

Statement of

The Honorable Herb Kohl

United States Senator
Wisconsin
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Opening Statement of Sen. Herb Kohl on the Supreme Court Confirmation Hearing of Judge John Roberts to be Chief Justice of the United States

Thank you, Mr. Chairman.

Judge Roberts, let me also extend my welcome to you this afternoon and to your family.

Judge Roberts, if confirmed you will succeed Justice Rehnquist and serve as only the 17th Chief Justice in the history of the United States, and the youngest in 200 years. You are nominated to a position of awesome power and responsibility. The decisions you and the other Justices make will shape the lives of every person in America for generations. Yet for only a few days this week will the people, through their Senators, be able to question and judge you.

That means that we on this Committee who will be questioning you have an awesome power and responsibility as well.

Judge Roberts, our democracy, our rights, and everything we hold dear about America are built on the foundation of our Constitution. That remarkable document has endured throughout our history. In the hands of the Supreme Court, it has established a right to equal education regardless of race. It has guaranteed an attorney and a fair trial to all Americans, rich and poor alike. It has allowed women to keep private medical decisions private. It has allowed Americans to speak, vote, and worship without interference from their government.

You will lead the Court in its most solemn duty to interpret the Constitution and the rights it grants to all Americans. The Court has the last say in what will be the scope of our rights and the breadth of our freedoms. The Court even has power over which constitutional questions it will hear and which cases the Court will decide. That is why the Supreme Court is so vital to our lives -- and who decides these issues, Judge Roberts, is therefore of unsurpassed importance.

Moreover, you will enjoy even greater authority as Chief Justice of the United States than your fellow Associate Justices. You will not only lead an entire branch of our government if you are confirmed, but you will have a less evident, but an even more important power because it will be your sole responsibility to determine which Justices write which opinions when you are in the majority. Who writes the opinion governs the principle the case stands for and whether the precedent it sets is broad and important or narrow and less consequential.

If you are confirmed for this lifetime position, your decisions and those of your colleagues will be the final word on the rights and freedoms of all Americans for decades to come. You will have no constraints on the decisions you reach -- other than your understanding of the Constitution and your heart. That is why it is so essential that we -- the democratic representatives in a democratic country -- take this week to probe that understanding and that heart.

This process of lifetime tenure is unique in our system of government. The President, Senators, and Governors make decisions every day. Our choices and our opinions are transparent to the public. And every few years, we are accountable for the decisions we make and the votes we cast. If the people do not like our votes or disagree with our record, they vote for someone else and we are gone.

Just as we want -- and need -- to know much more about you, we presume that you want the country to know a lot about what is in your mind and in your heart. People in high places of public trust in this country have a responsibility to share their thoughts about important issues like civil rights, privacy, property rights, the separation of church and state, civil liberties and much more. We hope you understand the need to be totally forthcoming in your answers to questions on these issues. Evasions, avoidance, and hiding behind legal jargon simply will not suffice.

So, the panel will ask you about some of the most important issues that you will face should you be confirmed. For example, the right to privacy. In early writings, you questioned this freedom, calling it a [QUOTE] "so-called right to privacy", so we expect you to discuss with us your current thinking on this basic question.

This past term, the Court decided a ground breaking case concerning the government's power of eminent domain. The Supreme Court held that the government may take private land not only for public use, but also for private development. Public opinion is opposed to this outcome. So, we look forward to hearing your views on this important issue.

The Supreme Court's decisions may be most important when they address the breadth of our civil rights. Some people think that your early writings were cavalier in dismissing many civil rights protections. For example, you were active in efforts to narrowly define voting rights protections. And, your narrow interpretation of Congressional power to address civil rights and other important issues while a judge on the D.C. Circuit gives some pause. The American people deserve to know how you will approach cases involving voting rights, gender discrimination, violence against women, and affirmative action, among many others.

Finally, some speculate that if confirmed you will seek to weaken the separation between church and state. Your critics point to positions you took as a government attorney critical of Supreme Court decisions on prayer in school. So, we need to hear your views about the Establishment Clause of the Constitution as well.

Judge Roberts, if confirmed we can expect that you will serve 25 or 30 years as Chief Justice of the United States. You will likely become the most influential Justice of your generation. During these decades, you will help shape the nature of our country and our democracy. It will be your job to give life and meaning to the broad and lofty promises of the Constitution -- such essential

principles as "due process", "equal protection", and "free speech" -- and to stand up for the rights and civil liberties of the underrepresented and unpopular.

Before we decide whether to entrust you with this power, we ask you to stand before the public and explain your views, express our hopes, and expound on your approach to the bedrock principles that guide us as a Nation.

We have an obligation to find out where you will take us before we decide whether we want you to lead us there. And, most importantly, you have an obligation to tell us.

This would be an appropriate time to share my perspective on how I will judge a nominee. In judging this and other Supreme Court nominations, my test has been judicial excellence. To me, judicial excellence involves four elements. First, a nominee must possess the competence, character, and temperament to serve on the Supreme Court. He or she must have a keen understanding of the law, and the ability to explain it in ways that the American people will understand.

Second, judicial excellence means that a Supreme Court Justice must have a sense of the values which form the core of our political and economic system. We have a right to require the nominee to understand and respect our constitutional values.

Third, judicial excellence requires a sense of compassion. The law is more than an intellectual game, and more than a mental exercise. As Justice Black said, [QUOTE] "The Courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement." [UNQUOTE]

A Supreme Court Justice must understand this. He or she must recognize that real people, with real problems are affected by the decisions rendered by the Court. They must have a connection with and an understanding of the problems that people struggle with on a daily basis. Justice, after all, may be blind, but it should not be deaf.

And finally, judicial excellence requires candor before confirmation. We are being asked to give the nominee enormous power. So, we want to know how he or she will exercise this power and how they see the world -- and we need and we deserve -- to know what is in your mind and in your heart.

Judge Roberts, I am convinced that you satisfy the requirements of competence, character and temperament. I enjoyed meeting you a few weeks ago and appreciated our discussion. Your legal talents are undeniably impressive. Yet, while we are now familiar with your abilities, we still know precious little about your legal philosophy and views on the crucial issues you will face on the Supreme Court in the years ahead. So, we look forward to these hearings as an opportunity to learn more and measure whether you meet our test of judicial excellence.

Thank you, Mr. Chairman.