judges, once confirmed, are not subordinate to the President nor the U.S. Congress. They are members of a coequal branch of our Federal Government and hold their jobs for life, not subject to the political processes as we in the executive and legislative branches are.

Therefore, I also believe that the Senate, as an independent body, in exercising its constitutional mandate to advise and consent, must peel beneath the veneer of a nominee to try and better ascertain what role that person intends to play as an Associate Justice on the highest court in this great Nation.

Judge Souter, this committee will do a lot of peeling beneath your veneer, for you are, indeed, a stealth nominee. It is thought by many that little is known about your reasoning process, thinking, and predictability of how you would decide certain issues that are expected to come before the U.S. Supreme Court. While you left a paper trail in the 219 opinions you wrote as a member of the New Hampshire Supreme Court, there are few blips on the radar screen on the major issues that will face the Supreme Court of the United States in the upcoming crossroad years. So peel we must. But we must do this in a fair and impartial manner, and certainly not cause you to prejudge an issue or a case without benefit of briefs, arguments, and research on the issue of the case in point.

It is our constitutional role to probe, cautiously but firmly and fairly, any s nominee on his or her past actions as a public official; his or her general views on political, economic, or social issues facing our Nation; his or her views on how, as a judge, he or she might expect to approach the analysis of a case in general; and, finally, his or her judicial philosophy. To do less would be a dereliction of our responsibility to the American public and to the constitutional process by which the President is "advised."

I believe the majority of the American public supports the concept of judicial restraint—that is, judges who will interpret the U.S. Constitution, respect prior decisions, and give presumptions to the validity of laws passed by the Congress and State legislatures, so long as they do not violate the U.S. Constitution.

I believe the people of our Nation do not want to see a Justice appointed who will try to legislate from the bench. Nor does the public wish to see a judicial extremist of either the right or the left who would proceed to force his or her peculiar political ideology through opinions rendered by the highest court in the Nation. Extremism is a dangerous commodity, and we on this committee have a duty to the American people to guard against this in any such potential nominee.

Given these facts and acknowledging the critical nature of the task before us, Judge Souter, I welcome your appearance before our committee today and look forward to your comments through a dialog with the members of this committee.

Thank you.

The CHAIRMAN. Thank you, Senator.

We would ordinarily go to Senator Humphrey next, but he has indicated that he is going to waive his opening statement because he will be joining Judge Souter when we conclude our statements to introduce Judge Souter, along with his senior colleague, Senator Rudman.