

tion of the laws have earned her the admiration and respect of every American committed to ending discrimination in our Nation. Her impressive and scholarly work on the Federal appeals court here in Washington has earned her a reputation as one of the very best judges in the United States today.

The members of this committee, nonetheless, have a constitutional responsibility to carefully examine Judge Ginsburg's opinions and articles and to ask her about her legal philosophy and approach to the Constitution, to assure ourselves that she deserves the high honor of joining the Nation's highest court.

I commend President Clinton for this excellent nomination, and I look forward to Judge Ginsburg's testimony.

The CHAIRMAN. Because we went out of order at the outset, the next speaker will be Senator Metzenbaum.

### OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. Thank you, Mr. Chairman.

Judge Ginsburg, congratulations on your nomination and welcome to these hearings.

It has been a long time since a Democratic President has made a Supreme Court nomination. Justice White's resignation means that all of the remaining Justices were nominated by Republican Presidents.

This day is welcome, for many reasons. For 12 years, Supreme Court nominees have been sent to this committee in the hope of promoting a political and social agenda directly from the planks of the Republican Party platform. A core element of that agenda was the reversal of Supreme Court decisions in the areas of abortion, civil rights, individual liberties, and the first amendment. Unfortunately, their efforts have met with considerable success.

As a result, the Supreme Court today is plagued by a vision of the Constitution which is cramped and narrow. The current Court lacks either the will or the commitment to make the promises and principles of our Constitution a reality for all Americans.

This Nation faces difficult—and sometimes divisive—social problems. We need leadership that is inclusive and tolerant. And we need a Supreme Court that is a source of inspiration and moral leadership. Only then will individual liberty, equal justice, and fundamental fairness be a reality for everyday Americans, as we prepare to turn to the 21st century.

President Clinton took one large step in that direction by nominating Ruth Bader Ginsburg. No one can seriously claim that the President selected Judge Ginsburg to carry out a political agenda. The President found in Judge Ginsburg the nominee he was searching for, a person of enormous talent and integrity, a generous character, and an unyielding fidelity to the Constitution and the rule of law in the service of society.

Judge Ginsburg's record as a litigator is the envy of lawyers throughout the country. She spent the bulk of her career as a lawyer working to secure equal rights for women. She succeeded, due to her comprehensive knowledge of the law and her keen understanding of what would persuade the male members of the Supreme Court.

She developed a brilliant litigation strategy, which included at times using men as plaintiffs in gender discrimination suits. This tactic helped the then all-male Supreme Court see that discrimination based on gender was incompatible with the great constitutional principle of equal protection under the law.

She showed courage and determination, when opportunities were closed to her due to discrimination against women. She didn't just get angry and resentful. She fought to change the law for the benefit of all women and men.

With such an outstanding career as a lawyer, it is no surprise that President Carter selected her for the Federal Bench. Her tenure on the Circuit Court of Appeals for the District of Columbia has distinguished her as one of the country's finest judges. As President Clinton said in introducing her to the Nation, she is "progressive in outlook, wise in judgment, balanced and fair in her opinions."

Judge Ginsburg's record is exemplary, and I am frank to say that I expected nothing less in a nomination by President Clinton. But there is still more that I want to know.

As an advocate, Ruth Bader Ginsburg pushed the Court to landmark decisions on behalf of women's rights. While she fought for women one case at a time, she had a goal, a vision of a Constitution that protected women against discrimination.

While a circuit court of appeals judge, her duty has been to faithfully apply the law as interpreted by the Supreme Court. But, if confirmed as the next Supreme Court Justice, she would have the opportunity to shape the law, rather than merely apply it. I want to know whether Judge Ginsburg will embrace this opportunity to shape the law to make the enduring principles of our Constitution a reality for all Americans, no matter how rich or poor, no matter what race or religion, no matter how unpopular their cause might be.

As an appeals court judge, Judge Ginsburg is well known for her preference for measured or incremental movement in the law. She speaks of permitting constitutional doctrine, especially in controversial areas, to emerge from a dialog between the courts, other branches of government, and the people. I am concerned she will always take a similar approach on the Supreme Court, and I will make it no secret that I hope she will not.

When Judge Ginsburg speaks of a dialog, she apparently envisions a concept of gradualism in applying the Constitution's provisions. That causes me concern, because any delay in enunciating or protecting constitutional rights is justice denied.

There are times and there are issues when the Supreme Court must show leadership. History demonstrates that it is sometimes the Court, rather than Congress or the President, which must have the will and the vision to define the Constitution's promises of liberty and justice, even when it is unpopular to do so. I expect to inquire in this area, to know whether Judge Ginsburg will lead the Court at such times.

Judicial leadership in addressing the great social and political problems of our day can be controversial. Judge Ginsburg will probably hear much about judicial activism and judge-made laws from my colleagues during these hearings. I suspect they will warn her

against judicial activism, notwithstanding the considerable conservative judicial activism we have seen from the current Supreme Court.

But we must rise above this wornout debate to recognize that leadership in applying the cherished principles of our Constitution is not judicial activism. It is leadership we need from Judge Ginsburg on the Supreme Court.

The role of the Supreme Court in preserving and promoting individual liberty, equal opportunity, and social justice must be restored. Judge Ginsburg, your career as an advocate suggests that you have the intelligence, determination, and courage to begin the work that needs to be done. Your career as an appeals court judge suggests that you have the temperament and judicial skills to begin that restoration. My only question for you during these hearings relates to how you will meet that challenge.

Thank you, Mr. Chairman.

[The prepared statement of Senator Metzenbaum follows:]

#### PREPARED STATEMENT OF SENATOR METZENBAUM

Judge Ginsburg, congratulations on your nomination and welcome to these hearings.

It has been a long time since a Democratic President has made a Supreme Court nomination. Justice White's resignation means that all of the remaining Justices were nominated by Republican Presidents. So, I am relieved and pleased that President Clinton has made this nomination.

This day is welcome for another reason. For twelve years, Supreme Court nominees have been sent to this committee in the hope of promoting a political and social agenda directly from the planks of the Republican Party platform. A core element of that agenda was the reversal of Supreme Court decisions in the areas of abortion, civil rights, individual liberties, and the first amendment. Unfortunately, their efforts have met with considerable success.

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