Packing v. *Antonio* case; and then the *AT&T Technologies* case, the *Lawrence* case. I think you are familiar with those cases.

A bipartisan majority in the Congress joined together to pass the Civil Rights Act of 1991 to overrule those decisions and several others. So now those cases are dead letters because of the 1991 act, so they can't come before you.

My question is: What is your view of the approach to construing civil rights laws taken by the Supreme Court majorities in those cases?

TESTIMONY OF RUTH BADER GINSBURG, TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Judge GINSBURG. My view of the civil rights laws conforms to my views concerning statutory interpretation generally; that is, it is the obligation of judges to construe statutes in the way that Congress meant them to be construed. Some statutes, not simply statutes in the civil rights area but those in the antitrust area, are meant to be broad charters—the Sherman Act, for example. The Civil Rights Act states grand principles representing the highest aspirations of our Nation to be a nation that is open and free where all people will have opportunity. And that spirit imbues that law just as free competition is the spirit of the antitrust laws, and the courts construe statutes in accord with the essential meaning that Congress had for passing them.

Senator KENNEDY. Well, we have overturned those decisions now in the Civil Rights Act of 1991. I am asking you whether you are willing to express an opinion about those cases that were overturned since it won't come back up to you and since now we have legislated in those particular cases.

Judge GINSBURG. I don't want to attempt here a law review commentary on the Supreme Court's performance in different cases. I think the record of the decisions made in the lower courts can be helpful. In some of the cases, the Supreme Court's position was contrary to the position that had been taken in the lower Federal courts. I believe that was true in the *Ward's Cove* (1989) case and in the *Patterson* (1989) case. It is always helpful when Congress responds to a question of statutory interpretation, as it did in this instance, to set the record right about what the legislature meant to convey.

Now, sometimes—I spoke of the Pregnancy Discrimination Act and title VII—Congress is less clear than it could have been the first time around. Maybe the ambiguity wasn't apparent until the specific case came up. Congress reacted rather swiftly in that instance and said, "yes," discrimination on the ground of pregnancy is discrimination on the ground of sex, and title VII henceforth is to be interpreted that way.

It is a very healthy exchange. It is part of what I called the dialog. Particularly on questions of statutory interpretation if the Court is not in tune with the will of Congress, Congress should not let the matter sit but should make the necessary correction. That can occur even on a constitutional question. I referred to the *Simcha Goldman* (1986) case yesterday, a case in which Congress fulfilled the free exercise clause more generously than the Court had.