

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
September 12, 2005

Opening Statement Of Senator Patrick Leahy, Ranking Member  
Hearing Before The Senate Committee On The Judiciary  
On The Nomination Of John G. Roberts, Jr.,  
To Be Chief Justice Of The Supreme Court  
Monday, September 12, 2005  
Senate Caucus Room

A few days ago William H. Rehnquist passed away after 33 years of service on the Supreme Court, including 19 as the Chief Justice. Last week many of us paid our respects for his service at the monumental building across the street in which the Chief Justice devoted himself to protecting the independence of the federal judiciary. The facade of that Court exhibits the enduring strength and dignity of marble from Vermont, a place that served as a refuge for the Chief Justice.

## **Self-Government And The Common Good**

Today, the devastation and despair facing millions of our fellow Americans in the Gulf region is a tragic reminder of why we have a federal government and why it is critical that our government be responsive. We need the federal government for our protection and security; to cast a lifeline to those in distress; and to mobilize vital resources, beyond the ability of any local or State government, for the common good.

The full dimensions of the disaster are not yet known. Bodies of loved ones need to be recovered, families need to be reunited, the survivors need to be assisted, long-term health risks and environmental damage need to be assessed. But if anyone needed a reminder of the need and role for government, the last days have provided it. If anyone needed a reminder of the growing poverty and despair among too many Americans, we now all have it. And if anyone needed a reminder of the racial divide that remains in our nation, no one can now doubt that we still have miles to go.

I believe that the American people still want, expect and demand their government to help ensure justice and equal opportunity for all and especially for those who, through no fault of their own, were born into poverty. The American people deserve a government as good as they are, with a heart as big as theirs. We are all Americans and all Americans should have the opportunity to earn a fair share of the bounty and blessings that America offers.

We The People

We have been given a great Constitution. It begins: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." Our Constitution is the framework for our government and the foundation of our rights and liberties.

Vermont joined the Union in the same year that the Bill of Rights was ratified. Those of us from the Green Mountain State, the nation's 14th state, have historically been protective of our fundamental rights and liberties. Vermonters understand the importance the Constitution and Bill of Rights and of those constitutional amendments that have expanded individual rights over time.

In these hearings, we will be discussing constitutional issues that may seem legalistic. But these are vital questions that affect each of us, every day. When we discuss the Constitution's Commerce Clause or Spending Power, for example, we are asking about congressional authority to pass laws to ensure clean air and water, children's and seniors' health, safe food and drugs, safe workplaces - even wetland protection and levees that should protect our communities from natural disasters.

Our constitutional values remain constant as we strive to realize the American promise of fairness, equality, and justice. I have noted that our Constitution begins with the words "We the People." When the Constitution was written, "We the People" did not include Native Americans or African-American slaves but only "free Persons." It took more than four score years and a Civil War before the Constitution was amended to include as citizens "all persons born or naturalized in the United States." Even then, the Constitution failed to accord half of the people one of democracy's defining rights -- women were not yet guaranteed the right to vote. That was not remedied until 1920. Decades later still, it took an historic constitutional ruling by the United States Supreme Court in the case of *Brown v. Board of Education*, and landmark legislation by the federal government, for America to begin to provide a measure of equality to many who were held back for so long because of the color of their skin.

I have long been a proponent of First Amendment freedoms and open government because the public's right to know what our government is doing promotes accountability and invigorates our system of checks and balances.

Federal judges are not elected. Once confirmed, they serve for life. The people never have the opportunity for effective oversight of their work. The judiciary is the most insulated branch of government from public accountability.

This hearing is the only opportunity for the American people to examine what kind of justice John Roberts will dispense, if promoted to the Supreme Court, and the direction in which he would lead the federal judiciary. This hearing is the only chance that "We the People" have to hear from and reflect on the suitability of the nominee to be a final arbiter of the meaning of the Constitution. Open and honest public conversation with the nominee in these hearing rooms is an important part of this process.

Our Fundamental Rights In A New Century

This hearing is about the fundamental rights of all Americans. Judge John Roberts is the first nominee of the 21st Century. If he is confirmed he serves not just for the remaining three years of the Bush Administration but could serve through the administrations of the next seven or eight presidents. He would be deciding matters that affect not only all of Americans today, but also our children and grandchildren.

Nearly 20 years ago, I noted how critical it is for the Senate to engage in a public exploration of the judicial philosophy of Supreme Court nominees saying: "There can hardly be an issue closer to the heart of the Senate's role than a full and public exposition of the nominee's approach to the Constitution and to the role of the courts in discerning and enforcing its commands. That is what I mean by judicial philosophy." This truth has not changed, as today we consider a successor to Chief Justice Rehnquist and will then be called upon to consider a successor for Justice Sandra Day O'Connor.

### The Arc of the Law

What is more difficult to see is the arc of the law in the years ahead, as Justices will vote on which cases to accept and how to decide them. Ours is a government of laws, but when faced with a vacancy on the Supreme Court, we are reminded that our fellow citizens on the Court interpret and apply those laws. The balance and direction of the Supreme Court are now at issue with two vacancies. Chief among emerging concerns are whether the Supreme Court will continue its recent efforts to restrict the authority of Congress to pass legislation to protect the people's interests in the environment, safety, and civil rights; and, whether the Supreme Court will effectively check the enhanced presidential power that has been amassed in the last few years.

The light of the nominations process is intense because it is the only time that light will shine, and the afterglow lasts for the rest of a Justice's career. "We the People" have just this one chance to inquire whether this person should be entrusted with the privilege and responsibility of interpreting our Constitution and dispensing justice from the nation's highest court. On behalf of the American people, it is our job to do all we can to make sure we get it right.