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OPENING STATEMENT FOR SANDRA O'CONNOR NOMINATION
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ARTICLE II, SECTION 2 OF THE CONSTITUTION STATES THAT THE PRESIDENT "SHALL NOMINATE, AND BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT . . . JUDGES OF THE SUPREME COURT." ACCORDINGLY, WE SHARE WITH THE PRESIDENT THE VITAL CONSTITUTIONAL FUNCTION OF SHAPING THE FUTURE OF AMERICAN JURISPRUDENCE.

WE WOULD PROFIT BY RECALLING THE REASONS THE FRAMERS OF THE CONSTITUTION SPLIT THE NOMINATION PROCESS FOR SUPREME COURT JUDGES BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES. THE FRAMERS UNDERSTOOD THE IMPORTANCE OF THE SUPREME COURT TO THE NEW REPUBLIC. WHEN MOVING TO ELIMINATE INFERIOR FEDERAL COURTS FROM THE CONSTITUTIONAL PLAN, DELEGATE JOHN RUTLEDGE FROM SOUTH CAROLINA STATED THAT:

> /T/HE RIGHT OF APPEAL TO THE SUPREME NATIONAL TRIBUNAL /WILL/ BE SUFFICIENT TO SECURE THE NATIONAL RIGHTS AND UNIFORMITY OF JUDGMENTS. (J FARRAND 129)

THROUGHOUT THE SUBSEQUENT DEBATE IN WHICH INFERIOR COURTS WERE EXCLUDED BY VOTE AND THEN RESTORED BY A COMPROMISE THAT ALLOWED CONGRESS TO ESTABLISH THEM, THE DELEGATES REPEATEDLY AFFIRMED THEIR CONFIDENCE IN THE SUPREME COURT'S ABILITY TO PROTECT CONSTITUTIONAL RIGHTS AND SUSTAIN LAWS AND POLICIES DECREED BY CONGRESS.

THE FRAMERS, HOWEVER, KNEW THAT WORDS OF LAW COULD BE SLIPPERY. THEY HAD EXPERIENCED SUCH INDIGNITIES AT THE HANDS OF THE KING'S MAGISTRATES. RECOGNIZING THAT THE INTEGRITY OF THE CONSTITUTION'S WORDS WERE AT STAKE, THEREFORE, THEY WOULD NOT LEAVE THE FORMATION OF THE SUPREME COURT TO ONE MAN. IF ENFORCEMENT OF THE CONSTITUTION WERE TO BE COMMITTED TO THE HANDS OF THE JUSTICES, THE FRAMERS WANTED

TO BE SURE, IN THE WORDS OF ALEXANDER HAMILTON, THAT THEY DESIGNED "THE PLAN BEST CALCULATED . . . TO PROMOTE A JUDICIOUS CHOICE OF MEN (INCIDENTALLY, I THINK ALEXANDER WOULD EXTEND HIS LANGUAGE TO INCLUDE WOMEN IN THIS INSTANCE.) FOR FILLING THE OFFICES OF THE UNION." IN SHORT, THIS PLAN WOULD PROVIDE A DOUBLE CHECK ON NOMINATIONS TO INSURE THAT THE CONSTITUTION AND SUCH WORDS AS "DUE PROCESS" OR "EQUAL PROTECTION" MEAN WHAT THE AUTHORS INTENDED NOT SIMPLY WHAT FIVE APPOINTEES MIGHT CUMULATIVELY CONCOCT. HAMILTON CONTINUED TO STATE WHY ONE MAN COULD NOT BE GIVEN THIS VITAL TASK:

> /ADVICE AND CONSENT/ WOULD BE AN EXCELLENT CHECK UPON A SPIRIT OF FAVORITISM IN THE PRESIDENT, AND WOULD TEND GREATLY TO PREVENT THE APPOINTMENT OF UNFIT CHARACTERS FROM STATE PREJUDICE, FROM FAMILY CONNECTION, FROM PERSONAL CONNECTION, OR FROM A VIEW TO POPULARITY. AND, IN ADDITION TO THIS, IT WOULD BE AN EFFICACIOUS SOURCE OF STABILITY IN THE ADMINISTRATION. (FEDERALIST #76)

THUS THE FRAMERS UNDERSTOOD THE PIVOTAL ROLE OF THE NATION'S HIGHEST JUDICIAL FORUM AND SPECIFICALLY PROVIDED A TWO-STEP SELECTION PROCESS FOR ITS JUDGES.

WE HAVE ALL HEARD THE ENTHUSIASTIC BOAST OF FORMER CHIEF JUSTICE CHARLES EVANS HUGHES THAT "WE ARE UNDER A CONSTITUTION, BUT THE CONSTITUTION IS WHAT THE JUDGES SAY IT IS." THIS IS THE UNINHIBITED SPIRIT THE FRAMERS MEANT TO CHECK BY INVOLVING THE SENATE IN THE SELECTION OF JUDGES. THE FRAMERS OF THE CONSTITUTION FORESAW THAT THE SUPREME COURT WOULD HAVE EXTENSIVE AUTHORITY TO INSURE THAT THEIR DOCUMENT WOULD BE PROPERLY ENFORCED. PRECISELY FOR THIS REASON, THEY OBLIGATED THE SENATE TO PROTECT THE CONSTITUTION IN THE NOMINATION PROCESS.

THIS PLACES UPON US A GRAVE RESPONSIBILITY. THIS RESPONSIBILITY WITH REGARD TO JUDGE SANDRA O'CONNOR IS ONE THAT I PERSONALLY AM DELIGHTED TO PARTICIPATE IN, NOT ONLY BECAUSE OF ITS IMPLICATIONS FOR THE INTERPRETATION OF THE CONSTITUTION, BUT BECAUSE I FEEL THAT JUDGE O'CONNOR'S SENSE OF CONSTITUTIONAL JUSTICE WILL BE WORTHY OF THE TRUST PLACED IN THE SUPREME COURT BY THE FOUNDING FATHERS. AS WE EMBARK UPON THIS INVESTIGATION, HOWEVER, I WOULD LIKE TO REMIND MY COLLEAGUES AND MYSELF THAT THE STAKES ARE HIGH. WE ARE DECIDING TODAY THE FUTURE OF OUR MOST SACRED DOCUMENT.