

U.S. Senator Howard M.
METZENBAUM
of Ohio

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OPENING STATEMENT OF SENATOR HOWARD METZENBAUM
 HEARING ON THE NOMINATION OF JUDGE ANTHONY KENNEDY
 TO BE ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT

DECEMBER 14, 1987

WE BEGIN THESE HEARINGS ALMOST SIX MONTHS AFTER JUSTICE POWELL ANNOUNCED HIS RETIREMENT. I BELIEVE ALL OF US ON THE COMMITTEE ARE OPTIMISTIC THAT THE LONG STRUGGLE TO FILL THIS VACANCY IS NEARING ITS CONCLUSION. NEVERTHELESS, THIS COMMITTEE OWES IT TO THE SENATE AND THE AMERICAN PEOPLE TO CONDUCT FAIR AND THOROUGH HEARINGS AND I AM CONFIDENT WE WILL DO SO.

JUDGE KENNEDY IS CLEARLY QUALIFIED BY ABILITY AND TEMPERAMENT TO SIT ON THE SUPREME COURT. IN ADDITION, THE RECORD SUGGESTS THAT HE IS A TRADITIONAL CONSERVATIVE IN HIS APPROACH TO CONSTITUTIONAL AND STATUTORY INTERPRETATION.

ON THE OTHER HAND, I DO NOT NECESSARILY AGREE WITH ALL OF JUDGE KENNEDY'S DECISIONS. I WOULD HAVE BEEN HAPPIER IF HE HAD REACHED DIFFERENT RESULTS IN CERTAIN CASES. I WOULD HAVE BEEN

PLEASED IF HE HAD RESIGNED EARLIER FROM CLUBS THAT EXCLUDED WOMEN, THOUGH IT IS FAIR TO POINT OUT THAT HE TOOK AFFIRMATIVE STEPS TO CHANGE THE POLICY OF THESE CLUBS. IN SHORT, HE WOULD NOT BE MY IDEAL NOMINEE. BUT THE SIGNS ARE THAT HE IS AN ACCEPTABLE NOMINEE, AND THAT IS ALL WE ARE ENTITLED TO ASK OF THE PRESIDENT.

WE HAVE UNDERGONE A LENGTHY AND EXHAUSTING STRUGGLE OVER WHO WILL BECOME THE NEXT SUPREME COURT JUSTICE. THE PUBLIC IS ENTITLED TO ASK -- HAS IT REALLY BEEN WORTH THIS MUCH TROUBLE? WITHOUT QUESTION, IT HAS. WE HAVE HAD A NATIONAL REFERENDUM ON THE KIND OF CONSTITUTION THIS COUNTRY WANTS. THE RESULT HAS BEEN AN OVERWHELMING ENDORSEMENT FOR THE ONE WE HAVE NOW.

THE SENATE AND THE AMERICAN PEOPLE REJECTED A NOMINEE WHO BELIEVED INDIVIDUAL FREEDOMS CAN BE FOUND ONLY IN THE FINE PRINT OF THE WRITTEN CONSTITUTION. THE SENATE AND THE AMERICAN PEOPLE REAFFIRMED THE VALUE OF BROAD CONSTITUTIONAL PROTECTIONS FOR INDIVIDUAL LIBERTIES AND STRONG GUARANTEES OF EQUAL PROTECTION. IF THIS HEARING DEMONSTRATES THAT JUDGE KENNEDY DOES SUPPORT THESE FUNDAMENTAL VALUES -- AND I FULLY EXPECT THAT IT WILL -- THESE MONTHS OF STRUGGLE WILL PAY RICH DIVIDENDS FAR INTO THE FUTURE FOR OUR COUNTRY.