

Statement of

The Honorable John Cornyn

United States Senator
Texas
April 27, 2004

Mr. Chairman and Ranking Member, I am privileged to introduce to the committee Brett Kavanaugh - a distinguished attorney and devoted public servant. I have known Brett for several years, and I have had the privilege of working with him on a case I argued to the US Supreme Court, so I have been able to observe his legal skills from up close. I have every confidence that Brett would be an exceptional jurist on the U.S. Court of Appeals for the D.C. Circuit. His distinguished academic and professional record confirms beyond all doubt that he possesses the intellectual ability to be a federal judge. His temperament and character demonstrate that he is well suited to the office. Indeed, I can think of no better evidence of his sound judgment than the fact that he has chosen to marry a good woman from the great state of Texas. Brett deserves the support of this committee, and the support of the United States Senate.

As you know, Mr. Chairman, one-fourth of the active D.C. Circuit court is currently vacant. And as you also know, Mr. Chairman, the D.C. Circuit is unique amongst the federal courts of appeals. Of course, the D.C. Circuit is an appellate court, not a trial court. Appellate judges do not try cases or adjudicate factual disputes - instead, they hear arguments on legal issues. But unlike the docket of other courts of appeals, the docket of the D.C. Circuit is uniquely focused on the operations of the federal government. Accordingly, attorneys who have experience working with and within the federal government are uniquely qualified to serve on that distinguished court.

Brett Kavanaugh is an ideal candidate for the D.C. Circuit. He has an extensive record of public service. For over a decade, he has held the most prestigious positions an attorney can hold in our federal government. After graduating from Yale College and Yale Law School, Brett served as a law clerk to three distinguished federal appellate judges, including U.S. Supreme Court Justice Anthony Kennedy. Brett has also served as an attorney in the Office of the Solicitor General, representing the United States government in cases before the U.S. Supreme Court. He has served as a federal prosecutor in the Office of Independent Counsel under the Honorable Kenneth Starr. He has personally argued civil and criminal cases in the U.S. Supreme Court and federal courts of appeals throughout the country. And he has been called upon for his wisdom and counsel by the President of the United States - first through his service as Associate Counsel and Senior Associate Counsel to the President, and now as Staff Secretary, one of the President's most senior trusted advisers.

Mr. Chairman, I can think of few attorneys of any age who can boast this level of experience with the inner workings of the federal government. It is no wonder, then, that the American Bar Association has rated Brett Kavanaugh "well qualified" to serve on the D.C. Circuit - "the gold standard by which judicial candidates are judged," according to leading Senate Democrats on this very committee.

Ordinarily, a nominee possessing such credentials and experiences would have little difficulty receiving swift confirmation by the United States Senate. Unfortunately, as observers of this committee well know, we are not living under ordinary circumstances today. I hope that the distinguished nominee before the committee today will receive fair treatment. His exceptional record of public service in the federal government will serve him well on the D.C. Circuit bench. His wisdom and counsel have been trusted at the highest levels of government. Yet I fear that it is precisely Brett's distinguished record of experience that will be used against him. I sincerely hope that that will not happen - after all, it would be truly perverse to use one's record of service against a nominee, especially with respect to a court that is so much in need of jurists who are knowledgeable about the inner workings of the federal government.

Indeed, many successful judicial nominees have brought to the bench extensive records of service in partisan political environments. I have often said that, when you place your hand on the Bible and swear an oath to serve as a judge, you change - you learn that your role is no longer partisan, your duty is no longer to advocate on behalf of a particular party or client, but rather to serve as a neutral arbiter of law. The American people understand that when

your job changes, you change - and that people are fully capable of putting aside their personal beliefs in order to fulfill professional duty.

That's why this body has traditionally confirmed nominee after nominee with clear records of service to one particular party or political philosophy. Ruth Bader Ginsburg served as General Counsel of the ACLU. Of course, it's difficult to imagine a more ideological job than General Counsel of the ACLU. Yet she was confirmed by overwhelming margins of the United States Senate - first by unanimous consent to the D.C. Circuit, and then by a vote of 96-3 to the U.S. Supreme Court. Stephen Breyer was the Democrats' Chief Counsel on the Senate Judiciary Committee, before he too was easily confirmed to the 1st Circuit and then to the U.S. Supreme Court. Byron White was the second most powerful political appointee at the Justice Department under President Kennedy, when the Senate confirmed him to the Supreme Court by voice vote. Liberal activist Abner Mikva was a Democrat member of Congress when he was confirmed to the D.C. Circuit by a majority of the Senate. Indeed, as many as 42 of the 54 judges who have served on the D.C. Circuit came to the bench with political backgrounds - including service in appointed or elected political office. All received the respect of an up-or-down vote on the floor of the United States Senate, and all received the support of at least a majority of Senators, as our Constitution demands.

So historically, this body and this committee have exercised the advice and consent function seriously and appropriately, by emphasizing legal excellence and experience - and not by punishing nominees simply for serving their political party. It would be tragic for the federal judiciary, and ultimately harmful to the American people who depend on it, to establish a new standard today, and to declare that any attorney who takes on a political client is somehow disqualified from confirmation - no matter how talented, how devoted, or how fit for the federal bench they may truly be.

Brett Kavanaugh is a skilled attorney who has demonstrated his commitment to public service throughout his life and career. He happens to be a Republican, and he happens to be close to the President. This is a Presidential election year, but the rigorous fight for the White House should not spill over to the judicial confirmation process. Last year, it was wrong for close friends of the President like Texas Supreme Court Justice Priscilla Owen to be denied even the basic courtesy and Senate tradition of an up-or-down vote, simply to score political points against the President. This year, it would be terribly wrong for Brett to be denied confirmation - or at least an up-or-down vote - simply because he has ably and consistently served his President, his party, and his country.