

The Effect on Future Nominations

Finally, I would like to say something about why the line I attempt to draw in this testimony is so critical right now. As I said earlier, we have had 101 Justices in 197 years. This comes to an appointment, on the average, every other year. We have, however, had only one appointment in the last nine years. Five of the current Justices were born between 1906 and 1908. It is not unreasonable to expect that there will be five additional Court seats to fall before this decade is through. Going further, the current President and the next three persons to be elected president can be expected nearly to rename the entire Court.

This speaks to the Senate's institutional role. No one now knows who the president will be four, eight, or 12 years from now. No one now knows which party will control the Senate at any of these times. Precedent established with the current nomination will be invoked when future presidents nominate future men and women to sit on the Supreme Court. It would be extremely unfortunate if that precedent revealed a Senate willing to use the confirmation process to reject a nominee because she refused to adopt a particular position on an emerging constitutional question. Adoption of such a senatorial role would seriously weaken the Court and, eventually, the nation.

Thank you very much.

The CHAIRMAN. Our next witness is Ms. Eleanor Smeal, representing the National Organization for Women.

Ms. Smeal, will you hold up your hand and be sworn?

Do you swear that the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. SMEAL. I do.

The CHAIRMAN. You may proceed, Ms. Smeal. Do you want to submit a statement for the record or do you want to speak off the cuff.

Ms. SMEAL. I want to submit a statement for the record.

The CHAIRMAN. All right. Without objection, that will be included. Then try not to duplicate it because there is no use, if your statement is printed, then we do not want what you say to duplicate that.

Ms. SMEAL. I will try not to duplicate it too much but—

The CHAIRMAN. If you want to summarize it—

**TESTIMONY OF ELEANOR CUTRI SMEAL, PRESIDENT,  
NATIONAL ORGANIZATION FOR WOMEN**

Ms. SMEAL [continuing]. Highlight it and summarize it, yes.

As president of the National Organization for Women, I am representing today the largest organization dedicated to the advancement of equal rights for women in the United States. On behalf of our membership I would like to urge this committee to confirm the nomination of Judge Sandra Day O'Connor.

This nomination, of course, is truly historic and is a major victory for women's rights. We believe it is both important symbolically

and important actually. We believe that the long fight for women's rights is why we are here today. When we, the National Organization for Women, joined in this fight just 15 years ago, women were totally tokens in law schools and in participation as lawyers in the courts.

We think that Judge O'Connor's performance and her qualifications are more outstanding when you consider how extraordinary they are for a woman of her time and for the pervasive discrimination in the judiciary, in the law practice, during her whole career.

I would like to call attention, and I do not think anybody else has, not only to her experience in the law but to the fact that she has been a homemaker. We believe that this experience as a homemaker and a community volunteer, which is not unique for a woman, will add a unique and vitally new perspective to the Supreme Court.

There has been much made of her legislative record vis-a-vis social issues. We believe that her record indicates a commitment to equal justice under the law, and we believe that her record of sensitivity to women's rights issues is important. We have studied this record and we believe that it shows accomplishments in her concern for women over her total career.

We do not contend that the National Organization for Women agrees with all of the legal and political views of Judge O'Connor. As a matter of fact, we know that our own State organization, Arizona NOW, did oppose Judge O'Connor in some of her positions in her career as a Senator. However, we do not think that total agreement is necessary and we believe that there has been overall a commitment and an understanding of discrimination.

In fact, we think that it would be preposterous if she did not have such an understanding of discrimination because, as the first woman appointment, she will have a unique burden before the Supreme Court. The first black appointment, we would expect, would have been—and is, as a matter of fact—sensitive to discrimination against blacks. We think there should be no less expectation for the first woman appointment.

We believe, on the basis not only of an understanding of her record but upon interviewing many, many people who have worked with her throughout her lengthy career, that she indeed understands discrimination and that she is sensitive to the whole progress of women and minorities under the law.

By the way, we join in the other statements by professional women's organizations and the legal associations representing women. In fact, we also salute Judge O'Connor for her work through these organizations to eliminate sex discrimination. She has been a charter member of the National Association of Women Judges, the Arizona Women Lawyers, and Charter 100, which is a business and professional women's network group. Such groups work to the advancement of women in the professions.

We believe that Judge O'Connor's appointment is extremely important for the advancement of women, and in establishing the principle that there is no such thing as a "woman's place." We know that the opponents to Judge Sandra Day O'Connor say that they are for women's rights and the advancement of women but we warn that they are not. They have opposed women's rights almost

at every significant turn, and we are not surprised by their opposition to Judge O'Connor.

In fact, we think that their questioning of her family values on one limited issue shows their own myopic views of the family. We firmly believe that the first woman Justice before the Supreme Court must by definition not be a traditional woman. However, we do believe that it is in the finest traditions of equality and justice for all.

Therefore, for all these reasons we urge her appointment. We would like to further urge that this committee look at the other 65 vacancies on the Federal district and appellate courts which to date, of the 46 individuals that have been named or confirmed, only 2 are females. We hope that Judge O'Connor is not to be tokenized but is one of many females, for equal justice under the law demands full representation of females in the Court.

Thank you.

The CHAIRMAN. Thank you for your appearance.

[Material follows:]