

### STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. Thank you very much, Mr Chairman. I want to begin by commending Judge Scalia on his nomination to the Supreme Court. At the outset, let me say that this nomination, certainly at this stage, raises fewer of the concerns that have led me to oppose the nomination of Justice Rehnquist to be Chief Justice.

In my view, Justice Rehnquist's career of relentless opposition to fundamental claims involving issues such as racial justice, equal rights for women, the freedom of speech, and the separation of church and State places him outside the mainstream of American constitutional law as an extremist who should not be confirmed as Chief Justice of the United States.

Judge Scalia has been on the bench only 4 years. He has not ruled on many basic constitutional issues. His record in these areas is less complete than Justice Rehnquist's. On the available record, I disagree with Judge Scalia on women's rights, and it is fair to say that his position on this issue seems as insensitive as Justice Rehnquist's.

I am also concerned about Judge Scalia's writings on two important areas in administrative law, his apparent views that the independent agencies are unconstitutional and the courts can undo the New Deal by denying Congress the power to delegate authority of regulatory agencies.

But in other areas that are of major concern to me, it is difficult to maintain that Judge Scalia is outside the mainstream. Should he be confirmed as a Justice, I would hope that as a result of these hearings and his new rank, he will look with greater sensitivity on critical issues, especially on race discrimination, the right of women to escape their second-class status under the law and to share fully in the protections of the Constitution.

Finally, as far as I can determine from the investigation carried out so far, the nomination of Judge Scalia presents none of the troubling issues with respect to the truthfulness, the candor, judicial ethics, and full disclosure that have marked the nomination of Justice Rehnquist. And as a scholar, public official, Federal judge, Mr. Scalia has demonstrated a brilliant legal intellect and earned the respect and the affection of colleagues whose personal philosophies are far different from his own.

I look forward to his testimony

The CHAIRMAN. The distinguished Senator from Nevada.

### STATEMENT OF SENATOR PAUL LAXALT

Senator LAXALT. Judge Scalia, welcome to the committee. I could not have been more delighted than when I was informed that the President had settled upon you for this very high position.

Looking at that wonderful family out there, they all must be proud. You are really experiencing the American dream today in many respects. To have the son of an Italian immigrant rise to this very high position has to be a singular experience for each of the members of the family.

I have a strong suspicion that these are going to be very civil hearings, far more so than last week, because I cannot think of one

of my colleagues who would dare arouse the ire of the Scalia clan. [Laughter.]

As far as the family is concerned, at times these questions are going to be hard and difficult. There is a reason for that; because under the Constitution, we on this committee and the full Senate have a serious fundamental constitutional responsibility. It is up to us not to rubberstamp the recommendation of the President, but to take an independent look. We do that, and it is a trying experience, very often, for all concerned.

Please understand that every one of the members of the panel here is attempting to discharge his responsibility as he sees fit as a member of this very important committee.

I feel very strongly, Judge Scalia, you are going to acquit yourself well because you are a pro. You are a thoroughbred. I look forward to a speedy confirmation.

I thank the Chairman.

The CHAIRMAN. The distinguished Senator from Ohio.

#### STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. Judge Scalia, we are happy to welcome you here and welcome your family as well.

Parenthetically, I would like to say that looking out at that youngest daughter of yours and your young son, I do not think there is any requirement that they sit through these laborious, tedious hearings. Any time they leave, I think every one of us on the committee will understand that they still support you, but it is a rather tiring process for young children.

Judge Scalia is an accomplished scholar. A former assistant attorney general, sitting judge of the court of appeals, and well known in my own community of Cleveland, where he practiced law for 6 years.

There can be little question about the fact that he is qualified for the position of Associate Justice. To my knowledge, there are no allegations of impropriety or misconduct. Consequently, I believe the integrity of the nominee is not in issue.

Judge Scalia, you know personally of your own area of bad judgment. I think it was bad judgment in whipping me on the court, not in the courts, but I think that, too, can be passed over and not made a major point of issue.

Judge SCALIA. It was a case of my integrity overcoming my judgment, Senator.

Senator METZENBAUM. Touché. [Laughter.]

My only area of concern relates to some of the views Judge Scalia has stated in a number of critically important areas such as the proper approach to constitutional interpretation, separation of powers, and the circumstances under which citizens may seek relief in Federal court for Government action. Judge Scalia seems to take a view that there should be very little limitation on the authority of the executive branch. That view concerns me because the Framers of the Constitution clearly had in mind that the three branches of Government were to be coequal. No branch would be able to dominate the others. I also have concerns about his approach to interpreting the Constitution. Some of your statements