

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 President, I ask unanimous consent that the order for the quorum call be rescinded.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

confirm him because he has lived it. We can ask no more of our judges but we must ask no less. Let this be the standard we apply to this nominee and to future nominees, both to the Supreme Court and to lower courts.

I urge my colleagues to confirm the President's nomination of Judge John G. Roberts as Chief Justice of the United States.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:38 p.m., recessed until 2:20 p.m. and reassembled when called to order by the Presiding Officer (Mr. CHAMBLISS).

EXECUTIVE SESSION

NOMINATION OF JOHN G. ROBERTS, JR., TO BE CHIEF JUSTICE OF THE UNITED STATES—Continued

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, what is pending before the Senate?

The PRESIDING OFFICER. Under the previous order, the time from 2:15 to 2:45 p.m. will be under the control of the majority. We are on the Roberts nomination.

Mr. SESSIONS. Mr. President, I appreciate the opportunity to share some thoughts on this important matter and I probably will speak again before this final vote occurs.

Mr. President, this is an important process. What we are doing here is more important than the average confirmation, in my view. What has been going on for virtually the entire time I have been in the Senate, going on 8 years, and certainly in the last 5 years, has been a rigorous and vigorous debate over the role of courts in American life. The American people have become very concerned that those we appoint and confirm to the Federal judiciary and have been given a lifetime appointment, as a result of that are unaccountable to the American people; that they are not, therefore, any longer a part of the democratic process and can only be removed from office on causes relating to an impeachment or their own resignation or death.

This has raised concerns because these lifetime-appointed, unaccountable officials of our Government have set about to carry out political agendas. There is no other way to say it. I hate to be negative about our courts because I believe in our courts. The courts I practiced before, the Federal courts in Alabama, are faithful to the law. If a Democratic judge or Republican judge, a liberal or conservative, is faithful to the law, I do not see a problem. Overwhelmingly, in the courts of America today, justice is done.

But we have a growing tendency among the members of our Supreme Court. Many of them have been there for many years. It strikes me that perhaps they have lost some discipline. They have forgotten they were appointed and not anointed. As my good friend said—a former judge, now deceased, Judge Thomas, in the Southern District of Alabama: Remember, you were appointed, not anointed.

I think they have forgotten that. I believe they have begun to think it is important for them and the courts to settle disputed social issues in the country; that they are somehow an elite group of guardians of the public health and that they should protect us from ourselves on occasion.

We have seen that. We have seen a series of opinions that, as a lawyer, I believe cannot be justified as being consistent with the words or any fair interpretation of the words of the Constitution of the United States. That is what a judge is sworn to uphold.

These issues are important, as I said, because if this is true, and if judges are going beyond what they have been empowered to do, and they are twisting or redefining or massaging the words of the Constitution to justify them in an unjustified act of imposing a personal view on America, then that is a serious problem indeed, and I am afraid that is what we have.

They say it is good. The law schools, some of them, these professors, believe judges should be strong and vigorous and active and should expand the law and that the Constitution is living. So, therefore "living" means, I suppose, you can make it say what you want it to say this very moment.

But Professor Van Alstyne at Duke once said to a judicial conference I attended many years ago: If you love this Constitution, if you really love it, if you respect it, you will enforce it—"it"—as it is written. When judges don't do that they therefore do not respect the Constitution. In fact, they create a situation in which a future court may be less bound by that great document. It can erode our great liberties in ways we cannot possibly imagine today.

The name of Justice Ginsburg sometimes came up at Judge Roberts hearings because of her liberal positions on a number of issues before she went on the bench. Yet she was confirmed overwhelmingly. An argument was made therefore Judge Roberts, who has mainstream views, ought to be confirmed. She just recently made a speech to the New York Bar Association. She said she was not happy being the only female Justice on the Court but she stated:

Any woman will not do. There are some women who might be appointed who would not advance human rights or women's rights.

What about other groups' rights? Do you need to advance all those other rights, too? And what is a right?

Then she dealt with the question of foreign law being cited by the Supreme

Court of the United States. We have had a spate of judges, sometimes in opinions and sometimes in speeches, making comments that suggest their interpretation of the law was influenced by what foreign people have done in other countries. She said:

I will take enlightenment wherever I can get it. I don't want to stop at the national boundary.

Then she noted that she had a list of qualified female nominees, but the President hadn't consulted with her—and I would hope not, frankly.

Why are we concerned about citing foreign law? We are concerned because this is an element of activism. Our historic liberties are threatened when we turn to foreign law for answers.

This is a bad philosophy and a bad tendency because we are not bound by the European Union. We didn't adopt whatever constitution or laws or documents they have in the European Union. What does our Constitution say?

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Not some other one. Not one you would like, not the way you might like to have had it written, but this one. That is the one that we passed. That is the one the people have ratified. That is the one the people have amended. And that is the one a judge takes an oath to enforce whether he or she likes it or not.

You tell me how an opinion out of Europe or Canada or any other place in the world has any real ability to help interpret a Constitution, a provision of which may have been adopted 200 years ago.

I submit not.

You see, we have to call on our judges to be faithful to that. I do not want, I do not desire, and the President of the United States has said repeatedly that he does not want, he does not desire that a judge promote his political or social agenda. That is what we fight out in this room right here, right amongst all of us. We battle it out, and I am answerable to the people in my State, the State of Alabama. That is who I answer to, and each one of us answers to the people in our states; and the President answers to all the people of the United States. That is where the political decisions are made, and we leave legal decisions in the court.

My time to speak is limited. I will close with this: We have never had a judge come before this Senate, in my opinion, who has in any way come close to expressing so beautifully and so richly and so intelligently the proper role of a court. Judge Roberts used a common phrase: You should be a neutral umpire. Certainly he should be that. Absolutely that is a good phrase.

A judge should be modest. He should decide the facts and the law before the