

personal view on a legal issue in a memo written over a decade ago, I think we and the American people have the right to know if he still holds that view today.

Mr. Chairman, if confirmed to the Supreme Court, Judge Alito is likely to have a profound impact on the lives of Americans for decades to come. That is a fact. It is clear, Mr. Chairman, from how you have planned these hearings, that you recognize that.

Thank you for your efforts to ensure a full and fair evaluation of this nominee, and I not only look forward to the questioning, but I want to note that I have caused the recess to occur 3 minutes and 40 seconds earlier than it normally would have.

[Laughter.]

Chairman SPECTER. Thank you, Senator Feingold, for your brevity.

We will now take a 15-minute recess until 2:15.

[Recess from 2 p.m. to 2:15 p.m.]

Chairman SPECTER. It is 2:15. We will resume these hearings. Next up on opening statement is Senator Graham.

Senator GRAHAM. Shall I wait or go ahead, Mr. Chairman?

[Pause.]

Chairman SPECTER. Senator Graham, you may begin.

**STATEMENT OF HON. LINDSEY O. GRAHAM, A U.S. SENATOR
FROM THE STATE OF SOUTH CAROLINA**

Senator GRAHAM. Thank you, Mr. Chairman, and welcome back, Judge. I would hate for you to miss my opening statement, a loss for the ages.

Welcome to the Committee. Welcome to one of the most important events in your life. You have got the people that mean the most here with you today, your family, and I know they are proud of you, and I am certainly proud of what you have been able to accomplish.

To say the least, you come to the Senate in interesting political times. There is going to be a lot of talk by the Senators of this Committee about concepts that are important to Americans, but what I worry the most about is your time, believe it or not, will come and go. You will not be here forever. It may seem that way, but I think you are going to be just fine.

I don't know what kind of vote you are going to get, but you will make it through. It is possible you could talk me out of voting for you, but I doubt it. So I won't even try to challenge you along those lines. I feel very comfortable with you being on the Supreme Court based on what I know, and the hearings will be helpful to all of us to find out some issues that are important to us.

We had a talk recently about Executive power. That is very important to me. In time of war, I want the executive branch to have the tools to protect me, my family and my country. But also I believe even during a time of war, the rule of law applies.

I have got some problems with using a force resolution to the point that future Presidents may not be able to get a force resolution from Congress if you interpret it too broadly. And we will talk about those things and we will talk more about it.

I am going to talk a little bit about some of the points my colleagues have been making. Everybody knows you are a conserv-

ative. The question is are you a mainstream conservative. Well, the question I have for my colleagues is who would you ask to find out. Would you ask Senator Kennedy? Probably not. If you asked me who a mainstream liberal is, I would be your worst person to pick because I don't hang out over there.

I suspect that most all of us, if not all of us, will vote for you, and I would argue that we represent from the center line to the right ditch in our party and if all of us vote for you, you have got to be pretty mainstream. So the answer to the question, are you a mainstream conservative, will soon be know.

If every Republican member of the Judiciary Committee votes for you and you are not mainstream, that means we are not mainstream. And it is a word that means what you want it to mean. Advise and consent means what? Whatever you want it to mean. Advise and consent means the process has got to work to the advantage of people I like, and with people I don't want on the Court, it is a different process. That is politics.

Every Senator will have to live within themselves as to what they would like to see happen for the judiciary. My main concern here is not about you. It is about us. What are we going to be doing as a body to the judiciary when it is all said and done?

Roe v. Wade and abortion. If I wanted to work for Ronald Reagan, one of the things I would tell the Reagan administration is I think *Roe v. Wade* was wrongly decided. They are likely to hire me because they were trying to prove to the Court that the Court took away from elected officials a very important right, protecting the unborn.

I was on a news program with Senator Feinstein this weekend, who is a terrific person. She made a very emotional, compelling argument that she can remember back-alley abortions and women committing suicide when abortion was illegal. I understand that is very seared in her memory banks and that is important to her.

Well, let me tell you there is another side to that story. There are millions of Americans, a bunch of them in South Carolina, who are heartsick that millions of unborn children have been sent to certain death because of what judges have done. It is a two-sided argument. It is an emotional event in our society.

They are talking about filibustering maybe if you don't give the right answer. Well, what could possibly be the right answer about *Roe v. Wade*? If you acknowledge it is a precedent of the Court, well, then you would be right. If you refuse to listen to someone who is trying to change the way it is applied or to overturn it and you will say here I will never listen to them, you might talk me out of voting for you. I don't think any American should lose the right to challenge any precedent that the Supreme Court has issued because the judge wanted to get on the Court.

And you may be a great fan of *Roe v. Wade* and you think it should be there forever. There may be a case where someone disagrees with that line of reasoning. What I want from the judge is the understanding that precedent matters, but the facts, the brief and the law is what you are going to base your decision on as to whether or not that precedent stands, not some bargain to get on the Court, because I can tell you if that ever becomes a reason to filibuster, there are plenty of people that I personally know, if it

became fashionable to stand on the floor of the Senate to stop a nominee on the issue of abortion, who feel so deeply, so honestly held belief that an abortion is certain death for an unborn child that they would stand on their feet forever.

And is that what we want? Is that where we are going as a Nation? Are we going to take one case and one issue and if we don't get the answer we like that represents our political view on that issue, are we going to bring the judiciary to their knees? Are we going to say as a body it doesn't matter how smart you are, how many cases you have decided, how many things you have done in your life as a lawyer, forget about it, it all comes down to this one issue?

If we do, if we go down that road, there will be no going back, and good men and women will be deterred from coming before this body to serve their Nation as a judge at the highest levels. What we are saying and what we are doing here is far more important than just whether or not Judge Alito gets through the process.

What is the proper role of a Senator when it comes to advising and consenting? I would argue that if we start taking the one or two cases we cherish the most and make that a litmus test, we have let our country down and we have changed the historical standard.

Elections matter. Values debates occur all over this country. They occur in Presidential elections. It is no mystery as to what President Bush would do if he won. He would pick people like John Roberts and Sam Alito. That is what he said he would do. That is exactly what he has done. He has picked solid strict constructionists, conservatives, who have long, distinguished legal careers.

What did President Clinton do? He picked people left of the center who worked for Democrats. And it cannot surprise the people on the other side that the two people we picked worked for Ronald Reagan. We liked Ronald Reagan. President Clinton picked Ginsburg and Breyer. Justice Ginsburg was the general counsel for the ACLU. If I am going to base my decision based on who you represented as a lawyer, how in the world could I ever vote for somebody that represented the ACLU?

If I am going to make my decision based on whether or not I agree with the Princeton faculty and administration policies on ROTC students and quotas and I am bound by that, I will get killed at home. What Princeton does with their admission policies and whether or not a ROTC unit should be on a campus is an OK thing to debate; at least I hope it is OK. I think most Americans are going to be with the group that you are associated with, not the policies of Princeton.

The bottom line is you come here as an individual with a life well lived. Everybody who seems to have worked with you as a private lawyer, public lawyer and as a judge admires you, even though they may disagree with you.

My biggest concern, members of this Committee, is if we don't watch the way we treat people like Judge Alito, we are going to drive good men and women away from wanting to serve. There will be a Democratic President one day. I don't know when, but that is likely to happen, and there will be another Justice Ginsburg come

over. If she came over in this atmosphere, she wouldn't get 96 votes. Judge Scalia wouldn't get 98 votes, and that is sad to me.

I hope we will use this opportunity not only to treat you fairly, but not use a double standard. I hope we will understand that this is bigger than you, this is bigger than us, and the way we conduct ourselves and what we expect of you we had better be willing to expect when we are not in power.

Thank you.

Chairman SPECTER. Thank you, Senator Graham.

Senator SCHUMER.

**STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator SCHUMER. Thank you, Mr. Chairman.

Judge Alito, welcome to you, Mrs. Alito, your two children, the rest of your family. I join my colleagues in congratulating you on your nomination. If confirmed, you will be one of nine people who collectively hold power over everyone who lives in this country. You will define our freedom, you will affect our security, and you will shape our law. You will determine on some days where we pray and how we vote. You will define on other days when life begins and what our schools may teach, and you will decide from time to time who shall live and who shall die. These decisions are final and appeals impossible.

That is the awesome responsibility and power of a Supreme Court Justice, and it is therefore only appropriate that everyone who aspires to that office bear a heavy burden when they come before the Senate and the American people to prove that they are worthy.

But while every Supreme Court nominee has a great burden, yours, Judge Alito, is triply high, first because you have been named to replace Sandra Day O'Connor, the pivotal swing vote on a divided Court; second, because you seem to have been picked to placate the extreme right wing after the hasty withdrawal of Harriet Miers; and finally, and most importantly, because your record of opinions and statements on a number of critical constitutional questions seems quite extreme.

So, first, as this Committee takes up your nomination, we can't forget recent history, because that history increases your burden and explains why the American people want us to examine every portion of your record with great care.

Harriet Miers's nomination was blocked by a cadre of conservative critics who undermined her at every turn. She didn't get to explain her judicial philosophy, she didn't get to testify at the hearing, and she did not get the up-or-down vote on the Senate floor that her critics are now demanding that you receive. Why? For the simple reason that those critics couldn't be sure that her judicial philosophy squared with their extreme political agenda. They seem to be very sure of you. The same critics who called the President on the carpet for naming Harriet Miers have rolled out the red carpet for you, Judge Alito. We would be remiss if we didn't explore why.

And there is an additional significance to the Miers precedent which is this: everyone now seems to agree that nominees should