Court that our Founding Fathers envisioned.

While some seem bound and determined to inject politics into the Court and have applied intense pressure to secure his assistance in that effort, Judge Roberts has stood by his commitment to the rule of law, and that is what a judge should do.

This speaks highly of his integrity, but again his integrity is not in question. No one had brought forth any evidence to suggest that he is not a person of high moral character. In fact, many of the Members who say they will vote against his confirmation say that he appears to be a very fine fellow—smart, witty, thoughtful. So where are they going and what are they attempting to dredge up? His judicial demeanor is also not in question.

The overwhelming assessment of Judge Roberts' performance before the Senate Committee on the Judiciary is that he did an outstanding job. He remained calm, thoughtful, impartial, and unshaken. In a word, he was judicial.

I said during my tenure on that committee and during confirmation processes, while I may agree or disagree, what I was looking for was the character of the individual, the judicial demeanor: How would he or she perform on the court? Would they bring integrity to the court in those kinds of rulings to which they would be subjecting their mind and their talent?

Some believe that all documents related to Judge Roberts during his service as Deputy Solicitor General should be disclosed even though this would violate attorney-client and deliberate process privileges. He will not infringe upon past employers' rights and privileges. He knows this would discourage consultation and new ideas and reduce the effectiveness of the Office of Solicitor General. This is a man who truly exemplifies integrity. Although he is criticized for not releasing some documents, it is his integrity that will not allow that to happen. If it were not unethical to disclose these documents, I am sure the judge would release them. In fact, those that would not infringe upon his integrity have been released.

We have reviewed some 76,000 pages of documents, including documents for more than 95 percent of the cases he worked on in the Solicitor General's Office. Our access has been restricted to a mere 16 out of 327 cases. Finding Judge Roberts unfit to be Chief Justice on the grounds of undisclosed privileged internal deliberations is not only unfair, I believe it is illegal and, at any test, it is ludicrous.

Judge Roberts' competence is not being called into question, not in any sense by any Senator. It would be very difficult to find a better candidate anywhere to serve as Chief Justice. He seems to have done extremely well in whatever he has undertaken. Graduating summa cum laude says that this man is bright. Managing editor of the Harvard Law Review—that only comes to the top of the class. Later, he clerked for Judge Friendly of the U.S. court of appeals in Manhattan and for Supreme Court Justice William Rehnquist. He has tried 39 cases before the Supreme Court, both as a private litigant and as a Government litigant while serving as the Deputy Solicitor General. Judge Roberts now serves, as I mentioned, on the U.S. Court of Appeals for the DC Circuit.

His credentials are impeccable. This man deserves a unanimous vote, as he received 20 months ago. But that will not be the case today because some have chosen to inject politics into this process. Thank goodness Judge Roberts has stood unwaveringly not allowing that to happen when it comes to himself. His integrity is not in question. That is why he was nominated by the President of the United States to serve as the Chief Justice of our highest Court.

He deserves my vote. He will get my vote. He deserves the vote of every Senator serving in the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

SENATOR BILL FRIST

Mr. MCCONNELL. Mr. President, I first met BILL FRIST 11 years ago when he was a world-renown heart transplant surgeon from the neighboring State of Tennessee. He was considering a career change to public service in the Senate. Then, as now, I believe he was one of the most gifted, hard-working, and honest people I had ever met. He is a bit of a rarity in this town. He has more talent and less ego than almost anyone I can think of.

There has been this question raised about the sale of some stock. Of course, a bit lost in this dustup is the simple fact that the Senate Ethics Committee preapproved the sale. However, this is Washington, and sometimes even honest actions are questioned.

I have absolutely no doubt that the facts will demonstrate that Senator FRIST acted in the most professional and the most ethical manner, as he has throughout his distinguished medical and Senate career.

Senator FRIST has been clear that he welcomes the opportunity to meet with the appropriate authorities and put this situation in its proper context as a completely—a completely—appropriate transaction.

Furthermore, Senator FRIST has my full and unconditional support. He is a great majority leader. I find myself agreeing with my good friend from Nevada, the Democratic leader, HARRY REID, who said he knew Senator FRIST would not do anything wrong. Senator REID has it right.

Finally, I think there are few settled facts in this contentious capital of ours, but there is one fact of which I am completely certain: BILL FRIST is a decent, honest, hard-working man who puts public service before private gain.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ISAKSON). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, we have had several people on the Senate floor this morning speaking of the Roberts nomination. I understand that we have several Senators on this side of the aisle who are going to speak in a few minutes, and I will yield the floor when they arrive.

I hope the American people will listen to this discussion. The outcome is sort of foreordained because we know the number of people who are going to vote for Judge Roberts, as am I. The reason it is important to hear all the different voices is that we are a nation of 280 million Americans. But for the Chief Justice of the United States, only 101 people have a say in who is going to be there and, of course, they are the President, first and foremost, with the nomination, and the 100 men and women in this Senate.

We have to stand in the shoes of all 280 million Americans. Can we be absolutely sure in our vote of exactly who the Chief Justice might be as a person, somebody who will probably serve long after most of us are gone, certainly long after the President is gone and actually long after several Presidents will be gone? No. We have to make our best judgment. I have announced how I am going to vote. With me, it is a matter of conscience.

I see the distinguished Senator from Colorado. I know he wishes to speak, and I will be speaking later about this issue. I will yield the floor to the distinguished Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. SALAZAR. Mr. President, I thank my wonderful friend from Vermont for his great leadership in the Senate Judiciary Committee, along with Senator SPECTER.

I rise today concerning the nomination of Judge John Roberts to be Chief Justice of the U.S. Supreme Court. I have interviewed and recommended the appointment of many men and women who serve as State and Federal judges in my home State of Colorado. I am no stranger to analyzing the record of a candidate for the judiciary. I am no stranger to evaluating the character and temperament of people to serve in these positions. Yet I know this confirmation vote is special. It is one of the most significant votes that I will cast during my tenure as a Senator. I know this vote is likely to endure the rest of my life and the lives of those who serve in this Chamber.

The decisions of the Supreme Court significantly affect the everyday lives of the people in my State and all the people who live throughout our great Nation. The Chief Justice is first

among equals among the nine Justices who make these decisions. The Chief Justice's ability to run the Court's conferences and to assign opinions gives the Chief Justice important influence on the directions taken by the Court. The Chief Justice molds and defines the cohesiveness of the Court in the sense that he or she can lead efforts to reduce separate and complicated opinions and to make the opinions of the Court clear and understandable to all. This is an especially important influence to reduce confusion in the law.

Finally, the Chief Justice sits at the very pinnacle of our Federal judicial branch. The Chief Justice leads the judges and the rest of the 21,000 employees of the Federal court system. The Chief Justice is responsible for making sure the Federal courts run effectively and efficiently. The administrative responsibilities of the Chief Justice are important for another reason. The Chief Justice can lead the judicial branch to become a place of inclusion, a place where women are as welcome as men, and where people work together who are black, brown, yellow, white, and every other color of human skin.

The Chief Justice can make the judicial branch a shining example of diversity and inclusiveness. This is not an abstraction. When people of any background come to the Court they should be looking in the mirror. The faces of the Court should be the same as the faces of those who come before the Court. In my view, this is an essential aspect of justice.

I commend the Senate Judiciary Committee for its fair, serious, and dignified hearings on the Roberts nomination. Chairman SPECTER, Ranking Member LEAHY, and all members of the committee have earned our gratitude. They have performed a very valuable service for our country. These Senators gave us a wonderful example worthy of repetition in the Senate of how the Senate should operate in the interest of our Nation. They did their work with courtesy, civility, and in the spirit of the parties working together in good faith to discuss their differing views. Our Nation is better for their efforts.

I also want to take a minute to thank Democratic Leader REID. I have been surprised and taken aback by the attacks on him from some people in this debate. To read the musings of Washington insiders, Senator REID is somehow guilty of not uniting Democrats, and at the same time not being too beholden to Democratic interest groups. As is the usual case in the debates in Washington, the truth can be found elsewhere.

Senator REID made very clear to this Senator and to the entire caucus that this is a vote of conscience. To suggest otherwise is unfair and dishonest. Our leader, a man of unshakable faith and conviction, helped ensure that this Senate lived up to its constitutional obligation of advice and consent.

I want to speak briefly about the history of America and our Constitution concerning equality under the law and the key role of the U.S. Supreme Court. The history of equal protection is a reminder of the most painful and at the same time the most promising moments of our Supreme Court and our Nation. We must not forget that history and its lessons, for to do so would undo our progress as a nation.

In retracing our history, the inevitable conclusion is that we have made major progress over four centuries. That history includes 250 years of slavery in this country, 100 years of legal segregation of the races, and the struggle in the new and recent times to achieve another age and celebrate the age of diversity.

We must look back at that history so that we do not forget its painful lessons. We must never forget that for the first 250 years of this country, after the European settlers reached the shores of Mexico and New England, the relationship between groups was characterized by slavery and the subjugation of one group for the benefit of another.

In Mexico and in the Southwest, the Spanish enslaved Native Americans. In the East and the South, the Americans brought Blacks from Africa and treated them as property. In the Dred Scott decision in 1857, the U.S. Supreme Court, in a terrible moment for our Nation, reasoned that Blacks were inferior to Whites and therefore the system of slavery was somehow justified.

At that point, the U.S. Supreme Court was endorsing the untenable proposition that one person could own another person as property simply because of their race. But the march toward freedom and equality would not be stopped by the U.S. Supreme Court in the Dred Scott decision.

The Civil War ensued. Let us never forget that the Civil War became the bloodiest war in American history, with over 500,000 Americans killed in battle. In the end, the 13th, 14th and 15th amendments to the U.S. Constitution ended the system of slavery and ushered in a new era of equal protection under the laws. Yet even with the end of slavery and the civil rights amendments to the Constitution, equal protection under the laws for the next 100 years would still require the segregation of the races.

The law of the land in many States and cities required the separation of the races in schools, theaters, restaurants, and public accommodations. It was not until 1954 that the U.S. Supreme Court marked the end of legal segregation by the Government in its historic decision of Brown v. Topeka Board of Education.

In that decision, Chief Justice Warren, writing for a unanimous Supreme Court, stated that in the field of public education the doctrine of separate but equal has no place. The Brown decision marked an historic milestone for the U.S. Supreme Court and our Nation about the relationships between groups.

Over the next decade, the U.S. Supreme Court struck down laws that required segregation on golf courses, parks, theaters, swimming pools, and numerous other facilities. These changes were met with intense controversy, marked by marches, protests, riots, and assassinations. Because of the leadership of Dr. Martin Luther King, Presidents Kennedy and Johnson, Robert Kennedy, and thousands of civil rights activists, Congress ushered in the sweeping civil rights reforms of the 1960s.

We, as an American society, began to understand that the doctrine of separate but equal truly had no place in America and that the age of diversity truly was upon us. But the age of diversity has been marked by significant and continuing tension. A part of that debate was put to rest only recently with the majority opinion authored by Justice Sandra Day O'Connor in the University of Michigan Law School case.

There, Justice O'Connor said:

> Today, we hold that the Law School has a compelling interest in attaining a diverse student body.

Justice O'Connor continued:

> The Law School's claim of a compelling interest is further bolstered by its amici, who point to the educational benefits that flow from student body diversity.

She explained further:

> These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints.

What is more, high-ranking retired officers and civilian leaders of the U.S. military assert that, and she quotes:

> [B]ased on [their] decades of experience, a highly qualified, racially diverse officer corps . . . is essential to the military's ability to fulfill its principal mission to provide national security.

She continued:

> . . . To fulfill its mission, the military must be selective in admissions for training and education for the officer corps, and it must train and educate a highly qualified, racially diverse officer corps in a racially diverse setting.
>
> We agree that [i]t requires only a small step from this analysis to conclude that our country's other most selective institutions must remain both diverse and selective.

I believe Justice Sandra Day O'Connor was a beacon of wisdom at this moment in our Nation's history. We know we have had beacons of wisdom in our past to help guide us in our future. I am hopeful that Judge Roberts will be that kind of Chief Justice.

In 1896, Justice Harlan was a beacon of wisdom when he dissented in Plessy v. Ferguson against his colleagues on the U.S. Supreme Court when they decided to sanction the right to segregation under the law. Then Justice Harlan stated in his dissent:

> The destinies of the races, in this country, are indissolubly linked together and the interests of both require that the common government law shall not permit the seeds of

race hate to be planted under the sanction of law.

I do not know exactly how judge Roberts will provide us with that beacon of wisdom for the 21st century, but the doctrine of inclusion is somehow at the heart of the answer, and I expect and implore Judge Roberts to follow that doctrine.

That doctrine means that we should be inclusive of all, and that doctrine means that there is something wrong when we look around and we see no diversity in the people who surround us, and that doctrine means that the motto on our American coins, ''E Pluribus Unum,'' can only be achieved if we include all those who make the many of us into one nation.

My criteria for the confirmation of judges remain the same as they have been. I reviewed Judge Roberts' record for fairness, impartiality, and a proven record for upholding the law. I have given this difficult decision the careful deliberation it deserves. I have reviewed his writings. I have read his cases. I have reviewed his testimony to the Judiciary Committee. I have met twice with Judge Roberts, the second time last Friday, asking him pointed and specific questions to gauge the measure of the man.

I am grateful for his courtesy and appreciative of his time. I concluded that a vote to confirm Judge Roberts as the next Chief Justice of the U.S. Supreme Court is the appropriate vote to cast. Judge Roberts' intellect is unquestioned. His technical legal skills are unquestioned. He is a lawyer that other lawyers respect, those who have worked with him as well as those who have worked against him.

Judge Roberts has convinced me that he understands the constitutional need for judicial independence. He believes in the bedrock principle that decisions of the Supreme Court must be carefully based upon the facts of the case and the law. He believes that all cases must be decided on their specific merits by a judge with an open and fair mind. These concepts lie at the heart of our judicial system. They differentiate the courts from other institutions of government. They are critical to our freedom.

I am favorably impressed by Judge Roberts' statement to do his best to heal the gaping fractures in the opinions of the Supreme Court in recent years. When the Court issues three or five or nine opinions in a single case, it is a recipe for confusion and uncertainty for judges, lawyers, and litigants. This is bad for the law.

I believe Judge Roberts has a clear understanding of the jolts to the system that disrupt the country when the Court overturns settled law, and he is equally understanding and determined to avoid these jolts. I lived through that type of difficult and expensive disruption as Colorado attorney general, when the Supreme Court changed long-settled expectations about sentencing by judges in criminal cases. The criminal justice system in Colorado and across the Nation was thrown into turmoil. It still has not recovered.

I believe Judge Roberts has an understanding of the Supreme Court's role to guide the lower courts, lawyers, and litigants, with clear and understandable direction. I have been particularly interested in Judge Roberts' views on diversity and inclusion of all people, women as well as men, in our country. I have lived my life by the bedrock principle that people of all backgrounds and both genders should be included in all aspects of our society. This is very important to me. So I have asked Judge Roberts directly and personally about his commitment to diversity and inclusiveness in our country. He has assured me of his commitment to this principle.

Finally, Judge Roberts passes a simple test that I will apply to judicial candidates for as long as I am a Senator. I do not believe he is an ideologue. He is not the kind of judge—like some—for whom anyone can predict the outcome of a case before the case is briefed and argued. The ideologue's approach to the law makes a mockery of judicial independence, and it is the opposite of being openminded and fair.

In conclusion, I have reached my decision to vote for Judge Roberts based upon his word that, first, he will stand up and fight for an independent judiciary and defend the judiciary from unwarranted attacks on its independence; second, he will not roll back the clock of progress for civil rights and recognizes that the equal protection provided under the Constitution extends to all Americans, including women and racial and ethnic minorities; third, he will respect the rule of law and the precedents of the U.S. Supreme Court, including the most important decisions of the last century; fourth, he understands the importance of the freedom of religion and religious pluralism as a cornerstone of a free America; and five, he will work to create a Federal judicial system that embraces diversity and has a face that reflects the diverse population of America.

I will vote to confirm Judge Roberts to be the Chief Justice of the United States. I wish Judge Roberts the very best as he assumes his new responsibilities on behalf of our Nation.

I yield the floor to my wonderful and good friend from the State of Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I thank my friend from Colorado for his very thoughtful and eloquent statement.

I rise to speak on the President's nomination of John Roberts of Maryland to be Chief Justice of the U.S. Supreme Court. During my 17 years as a Member of the Senate, I have had the opportunity on four previous occasions to consider nominees to the Supreme Court—two from the first President Bush and two from President Clinton. On three of those occasions—Justices Souter, Ginsburg and Breyer—I carried out my constitutional responsibility by giving not only advice but consent. On the fourth, Justice Thomas, I withheld my consent.

I must say that on each of those preceding four occasions, I was struck, as I am again now in considering President Bush's nomination of John Roberts, by the wisdom of the Founders and Framers of our Constitution and by the perplexing position they put the Senate in when we consider a nominee to the U.S. Supreme Court.

As we know, our Founders declared their independence and formed their new government to secure the inalienable rights and freedoms which they believed are the endowment of our Creator to every person. But from their knowledge of history and humanity, and from their own experiences with the English monarch, they saw that governments had a historic tendency to stifle, not secure, the rights and freedoms of their citizens. So in constructing their new government, they allocated power and then they limited it, time and time again. Theirs was to be a government of checks and balances, except for one institution which is, generally speaking, unchecked and unlimited, and that is the Supreme Court.

I understand that Congress can reenact a statute that has been struck down by the Court as inconsistent with the Constitution, but I also know that the Court can then nullify the new statute. I understand, too, that the people may amend the Constitution to overturn a Supreme Court decision with which they disagree, but that is difficult and cumbersome and therefore rare in American history. So the Supreme Court almost always has the last word in our Government. It can be, and has been, a momentous last word, with great consequences for our national and personal lives.

Why then, in constituting the Supreme Court, did our Nation's Founders vary from their system of limited government, of checks and balances? I believe one reason is that they were wise enough to know that to be orderly, to function, a system must have a final credible point where disputation and uncertainty end and from which the work of society and government proceeds. But there was a larger reason, I am convinced, consistent with their highest value, and that was their understanding, again from their knowledge of history and humanity, that freedom can just as easily be taken by a mob of citizens as it can by a tyrannical leader. So they created a Supreme Court that was to be insulated from the political passions of the moment and that would base its decisions not only on transitory public opinion but on the eternal values of our founding documents—the Declaration, the Constitution, the Bill of Rights—and the rule of law.

They did this, these Founders and Framers, not just by giving the Court

such enormous power but also by giving its individual members life tenure. The President nominates Justices, the Senate advises and decides whether to consent, and then the Justice who is confirmed serves for as long as he or she lives or chooses to serve, absent the unusual possibly of impeachment, of course; limited in that service only by the Justice's own conscience, intellect, sense of right and wrong, understanding of what the Constitution and law demand, and by the capacity of the litigants who appear before the Court and by the Justice's own colleagues on the Court to convince him or her.

This gets to why I have described the Senate's responsibility to act on nominations to the Supreme Court as perplexing. It is our one and only chance to evaluate and influence the nominees, and then they are untouchable and politically unaccountable. But the Senate is a political body. We are elected by and accountable to the people. So naturally during the confirmation process we try to extract from the nominees to this Court, on this last chance that we have, commitments, political commitments that they will uphold the decisions of the Court with which we agree and overrule those with which we disagree; and they naturally try to avoid making such commitments.

We are both right. Because the Supreme Court has such power over our lives and liberties, we Senators are right to ask such questions. But because the Court is intended to be the nonpolitical branch of our Government, the branch before which litigants must come with confidence that the Justices' minds are open, not closed by rigid ideology or political declaration, the nominees to the Court are ultimately right to resist answering such questions in great detail. I understand that I am describing an ideal which has not always been reached by individual Justices on the Court. But on the other hand, the history of the Supreme Court is full of examples of Justices who have issued surprisingly different opinions than expected, or even than expressed before they joined the Court; and also of Justices who have changed their opinions over the years of their service on the Court. That is their right, and I would add the responsibility the Constitution gives to Justices of our Supreme Court.

Our pending decision on President Bush's nomination of John Roberts to the Supreme Court is made more difficult because it comes at an excessively partisan time in our political history. That makes it even more important that we stretch to decide it correctly and without partisan calculations, whichever side we come down on. Judge Roberts, after all, has been nominated to be Chief Justice of the highest Court of the greatest country in the world, and our decision on whether to confirm him should be a decision made above partisanship.

Today in these partisan times, it is worth remembering that seven of the nine sitting Justices were confirmed by overwhelmingly bipartisan votes in the Senate. Justices O'Connor by 99, Stevens and Scalia by 98, Kennedy by 97, Ginsburg by 96, Souter by 90, and Breyer 89. So it was not always as it is now, and it is now hard to imagine a nominee who would receive so much bipartisan support. That is wrong and it is regrettable.

One reason for this sad turn, is that our recent Presidential campaigns have unfortunately made the Supreme Court into a partisan political issue, contrary to the intention of the Founders of our country as I have described it, with candidates in each party promising to nominate only Justices who would uphold or overrule particular prevailing Supreme Court decisions. I know that is not the first time in our history this has happened.

But it nonetheless today undercuts the credibility and independence of the Supreme Court, and I might add it complicates this confirmation process. Because President Bush promised in his campaign that he would nominate Supreme Court Justices in the mold of Justices Scalia and Thomas, an extra burden of proof was placed on Judge Roberts to prove his openness of mind and independence of judgment.

All of that is one reason why earlier this year I was proud to be one of the ''group of 14'' Senators. I view the agreement of that group of 14 as an important step away from partisan politicizing of the Supreme Court. By opposing the so-called nuclear option, we were saying—7 Republicans and 7 Democrats—that a nominee for a lifetime appointment to the Supreme Court should be close enough to the bipartisan mainstream of judicial thinking to obtain the support of at least 60 of the 100 Members of the Senate. That is not asking very much for this high office.

When I was asked during the deliberation of the group of 14 to describe the kind of Justice I thought would pass that kind of test, I remember saying it would be one who would not come to the Supreme Court with a prefixed ideological agenda but would approach each case with an open mind, committed to applying the Constitution and the rule of law to reach the most just result in a particular case. I remember also saying the agreement of the group of 14 could be read as a bipartisan appeal to President Bush which might be phrased in these words:

> Mr. President, you won the 2004 election and with it came to the right to fill vacancies on the Supreme Court. We assume you will nominate a conservative but we appeal to you not to send us an extreme conservative who will confront the court and the country with a disruptive, divisive, predetermined ideological agenda. Send us an able, honorable nominee, Mr. President, who will take each case as it comes, listen fully to all sides, and try to do right thing.

Based on the hours of testimony Judge Roberts gave to the Judiciary Committee under oath, the lengthy personal conversation I had with him, a review of his extraordinary legal and judicial ability and experience, and the off-the- record comments of people who have known or worked with Judge Roberts at different times of his life, and volunteered them to me, and uniformly testified to his personal integrity and decency, I conclude that John Roberts meets and passes the tests I have described. I will, therefore, consent to his nomination.

In his opening statement to the Judiciary Committee on September 13, Judge Roberts said:

> I have no platform.
>
> Judges are not politicians who can promise to do certain things in exchange for votes. If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will be open to the considered views of my colleagues on the bench. And I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability.

I could not have asked for a more reassuring statement.

During the hearings, some of our colleagues on the Judiciary Committee challenged Judge Roberts to reconcile that excellent pledge with memos or briefs he wrote during the 1980s or early 1990s, or opinions he wrote on the Circuit Court in more recent years. They were right to do so. I thought Judge Roberts' answers brought reassurance, if not total peace of mind. But then again, I have no constitutional right to total peace of mind as a Senator advising and deciding whether to consent on a Justice of the Supreme Court.

From his statements going back more than 20 years, I was troubled by, and in some cases strongly disagreed with, opinions or work he had been involved in on fundamental questions of racial and gender equality, the right of privacy, and the commerce clause. But in each of these areas of jurisprudence, his testimony was reassuring.

On questions of civil rights, Judge Roberts told the Judiciary Committee of his respect for the Civil Rights Act and the Voting Rights Act, as precedents of the Court, and he said they ''were not constitutionally suspect.''

He added that he ''certainly agreed that the Voting Rights Act should be extended.''

When asked by Senator KENNEDY whether he agreed with Justice O'Connor's statement in upholding an affirmative action program that it was important to give ''great weight to the real world impact of affirmative action policies in universities,'' Judge Roberts answered, ''You do need to look at the real world impact in these areas and in other areas as well.'' He also told Senator DURBIN that he believed the Reagan administration had taken the ''incorrect position'' on Bob Jones University.

I have said, and I say again, that I found those answers to be reassuring.

With regard to the right of privacy, Judge Roberts gave a lengthy and informed statement: ''The right of privacy is protected under the Constitution in various ways.''

He said:

It's protected by the Fourth Amendment which provides that the right of people to be secure in their persons, houses, effects, and papers is protected.

It's protected under the First Amendment dealing with prohibition on establishment of a religion and guarantee of free exercise.

It protects privacy in matters of conscience.

These are all quotes from Judge Roberts, and I continue:

It was protected by the framers in areas that were of particular concern to them—: The Third Amendment protecting their homes against the quartering of troops.

And in addition the Court—has recognized that personal privacy is a component of the liberty protected by the due process clause.

The Court has explained that the liberty protected is not limited to freedom from physical restraint and that it's protected not simply procedurally, but as a substantive matter as well.

And those decisions have sketched out, over a period of years, certain aspects of privacy that are protected as part of the liberty in the due process clause of the Constitution.

I thought that was a learned embrace of the constitutional right of privacy, particularly when combined with Judge Roberts' consistent support of the principle of stare decisis, respect for the past decisions and precedents of the Court in the interest of stability in our judicial system and in our society.

Regarding Roe v. Wade, Judge Roberts specifically said, ''That is a precedent entitled to respect under the principles of stare decisis like any other precedent of the Court.''

When asked by Senator FEINSTEIN to explain further when, under stare decisis, a Court precedent should be revisited, Judge Roberts said:

Well, I do think you do have to look at those criteria. And the ones that I pull from these various cases are, first of all, the basic principle that it's not enough that you think that the decision was wrongly decided. That's not enough to justify revisiting it. Otherwise there would be no role for precedent, and no role for stare decisis. Second of all, one basis for reconsidering the issue of workability (And) . . . the issue of settled expectations, the Court has explained you look at the extent to which people have conformed their conduct to the rule and have developed settled expectations in connection with it.

Again, specifically with regard to Roe v. Wade, I found those answers reassuring.

One of Judge Roberts' circuit court opinions on the commerce clause gave rise to fears that he would constrict Congress's authority to legislate under that important clause. But in his consistent expressions of deference to the work of Congress and his several references to the Supreme Court's recent decision in Gonzales v. Raich, Judge Roberts was once more reassuring.

So I will vote to confirm John Roberts and send him off to the nonpolitical world of the Supreme Court with high hopes, encouraged by these words of promise he spoke to the Judiciary Committee at the end of his opening statement to that committee as follows:

If I am confirmed, I will be vigilant to protect the independence and integrity of the Supreme Court, and I will work to ensure that it upholds the rule of law and safeguards those liberties that make this land one of endless possibilities for all Americans.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Thank you, Mr. President.

Mr. President, along with a vote to authorize war, the vote on the nomination of a Supreme Court Justice, especially a Chief Justice, is one of the most important votes that Senators ever cast. Because the Supreme Court is the guardian of our most cherished rights and liberties, the vote on any Supreme Court nominee has enormous significance for the everyday lives of all Americans.

Supporting or opposing a Supreme Court nominee is not—and should not be—a partisan issue. Indeed, in my time in the United States Senate, I have voted to confirm nearly twice as many Republican nominees to the high Court as Democratic nominees. To be sure, there are also some nominees that I have opposed. But that opposition was not based on the political party of the President who nominated them, but on the record—or lack of record—of the testimony and writings of each individual nominee. In hindsight, there are some votes—either for or against—that I wish I had cast differently, but each vote reflected my best, considered judgment at the time, based on the information and record before me. That is what the Constitution calls us to do as Senators.

Yet some of our friends on the other side of the aisle have tried to portray a vote against John Roberts as a reflexive, partisan vote against any nominee by President Bush. Still others have made the sweeping statement that any Senator who can't vote for Roberts can't vote for any nominee of a Republican President. These broad statements are patently wrong and suggest partisan posturing that does serious injustice to the most serious business of giving a lifetime appointment to a Justice on the highest Court in the land.

With full appreciation and awareness of the Senate's solemn obligation to give advice and consent to this all-important Supreme Court nomination by President Bush, I have read the record, asked questions, re-read the record, and asked even more questions. But after reviewing the record such as it is, I am unable to support the nomination of John Roberts to be the Chief Justice of the United States Supreme Court.

Our Founders proclaimed the bedrock principle that we are all created equal. But everyone knows that in the early days of our Republic, the reality was far different. For more than two centuries, we have struggled, sometimes spilling precious blood, to fulfill that unique American promise. The beliefs and sacrifices of millions of Americans throughout the history of our Nation have breathed fuller life and given real world relevance to our constitutional ideals.

With genius and foresight, our founders gave us the tools—the Constitution and the Bill of Rights—that have aided and encouraged our march towards progress. The guarantees in our founding documents, as enhanced in the wake of a divisive Civil War, have guided our Nation to live up to the promise of liberty, equality and justice for all.

We have made much progress. But our work is not finished. We still look to our elected representatives and our independent courts in each new generation to uphold those guiding principles, to continue the great march of progress, and never to turn back or give up hard-won gains.

The commitment to this march of progress was the central issue in the John Roberts hearing. We asked whether he, as Chief Justice, would bring the values, ideals and vision to lead us on the path of continued equality, fairness, and opportunity for all. Or would he stand in the way of progress by viewing the issues that come before the Court in a narrow and legalistic way, thereby slowly turning back the clock and eroding the civil rights and equal rights gains of the past.

We examined the only written record before us and saw John Roberts, aggressive activist in the Reagan Administration, eager to narrow hard-won rights and liberties, especially voting rights, women's rights, civil rights, and disability rights. As Congressman John Lewis eloquently stated in our hearings, 25 years ago John Roberts was on the wrong side of the nation's struggle to achieve genuine equality of opportunity for all Americans. And, despite many invitations to do so, Judge Roberts never distanced himself from the aggressively narrow views of that young lawyer in the Reagan administration.

Who is John Roberts today? Who will he be as the 17th Chief Justice of the United States?

John Roberts is a highly intelligent nominee. He has argued 39 cases before the Supreme Court, and won more than half of them. He is adept at turning questions on their head while giving seemingly appropriate answers. These skills served him well as a Supreme Court advocate. These same skills, however, did not contribute to a productive confirmation process. At the end of the 4 days of hearings, we still know very little more than we knew when we started.

John Roberts said that ''the responsibility of the judicial branch is to decide particular cases that are presented to them in this area according to the rule of law.''

Of course, everyone agrees with that. Each of us took an oath of office to

protect and defend the Constitution, and we take that oath seriously. But the rule of law does not exist in a vacuum. Constitutional values and ideals inform all legal decisions. But John Roberts never shared with us his own constitutional values and ideals.

He said that a judge should be like an umpire, calling the balls and strikes, but not making the rules.

But we all know that with any umpire, the call may depend on your point of view. An instant replay from another angle can show a very different result. Umpires follow the rules of the game. But in critical cases, it may well depend on where they are standing when they make the call.

The same is true with judges.

As Justice Oliver Wendell Holmes famously stated: The life of the law has not been logic; it has been experience.'' He also said that legal decisions are not like mathematics. If they were, we wouldn't need men and women of reason and intellect to sit on the bench—we would simply input the facts and the law into some computer program and wait for a mechanical result.

We all believe in the rule of law. But that is just the beginning of the conversation when it comes to the meaning of the Constitution. Everyone follows the same text. But the meaning of the text is often imprecise. You must examine the intent of the Framers, the history, and the current reality. And this examination will lead to very different outcomes depending on each Justice's constitutional world view. Is it a full and generous view of our rights and liberties and of government power to protect the people or a narrow and cramped view of those rights and liberties and the government's power to protect ordinary Americans?

Based on the record available, there is insufficient evidence to conclude that Judge Roberts view of the rule of law would include as paramount the protection of basic rights. The values and perspectives displayed over and over again in his record cast doubt on his view of voting rights, women's rights, civil rights, and disability rights.

In fact, for all the hoopla and razzle-dazzle in four days of hearings, there is precious little in the record to suggest that a Chief Justice John Roberts would espouse anything less that the narrow and cramped view that staff attorney John Roberts so strongly advocated in the 1980s.

On the first day of the hearing, Senator KOHL asked, ''Which of those positions were you supportive of, or are you still supportive of, and which would you disavow?'' Judge Roberts never gave a clear response.

Other than his grudging concession during the hearing that he knows of no present challenge that would make section 2 of the Voting Rights Act ''constitutionally suspect''—a concession that took almost 20 minutes of my questioning to elicit—John Roberts has a demonstrated record of strong opposition to section 2, which is almost universally considered to be the most powerful and effective civil rights law ever enacted. Section 2 outlaws voting practices that deny or dilute the right to vote based on race, national origin, or language minority status—and is largely uncontroversial today.

But in 1981 and 1982, Judge Roberts urged the administration to oppose a bi-partisan amendment to strengthen section 2, and to have, instead, a provision that made it more difficult some say impossible to prove discriminatory voting practices and procedures. Although Judge Roberts sought to characterize his opposition to the so-called ''effects test'' as simply following the policy of the Reagan administration, the dozens of memos he wrote on this subject show that he personally believed the administration was right to oppose the ''effects test.''

When Roberts worried that the Senate might reject his position, he urged the Attorney General to send a letter to the Senate opposing the amendment, stating, ''My own view is that something must be done to educate the Senators. . . .''

He also urged the Attorney General to assert his leadership against the amendment strengthening section 2. He wrote that the Attorney General should ''head off any retrenchment efforts'' by the White House staff who were inclined to support the effects test. He consistently urged the administration to require voters to bear the heavy burden of proving discriminatory intent—even on laws passed a century earlier—in order to overturn practices that locked them out of the electoral process.

Judge Roberts wrote at the time that ''violations of section 2 should not be made too easy to prove. . . .'' Remember, when he wrote those words there had been no African-Americans elected to Congress since Reconstruction from seven of the States with the largest black populations.

The year after section 2 was signed into law, Judge Roberts wrote in a memorandum to the White House Counsel that ''we were burned'' by the Voting Rights Act legislation.

Given his clear record of hostility to this key voting rights protection, the public has a right to know if he still holds these views. But Judge Roberts gave us hardly a clue.

Even when Senator FEINGOLD asked whether Judge Roberts would acknowledge today that he had been wrong to oppose the effects test, he refused to give a yes-or-no answer.

Judge Roberts responded: ''I'm certainly not an expert in the area and haven't followed and have no way of evaluating the relative effectiveness of the law as amended or the law as it was prior to 1982.''

So we still don't know whether he supports the basic law against voting practices that result in denying voting rights because of race, national origin, or language minority status.

You don't need to be a voting rights expert to say we're better off today in an America where persons of color can be elected to Congress from any State in the country. You don't need to be a voting rights expert to know there was a problem in 1982, when no African American had been elected to Congress since Reconstruction from Mississippi, Florida, Alabama, North Carolina, South Carolina, Virginia, or Louisiana—where African Americans were almost a third of the population—because restrictive election systems effectively denied African Americans and other minorities the equal chance to elect representatives of their choice.

You don't need to be a voting rights expert to say it's better that the Voting Rights Act paved the way for over 9,000 African American elected officials and over 6,000 Latino elected officials who have been elected and appointed nationwide since the passage of that act.

And you don't need to be an expert to recognize that section 2 has benefited Native Americans, Asians and others who historically encountered harsh barriers to full political participation.

Yet Judge Roberts refused in the hearings to say that his past opposition to section 2 doesn't represent his current views.

Judge Roberts also refused to disavow his past record of opposition to requiring non-discrimination by recipients of federal funds. These laws were adopted because, as President Kennedy said in 1963, ''[s]imple justice requires that public funds, to which all taxpayers . . . contribute, not be spent in any fashion which . . . subsidizes, or results in . . . discrimination.''

He supported a cramped and narrow view that would exempt many formerly covered institutions from following civil rights laws that protect women, minorities and the disabled. Under that view, the enormous subsidies the Federal government gives colleges and universities in the form of Federal financial aid would not have been enough to require them to obey the laws against discrimination. That position was so extreme that it was rejected by the Reagan administration and later by the Supreme Court. Although Judge Roberts later acknowledged that the Reagan administration rejected this view, he would not tell the committee whether he still holds that view today.

He also never stated whether he personally agrees with the decision in Franklin v. Gwinnett, where the Supreme Court unanimously rejected his argument that title IX, the landmark law against gender discrimination, provided no monetary relief to a schoolgirl who was sexually abused by her schoolteacher.

A careful reading of the transcript of his testimony makes clear that he never embraced the Supreme Court's decision to uphold affirmative action at the University of Michigan Law School, nor did he expressly agree with the Supreme Court decision that all

children—including those who are undocumented—have a legal right to public education. He emphasized his agreement with certain rationales used by the court in those cases, but he left himself a lot of wiggle room for future reconsideration of those 5–4 decisions.

Finally, a number of my colleagues on the committee asked Judge Roberts about issues related to women's rights and a woman's right to privacy. On these important matters, too, he never gave answers that shed light on his current views.

No one is entitled to become Chief Justice of the United States. The confirmation of nominees to our courts—by and with the advice and consent of the Senate—should not require a leap of faith. Nominees must earn their confirmation by providing us and the American people with full knowledge of the values and convictions they will bring to decisions that may profoundly affect our progress as a nation toward the ideal of equality.

Judge Roberts has not done so. His repeated reference to the rule of law reveals little about the values he would bring to the job of Chief Justice of the United States. The record we have puts at serious risk the progress we have made toward our common American vision of equal opportunity for all of our citizens.

There is clear and convincing evidence that John Roberts is the wrong choice for Chief Justice. I oppose the nomination. I urge my colleagues to do the same.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURR). Without objection, it is so ordered.

Mr. ALEXANDER. Mr. President, my constituents have been asking me, ''Who will President Bush nominate for the second Supreme Court vacancy?'' The question reminds me of a story about a punter from California who went all the way to the University of Alabama to play for Coach Bear Bryant. Day after day, this punter would kick it more than 70 yards in practice. Day after day, Coach Bear Bryant watched the punter kick it 70 yards and said nothing. Finally the young kicker came over to the coach and said: Coach, I came all the way from California to Alabama to be coached by you. I have been out here kicking for a week, and you haven't said a word to me.

Coach Bryant looked at him and said: Son, when you start kicking it less than 70 yards, I will come over there and remind you what you were doing when you kicked it more than 70 yards.

That is the way I feel about President Bush and the next Supreme Court nominee. My only suggestion for him would be respectfully to suggest that he try to remember what he was thinking when he appointed John Roberts and to do it again. Especially for those of us who have been trained in and who have respect for the legal profession, it has been a pleasure to watch the Roberts nomination and confirmation process. It is difficult to overstate how good he seems to be. He has the resume that most talented law students only dream of: editor of the Harvard Law Review and a law clerk to Judge Henry Friendly.

I was a law clerk to Judge John Minor Wisdom in New Orleans, who regarded Henry Friendly as one of the two or three best Federal appellate judges of the last century. In fact, we law clerks used to sit around and think about ideal Federal panels on which three judges would sit. Sometimes Judge Wisdom and Judge Friendly would sit on the same panel, and we tried to think of a third judge. There was a judge named Allgood. We thought if we could get a panel of judges named Wisdom, Friendly, and Allgood, we would have the ideal panel.

So Judge Roberts learned from Judge Friendly. Then he was law clerk to the Chief Justice of the United States. Add to that his time in the Solicitor General's Office, where only the best of the best lawyers are invited to serve; then his success as an advocate before the Supreme Court both in private and in public practice. Then what is especially appealing is his demeanor, his modesty both in philosophy and in person, something that is not always so evident in a person of superior intelligence and such great accomplishment. Then there are the stories we heard during the confirmation process of private kindnesses to colleagues with whom he worked.

Judge Roberts' testimony before the Senate Judiciary Committee demonstrated all those qualities, as well as qualities of good humor and intelligence, and an impressive command of the body of law that Supreme Court Justices must consider. Those televised episodes, which I took time to watch a number of, could be the basis for many law school classes or many civics classes. Judge Roberts brings, as he repeatedly assured Senators on the committee, no agenda to the Supreme Court. He understands that he did not write the Constitution but that he is to interpret it, that he does not make laws—Congress does that—but that he is to apply them. He demonstrates that he understands the Federal system. It is not too much to say that for a devotee of the law, watching John Roberts in those hearings was like having the privilege of watching Michael Jordan play basketball at the University of North Carolina in the early 1980s or watching Chet Atkins as a sessions guitarist in the 1950s in Nashville.

One doesn't have to be a great student of the law to recognize there is unusual talent here.

If Judge Roberts' professional qualifications and temperament are so universally acclaimed, why do we now hear so much talk of changing the rules and voting only for those Justices who we can be assured are ''on our side''? That would be the wrong direction for the Senate to go. In the first place, history teaches us that those who try to predict how Supreme Court nominees will decide cases are almost always wrong. Felix Frankfurter surprised Franklin Roosevelt. Hugo Black surprised the South. David Souter surprised almost everybody. In the second place, courts were never intended to be set up as political bodies that could be relied upon to be predictably on one side or the other of a controversy. That is what Congress is for. That is why we go through elections. That is why we are here. Courts are set up to do just the opposite, to hear the facts and apply the law and the Constitution in controversial matters. Who will have confidence in a system of justice that is deliberately rigged to be on one side or the other despite what the facts and the law are?

Finally, failing to give broad approval to an obviously well-qualified nominee such as Judge Roberts—just because he is ''not on your side''—reduces the prestige of the Supreme Court. It jeopardizes its independence. It makes it less effective as it seeks to perform its indispensable role in our constitutional republic.

For these three reasons, Republican and Democratic Senators, after full hearings and discussion, have traditionally given well-qualified nominees for Supreme Court Justice an overwhelming vote of approval. I am not talking about the ancient past. I am talking about the members of today's Supreme Court, none of whom are better qualified than Judge Roberts. For example, Justice Breyer was confirmed by a vote of 87 to 9 in a Congress composed of 57 Democrats and 43 Republicans. Justice Ginsburg was confirmed by a vote of 96 to 3 in the same Congress. Justice Souter was confirmed by a vote of 90 to 9 in a Congress composed of 55 Democrats and 45 Republicans. Justice Kennedy was confirmed by a vote of 97 to 0 in a Congress composed of 55 Democrats, 45 Republicans. Justice Scalia, no shrinking violet, was confirmed by a vote of 98 to 0 in a Congress composed of 47 Democrats as well as 53 Republicans. Justice O'Connor was confirmed by a vote of 99 to 0 in a Congress composed of 46 Democrats and 53 Republicans. And Justice Stevens was confirmed by a vote of 98 to 0 in a Congress composed of 61 Democrats and 37 Republicans. The only close vote, of those justices on this Court, was for the nomination of Justice Thomas, following certain questions of alleged misconduct by the nominee. Thomas was confirmed by a vote of 52 to 48. However, even in that vote, 11 Democrats crossed the aisle to support the nominee.

If almost all Republican Senators can vote for Justice Ginsburg, a former counsel for the American Civil Liberties Union, and a nominee who also

declined, as Judge Roberts occasionally did, to answer questions so as not to jeopardize the independence of the Court on cases that might come before her. If every single Democratic Senator could vote for Justice Scalia, then why cannot virtually every Senator in this Chamber vote to confirm John Roberts?

I was Governor for 8 years in Tennessee. I appointed about 50 judges. I looked for the qualities that Judge Roberts has so amply demonstrated: intelligence, good character, respect for the law, restraint, and respect for those who might come before the court. I did not ask one of my nominees how he or she might vote on abortion or on immigration or on taxation. I appointed the first woman circuit judge, as well as men. I appointed the first African-American chancellor and the first African-American State supreme court justice. I appointed some Democrats as well as Republicans. That process, looking back, has served our State well. It helped to build respect for the independence and fairness of our judiciary.

I hope that we Senators will try to do the same as we consider this nomination for the Supreme Court of the United States. It is unlikely in our lifetime that we will see a nominee for the Supreme Court whose professional accomplishments, demeanor, and intelligence is superior to that of John Roberts. If that is so, then I would hope that my colleagues on both sides of the aisle will do what they did for all but one member of the current Supreme Court and most of the previous Justices in our history and vote to confirm him by an overwhelming majority.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENERGY

Mr. NELSON of Florida. Mr. President, I am going to vote for Judge Roberts as Chief Justice. I will be making a lengthy statement later on in the day as there is time allowed, since the time allocated right now under the previous order is very limited.

However, I did want to take this opportunity to say, with the fresh memories of Katrina and now Rita, I think it is incumbent upon us to finally get our collective heads as Americans out of the sand and face up to the fact that we are dependent on foreign energy sources, and that since we cannot drill our way out of the problem because the development of those resources of oil would take years and years to complete, one of the great natural resources of this country is coal.

Of course, that does not affect my State of Florida; we have 300 years of reserves of coal, and we now have the technology to cook this coal with highly intense heat in what is known as a coal gasification project. It burns off the gas, and that is a clean-burning gas.

It would be my hope that this country will start getting serious about weaning ourselves from dependence on foreign oil by using our technology to address this problem.

So that is what I wanted to share with my colleagues, since there were a couple of minutes under the previous order, and then I will be making my statement about Judge Roberts later in the day.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. I ask unanimous consent that the time be extended until the end of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, I rise in support of the nomination of John G. Roberts to be Chief Justice of the United States. By his nomination of Judge Roberts to be Chief Justice, President Bush has not only fulfilled his constitutional responsibility but he has demonstrated sound judgment and great wisdom by this nomination.

In bipartisan fashion, our colleagues on the Judiciary Committee have similarly demonstrated such judgment and wisdom in recommending that we consent to that nomination. I urge my colleagues to follow the committee's recommendation.

Judge Roberts is an able jurist, a decent man, and he should be the next Chief Justice of the Supreme Court of the United States. Both by his professional career and his answers to questions during the committee's consideration of his nomination, Judge Roberts has demonstrated his unwavering fidelity to the Constitution and commitment to the rule of law.

''The rule of law'' is a phrase often used in public discourse. It trips easily off the tongue. Too often, it seems, we recite it with a banality that comes with the assumption that it is self-evident and self-executing. It is neither.

Jefferson wisely taught that eternal vigilance is the price of liberty. So, too, the rule of law requires both vigilance and continuous oversight.

Far beyond fulfilling the constitutional responsibilities of this body, the confirmation process involving Judge Roberts has served as an essential reminder of the constitutional role of judges and the judiciary under our Republican form of government. At a time when too many of those in the judicial branch have sought to use their lifetime-tenured position to advance their own personal ideological or political preferences in deciding matters which come before them, at a time when too many within the legal, media, and political elites have sought to recast the role of the judiciary into a superlegislature, approving of and even urging judges to supplant their views for those of the elected representatives of the American people, Judge Roberts has served to remind us that such actions and such views are anticonstitutional and contrary to the rule of law itself.

The American people have listened to Judge Roberts in this regard. They like what they have heard because it rings true with what we all learned but some have forgotten, from high school civics class and what we profess in doctrines of separation of powers among the branches of our Federal Government.

Let me repeat some of what Judge Roberts has said:

> Judges and Justices are servants of the law, not the other way around.
>
> Judges are not to legislate, they're not to execute the laws.
>
> Judges need to appreciate that the legitimacy of their action is confined to interpreting the law and not making it.
>
> Judges are not individuals promoting their own particular views, but they are supposed to be doing their best to interpret the law, to interpret the Constitution, according to the rule of law, not their own preferences, not their own personal beliefs.

These are simple but profound statements. They go to the heart of our constitutional system and what we mean by the rule of law.

As Chief Justice of the United States, John Roberts will not only serve as the Chief Justice of the Supreme Court but he will also serve as the leader of the entire Federal judiciary, setting the standards, showing the way, and speaking for an entire branch of our Federal Government. Every judge in our Federal system and every person who aspires to join its ranks at some future date should hear and receive Judge Roberts' words and seek to follow them with fidelity. A lot is riding on their willingness to do so.

Judicial independence is another phrase bantered about of late by judges and others who feel threatened by legitimate congressional oversight of the judiciary. Judicial independence does not exist to shield judges from congressional and public scrutiny from improper judicial actions. Judicial independence does not shield judges from the inquiry of impeachment and removal from office for lawless actions on the bench. Federal judges, appointed for life, subject to removal only upon impeachment, are afforded this extraordinary power precisely to permit them to follow the law, even when following the law may be politically unpopular.

Describing his own fidelity to the Constitution and to the rule of law, Judge Roberts told the Judiciary Committee:

> As a judge I have no agenda. I have a guide in the Constitution and the laws and the precedents of the Court, and those are what I would apply with an open mind, after fully and fairly considering the arguments and assessing the considered views of my colleagues on the bench.

We should confirm Judge Roberts not merely because he said that; we should