Testimony of

The Honorable John Warner

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Introductory Remarks (as prepared)
before the Senate Judiciary Committee
Nomination of Judge John Roberts
to the position of Chief Justice of the United States

Senator John W. Warner, R-Va.
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Mr. Chairman, Senator Leahy, members of the Committee, it is a privilege for me to appear before you again, as I have many times, with respect to a nomination to our third branch of government -- the federal judiciary.

Before I begin, though, I'd like to associate myself with the remarks made by others on the Committee who have paid homage to the late Chief Justice of the United States, William Rehnquist.

Mr. Chairman, this hearing today is an important chapter in the history of the United States. In the 218 years since the Constitution was ratified, the nation has had 43 Presidents but only 16 individuals have served as Chief Justice.

Further, the Senate deliberations, in this hearing, and to be followed with floor debate, provide a unique opportunity for generations of Americans, particularly younger ones, to follow these proceedings and learn about the inter-relationship of our three branches of government, the role of the judicial branch in our constitutional framework of government, and the ongoing debates in constitutional law.

For example, does the Constitution protect a general right of privacy? Should the courts construe provisions of the Constitution in accordance with their meaning at the time the Constitution was ratified -- the doctrine of original intent? Or is the Constitution a living document that evolves over time? What does the term "judicial activism" mean?

Accordingly, I hope educators across the land will encourage students to follow all or parts of the Senate proceedings.

I am confident that this distinguished committee will perform its functions in a manner that will comport with the finest traditions of the Senate, and will impart on our audience across America, particularly our younger citizens, a respect for and an understanding of the U.S. Senate, and its duties under the Constitution.

The Constitution, together with the Bill of Rights, is an amazing document. For it is the reason that our nation's government stands today as the oldest, continuous, democratic republic form of government in the world today. Indeed, most all of the other bold experiments in government have gone into the dustbin of history. That is why so many other nations today are forming governments that embrace the principles of our own.

Within the basic foundation of our Constitution lies the bedrock principle that our government is composed of three different, yet coequal, branches -- the Congress, the Executive, and the Judiciary.

While the Constitution provides each of these three, coequal branches with its own unique responsibilities, it is appropriate today to focus on how the Founding Fathers made the continuity of the judicial branch entirely dependent upon the other two branches of government -- the Executive branch and the Congress -- fulfilling their constitutional obligations.

Within our Constitution, the Founding Fathers entrusted to the Executive branch the exclusive power to nominate individuals to serve on our federal judiciary. At the same time, the Founding Fathers also entrusted to the United States Senate, under Article II, Section II of the Constitution, the exclusive power to give, or withhold, consent to serve.

Only if the President and the Senate exercise these respective constitutional powers fairly, objectively, and in a timely manner, can the Judicial branch have the numbers of qualified judges to serve properly the needs of our citizens. For this reason, in my view, a Senator has no higher duty than his or her constitutional responsibilities under Article II, Section II -- the advice and consent clause.

Recently, fourteen Senators, of which I was one, committed themselves, in writing, to support our Senate leadership in facilitating the Senate's responsibility of providing "advice and consent." In our Memorandum of Understanding, Senator Byrd and I incorporated language that spoke directly to the Founding Fathers' explicit use of the word "advice" in Article II, Section 2, of our Constitution. Without question, our Framers put the word "advice" in our Constitution for a reason: to ensure consultation between a President and the Senate prior to the forwarding of a nominee to the Senate for consideration. And, in my view, with this nomination, the President met these responsibilities in an exemplary way.

Now, with the beginning of these hearings today, the Senate commences the next phase -- the consent phase -- of this constitutional process. After committee consideration, the nomination will move to the full Senate for debate, followed by a vote. Throughout this process, the ultimate question will remain the same: whether the Senate should grant, or deny, its consent.

In the twenty-seven years I have been privileged to serve in the United States Senate, slightly more than 2000 judicial nominations have been submitted to the Senate by a series of Presidents.

When evaluating nominees, it has been my practice to recognize political considerations, but not to be bound by them. I give far greater weight to an individual's credentials, which I judge fairly and objectively. I look at a wide range of factors, primarily: character, professional career, experience, integrity, and temperament for lifetime service on our courts.

In my view, the unique posture in which our Framers placed our federal judiciary, with respect to the other two coequal branches of governments, requires such fairness and objectivity.

I judge John Roberts' credentials to be Chief Justice in the same manner I have applied to all other nominees during my 27 years in the Senate. And in my view, I can say, without equivocation, that I have never seen a nominee with stronger qualifications than John Roberts.

Some two years ago, when Roberts was nominated to serve on the United States Court of Appeals for the District of Columbia, I was privileged, at his request, to introduce him to this Committee. At the time, he was relatively unknown; today the world knows him.

It was during that process that I first really came to know John Roberts, and gained my great respect for him. We were brought together because we were both fortunate to have been partners, at different times in our careers, at the law firm of Hogan & Hartson -- a venerable law firm known for its integrity.

Among the firm's many salutary credentials, Hogan & Hartson has long been known for its extensive commitment to pro bono representation, particularly in court appointed cases.

In fact, if I could share a personal story -- in 1960 I was serving as an Assistant United States Attorney in the District of Columbia. Late one day, an attorney who had been appointed by the court to represent an indigent defendant charged with first-degree murder, knocked on my door. The lawyer asked me for the opportunity to introduce himself and for a period of consultation. Subsequently, the defendant's case went to trial, and midway through the proceedings, the court accepted a plea of guilty to a lesser included offense.

The lawyer who represented that criminal defendant was Nelson T. Hartson, a founding member of the law firm of Hogan & Hartson.

I have such a profound respect for the late Nelson Hartson for many reasons, but mostly because of his ethics and his dedication to pro bono work. Mr. Hartson always had the highest standards of ethics and instilled this in the culture of the firm. He also always strongly encouraged young lawyers to combine public service in their careers along with private practice.

Judge Roberts, you have exemplified that combination of experience.

John Roberts shares the belief that lawyers have an ethical duty to give back to the community by providing free legal services, particularly to those in need. The hundreds and hundreds of hours he has spent working on pro bono cases are a testament to that. He didn't have to do any of it. The bar doesn't require it. But John Roberts, again and again, volunteered his time to help others.

Those who know him best can also attest to the kind of person he is. Throughout his legal career, both in public service, private practice and through his pro bono work, John Roberts has worked with and against hundreds of attorneys. Those attorneys who know him well typically speak with one voice when they tell you that dignity, humility, and a sense of fairness are hallmarks of John

Roberts. These qualities represent the embodiment of a federal judge, particularly a Chief Justice of the United States.

While I thoroughly understand that all do not share my views, the simple fact is that this nomination easily fits within the confines of Senate history and precedent.

Over the last fifty years America has seen a total of 27 Supreme Court nominees:

- 6 of those nominees received the unanimous consent of the Senate by voice vote.

- Another 15 of those nominees, including 7 current members of the United States Supreme Court, received the consent of the Senate by more than sixty votes.

- In fact, only 3 nominees to the Supreme Court over the course of the last fifty years have failed to receive the consent of the Senate.

The modern day history of the Senate is even more illustrative:

- Chief Justice Rehnquist was confirmed to the court as an Associate Justice in 1971 with 68 votes in support, and later confirmed as Chief Justice with 65 votes;

- John Paul Stevens received the consent of the Senate by a vote of 98-0;

- Justice O'Connor, Justice Scalia and Justice Kennedy were all confirmed by the Senate unanimously;

- Justice Souter was confirmed via a vote of 90-9;

- Justice Ginsburg was confirmed by a vote of 96-3; and

- Justice Breyer received the Senate's consent by a vote of 87-9.

In conclusion, I'd like to take a moment to remind everybody that this exact week, 218 years ago, our Founding Fathers finished the final draft of the U.S. Constitution after a long, hot summer of drafting and debating. When Ben Franklin ultimately emerged from Independence Hall upon the conclusion of the convention a reporter asked him, "Mr. Franklin, sir, what have you wrought?" To which Franklin replied, "A republic, if you can keep it."

And that is ultimately what this advice and consent process is all about. But while the Constitution sets the course for our country, it is without question the Chief Justice of the United States who must have his hand on the tiller to keep our great ship of state on a course consistent with the Constitution.

I shall follow the deliberations of this committee carefully, and will participate in the floor debate, and look forward to the privilege of voting for you.