her policy views and earlier role as advocate are distinct from her role as a judge. I will explore that distinction in these hearings.

It is my hope that Judge Ginsburg will satisfy this committee that she shares the judicial philosophy of applying the original meaning of our Constitution and laws in the cases which come before her on the Supreme Court, if she is confirmed.

[The prepared statement of Senator Hatch follows:]

PREPARED STATEMENT OF SENATOR HATCH

Thank you, Mr. Chairman. I congratulate the nominee, Judge Ruth Bader Ginsburg, on her nomination to be Associate Justice of the Supreme Court. Judge Ginsburg has had a distinguished career in the law. She has been a law professor and pioneering advocate for equal opportunity for women. For over 13 years, she has served as a thoughtful member of the Court of Appeals for the District of Columbia Circuit.

She has been nominated to replace a fine member of the Court, a distinguished public servant and patriot, Justice Byron White. I pay him tribute and wish him well as he enters a well deserved retirement.

Judge Ginsburg's ability, character, intellect, and temperament to serve on the Supreme Court are not, in my mind, in question. I have been favorably impressed with Judge Ginsburg for some time.

A Supreme Court Justice, in my view, however, must meet an additional qualification. He or she must understand the role of the judiciary, including the Supreme Court, in our system of government. Under our system, a Supreme Court Justice should interpret the law and not legislate his or her own policy preferences from the bench. The role of the judicial branch is to enforce the provisions of the Constitution and the laws we enact in Congress as their meaning was originally intended by their framers.

Any other philosophy of judging requires unelected federal judges to impose their own personal views on the American people in the guise of construing the Constitution and federal statutes. There is no way around this conclusion. Such an approach is judicial activism, plain and simple. And it is wrong, whether it comes from the political left or the right.

Let there be no mistake: the Constitution, in its original meaning, can readily be applied to changing circumstances. That telephones did not exist in 1791, for example, does not mean that the fourth amendment's ban on unreasonable searches is inapplicable to a person's use of the telephone. But, while circumstances may change, the meaning—the principle—of the text, which applies to those new circumstances, does not change.

Reasonable jurists can sometimes disagree over what a particular Constitutional or statutory provision was intended to mean and over how such meaning is properly applied to a given set of facts. But, if the judicial branch is not governed by a jurisprudence of original meaning, the judiciary usurps the role the Constitution reserves to the people through their elected representatives.

Alexander Hamilton, an advocate of a vigorous central government, in defending the judiciary's right to review and invalidate the Legislative Branch's acts which contravene the Constitution, made clear that federal judges are not to be guided by personal predilection. He rejected the concern that such judicial review made the judiciary superior to the legislature: "A constitution, is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body * * *. It can be of no weight to say that the courts, on the pretense of a repugnancy [between a legislative enactment and the Constitution], may substitute their own pleasure to the constitutional intentions of the legislature. The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislature body. [This] observation * * * would prove that there ought to be no judges distinct from that body." (Federalist 78.) And this commingling of the legislative and judicial functions, of course, would tend to start us down the road to the kind of tyranny the Framers warned about when the separate executive, legislative, and judicial functions are united in the same hands.

When judges depart from these principles of construction, they elevate themselves not only over the executive and legislative branches, but over the Constitution itself, and, of course, over the American people. These judicial activists, whether of the left or right, undemocratically exercise a power of governance that the Constitution com-

mits to the people and their elected representatives. And these judicial activists are limited, as Alexander Hamilton shrewdly recognized over 200 years ago, only by their own will—which is no limit at all.

As a consequence of judicial activism, we witnessed, in an earlier era, the invalidation of state social welfare legislation, such as wage and hour laws. Since the advent of the Warren Court, judicial activism has resulted in the elevation of the rights of criminals and criminal suspects and the concomitant strengthening of the criminal forces against the police forces of our country; the twisting of constitutional and statutory guarantees of equal protection of the law such that reverse discrimination often results; prayer being chased out of the schools; and, the Court's creating out of thin air a constitutional right to abortion on demand to cite a few examples. One of the objectives of the judicial activists for the future is the elimination of the death penalty.

The Constitution, as it has been amended through the years, in its original meaning, is our proper guide on all of these issues. It places primary responsibility in the people to govern themselves. It provides means of amendment through the agency of the people and their representatives—not by a majority of the Supreme Court. That is why appointing and confirming judges and Supreme Court Justices who won't let their own policy preferences sway their judgment is so important.

A President is entitled to some deference in a selection of a Supreme Court Justice. President Clinton and I are unlikely to agree on the person who ought to be nominated. But so long as a nominee is experienced in the law, intelligent, of good character and temperament, and gives clear and convincing evidence of understanding the proper role of the judiciary in our system of government, I can support that nominee.

Moreover, I do not expect to agree with any nominee, especially one chosen by a President of the other party, on every issue before the Judicial branch. The key question is whether the nominee can put aside his or her own policy preferences and interpret the Constitution and laws in a neutral fashion.

Finally, I would point out that I disagree very much with some of Judge Ginsburg's academic writings and some views she held prior to ascending the bench in 1980. I believe that Judge Ginsburg's judicial opinions indicate her understanding that her policy views and earlier role as advocate are distinct from her role as judge. I will explore that distinction in these hearings.

It is my hope that Judge Ginsburg will satisfy this Committee that she shares the judicial philosophy of applying the original meaning of our Constitution and laws in the cases which will come before her on the Supreme Court if she is confirmed.

Senator HATCH. Now, Mr. Chairman, I want to say that I am pleased with this nomination. I am looking forward to these hearings. They are important. This is one of the great constitutional exercises, and I think every Senator here will be asking some very interesting questions. But could I ask for a few more minutes just as a personal privilege?

The CHAIRMAN. Yes.

Senator HATCH. I want to thank the chairman, and I appreciate the indulgence of my colleagues and the nominee.

I believe my colleagues will agree with me that two members of this committee deserve special recognition for their service on this committee and in the Senate. The distinguished Senator from Massachusetts, Senator Kennedy, has been a member of the Judiciary Committee since February 13, 1963—30 years, 5 months, and 1 week of service. This service included 2 years as chairman. I do not mean to age the Senator from Massachusetts, but his service on the committee began so long ago I had to ask the Senate Historical Office to look it up.

Fortunately, they did not have to go back as far as the Jurassic period, although he does tend to dwell in that period from time to time. [Laughter.]

Nineteen Supreme Court nominations have occurred during this time. Of course, we all know that Senator Kennedy has continued