

Statement of

The Honorable Patrick Leahy

United States Senator
United States Senate
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I welcome Justice O'Connor back to the Senate Judiciary Committee. I am happy we are also joined by many students in this room and over the Internet who are interested in learning more about judicial independence.

I believe that discussions like this serve our democracy. As public officials, we owe it to all Americans to be transparent about what we do in our official capacities. We justify their trust by demonstrating how our Government works to uphold our common values, how we are guided by the Constitution, and how that Constitution has served over the years to make our great Nation more inclusive in our continuing effort to become that "more perfect union."

The design of our Federal Government, as set forth by our Constitution, provides for three branches of government, only two of which are political. The third branch, the judiciary, is independent of the two political branches by design. Both of the political branches come together in the judicial confirmation process to equip that independent branch with the men and women necessary to carry out its role in our democracy.

Judicial independence and the role of judges in our democracy has been the subject of two previous hearings with Supreme Court justices but in the wake of recent rhetoric about the sitting Chief Justice, this public conversation here today is all the more relevant. In the past few weeks, the Chief Justice has been labeled a "traitor" and his ruling in the health care decision has been called a "betrayal" to former President George W. Bush. These types of attacks reveal the misguided notion that justices and judges owe some allegiance to the president who appointed them or to a political party.

I have served on this Committee for more than three decades and have questioned every Supreme Court Justice serving on the high court today at their confirmation hearings. I have voted to confirm Justices and judges nominated by both Republican and Democratic presidents, and I have long noted that I do not vote to confirm individuals to the bench because I expect to agree with all of their decisions. My only standard is whether the nominee would be the kind of independent judge who would be fair and impartial.

No one should demand political allegiance from any judge. As many sitting justices have noted, it is completely appropriate to criticize the rulings of any court, including the Supreme Court. There is much in the Chief Justice's recent health care decision with which I disagree. For example, I find the opinion of Justice Ginsburg compelling on congressional authority under the Commerce Clause and Spending Clause. But it reveals a complete misunderstanding of our democracy to label the Chief Justice a "traitor" as if he owed partisan allegiance to a political

party.

This is a teachable moment. And who better than Justice O'Connor to seize on that moment. Justice O'Connor has dedicated her life to public service. She has been elected to state government and served on both the state bench and on the highest court in the land. She has traveled the world to teach emerging democracies about the importance of the rule of law. And most recently, she has directed her considerable talents to reminding us of the importance of civics education so that our own democracy will continue to thrive and be protected.

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