

Statement of
The Honorable Chuck Grassley

United States Senator
Iowa
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**SENATOR GRASSLEY'S OPENING STATEMENT FOR HEARING ON JOHN ROBERTS,
NOMINEE TO THE UNITED STATES SUPREME COURT**

Judge Roberts, welcome to the Judiciary Committee and congratulations on your nomination. With the passing of Chief Justice William Rehnquist, President Bush has sent your name up to replace him on the Court. I think it is fitting that you've been nominated to replace your mentor. Judge Roberts, you have a tough act to follow. Chief Justice Rehnquist was a great Supreme Court Justice. He believed in the strict application of the law and the Constitution, and was a consistent voice for judicial restraint. We will all miss his leadership on the Court.

Judge Roberts, we had a good personal meeting in my office a little over a month ago. Based on our discussions and what I've reviewed, you appear to be extremely well qualified. At our meeting, I was encouraged by your respect for the limited role of the courts as an institution in our democratic society. I look forward to asking you more about your record and qualifications, as well as your judicial approach. I also look forward to asking you about what you think are priorities for the federal judiciary, as you will be the head of that branch of government.

Of course, as we reflect on the enormous build up to this day and the packed hearing room filled with media lights and cameras, it's worth recalling the fact that judicial nominees never appeared before the Senate until 1925. Even since then, for the most part, the hearings weren't public spectacles. In 1962, for example, when Byron White was nominated to the Supreme Court by President Kennedy, the hearing before the Judiciary Committee lasted all of 15 minutes and 8 questions. And Justice White served for 30 years. Of course, all this was before we had televised hearings, which has encouraged Senators to ratchet up the rhetoric to play to various constituencies. Furthermore, Judge Roberts, you are the first nominee of the full Internet age, with millions of eyes scrutinizing thousands of downloaded pages of writing. Not to mention the hundreds of website blogs characterizing the documents that have been produced - in an accurate or more likely inaccurate way - and opining on your record by the minute.

During the Ginsburg nomination, Senator Biden - then the Chairman of the Judiciary Committee - urged that we not treat these hearings as "make or break trials" of "dramatic importance". I agree.

Rather, the hearing provides a unique opportunity for us to ensure that each person appointed to the federal bench will be a true judge, and not a "super-legislator". The courts should not be made up of seats designated for conservative, liberal or moderate judges. Rather, we have a

responsibility to fill the federal bench with individuals who will faithfully interpret the laws and Constitution - individuals who will withhold any personal, political or ideological tendencies from their decision-making process. And this is even more important when we are confirming nominees to the Supreme Court.

There are a number of qualities that I've looked for in a Supreme Court nominee. I believe that the nominee should be someone who knows he or she is not appointed to impose his or her views of right and wrong. As Chief Justice Marshall said over 200 years ago, the duty of the judge is to say what the law "is", not what it "ought to be". Moreover, the nominee should be someone who not only understands, but truly respects the equal roles and responsibilities of the different branches of government and the States. If we confirm a nominee who is all this, none of us - on the political right or left - will be disappointed, because it will mean that the people, through their elected representatives, will be in charge. On the other hand, if we confirm individuals who are bent on assigning to themselves the power to "fix society's problems" as they see fit - a bare majority of these nine unelected and unaccountable men and women will usurp the power of the people - hijacking democracy to serve their own personal prejudices. We do not want to go down that road. We should not go down that road.

Why is it so important to have Supreme Court Justices practice judicial restraint? Because that means the policy choices of the democratic-elected branches of government will only be overturned if and when there is clear warrant to do so in the Constitution itself. We want Supreme Court Justices to exercise judicial restraint so that cases will be decided solely on the law and the principles set forth in the Constitution, and not upon an individual Justice's personal philosophical views or preferences. Felix Frankfurter identified this as the highest example of judicial duty. A fundamental principle of our country is that the majority has a legitimate right to govern. This approach hardly means that courts are less energetic in protecting individual rights. But the words of the Constitution constrain judges every bit as much as they control legislators, executives, and citizens. Otherwise, we are no longer a nation of laws, but a nation of politicians dressed in judges' robes.

During my tenure here in the Senate, I've participated in a number of these Supreme Court nomination hearings - nine to be exact. I'm hopeful that we will see a dignified confirmation process that will not degenerate into what we saw during the Bork and Thomas hearings. Rather, we need to see the same level of civility as during the O'Connor, Ginsburg and Breyer hearings.

Moreover, I'm hoping that we won't see a badgering of the nominee about how he'll rule on specific cases and possible issues that will or may come before the Supreme Court. That has not been the practice in the past - let me remind my colleagues that Justices Ginsburg and Breyer refused to answer questions on how they would rule on cases during their confirmation hearings. The fact is that NO Senator has a right to insist on his or her own issue-by-issue philosophy, or to seek commitments from the nominee on specific litmus-test questions likely to come before the Court. To do so is to give in to the liberal interest groups that only want judges who will do their political bidding on the bench, regardless of what is required by the law and the Constitution. The result is a loss of independence for the Supreme Court, and a lessening of our government's checks and balances.

Some have suggested that since you've now been nominated to be Chief Justice of the Supreme Court, you deserve even more scrutiny than before when you were just nominated to be an Associate Justice. Some are saying that we should prolong the hearings, and turn over even more stones than we've already turned so far. Well, the Chief Justice has been described as "first among equals" - the plain truth is that there really isn't anything substantively different in your role and your vote will count just the same as any other Justice on the Court. So my own questioning and analysis of your qualifications will not really be that much different now.

But it is true that the Chief Justice has additional duties as the head of the federal judiciary. The Chief Justice has to be someone who has a good management style, who can run the trains on time, and who can foster collegiality on the Court. Judge Roberts, I think that the fact that you've appeared 39 times to argue cases on appeal before this Court, and that the current Justices know and respect you - that bodes very well in terms of you smoothly transitioning into the Court in the role of Chief Justice.

So, Judge Roberts, again I congratulate you on your nomination, and I look forward to your testimony.