

Senator Graham, you are recognized for your opening statement.

**STATEMENT OF HON. LINDSEY O. GRAHAM, A U.S. SENATOR
FROM THE STATE OF SOUTH CAROLINA**

Senator GRAHAM. Thank you, Mr. Chairman. Thanks for the seventh-inning stretch, too. We all very much appreciate it.

Judge Roberts, playing a little bit off of what my colleague Senator Feingold said, I don't think you expect it to be easy. And having to listen to 18 Senators proves the fact that it is not going to be easy. But I hope that we will live up to our end of the bargain to make it fair. And "fair" is something that comes around in September in South Carolina, or it can be an idea. The idea of treating you fairly is very important to me because not only are you on display but the Senate is on display. And Senator Kennedy said something that I disagree with, but he is very passionate in his statement. He said the central issue is whether or not you will embrace policies, a certain set of policies or whether or not you will roll back certain policy decisions.

I respectfully disagree with Senator Kennedy. To me, the central issue before the Senate is whether or not the Senate will allow President Bush to fulfill his campaign promise to appoint a well-qualified strict constructionist to the Supreme Court, and in this case, to appoint a Chief Justice to the Supreme Court in the mold of Justice Rehnquist.

He has been elected President twice. He has not hidden from the public what his view of a Supreme Court Justice should be and the philosophy that they should embrace. In my opinion, by picking you, he has lived up to his end of the bargain with the American people by choosing a well-qualified strict constructionist. You have been described as brilliant, talented, and well qualified, and that is by Democrats. The question is: Is that enough in 2005 to get confirmed? Maybe not.

Professor Michael Gerhardt has written an article in 2000 called "The Federal Appointments Process," and I think he has given some advice to our Democratic friends in the past, and maybe recently, about the confirmation process that we are engaged in today. And he has written, "The Constitution establishes a presumption of confirmation that works to the advantage of the President and his nominee."

I agree with that. Elections matter. We are not here to debate how to solve all of the Nation's problems. We are not here to talk about liberal philosophy versus conservative philosophy and what is best for the country. We are here to talk about you and whether or not you are qualified to sit on the Supreme Court, whether or not you have the intellect, the integrity, and the character. And it has been said in the past by members of this Committee—Senator Kennedy, and I believe is recognized by most Senators—that we are not charged with the responsibility of approving Justices if their views always coincide with our own. We are really interested in knowing whether the nominee has the background, experience, qualifications, temperament, and integrity to handle the most sensitive, important, and responsible job, and that is, being on the Supreme Court.

If you are looking for consistency, you have probably come to the wrong place, because the truth of the matter is that we are all involved in the electoral process ourselves, and we have different agendas. Your memos are going to be talked about. The memos you wrote while you were working for President Reagan and Bush I in my opinion reflect a conservative lawyer advising a conservative President about conservative policies. And to some, those policies make no sense. Those policies are out of the mainstream. But this hearing is about whether or not you are qualified and whether or not Reagan conservatism is in the mainstream.

Does affirmative action require quotas? From a conservative's point of view, no. From a conservative point of view, we do not want Federal judges setting the value of someone's wages from the bench. And you wrote about that. Now, some people want that, but conservatives do not.

Environmental policies. We want a clean environment. We do not want to ruin the economy in the process. We want to be able to build levees to protect cities. Conservatives have a different view of a lot of issues versus our friends on the other side. The election determines how that shakes out.

We are here to determine whether or not you and all you have done in your life makes you a fitting candidate to be on the Supreme Court. Before we got here, the Senate was in disarray. May 23rd of this year, I engaged in a compromise agreement with seven Democrats and seven Republicans to keep the Senate from blowing itself up. You are the first nomination that we have dealt with in any significant manner after that agreement. There is plenty of blame to go around, Judge Roberts. On our watch, I am sure we did things in Committee that were very unfair to Democratic nominees, particularly by President Clinton. And at the time of that agreement, there were ten people being filibustered for the first time in the history of the Senate in a partisan manner that were going to be on the court of appeals.

We were in chaos. We were at each other's throats. And since May 23rd, we have done better. The Senate has gotten back to a more traditional role when it comes to judges, and as Senator Specter described the Committee, we have done some good things here on this Committee and in the Senate as a whole.

I hope we will take the chance to start over because the public approval of the Senate now is in the 30s. And that is not your fault, Judge Roberts. It is our fault. We have an opportunity as Senators to show that we can disagree based on philosophy but give you a fair shake. The question is whether we will rise to the occasion. I am hopeful we will based on the statements being made.

What is the standard for a Senator to confirm a Supreme Court nominee? Whatever the Senator wants it to be. And, really, that is the way it should be. But there should be some goals, in my opinion. The way we conduct ourselves, one of the goals we should have is to make sure we don't run good people away from wanting to be a judge. I do not know what it is like to sit at home and turn on the television and watch a commercial about you in the presence of your wife and your kids that say some pretty unflattering things about you. That is just not a problem you have faced. I am sure Democratic nominees have faced the same type problem.

We should not in our standard, trying to come up with a standard, invalidate elections. The President won. The President told us what he is going to do, and he did it. He picked a strict constructionist to be on the Supreme Court. If anybody is surprised, they were not listening to the last campaign.

Roe v. Wade—it divides America. If you believe in polling, most Americans would like to see the decision stand, even though we are divided 50/50 on the idea of abortion on demand. My good friend from California has expressed a view about *Roe v. Wade*, which I completely understand and respect. I can just tell you, Judge Roberts, there are plenty of women in South Carolina who have an opposite view about abortion.

If we were to base our votes on that one principle, Justice Ginsburg would not be Justice Ginsburg. In her writings, she embraced the idea of Federal funding for abortion. She indicated that an abortion right was based on the Equal Protection Clause of the Constitution. I dare say that 90 percent of the Republican Caucus is pro-life. I dare say that 90 percent of the Democratic Caucus is pro-choice. Justice Ginsburg got 96 votes, even though she expressed a view of the Federal Government's role in abortion that I completely disagree with, and I think most conservatives disagree with.

There was a time not too long ago, Judge Roberts, where it was about the way you lived your life, how you conducted yourself, what kind of lawyer you were, what kind of man or woman you were, not whether you had an allegiance to a specific case or a particular cause. Let's get back to those days. Let's get back to the days where the Ginsburgs and the Scalias can be pushed and pressed, but they can be honored for their commitment to the law and the way they lived their life. Let's get back to the good old days where we understood that what we were looking for was well-qualified people to sit on the highest Court of the land, not political clones of our own philosophy.

The reason I signed the agreement more than anything else was that I love the law. The role of the law in our society is so important. You take out the rule of law and you do not have a democracy. The law, Judge Roberts, to me represents a quiet place in American discourse. Politics is a loud, noisy, and destructive place. But the courtroom is a quiet place where the weak can challenge the strong and the unpopular can be heard. I know you will honor the rule of law in our country and that you will be a judge that we all can be proud of.

God bless you and your family.

Chairman SPECTER. Thank you very much, Senator Graham.
Senator Schumer?

**STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator SCHUMER. Thank you, Mr. Chairman. And, Judge Roberts, welcome to you and Mrs. Roberts, your parents, your family, your two beautiful children. I join my colleagues in congratulating you on your nomination to the position of Chief Justice of the United States. Now, this is indisputably the rarest opportunity in American Government. In the entire history of the Republic, we