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 answers 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

to coerce you into stating your opinion on hot-button issues that are likely to come before you as a judge, as if this were an election.

But, of course, this is not an election, and no reasonable person expects you to make promises to politicians about how you are likely to rule on those issues when they come before the Court as a condition of confirmation.

Still, some in our country have lost sight of the proper role of an unelected judge where the people are sovereign and where Government enjoys no legitimacy except by consent of the governed. They see unelected judges primarily as policymakers and arbiters of every pressing social issue that might arise, with the authority to dictate to the people what they think is good for us.

Well, this ideal of the Supreme Court as a super-legislature to which we might turn to give us everything that is good and stop everything that is bad is not a view that I share, nor, for that matter, did those who wrote and ratified the Constitution. The Constitution does not guarantee everything that is good and prohibit everything that is bad, or it could have been written in two sentences. Rather, it guarantees some specific things, it prohibits some specific things, and leaves the rest to be sorted out through the democratic process.

Alexander Hamilton, as you know, wrote in the Federalist Papers, which argued for ratification of the Constitution, that the judicial branch, he predicted, would be known as the least dangerous branch. He believed that there is no liberty if the power of judging is not separated from the legislative and executive powers. Its sole purpose was to interpret and apply the laws of the land. Its role would be limited.

Regrettably, Justices have not always been faithful to this constitutional design. All we need to do is to look at the Supreme Court's track record to see why abdicating our right of self-government to nine judges isolated behind a monumental marble edifice, far removed from the life experiences of the average American, is a bad idea.

For example, the Constitution says in part that the Federal Government shall not prohibit the free exercise of religion or abridge freedom of speech. Many Americans, including me, are concerned that the Supreme Court, by erecting extra-constitutional and contradictory judge-made standards in this area of the law, has effectively banned voluntary religious expression from much of our public life, turning what should be official neutrality into a policy of official hostility.

To be sure, the Court has been zealous in protecting the rights of those who express themselves or promote their products using violence or sex, but voluntary expression of one's faith, never.

Likewise, many Americans, including me, are baffled that the Supreme Court recently saw fit to strike down the display of the Ten Commandments in Kentucky but uphold the constitutionality of a display in Texas, even while the Ten Commandments itself is prominently displayed in the chambers of the United States Supreme Court on its ceiling.

Many Americans, including me, wondered what to read into the Court's recent dismissal of a suit seeking to deny school children the right to recite the pledge of allegiance because it contains the

words "One nation under God." A majority of the Court refused to agree that the pledge was constitutional, leaving this time-honored tradition of school children across our Nation in legal limbo.

And, recently, the Court expanded the awesome power of Government to condemn private property beyond all previous bounds by reading the public use limitation on eminent domain right out of the Constitution. Justice O'Connor warned, "The specter of condemnation now hangs over all property. Nothing is to prevent the state from replacing any Motel 6 with a Ritz Carlton, any home with a shopping mall, or any farm with a factory."

On what legitimate basis can the Supreme Court uphold State laws on the death penalty in 1989, then strike them down in 2005, relying not on the written Constitution, which, of course, had not changed, but on foreign laws that no American has voted on, consented to, or may even be aware of? When in 2003 the Court decided *Lawrence* v. *Texas*, the Court overruled a 1986 decision on the constitutionality of State laws based on the collective moral judgment of those States about permissible sexual activity. What changed in that intervening time? Did the Constitution change? Well, no. Did the Justices change? Yes. But should that determine a different meaning of the Constitution? Are some judges merely imposing their personal preferences under the guise of constitutional interpretation? Indeed, this was the same case, as you know, Judge Roberts, that served as the cornerstone of the Massachusetts Supreme Court's decision holding that State laws limiting marriage to a man and a woman amounted to illegal discrimination.

Let me close on an issue that several Senators have already mentioned today, and that is, your obligation to answer our questions. Of course, I share with all of my colleagues a desire and a curiosity, really, to know what you think about all sorts of issues. All of us are curious. But just because we are curious does not mean that our curiosity should be satisfied. You have no obligation to tell us how you will rule on any issue that might come before you if you are confirmed to the Supreme Court.

It boils down to a question of impartiality and fairness. One characteristic of good judges is that they keep an open mind until they hear the facts and hear the lawyers argue the case before them. If you pledge today to rule a certain way on an issue, how can parties to future cases possibly feel that they would ever have a fair day in court?

Justice Ginsburg, as we have heard already, one of the last Supreme Court Justices confirmed by the Senate, noted not too long ago, "In accord with longstanding norm, every member of the current Supreme Court declined to furnish such information. The line each Justice drew in response to pre-confirmation questioning is crucial to the health of the Federal judiciary." And this has come to be known as "the Ginsburg standard," although it has been the norm for all nominees who come before the Committee and before the Senate for confirmation.

Now, I know some of the members of the Committee will ask you questions that you cannot answer. They will try to entice you to abandon the rules of ethics and the long tradition described by Justice Ginsburg. But that should not concern you, Judge Roberts. Don't take the bait. Do not head down that road, but do exactly

what every nominee of every Republican President and every Democratic President has done: decline to answer any question that you feel would compromise your ability to do your job. The vast majority of the Senate, I am convinced, will not punish you for doing so. Rather, I am convinced that the vast majority of the Senate will respect you for this decision because it will show you are a person of deep integrity and independence, unwilling to trade your ethics for a confirmation vote.

Again, let me say welcome to you again before the Committee, and thank you for your continued willingness to serve this 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, Mr. Chairman.

Judge Roberts, welcome to you and your family. Congratulations on your nomination. The Committee hearing began with the Chairman telling us that you had shared the wisdom of 47 individual Senators by visiting their office, some of them on several different occasions, and many people believe that that fact alone should earn you confirmation before the United States Senate.

Twelve years ago, at the nomination hearing of Justice Ruth Bader Ginsburg, my friend, Illinois Senator Paul Simon, said something worth repeating. He said to the nominee, and I quote, "You face a much harsher judge. . . than this Committee and that is the judgment of history. And that judgment is likely to revolve around the question: Did she restrict freedom or did she expand it?"

I think Senator Simon put his finger on how the United States Senate should evaluate a nominee for a lifetime appointment to the Federal bench.

Judge Roberts, if you are confirmed to be the first Supreme Court Justice in the 21st century, the basic question is this: Will you restrict the personal freedoms we enjoy as Americans, or will you expand them?

When we met in my office many weeks ago, I gave you a biography of a judge I admire greatly. His name was Frank Johnson, a Federal district judge from Alabama and a lifelong Republican. Fifty years ago, following the arrest of Rosa Parks, Judge Johnson ruled that African-Americans in Montgomery, Alabama, were acting within their constitutional rights when they organized a boycott of the buses, and he later ruled that Martin Luther King, Jr., and others could march from Selma to Montgomery. As a result of those decisions, the Ku Klux Klan branded Johnson the most hated man in America. Wooden crosses were burned on his lawn. He received so many death threats that his family was under constant Federal protection from 1961 to 1975.

Judge Frank Johnson was denounced as a judicial activist and threatened with impeachment. He had the courage to expand freedom in America. Judge Roberts, I hope that you agree America must never return to those days of discrimination and limitations on our freedom.