

Statement of
The Honorable Mike DeWine

United States Senator
Ohio
September 12, 2005

OPENING STATEMENT
CONFIRMATION HEARING OF JOHN G. ROBERTS, JR.
U.S. SENATOR MIKE DEWINE
SEPTEMBER 12, 2005

Thank you, Mr. Chairman. Judge Roberts, I congratulate you on your nomination, applaud you on your extraordinary legal career, and welcome you, your wife Jane, and your children Jack and Josie.

Over the next several days, we will be spending a lot of time together: you, the 18 members of this Committee, and the American people. This is the time for a national conversation -- a conversation about the document that binds us as a nation and a people. That document, of course, is the Constitution.

For more than 215 years, we have been having an extended conversation about the meaning of our Constitution.

Sometimes, the conversation has been civil. Sometimes, it has been passionate. And, sometimes, it has been violent.

The New Deal -- and the court battles that were fought about the scope of the federal government's power to combat the Great Depression -- was a debate about the meaning of the Constitution.

The civil rights movement -- and the vigorous, often violent, resistance to efforts to desegregate all America -- was a debate about the meaning of our Constitution.

And, the Civil War -- the most violent and bloodiest time in American history -- was a war about the meaning of our Constitution.

We have seen a President resign, elections decided, and popular laws overturned all because of our Constitution. But, our Constitution is more than just a symbol of our Nation's history. It is also a light for the world. As a nation, we were among the first to sit down and draft a document that, quite literally, "constitutes" our government.

But, we were not the last. Since our Founders embraced the idea of a written Constitution, others have followed suit. After the fall of the Soviet regime, we witnessed an explosion of

Constitution-writing in Eastern Europe. There are now more than 170 written constitutions in the world, more than half of which have been drafted in the last 30 years. To paraphrase Thomas Paine, "the cause of America" is indeed, "the cause of all mankind."

That's why our gathering today is so significant. We are charged with providing our "advice and consent" on the President's nominee to the Supreme Court. Our job is important. But, if confirmed, Judge Roberts, your job will be even more important. It will be your job, as the 17th Chief Justice of the United States, to correctly construe our Constitution, to preserve the balance of power sewn into it, and to protect those rights and values that are a part of our history and tradition.

Former Chief Justice John Marshall once warned that "people made the Constitution, and people can unmake it." It will be your job, in other words, to ensure that our Constitution is never unmade.

As of late, however, many Americans believe that the Supreme Court is "unmaking" the very Constitution that our Founders drafted. Many are concerned when they see the Court strike down laws protecting the aged, the disabled, and women who are the victims of violence. Many worry when they see the Court permit the taking of private property for "economic development." Many are troubled when they see the Court cite international law in its decisions. Many fear that our Court is making policy, when it repeatedly strikes down laws passed by Congress and the State legislatures.

I, too, am concerned. Judges are not Members of Congress. They are not State Legislators. They are not Governors. And, they are not Presidents. Their job is not to pass laws, implement regulations, or make policy.

Perhaps no one said this better than Justice Byron White. During his confirmation hearing in 1962, White was asked to explain "the role of the Supreme Court in our constitutional form of government." Nowadays, in response to this question, we often hear grand theories about the meaning of the Constitution and its history. Justice White, however, said nothing of the kind.

When he was asked about the role of the Supreme Court in our system of government, White gave a simple answer: "to decide cases."

It sounds almost too obvious to be true, but that is the right answer. Judges need to restrict themselves to the proper resolution of the case before them. They need to avoid the temptation to set broad policy. And, they need to pay proper deference to the role of the Executive, the Congress, and the States -- while closely guarding the language of the Constitution.

We would do well to keep this example in mind. The Constitution does not give us all the answers. It does, however, create the perfect process for solving our problems. The Congress and the President have a role in this process. The States have theirs. And, when there are disputes, the Courts are there to "decide cases."

There is a reason that Judges need to take on this limited role. As my esteemed colleague from Iowa, Senator Grassley, explained during Justice Souter's confirmation hearing, a Judge should not be "pro-this and anti-that. He should rather be a judge of cases, not causes."

Causes come and go, but cases do not. In years or decades, one cause may fade and another will emerge. But, Judges will remain, deciding cases and interpreting our Constitution.

Our next Chief Justice is not merely for today. He is a Chief Justice for the future -- a future that will present Constitutional issues that are now unknown.

The career of Chief Justice Rehnquist proves the point. When he joined the Court in 1972, there was no Internet, and no need to protect our children from the proliferation of on-line pornography. And, at the time, there was no War on Terror, no Presidential order to detain terrorists as "enemy combatants," and no terrorist prison at Guantanamo Bay. But, Chief Justice Rehnquist dealt with all of these issues while on the Court.

When faced with new and unexpected issues, a Justice is left only with the tools that every good Judge must use: the facts of the case, the language of the Constitution, and the weight of precedent. This is a simple and limited approach to deciding cases -- the kind of approach that Justice White would have understood and our Founders would have admired.

While preparing for this hearing, I came across a statement from a sitting federal judge that neatly sums up this philosophy. Deciding cases, this Judge said, "requires an essential humility grounded in the properly limited role of an undemocratic judiciary in a democratic republic, a humility reflected in doctrines of deference to legislative policy judgments and embodied in the often misunderstood term 'judicial restraint.'"

Judge Roberts, those words are yours. And, in my opinion, they are very wise words indeed. You have the talent, experience, and humility to be an outstanding member of the Supreme Court. And, I expect that these hearings will show that you have the appropriate philosophy to lead our Nation into the future as the 17th Chief Justice of the United States.

Thank you, Mr. Chairman.