

Statement of

The Honorable Dianne Feinstein

United States Senator
California
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Opening Statement (Prepared Remarks)
Senate Judiciary Committee Hearings
Nomination of Judge John G. Roberts Jr. to be
Chief Justice of the United States Supreme Court

Introduction

It is clear that Judge Roberts is brilliant and has a strong legal background. However, as the Senate evaluates Judge Roberts for the position of Chief Justice, I think it is essential to determine whether he will be a leader who can generate consensus and find compromise, as well as embody the mainstream of American legal thinking.

Importance of the Chief Justice

Clearly, to succeed at this enormous charge takes more than a soothing tone and calm demeanor. The person who occupies the seat of Chief Justice needs to see that justice is provided to all Americans -- men and women of all races and creeds, rich and poor, weak and powerful, Democrats and Republicans, young and old.

In the new term, the Court will hear cases concerning:

- the standard of review for abortion cases;
- the constitutionality of an Oregon law which permits physician-assisted suicide for terminally ill, but legally competent individuals;
- price fixing between oil companies.

In addition, many other important issues are just over the horizon, including the rights of enemy combatants; the so-called federal "partial birth" abortion ban; and whether Congress has the authority to protect our nation's environment through legislation. The new Chief Justice will play a pivotal role in directing the Court and in the outcome of these and other future cases.

A Supreme Court Moving to the Right

Chief Justice Rehnquist will be remembered not only for a distinguished tenure, but also for applying a more restrictive interpretation of the Constitution which limited the role of Congress. In recent years the Court has adopted a politically conservative "states' rights" view of several Constitutional provisions. As a result, congressional authority to enact important legislation has been significantly curtailed.

This has occurred through its restrictive interpretation of the Spending Clause, the Commerce Clause, the Fourteenth Amendment, and the Eleventh Amendment which the Congress uses to enact certain laws.

Based on these federalism grounds, the Court has wiped out all or key parts of legislation addressing issues such as: gun free schools, religious freedom, overtime protections, age discrimination, violence against women, and discrimination against people with disabilities.

In fact, over the past decade, the Rehnquist Court has weakened or invalidated more than three dozen federal statutes. Almost a third of these decisions were based on the Commerce Clause and the 14th Amendment.

If Judge Roberts subscribes to the Rehnquist Court's restrictive interpretation of Congress' ability to legislate, the impact could be to severely restrict the ability of Congress to tackle nationwide issues that the American people have elected us to address.

Issues of Special Concern to Women

As the only woman on the Committee, I believe I have an additional role in evaluating nominees for the Supreme Court. This entails representing the views and concerns of American women throughout this process.

Like with any population, women enjoy diverse opinions, beliefs, political affiliations, priorities and values. And we share a history of having to fight for many of the rights and opportunities that young American women now take for granted.

During the early years of the United States, women had very few rights and privileges. In most states, women were not allowed to enter into contracts, act as an executor of an estate, and they had limited inheritance and child custody rights. It wasn't until 1839 that a woman could own property separate from her husband when Mississippi passed the Married Woman's Property Act.

It wasn't until the 19th century that women began working outside their homes in large numbers. Most often women were employed as teachers or nurses, and in textile mills and garment shops. As women entered into the workforce, we had to fight our way into "nontraditional" fields (medicine, law, business, and, yes, even politics).

The American Medical Association was founded in 1846, but it barred women from membership until 1915. The American Bar Association was founded in 1878, but it did not admit women until 1918. And it wasn't until 1920 when women finally won the right to vote.

By virtue of our history, and our sex, women have a perspective that has been recognized as unique and valuable. I try to represent and honor this through my role on the Committee. With the absence of Justice Sandra Day O'Connor, the Court loses the important perspective she brought as a woman -- and the deciding vote in a number of critical cases.

For me, one of the most important issues that needs to be addressed by Judge Roberts is the constitutional right to privacy.

I am concerned by a trend on the Court to limit this right and curtail women's autonomy. It would be very difficult for me to vote to confirm someone to the Supreme Court whom I knew would overturn *Roe v. Wade*.

I remember what it was like when abortion was illegal. As a college student, I watched the passing of the plate to collect money so young women could go to Tijuana for an abortion. I knew a woman who ended her life because she was pregnant.

And in the 1960s, as a member of the California Women's Board of Terms and Parole, I sentenced women convicted of performing an illegal abortion. I saw the injuries they caused. I don't want to go back to those days.

How the Court decides future cases could determine whether both beginning-of-life and end-of-life decisions remain private, or whether individuals could be subject to government intrusion or perhaps the risk of prison.

Church and State:

Also I will be looking to understand Judge Roberts' views on the Constitutional provision of providing for the separation of church and state.

It is important to remember and learn from history. For centuries people have been persecuted for their religious beliefs. During the Roman Empire, the Middle Ages, the Reformation, and even, today, millions of innocent people have been killed and tortured because of their religious beliefs.

I recently traveled to Europe where I saw monuments enshrining the tragedies that have occurred in the name of religion. In Budapest along the River Danube there are 60 pairs of shoes covered in copper: women's, men's, small children's.

During World War II, Hungarian fascist and Nazi soldiers forced thousands of Jews including men, women, and small children to remove their shoes, as a final humiliation, before shooting them and letting their bodies fall and drift down the river. These shoes represent a powerful symbol of man's inhumanity.

And we cannot forget that in American history, Puritans, Baptists, Catholics, Jews and other religious individuals came to this continent looking for a society where they could be free from the persecution they faced in Europe and England.

In response, the Founding Fathers created a balance in the Constitution that provided for freedom of worship as well as for separation of church and state. In their efforts to protect against religious persecution, the Framers established a secular government that would remain separate from religion.

However, these basic principles could be severely weakened or unraveled depending on the Court's allowing government funding of religious education, prayer in school, and the display of religious symbols on public property and land.

Conclusion:

These issues are not easy and the legal theories that govern them are complex. But the basic question we are faced with boils down to this: what kind of America do we want for our children and our grandchildren?

I am hopeful that those who take the seats of Chief Justice Rehnquist and Justice O'Connor will represent all Americans and work to secure a society where all people are treated equally under the law.

When entering the Supreme Court, one looks up and sees on the side of this enormous and impressive courthouse, two inscriptions -- "Equal Justice Under the Law," and "Justice the Guardian of Liberty."

These are the standards.

The Senate must decide whether Judge Roberts is prepared to uphold them.