

and court errors, there remain several other instances in which the Court strayed and stayed beyond the Constitution and the laws of the United States. Among the most famous of these Supreme Court cases of exercise of political power, I believe, are the cases of *Roe v. Wade* and *Doe v. Bolton*, two 1973 cases based on false statements which created a constitutional right to abortion. And you can claim whatever you want to of being pro-life or pro-choice, but the right to abortion is not in the Constitution. The Court created it. It created a constitutional right. And these decisions removed a fully appropriate political judgment from the people of several States and has led to many adverse consequences.

For instance, it has led to the almost complete killing of a whole class of people in America. As I noted to my colleagues in the Roberts hearings, this year—this year—between 80 to 90 percent of the children in America diagnosed with Down syndrome will be killed in the womb simply because they have a positive genetic test—which can be wrong and is often wrong, but they would have a positive genetic test for Down syndrome and they will be killed.

America is poorer because of such a policy. We are at our best when we help the weakest. The weak make us strong. To kill them makes us all the poorer, insensitive, calloused, and jaded. *Roe* has made it not only possible but has found it constitutional to kill a whole class of people simply because of their genetic makeup. This is the effect of *Roe*.

I think this is a proper issue for us to consider, and the judge you are replacing noted one time “that the Court’s unworkable scheme for constitutionalizing abortion has had this institutionally debilitating effect should not be surprising since the Court is not suited to the expansive role it has claimed for itself in the series of cases that began with *Roe*.”

You will have many issues in front of you, many that we will not discuss here in front of this committee. I think it unfortunate that we only narrow in on so few of the cases that you are likely to hear in front of you. And yet that is the nature of the day because they are the hot, political, heat-seeking cases. You are undoubtedly qualified. You are cited by the ABA to be unanimously well qualified. I look forward to a thorough discussion and a hopeful approval of you to be able to join the Supreme Court of the United States.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Brownback.

We now move to the final opening statement. When we finish the statement of Senator Coburn, we are going to go right to the presenters, Senator Lautenberg and Governor Whitman. So I would like them to be on notice that we will be doing that in just a few moments, and following Senator Lautenberg and Governor Whitman, we will be hearing from Judge Alito.

Senator Coburn, the floor is yours.

STATEMENT OF HON. TOM COBURN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator COBURN. Thank you. Judge Alito, welcome. I know you are tired of this, and I will try to be as brief as possible.

One of the advantages of going last is to be able to hear what everybody else has said, and as I have listened today, we have talked about the unfortunate, the frail. The quotes have been “fair shake for those that are underprivileged.” We have heard values, “strong, free, and fair,” “progress of our judiciary.” We have heard “the vulnerable, the more vulnerable, the weak, those who suffer.” We have heard of an “Alito mold” that has to be in the mold of somebody else. And as a practicing physician, the one disheartening thing that I hear is these very common words, this “right to choose,” and how we sterilize that to not talk about what it really is.

I have had the unfortunate privilege of caring for over 300 women who have had complications from this wonderful right to choose to kill their unborn babies. And that is what it is. It is a right of convenience to take the life. And the question that arises as we use all these adjectives and adverbs to describe our positions as we approach a Supreme Court nominee is where are we in America when we decide that it is legal to kill our unborn children. I mean, it is a real question for us. I debate honestly with those who disagree with me on this. It is a real issue of measurement of our society when we say it is fine to destroy unborn life who has a heartbeat at 16 days post-conception; 39 days post-conception you can measure the brain waves and there is pain felt. The ripping and tearing of an unborn child from its mother’s womb through the hands of another and we say that is fine, you have a constitutional right to do that.

How is it that we have a right of privacy and due process to do that, but you do not have the right, as rejected unanimously by the Supreme Court in 1997, to take your own life in assisted suicide. You know, how is it that we have sodomy protected under that due process, but prostitution unprotected. It is schizophrenic. And the reason it is schizophrenic is there is no foundation for it whatsoever other than a falsely created foundation that is in error.

I don’t know if we will ever change that. It is a measure of our society. But the fact is you cannot claim in this Senate hearing to care for those that are underprivileged, those that are at risk, those that are vulnerable, those that are weak, those that are suffering, and at the same time say I don’t care about those who have been ripped from the wombs of women and the complications that have come about throughout that.

So the debate for the American public and the real debate here is about *Roe*. Don’t let it—we are going to go off in all sorts of directions, but the decisions that are going to be made in votes on the Committee and the votes on the floor is going to be about *Roe*, whether or not we as a society have decided that this is an ethical process, that we have this convenient process that, if we want to rationalize one moral choice with another, we just do it through abortion, this taking of the life—of life of an unborn child.

I asked Chief Justice Roberts about this definition of life. You know, what is life? The Supreme Court cannot figure it out or does not want to figure it out. The fact that we know that there is no life if there is no heartbeat and brain waves, we know that in every State and every territory. But when we have heartbeat and brain waves, we refuse to accept it as the presence of life. This lack of

logic of which we approach this issue because we like and we favor convenience over ethics, we favor convenience over the hard parts of life that actually make us grow.

Senator Brownback talked about those with disabilities that are destroyed in the womb because of a genetic test that is sometimes wrong. I would put forward that we all have disabilities. Some of us, you just can't see it. And yet who makes the decision on whether or not we're qualified or not. We have gone down a road to which we don't have the answers for. That is why we have the schizophrenic decisions coming out of the Supreme Court that don't balance logically with one versus another decision.

So my hope as we go through this process is to not confuse it with easy words and really be honest and straightforward about what this is about. I firmly believe that the Court should take another direction on many of these moral issues that face us. If we are to honor the heritage of our country, whether it be in terms of religious freedom, whether it be in terms of truly protecting life, protecting not just the unborn but who comes next, the infirm, the elderly, the maimed, the disabled—that is who comes next. As we get into the budget crunch of taking care of those people in the years to come, I believe we ought to have that debate honestly and openly. But the fact is we are going to cover it with everything except the real fact is we have made a mistake going down that road in terms of saying we can destroy our unborn children and there are no consequences to it.

So I welcome you. This is a difficult process for you and your family. I am hopeful that you will be treated fairly. I am very disturbed at the picture that was painted by Senator Kennedy that you are not a man of your word, that you are dishonest. The implication that you are not reliable I don't think is a fair characterization of what I have read. And I look forward to you being able to give answers as you can to your philosophy. The real debate is we have had an activist Court, and the American people do not want an activist Court. And the real fear from those who might oppose you is that you will bring the Court back within a realm of where the American people might want us to be with the Supreme Court, one that interprets the law, equal justice under the law, but not advancing without us advancing, the legislative body advancing ahead of you.

I welcome you. I return the balance of my time, and I look forward to your introduction and your opening statement.

Chairman SPECTER. Thank you very much, Senator Coburn.

We will now turn to our presenting witnesses, Senator Lautenberg and Governor Whitman. In accordance with our standing rules of the Committee, the presenters will each have 5 minutes. They have been so informed, and we first welcome our colleague, Senator Frank Lautenberg, to present Judge Alito.