



Opening Statement by Senator Dianne Feinstein on the Nomination of
Judge John G. Roberts Jr.
to be Chief Justice of the United States Supreme Court
September 12, 2005

Washington, DC – Senator Dianne Feinstein (D-Calif.) today delivered the following opening statement during the Senate Judiciary Committee hearing on the nomination of Judge John G. Roberts Jr. to be Chief Justice of the United States Supreme Court:

Thank you very much, Mr. Chairman.

Good afternoon, Judge Roberts and Mrs. Roberts and the Roberts family.

This must be a moment of enormous pride for you. And I hope that despite the toughness of this hearing, you really realize that this family member of yours is taking over not just the position of an associate justice, but the Chief Justice of the United States at a time of unique division and polarization in this country.

And so many of us are going to be pressing him to see if he has got what we think it takes to do this.

Fred Thompson, welcome back. I hope you miss us just a little bit from time to time. Somehow I'm not quite sure that's the case.

Judge Roberts, thank you very much.

We spent a very interesting hour together. I came away from it feeling that you're certainly brilliant, talented and well qualified, and I don't think there's a question about that.

But as we take a look at you, 50-years old, to be Chief Justice of the United States, I think it's really essential for us to try to determine whether you can be the kind of leader that can generate consensus, find compromise and, above all, really embody the mainstream of American legal thinking.

For me, the most important thing is to see that the Chief Justice really cares about the fact that justice is provided to all Americans. It's been said here before, but it's

really important -- young and old, rich and poor, weak and powerful, all races, creeds, colors, et cetera.

This is going to be a big session.

The Court's going to consider some very critical cases, among many others, the Court will hear cases concerning:

- . • the standard of review for abortion cases, and the health of the mother;
- . • the constitutionality of an Oregon law which permits physician-assisted suicide for terminally ill but legally competent individuals; and
- . • whether two oil industry leaders and competitors can be allowed to work together to fix the price of gas once they've entered into a joint venture;
- . • the rights of enemy combatants;
- . • the so-called partial birth abortion law; and
- . • whether Congress has the authority to protect our nation's environment through legislation.

In addition, many other important issues are just over the horizon, including the rights of enemy combatants; and the so-called federal "partial birth" abortion ban. The Endangered Species Act is winding its way through the appellate courts. It looks like they differ. And if the courts keep going the way they're going, many of us feel that they will take away from the Congress the grounds on which we base legislation in the environment.

This is an enormous macro-question that you're going to be right in the middle of as a pivotal force.

Chief Justice Rehnquist, I believe, will be remembered not only for his distinguished tenure, but also for applying a much more restrictive interpretation of the Constitution which has limited the role of Congress.

In recent years, the court has adopted a politically conservative states' rights view of several constitutional provisions.

As a result, congressional authority to enact important legislation has been significantly curtailed.

This has occurred through its restrictive interpretation of the Spending Clause, the Commerce Clause, the Fourteenth Amendment, the Eleventh Amendment -- all of which Congress uses to enact certain laws.

Based on these federalism grounds, the court has wiped out all or key parts of legislation addressing issues such as gun-free schools -- should schools be allowed to prohibit guns within 1,000 feet; religious freedom; overtime protection; age

discrimination; violence against women; and discrimination against people with disabilities.

In fact, over the past decade, the Rehnquist Court has weakened or invalidated more than three dozen federal statutes. Almost a third of these decisions were based on the Commerce Clause and the Fourteenth Amendment.

If you, Judge Roberts, subscribe the Rehnquist Court's restrictive interpretation of Congress' ability to legislate, the impact could be enormous. It would severely restrict the ability of Congress to tackle nationwide issues that the American people have actually elected us to address.

As the only woman on this committee, I believe I have an additional role in evaluating nominees for the Supreme Court, and that is to see if the hard-earned autonomy of women is protected.

Like any population, women enjoy diverse opinions, beliefs, political affiliations, priorities and values. And we share a history of having to fight for many of the rights and opportunities that young American women now take so much for granted. I think they don't really recall that during the early years of the United States, women actually had very few rights and privileges. In most states, women were not allowed to enter into contracts, to act as executor of an estate. They had limited inheritance and child custody rights.

It actually wasn't until 1839 that a woman could own property separate from her husband, when Mississippi passed the Married Woman's Property Act.

It wasn't until the 19th Century that women began working outside their homes in large numbers. Most often, women were employed as teachers or nurses, and in textile mills and garment shops.

As women entered into the workforce, we had to fight our way into nontraditional fields: medicine, law, business, and yes, even politics.

The American Medical Association was founded in 1846. But it barred women for 69 years from membership, until 1915.

The American Bar Association was founded in 1876, but it barred women and did not admit them until 1918. That's 42 years later. And it wasn't until 1920 when, after a very hard fight, women won the right to vote -- not even 100 years ago.

By virtue of our accomplishments and our history, women have a perspective that's been recognized as unique and valuable. With the retirement of Justice Sandra Day O'Connor, the Court loses the important perspective she brought as a woman and the deciding vote in a number of critical cases.

For me -- and I said this to you privately, and I'll say more about it in my time on

questions -- one of the most important issues that needs to be addressed by you is the constitutional right to privacy.

I'm concerned by a trend on the Court to limit this right and thereby to curtail the autonomy that we have fought for and achieved; in this case, over just simply controlling our own reproductive system rather than having some politicians do it for us.

It would be very difficult -- and I said this to you privately and I said it publicly -- for me to vote to confirm someone whom I knew would overturn *Roe v. Wade*, because I remember -- and many of the young women here don't -- what it was like when abortion was illegal in America.

As a college student at Stanford, I watched the passing of the plate to collect money so a young woman could go to Tijuana for a back-alley abortion. I knew a young woman who killed herself because she was pregnant.

And in the 1960s, as a member of the California Women's Board of Terms and Parole, when California had what was called the Indeterminate Sentencing Law, I actually sentenced women who committed abortions to prison terms.

I saw the morbidity. I saw the injuries they caused. And I don't want to go back to those days.

How the Court decides future cases could determine whether both the beginning of life and the end of life decisions remain private, or whether individuals could be subject to government intrusion or perhaps the risk of prison.

And I will be looking to understand your views on the constitutional provision for providing for the separation of church and state.

Once again, history!

For centuries, individuals have been persecuted for their religious beliefs.

During the Roman Empire, the Middle Ages, the Reformation, and even today, millions of innocent people have been killed or tortured because of their religion.

A week ago, I was walking up the Danube River in Budapest when I saw on the shore 60 pairs of shoes covered in copper -- women's shoes, men's shoes, small tiny children's shoes. They lined the bank of the river.

During World War II, Hungarian fascists and Nazi soldiers forced thousands of Jews, including men, women and children, to remove their shoes before shooting them and letting their bodies float down the Danube.

These shoes represent a powerful symbol of how religion has been used in

catastrophic ways historically.

(With time expiring, the remainder of Senator Feinstein's statement was entered into the record).

And we cannot forget that in American history, Puritans, Baptists, and Catholics came to America looking for a society where they could be free from the persecution they faced in Europe and England.

In response, the Founding Fathers created a balance in the Constitution that provided for freedom of worship as well as for separation of church and state. In their efforts to protect against religious persecution, the Framers established a secular government that would remain separate from religion.

These issues are not easy and the legal theories that govern them are complex. But the basic question we are faced with boils down to this: will you, Judge Roberts as Chief Justice protect the rights of the people of this great nation – our civil and human rights, our rights as women to be treated as equals under the law.

These are the standards a Chief Justice must hold high.