

Statement of
The Honorable Orrin Hatch.

United States Senator
Utah
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Statement of Senator Orrin G. Hatch, Chairman

Before the Committee on the Judiciary

Hearing on the Nomination of

Janice Rogers Brown to be

United States Circuit Judge for the District of Columbia Circuit

This morning the Committee considers the nomination of California Supreme Court Justice Janice Rogers Brown to be United States Circuit Judge for the District of Columbia Circuit.

The last nominee considered for this court - Miguel Estrada - was treated shamefully by this Committee. He was badgered for adhering to the Code of Judicial Ethics; his record was distorted; and he was attacked for withholding information that he could not provide. After such obstructionist tactics, this impressive Hispanic immigrant became the first appellate court nominee in history to be defeated by a filibuster. Many are proud of that fact, but I think it was a sad day for this institution.

Last month, the Washington Post observed that the judicial confirmation process is "steadily degrading." I believe that the nomination before us offers another opportunity--indeed, an obligation--to change that trend.

The fight over judicial appointments is about more than the dispute of moment. It is about who should govern: The people through their elected representatives, or unelected and largely unaccountable judges. President Bush described his judicial nomination standard this way:

"Every judge I appoint will be a person who clearly understands the role of a judge is to interpret the law, not to legislate from the bench.... My judicial nominees will know the difference."

The powerful liberal groups fighting those nominees also know the difference, but take a different view. They want to win and, since their interests often lose when legislators legislate, they want judges to do it instead. These groups' strategy is like cooking spaghetti: They throw everything at a nominee and, when something sticks, the nominee is done.

Make no mistake - the single most important issue for these groups is abortion. Merely a suspicion that nominees may harbor personal pro-life beliefs is sometimes enough to prevent confirmation. Sworn testimony that they will follow the law despite their personal beliefs is not enough. Entire careers demonstrating a commitment to the rule of law over their personal beliefs is not enough. Their personal beliefs alone are deemed disqualifying.

I do not know Justice Brown's personal view on abortion and, frankly, I do not care. Her decisions as a jurist are guided by the law, not her personal beliefs, which is one of the most important marks of a good judge. Justice Brown, however, did one thing liberal interest groups cannot forgive: She issued an opinion that would have found constitutional California's parental consent law. I expect we will hear a great deal about this case today, and it explains why, according to yesterday's Sacramento Bee, liberal groups plan to "bombard . . . senators with 150,000 pieces of opposition mail from abortion rights backers."

But Justice Brown faces a second hurdle beyond the abortion litmus test that all nominees face. She is a conservative African-American woman, and for some that alone disqualifies her nomination to the D.C. Circuit, widely considered a stepping stone to the United States Supreme Court.

Now, I want to make clear that I am not referring to any of my colleagues here on the Committee. But let me show you what I AM talking about - an example of how low Justice Brown's attackers will sink to smear a qualified African-American jurist who doesn't parrot their ideology.

I hope that everyone here considers this cartoon offensive and despicable; I certainly do. It appeared on a Web site called BlackCommentator.com. Unfortunately, some of Justice Brown's opponents appear to share similar sentiments. I was deeply disappointed when, during a recent press conference, the all-Democrat Congressional Black Caucus applauded when one of its

members said: "This Bush nominee has such an atrocious civil rights record that Clarence Thomas would look like Thurgood Marshall in comparison." To some of her opponents, Justice Brown isn't even qualified to share the stage with the despised Justice Thomas.

Some of Justice Brown's other opponents will pull isolated bits and pieces from Justice Brown's rich and textured background in an attempt to discredit and belittle her accomplishments. Some may simply ignore any decisions they think would reflect positively on Justice Brown's judicial record. But I hope this hearing will be fair and open-minded. We owe Justice Brown no less.

We will hear more about Justice Brown's credentials and legal career, but let me briefly highlight a few facts. Justice Brown grew up the daughter of sharecroppers in segregated, rural Alabama. As a single mother, she worked her way through Cal State Sacramento and UCLA law school. She has spent nearly a quarter-century in public service, including nearly a decade on different levels of the California appellate bench. In 1996, she became the first African American woman to sit on the California Supreme Court. She was retained with 76% of the vote in her last election. Let me repeat that - 76% of the vote. I suspect that any Member of this Committee would be pleased to garner 76% of the vote. This overwhelming vote of confidence by the people of California reflects that Justice Brown is hardly out of the mainstream - a conclusion buttressed by the fact that last year she wrote more majority opinions than any other justice.

Those who know and have worked with Justice Brown confirm that she is what a judge is supposed to be. In a letter dated October 16, 2003, a dozen of her former judicial colleagues, both Democrats and Republicans, wrote: "We know that she is a jurist who applies the law without favor, without bias, and with an even hand."

A bipartisan group of professors at California law schools wrote: "A fair examination of her work reveals that Justice Brown resolves matters as individual cases. Not generalized or abstract causes." They praise her for her "open-minded and thorough appraisal of legal argumentation - even when her personal views may conflict with those arguments." What more could we ask for in a judge?

Not that this matters to the powerful political interests attacking Justice Brown. One report, for example, quotes prominently from an op-ed piece criticizing her opinion in an affirmative action case. To my surprise, the op-ed's author, Berkeley law professor Stephen Barnett, was one of the signatories on the law professors' letter endorsing Justice Brown's nomination.

The powerful political interests opposing President Bush's judicial nominations want judges who will advance their narrow, leftist ideology. To them, results matter more than the law. That is the wrong standard. I hope the better standard prevails, and that the downward slide of the confirmation process can be reversed. Let's seize this opportunity and make that happen today.

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