

From the start, America was summoned to be a shining city on a hill. But each generation must keep building that city. Even in this new century, some Americans are still denied a voice at the ballot box because of their color, denied a promotion because of their gender, denied a job because of their age, denied hope because they are gay, or denied an appropriate education because they are disabled. Long-established rights to privacy are under heavy siege.

We need a Chief Justice who believes in the promise of America and the guarantees of our Constitution, a person who will enter that majestic building near here and genuinely believe the four inspiring words inscribed in marble above the entrance: "Equal Justice Under Law."

I look forward to hearing from Judge Roberts about whether, if he joins the Supreme Court, he will uphold the progress we have made and will guarantee that all Americans have their rightful place in the Nation's future.

Thank you, Mr. Chairman.

[The prepared statement of Senator Kennedy appears as a submission for the record.]

Chairman SPECTER. Thank you, Senator Kennedy.

Senator Grassley?

**STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. Judge Roberts, I welcome you and congratulate you on your nomination. I think it is fitting that you have been nominated to replace a mentor of yours, Chief Justice Rehnquist. You obviously have a tough act to follow, and that is because Chief Justice Rehnquist was a great Supreme Court Justice. He believed in the strict application of the law and the Constitution and was a consistent voice for judicial restraint. And we will all miss his leadership.

Judge Roberts, we had a good personal meeting in my office a little over a month ago, and based on our discussions and what I have reviewed, you appear to be extremely well qualified. At our meeting, I was encouraged by your respect for the limited role of the courts as an institution in our democratic society. I look forward to asking more questions about your record and qualifications, as well as your judicial approach. I also look forward to asking you about what you think are priorities for the Federal judiciary, as you now lead that branch.

Of course, as we reflect on the enormous build-up to this day and the packed hearing room filled with media lights and cameras, it is worth recalling the fact that judicial nominees never appeared before the Senate until 1925. Ever since then, for the most part, the hearings were not public spectacles. In 1962, for example, when Byron White was nominated to the Supreme Court by President Kennedy, the hearing before the Judiciary Committee lasted all of 15 minutes and eight questions. And it seems to me that the Senate sure got it right within Justice White. And Justice White went on to serve then for a generation.

Of course, all this was before we had televised hearings, which has encouraged ratcheting up the rhetoric to play to various constituencies. Furthermore, Judge Roberts, you are the first nominee

of the Internet age, with millions of eyes scrutinizing thousands of downloaded pages of writing, not to mention the hundreds of website blogs characterizing the documents that have been produced in an accurate or, more likely, inaccurate way, and opinion on every record that you have been involved with, and doing it by the minute.

So to some extent, there is no turning back from what we have created here, and you just happen to be the latest victim of such scrutiny.

During the Ginsburg nomination, Senator Biden, then Chairman of the Judiciary Committee, urged that we not treat these hearings, in Senator Biden's words, as "make-or-break trials" of "dramatic importance." And I sure agree with what he said then.

Rather, the hearing provides a unique opportunity for us to ensure that each person appointed to the Federal bench will be a true judge and not some sort of super-legislator. The courts should not be made up of seats designated conservative, liberal, moderate. Rather, we have a responsibility to fill the Federal bench with individuals who will faithfully interpret the laws and the Constitution, individuals who will withhold any personal, political, or ideological tendencies from their decisionmaking process. And this is even more important when we are confirming you now to the Supreme Court as opposed to when we confirmed you to the circuit court.

There are a number of qualities that I look for in a Supreme Court nominee. I believe that the nominee should be someone who knows he or she is not appointed to impose his or her views of what is right or wrong. As Chief Justice Marshall said over 200 years ago, the duty of the judge is to say what the law "is," not what it "ought to be." Moreover, the nominee should be someone who not only understands, but truly respects the equal roles and responsibilities of the different branches of Government and the role of our States in the Federal system. If we confirm a nominee who is all of this, none of us—on the political right or the political left—will be disappointed, because it will mean in the end that the people, through their elected representatives, will be in charge. On the other hand, if we confirm individuals who are bent on assigning to themselves the power to "fix society's problems" as they see fit, a bare majority of these nine unelected and unaccountable men and women will usurp the power of the people—hijacking democracy to serve their own political prejudices. We do not want to go down that road, and we should not go down that road.

Why is it, then, so important to have Supreme Court Justices practice judicial restraint? Because that means the policy choices of the democratically elected branches of Government will only be overturned if and when there is a clear warrant to do so in the Constitution itself. We want Supreme Court Justices to exercise judicial restraint so that cases will be decided solely on the law and the principles set forth in the Constitution, and not upon an individual Justice's personal philosophical views or preferences. Felix Frankfurter identified this as the highest example of judicial duty. A fundamental principle of our country is that the majority has a legitimate right to govern. This approach hardly means that the courts are less energetic in protecting individual rights. But the words of the Constitution constrain judges every bit as much as

they control legislators, executives, and our citizens. Otherwise, we are no longer a Nation of laws, but a Nation of politicians dressed in judges' robes.

During my tenure in the Senate, I have participated in a number of these Supreme Court nomination hearings, and I believe it is nine to date. I am hopeful that we will see a dignified confirmation process that will not degenerate into what we saw during the Bork and Thomas hearings. Rather, we need to see the same level of civility as we saw during the O'Connor, Ginsburg, and Breyer hearings.

Moreover, I am hoping that we will not see a badgering of the nominee about how he will rule on specific cases and possible issues that will or may come before the Court. That has not been the practice, as you know, in the past. And let me remind my colleagues that Justices Ginsburg and Breyer refused to answer questions on how they would rule on cases during their confirmation hearings. The fact is that no Senator has a right to insist on his or her own issue-by-issue philosophy or seek commitments from nominees on specific litmus-test questions likely to come before that Court. To do so is to give in to the liberal interest groups that only want judges who will do their political bidding from the bench, regardless of what is required by the law and the Constitution. The result is then a loss of independence for the Supreme Court and a lessening of our Government's checks and balances.

Some have suggested that since you have been nominated now to be Chief Justice, you deserve even more scrutiny than before when you were just nominated for Associate. Some are saying that we should prolong the hearings and turn over even more stones than we have already turned over thus far. Well, the Chief Justice has been described as "first among equals." The plain truth is that there really isn't anything substantively different in your role, and your vote will count just the same as other Justices of the Court. So my own questioning and analysis of your qualifications will not really be much different from your previous appointment.

But it is true that the Chief Justice has additional duties as the head of the Federal judiciary. The Chief Justice has to be someone who has a good management style, who can run the trains on time, and who can foster collegiality on the Court. So, Judge Roberts, I think that since you have appeared before the Court 39 times to argue cases on appeal, and that the current Justices know and respect you, that bodes very well in terms of your smoothly transitioning into the Court, into the new role now of Chief Justice.

I congratulate you.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Senator Grassley.
Senator Biden?

**STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR
FROM THE STATE OF DELAWARE**

Senator BIDEN. Thank you, Mr. Chairman.

Judge Roberts, welcome. Mrs. Roberts, welcome to you. I might note at the outset I have never heard of or seen a Federal judge who was not independent. It is amazing what that life tenure does.