

United States Senate
Committee on the Judiciary


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Statement of
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United States Senator
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Senator Biden's Opening Statement at the Confirmation Hearings for John G. Roberts, Jr. to become Chief Justice of the United States

Judge Roberts, welcome.

Judge, as you know, there is a genuine intellectual struggle going on in our country over whether our Constitution will continue to protect our privacy and continue to empower the federal government to protect the powerless.

For 70 years, there has been a consensus in our Supreme Court on these issues. And this consensus has been fully embraced by the American people.

But there are those who strongly disagree with this consensus – and they seek to unravel it. And, Judge, you have the unenviable position of being right in the middle of this fundamentally important debate.

And, quite frankly, we need to know on which side you stand. For whoever replaces Chief Justice Rehnquist, as well as Justice O'Connor, will play pivotal roles in this debate.

But for tens of millions of our people this is more than an academic debate.

For the position you take in this debate will affect their lives in very real and personal ways – for the next three decades. There is nothing they can do about it after this moment.

I believe in a Constitution – as our Supreme Court's first great Chief Justice, John Marshall, said in 1819 – and I quote "intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs."

At its core, the Constitution envisions ever increasing protections of human liberty and dignity for its citizens and a national government empowered to face unanticipated "crises."

Judge, herein lies the crux of the intellectual debate I referenced at the outset – whether we will have ever increasing protections for human liberty and dignity or whether those protections will be diminished.

In 1925, the Constitution preserved the rights of parents to determine how to educate their kids, striking down a law that required children to attend public schools. In 1965, the Constitution told the state to get out of a married couple's bedroom, by striking down a state law prohibiting married couples from using contraceptives. In 1967, the Constitution defended the right of a black woman to marry a white man. And in 1977, the Constitution stopped a city from making it a crime for a grandmother to live with her grandchildren.

And, fortunately, even when the Supreme Court, at first, took our Constitution away from the promise and hope of our Constitution's ennobling phrases; in the end, we have kept the faith.

In 1873, for example, the Court said states could forbid women from being lawyers. It took a hundred years to undo this terrible mistake. But the Court eventually got it right.

In 1896, the Supreme Court said "separate but equal" was lawful. It took 58 years for the Supreme Court to outlaw racial segregation, throwing that doctrine in the dustbin of history. But the Court ultimately got it right.

In the early 1900s, the Court rendered the federal government powerless to outlaw child labor and to protect workers. It took until 1937 for the Supreme Court to see the error in its ways. But the Court finally got it right.

At every step, we've had to struggle against those who saw the Constitution as frozen in time. But time and again, we have overcome, and the Constitution has remained relevant and dynamic thanks to a proper interpretation of the ennobling phrases purposefully placed in our great "civic Bible."

And once again – when it should be even more obvious we need increased protections for liberty – as we look around the world and see thousands persecuted for their faith, women unable to show their faces in public, and children maimed and killed for no other reason than which tribe they were born into.

And once again – when it should be obvious we need a more energetic national government to deal with the challenges of a new millennium – terrorism, the spread of weapons of mass destruction, pandemic disease, and religious intolerance.

Once again, our journey of progress is under attack from the Right.

There are judges, scholars, and opinion leaders – good and honorable people – who believe the Constitution provides no protection against government intrusions into our highly personal decisions – decisions about birth, marriage, family, death, and religion. There are those who would slash the power of our national government, fragmenting it among the states. Incredibly, some have even argued that the Constitution eliminates the federal government's ability to respond to disasters like Katrina.

Judge, I don't believe the Constitution these individuals long for could have led to the America our Founders envisioned. Like the Founders, I believe our Constitution is as big and as grand as this great nation.

Our constitutional journey did not stop with women barred from being lawyers, with 10-year-olds working in coal mines, or with black kids forced into different schools than white kids just because the Constitution nowhere mentions "sex discrimination," "child labor," or "segregated education."

Our constitutional journey did not stop then, and it must not stop now. For we will be faced with equally consequential decisions in the 21st Century: can microscopic tags be implanted in a person's body to track his every movement; can patents be issued for the creation of human life; can brain scans be used to determine whether a person is inclined toward criminal or violent behavior?

Judge, I need to know whether you will be a Justice who believes that the constitutional journey must continue to speak to these consequential decisions – or that we've gone far enough in protecting against government intrusion into the most personal decisions we make.

Judge, that's why this is a critical moment. Those elected officials on the Far Right, such as Mr. DeLay and others, have been unsuccessful at implementing their radical agenda in the elected branches – so they pour their energy and resources into trying to change the Court's view of the Constitution.

And now they have a once-in-a-lifetime opportunity – the filling of two Supreme Court vacancies, one of which is the Chief Justice's – the first time that's happened in 75 years.

Judge, I believe with every fiber of my being that their view of the Constitution and where the Country should be taken would be a disaster for our people.

Like most Americans, I believe the Constitution recognizes a general right to privacy.

I believe the rights of women must be nationally and vigorously protected.

I believe the federal government must act as a shield to protect the powerless against major economic interests.

I believe the federal government should stamp out discrimination – wherever it occurs.

And I believe the Constitution inspires and empowers us to achieve these goals.

Judge, if I looked only at what you've said and written in the past, I'd feel compelled to vote NO. You dismissed the Constitution's protection of privacy as a "so-called right," you derided agencies like the Securities and Exchange Commission that combat corporate misconduct as "constitutional anomalies," and you dismissed "gender discrimination" as merely a quote, "perceived

problem.”

This is your chance to explain what you meant by what you have said and what you have written.

The Constitution provides for one democratic moment before a lifetime of judicial independence, when we the people of the United States are entitled to know as much as we can about the person we are entrusting with safeguarding our future and the future of our children and grandchildren.

This is that moment. That’s what these hearings are about.

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