

Testimony of

The Honorable Strom Thurmond

September 5, 2002

STATEMENT BY SENATOR STROM THURMOND (R-SC) BEFORE THE SENATE JUDICIARY COMMITTEE, REGARDING THE NOMINATION OF JUSTICE PRISCILLA OWEN TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, EXECUTIVE COMMITTEE MEETING, THURSDAY, SEPTEMBER 5, 2002, SD-226, 10:00 AM.

Mr. Chairman:

Today, this Committee will vote on the nomination of Priscilla Owen to the United States Court of Appeals for the Fifth Circuit. I am disappointed that many of my colleagues plan to oppose her nomination. Justice Owen is highly qualified, and she would make an outstanding Federal judge. Contrary to the accusations made by some special interest groups, Justice Owen has demonstrated that she will follow the law as dictated by the Constitution, the Supreme Court, and the Congress. I am proud to support her nomination.

Justice Owen's legal background is second to none. She was an honors graduate of Baylor Law School, and she received the highest grade on the Texas Bar Examination that year. Before arriving on the bench, Justice Owen practiced law for 17 years and was admitted to practice before both state and Federal courts, including the U.S. Courts of Appeals for the Fourth, Fifth, Eighth, and Eleventh Circuits. In 1994, she was elected to the Texas Supreme Court and was re-elected in 2000 with an overwhelming 84% of the vote. In addition, every major Texas newspaper endorsed her candidacy during the election.

Opponents of Justice Owen have tried to paint her as outside the mainstream. Justice Owen has been accused of bias towards big business because she received campaign contributions from Enron during her campaigns for the Texas Supreme Court. This accusation is plainly false. In Texas, Supreme Court justices are elected, and candidates are permitted to raise money. It is easy to attack her for Enron's financial problems, but upon a close examination, there is no reason to doubt her credibility or honesty. In addition to Justice Owen, many other justices received campaign contributions from Enron. In fact, one justice received almost four times as much as Justice Owen.

Regardless of the amounts received, there is no indication that Justice Owen favored Enron in her judicial rulings. In the case of *Enron Corp. v. Spring Indep. Sch. Dist.*, a tax opinion that favored Enron, the decision of the court was unanimous. Both Democrats and Republicans agreed with Justice Owen's assessment of the law. In fact, an attorney on the losing side in this case said that he was "disturbed" by the accusations that Justice Owen's decision was influenced by campaign contributions.

It is also important to note that Justice Owen has consistently argued for reform of the judicial election system in Texas. It is indeed curious that an advocate for reform has been attacked as being corrupted by the system. In short, there is simply no evidence to suggest that Justice Owen has ever acted improperly.

Another accusation that has been leveled against Justice Owen is that she is hostile to abortion rights. However, Justice Owen has never expressed her personal feelings on abortion. She has never been a political activist in this regard, and the only cases that have appeared before her have dealt with a Texas parental notification statute. The Texas Supreme Court has addressed this statute on several occasions in order to determine whether a parent must be notified of a minor girl's decision to have an abortion. In all of these cases, Justice Owen has endeavored to apply the law as written by the Texas legislature, and she has never ruled directly on the issue of abortion rights.

Even if her opinions were to somehow be construed as evidencing a resistance to abortion on demand, it is important to note that the majority of the American people approve of parental notification for minor girls. Therefore, a characterization of Justice Owen as out of the mainstream is plainly inaccurate. In any case, she has never expressed her personal views on this matter, and she should not have to. Justice Owen has applied the law fairly and accurately, and we should ask no more of her.

Justice Owen is a distinguished candidate for the Fifth Circuit Court of Appeals. It is no wonder that the American Bar Association unanimously voted that Justice Owen is "Well Qualified" for appointment to the Federal appellate bench. She is a distinguished jurist who has served the people of Texas with honor and distinction.

Mr. Chairman, if Justice Owen is defeated, it will be a victory for special interest groups who are completely out of the mainstream on issues such as parental notification. More importantly, the defeat of this nomination may also set an ideological litmus test for nominees. Instead of looking to a judge's qualifications, knowledge of the law, and a willingness to apply the law, a vote to defeat Justice Owen may indicate that political views, or perceived political views, are valid indicators of a person's fitness as a judge. By taking political views of a nominee into account, this Committee will alter past practice. It will set the stage for a party in control of the Judiciary Committee to obstruct with impunity nominees from the other party. We should be careful about going down this road. Members of this Committee should be looking for ways to improve the nominations process. If Justice Owen is defeated, the Committee will pave the way for even more obstructionism.