

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

have had but 16 Chief Justices. But the responsibility is as great as the opportunity is rare.

The decisions of the Supreme Court have a fundamental impact on people's lives, and the influence of a Chief Justice far outlasts that of a President. As the youngest nominee to the High Court's top seat in 204 years, you have the potential to wield more influence over the lives of the citizens of this country than any jurist in history. I cannot think of a more awesome responsibility—awesome not in the way my teenage daughter would use the word, but in the Biblical sense of the angels trembling in the presence of God.

But before you can assume that responsibility, we Senators, on behalf of the people, have to exercise our own responsibility. Fundamental to that responsibility is our obligation to ascertain your legal philosophy and judicial ideology. To me, the pivotal question which will determine my vote is this: Are you within the mainstream, albeit the conservative mainstream, or are you an ideologue who will seek to use the Court to impose your views upon us as certain judges, past and present, on the left and on the right, have attempted to do?

The American people need to learn a lot more about you before they and we can answer that question. You are without question an impressive, accomplished, and brilliant lawyer. You are a decent and honorable man. You have a remarkable resume. There are those who say your outstanding and accomplished resume should be enough, that you should simply promise to be fair and that we should confirm. I disagree. To me, the most important function of these hearings, because it is the most important qualification for a nominee to the Supreme Court, is to understand your legal philosophy and judicial ideology. This is especially true now that judges are largely nominated through an ideological prism by a President who has admitted he wants to appoint Justices in the mold of Scalia and Thomas. To those who say ideology does not matter, they should take their quarrel to President Bush.

I began to argue that consideration of a nominee's judicial ideology was crucial 4 years ago. Then I was almost alone. Today, there is a growing and gathering consensus on the left and on the right that these questions are legitimate, important, and awfully crucial. Therefore, I and others, on both sides of the aisle, will ask you about your views.

Here is what the American people need to know beyond your resume. They need to know who you are and how you think. They need to assess not only the sharpness of your mind but the fullness of your heart. They need to believe that an overachiever can identify with an underdog who has nothing but the Constitution on his side. They need to understand that your first-class education and your advantaged life will not blind you to the plight of those who need help and who rely on the protections of the Constitution, which is every one of us at one point or another. They need to be confident that your claim of judicial modesty is more than easy rhetoric, that your praise of legal stability is more than lip service. They need to know above all that if you take the stewardship of the High Court, you will not steer it so far out of the mainstream that it founders in the shallow waters of extremist ideology.

As far as your own views go, however, we only have scratched the surface. In a sense, we have seen maybe 10 percent of you, just the visible tip of the iceberg, not the 90 percent that is still submerged. And we all know that it is the ice beneath the surface that can sink the ship.

For this reason, it is our obligation to ask and your obligation to answer questions about your judicial philosophy and legal ideology. If you cannot answer these questions, how are we to determine whether you are in the mainstream? A simple resume, no matter how distinguished, cannot answer that question. So for me, the first criterion upon which I will base my vote is whether you will answer questions fully and forthrightly. We do not want to trick you, badger you, or play a game of "gotcha." That is why I met with you privately three times, and that is why I gave you a list of questions in advance of these hearings. It is not enough to say you will be fair. If that were enough, we would have no need for a hearing. I have no doubt you believe you will be a fair judge. I have no doubt that Justice Scalia thinks he is a fair judge and that Justice Ginsburg thinks she is a fair judge. But in case after case, they rule differently. They approach the Constitution differently, and they affect the lives of 280 million Americans differently. That is so, even though both Scalia and Ginsburg believe that they are fair.

You should be prepared to explain your views of the First Amendment and civil rights and environmental rights, religious liberty, privacy, workers' rights, women's rights, and a host of other issues relevant to the most powerful lifetime post in the Nation.

Now, having established that ideology and judicial philosophy are important, what is the best way to go about questioning on these subjects? The best way, I believe, is through understanding your views about particular past cases, not future cases that haven't been decided, but past, already decided cases. It is not the only way, but it the best and most straightforward way.

Some have argued that questioning a nominee about his or her personal views of the Constitution or about decided cases indicates prejudgment about a future case. It does nothing of the sort. Most nominees who have come before us, including Justice Ginsburg, whose precedent you often cite, have answered such questions. Contrary to popular mythology, when she was a nominee, Justice Ginsburg gave lengthy answers to scores of questions about constitutional law and decided cases, including individual autonomy, the First Amendment, criminal law, choice, discrimination, and gender equality. Although there were places she said she did not want to answer, she spoke about dozens of Supreme Court cases and often gave her unvarnished impressions, suggesting that some were problematic in their reasoning while others were eloquent in their vindication of important constitutional principles. And nominee after nominee, from Powell to Thomas to Breyer, answered numerous questions about decided cases, and no one ever questioned their fitness to hear cases on issues raised during confirmation hearings.

So I hope you will decide to answer questions about decided cases, which so many other nominees have done. If you refuse to talk about already decided cases, the burden, sir, is on you, one of

the most preeminent litigators in America, to figure out a way in plain English to help us determine whether you will be a conservative, but mainstream conservative, Chief Justice or an ideologue.

Let me be clear. I know you are a conservative. I do not expect your views to mirror mine. After all, President Bush won the election, and everyone understands that he will nominate conservatives to the Court. But while we certainly do not expect the Court to move to the left under the President, it should not move radically to the right.

You told me when we met that you were not an ideologue and you share my aversion to ideologues. Yet you have been embraced by some of the most extreme ideologues in America, like the leader of Operation Rescue. That gives rise to a question many are asking: What do they know about you that we do not?

Judge Roberts, if you want my vote, you need to meet two criteria: first, you need to answer questions fully so we can ascertain your judicial philosophy; and, second, once we have ascertained your philosophy, it must be clear that it is in the broad mainstream.

Judge Roberts, if you answer important questions forthrightly and convince me you are jurist in the broad mainstream, I will be able to vote for you, and I would like to be able to vote for you. But if you do not, I will not be able to vote for you.

Mr. Chairman, I have high hopes for these hearings. I want and the American people want a dignified, respectful hearing process, open, fair, thorough, aboveboard, one that brings not only dignity but, even more importantly, information about Judge Roberts's views and ideology to the American people. I, along with all of America, look forward to hearing your testimony.

[The prepared statement of Senator Schumer appears as a submission for the record.]

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 Roberts, let me also join in extending a warm welcome to you and your family for these hearings. As the 15th speaker in the order of seniority here, I recall the adage I learned when I first came to Washington that everything has been said, but not everyone has said it yet. And perhaps by the time this hearing is over this week, you will have a fuller appreciation than you do now for that.

But, of course, you are a known quantity, so to speak, to this Committee and to this Senate, having been confirmed by unanimous consent just 2 short years ago. And I want to extend a compliment to you on your judicial service. You have served with distinction in your current capacity.

While the importance of your nomination as Chief Justice of the United States cannot be overstated, it seems as though each new nomination to the Court brings an element of drama, somewhat akin to an election. Indeed, we have seen special interest groups raising money, running television advertisements, and even trying