

tell the committee and the American people how they intend to approach the Constitution and the Bill of Rights.

A few years back, you wrote a law review article that discussed the Supreme Court's confirmation process. You concluded by quoting a law professor who described the Senate's role in the process "as second, but not secondary."

The Senate's constitutional obligation is to examine a nominee's competence, integrity, experience, and, yes, his or her philosophy. For the Supreme Court is undeniably a policymaker.

Our Framers drafted the Constitution in broadly worded principles that were intended to protect an evolving society. Constitutional interpretation requires an exercise of discretionary judgment. Thus, we must carefully choose the Constitution's most important interpreters.

By no means are we here to secure assurances from you on certain cases. No one knows exactly how a case will come before you in the future. But how you approach a constitutional issue and what you consider in resolving that issue are all part of the judicial philosophy and part of the questioning that you will undertake in the next few days.

The process is not foolproof. In the past, we have had Supreme Court nominees come before this committee and tell us they had no agenda—and they did. We have had nominees come before this committee and tell us that they did not have a fully developed judicial philosophy—but they did. We have had nominees come before the committee and evoke an image of moderation—but they were not.

These past performances by nominees obviously concern this Senator. Because I believe that the hearings are an integral part of the confirmation process, honest answers matter greatly in this process to this Senator.

Quite frankly, I do not expect this to be a problem with you, Judge. I am confident that at the conclusion of these hearings, the Senate and the American public will have a clear vision of your constitutional philosophy.

Again, my congratulations, Judge, and also to President Clinton for his outstanding nomination and taking the time and the process in which he went through in choosing you to be the next Supreme Court Justice.

I look forward to learning more about your judicial philosophy and your thoughts regarding the Constitution in the next several days.

Thank you, Mr. Chairman.

[The prepared statement of Senator DeConcini follows:]

PREPARED STATEMENT OF SENATOR DECONCINI

I am pleased to join my colleagues on the committee in welcoming you, Judge Ginsburg, to your confirmation hearings. Over 12 years ago, I helped usher a good friend of mine through the same process, which you are now experiencing. Her nomination was historic. If confirmed, you will join my friend as the second woman ever to serve on the Court.

Like Justice O'Connor, despite your outstanding academic achievements, your ability to find employment after law school was deterred by your gender. You are an individual who has suffered first-hand the effects of discrimination.

But you overcame this rude beginning and proceeded to embark upon a truly remarkable and accomplished professional career.

You became a national respected law professor. And during that time and throughout your career, you have made a considerable contribution to our written legal commentary.

Before coming to the bench, you dedicated your efforts to the struggle for gender equality. In the 1970's, you were instrumentally involved in the landmark cases that ultimately persuaded the Supreme Court to establish a greater scrutiny to laws that classify on the basis of gender.

For the last 13 years, you have served with distinction on what is considered the second highest court in the land.

One comment that has been repeated often since the President announced your nomination is that you defy the label of liberal or conservative jurist.

Indeed, one news account noted that during your tenure you had "often gone out of [your] way to mediate between the court's warring liberal and conservative factions."

Throughout your judicial career, you have shown great respect for the institutional integrity of the Court. Over the last few weeks, I have had a chance to read many of your opinions. To me, they demonstrate deference to precedent and embody judicial restraint.

You have great understanding of the role of a middle-tier appellate court. And as you have written, with that role, a judge must follow the guidance of the Supreme Court.

However, Judge Ginsburg, as a Supreme Court Justice you will not be constrained by a higher court's interpretation. You will have free rein to interpret our Constitution. And as you have commented yourself, you will have "the last judicial word" on the "constitutional questions of the day."

Our constitutional system endows tremendous responsibility and power to our Supreme Court Justices. Because of that power, I strongly believe that nominees to that Court should be prepared to tell the committee—and the American people—how they intend to approach the Constitution and the Bill of Rights.

SENATE ROLE

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By no means are we here to secure assurances from you on certain cases. No one knows exactly how a case will come before you in the future. But how you approach a constitutional issue and what you consider in resolving that issue are all part of judicial philosophy. And this is all fair questioning.

This process is not foolproof.

In the past, we have had Supreme Court nominees come before this committee and tell us they had no agenda—but did. We have had nominees come before this committee and tell us they did not have a fully developed judicial philosophy—but did. We have had nominees come before the committee and evoke an image of moderation—but where not.

These past performances by nominees obviously concern this Senator. Because I believe that the hearings are an integral part of the confirmation process, honest answers matter greatly in this process.

Quite frankly, I do not expect this to be a problem with you in the least bit. I am confident that at the conclusion of these hearings, the Senate and the American public will have a clear vision of your constitutional philosophy.

In closing, I join my colleagues in extending a warm welcome to you, Judge Ginsburg. I look forward to our dialogue and witnesses. And I look forward to learning more about your judicial philosophy and thoughts on the great constitutional issues of our day.

The CHAIRMAN. Thank you, Senator.
Senator Grassley.