

personal beliefs, and that will enhance neither your credibility nor your reputation for careful legal reasoning.

I look forward, Judge, to a full and fair hearing.

Chairman SPECTER. Thank you, Senator Schumer.

Senator Cornyn.

**STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM
THE STATE OF TEXAS**

Senator CORNYN. Thank you, Mr. Chairman.

Judge Alito, welcome to the Committee, and to your family as well. I am a little surprised to learn that you have a triply high burden for confirmation here. I guess we will get a chance to explore that and the fairness of that, or whether all nominees ought to have the same burden before the Committee.

What I want to also make sure of is that we don't hold you to a double standard, that we don't expect of you answers to questions that Justice Ginsburg and others declined to answer in the interests of the independence of the judiciary and in the interests of observing the canons of judicial ethics.

Nevertheless, we have already heard a great deal about you and your credentials for the Supreme Court. As has been noted, you served with distinction on the court of appeals. You have served as a United States Attorney, and indeed you have served your entire adult life in public service.

We have also heard a bit today—and we will hear more as these proceedings unfold—about the testimonials from people who have worked with you, people who know you best, whether liberal, moderate or conservative. The judges on your court have praised you as a thoughtful and open-minded jurist, and we will hear more from them later in the week.

The same can be said of the dozens of law clerks who have worked with you over the last 15 years. As you know, law clerks are those who advise appellate judges on the cases they hear, and you have had law clerks from all political persuasions, from members of the Green Party, to Democrat clerks, even a clerk that went on to serve as counsel of record for John Kerry's campaign for President. And every single one of them says that you will make a terrific Supreme Court Justice, that you apply the law in a fair and even-handed manner, and that you bring no agenda to your job as a judge.

If fairness, integrity, qualifications and an open mind were all that mattered in this process, you would be confirmed unanimously. But we know that is not how the process works, or at least how it works today. We know that 22 Senators, including 5 on this committee, voted against Chief Justice Roberts's confirmation just a few short months ago. And my suspicion is that you do not come here with a total level playing field.

I am reluctantly inclined to the view that you and other nominees of this President to the Supreme Court start with no more than 13 votes on this Committee and only 78 votes in the full Senate, with a solid, immovable, and unpersuadable block of at least 22 votes against you, no matter what you say and no matter what you do. Now, that is unfortunate for you, but it is even worse for

the Senate and its reputation as the world's greatest deliberative body.

The question is why—with so many people from both sides of the aisle and across the ideological spectrum supporting your nomination—are liberal special interest groups and their allies devoting so much time and so much money to defeat your nomination? The answer, I am afraid, is that there are a number of groups who really don't want a fair-minded judge who has an openness to both sides of the argument. Rather, they want judges who will impose their liberal agenda on the American people—views so liberal that they cannot prevail at the ballot box.

So they want judges who will find traditional marriage limited to one man and one woman unconstitutional. They want judges who will ban any trace of religious expression from the public square. They even want judges who will prohibit schoolchildren from reciting the Pledge of Allegiance. As I say, none of these are mainstream positions embraced by the American people. So the strategy is to try to impose their agenda through unelected judges.

Judge Alito, the reason why these groups are trying to defeat your nomination—because you won't support their liberal agenda—is precisely why I support it. I want judges on the Supreme Court who will not use their position to impose personal policy preferences or a political agenda on the American people. I want judges on the Supreme Court who will respect the words and the meaning of the Constitution, the laws enacted by Congress, and the laws enacted by State legislatures.

Now, this doesn't mean, as you know, that a judge will always reach what might be called a conservative result. It means that judges will reach whatever result is directed by the Constitution, by the law, and by the facts of a case. Sometimes it might be called conservative, sometimes it might be called liberal. But the point is that the meaning of the Constitution and other laws should not change unless we the people change them.

A Supreme Court appointment is not a roving commission to rewrite our laws however you and your colleagues see fit. I will give you one example of an area where I believe our Supreme Court has been rewriting the Constitution for a long time. It is an area near and dear to me and others in this country. I am speaking of the ability of people of faith to freely express their beliefs in the public square.

There is no doubt where the Founding Fathers stood on this issue. They believed that people of faith should be permitted to express themselves in public. They believed that this country was big enough and free enough to allow expression of an enormous variety of views and beliefs. They believed that freedom of expression included religious views and beliefs, so long as the government did not force people to worship in a particular manner and remained neutral on what those views and beliefs were.

But this country has gotten seriously off track under the Supreme Court when it went so far as to limit the right of even private citizens to freely express their religious views in public. As I mentioned to you when we met early on in these proceedings, I had an opportunity, as some have had on this Committee, to argue a case before the U.S. Supreme Court. When I was attorney general,

I helped argue a case called *Santa Fe Independent School District v. Doe*.

The school district in that case had the temerity to permit student-led, student-initiated prayer before football games. And, of course, someone sued. I repeat, this is student-led, student-initiated, voluntary prayer. The Supreme Court held by a vote of six to three that even this was unconstitutional.

The decision led the late Chief Justice Rehnquist to remark that the Court now exhibits "hostility to all things religious in public life." It is hard to disagree with him. Depictions or expressions of sex, violence, crime are all permitted virtually without limit, but religion, it seems, never.

Now, this is where you come in, Judge Alito. I appreciate your record on the Third Circuit respecting the importance of neutrality of government when it comes to religious expression on a voluntary basis by individual citizens. It is my sincere hope that, when confirmed, you will persuade your colleagues to reconsider their attitude toward religious expression and grant it the same freedom currently reserved for almost all other non-religious speech.

No wonder many in America seem to believe that the Supreme Court has become one more inclined to protect pornography than to protect religious expression. Most people in America don't believe that "God" is a dirty word. But the sad fact is that some Americans are left to wonder whether the Supreme Court might have greater regard for it if it were.

Again, welcome to the Committee and thank you for your continued willingness to serve our great Nation.

Chairman SPECTER. Thank you, Senator Cornyn.
Senator Durbin?

**STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR
FROM THE STATE OF ILLINOIS**

Senator DURBIN. Thank you very much, Mr. Chairman. Judge Alito, welcome to you and your family before the Judiciary Committee. You have heard time and again from my colleagues why this seat on the Supreme Court means so much. They have quoted the statistics of 193 5-4 decisions where Sandra Day O'Connor was the deciding vote in 148 of those instances. She was a critical vote in issues of civil rights, human rights, workers' rights, women's rights, restraining the power of an overreaching President.

If you look at the record, the enviable record which Sandra Day O'Connor has written, you find she was the fifth and decisive vote to safeguard Americans' right to privacy, to require courtrooms to grant access to the disabled, to allow the Federal Government to pass laws to protect the environment, to preserve the right of universities to use affirmative action, to ban the execution of children in America. And Justice O'Connor was the fifth vote to uphold the time-honored principle, which bears repeating, of separation of church and state. There was real wisdom in the decision of our forefathers in writing a Constitution that gave us an opportunity to grow as such a diverse Nation, and we should never forget it.

Justice O'Connor has been the critical decisive vote on many issues that go to the heart of who we are as a Nation. We believe, many of us, that the decision on filling this vacancy is going to tip