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## THE SUPREME COURT: FINAL ARBITER OF OUR NATION'S LEGAL DISPUTES

*Strom Thurmond\**

I have had the opportunity to review twenty-three Supreme Court nominations during my thirty-seven years in the Senate.

When a nominee is considered for the Supreme Court, our responsibility is an enhanced one. Those chosen for a seat on our nation's highest court occupy a position of great authority, trust, and power as this appointment is one of life tenure without accountability by popular election. Members of the Supreme Court make vitally important decisions and can only be removed in very limited circumstances. A Supreme Court justice must be an individual who understands the responsibility to the people of this nation, the concept of justice, and the magnificence of our Constitution.

I have always believed that our Constitution is the most enduring document ever penned by the hand of man, and certainly remains the finest, most significant political document ever conceived. It creates the basic institutions of our national government and spells out the powers of these institutions, the rights of our citizens, and the basic freedoms we all deeply cherish. At an early age, I developed a deep and abiding respect for this document which stands as the centerpiece of mankind's struggle for self-determination. The fact that our Constitution has survived since its adoption in 1787 is a true testament to its remarkability.

When a vacancy occurs on the Supreme Court, it is one of the few times that all three branches of government are so greatly impacted at the same time. The head of the executive branch, the President of the United States, elected by the people, chooses a

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\* Strom Thurmond, Republican from South Carolina, is the senior member of the United States Senate. He is the ranking minority member of the Senate Judiciary Committee, serving as a member of the Committee since 1967, and as Committee Chairman from 1981 to 1987. This article is an excerpt from a statement by Senator Thurmond on the Senate Judiciary Committee confirmation hearings on Clarence Thomas to be associate justice of the Supreme Court of the United States. The full text of Senator Thurmond's remarks can be obtained from his office in Washington, D.C.

nominee. This nominee will sit on the highest, most prestigious, and most powerful court within our judicial branch. The Senate, as part of the legislative branch, is called upon to review the nominee to ensure that he or she is qualified to serve on the most important court in America. I believe this process which embraces all three branches of government signifies the majesty of our system and underscores the brilliance of our Founding Fathers.

Clearly, our magnificent Constitution confers tremendous responsibility on the Senate in a vast number of areas. In the confirmation process, the Senate alone holds exclusive authority to “advice and consent” on all judicial nominations. While the President of the United States has the constitutional authority to “appoint . . . judges of the Supreme Court,” the “advice and consent role” of the Senate is one of the most important ones we undertake. The Senate has assigned the task of holding hearings and the detailed review of judicial nominees to the Judiciary Committee. It is a task that this Committee has undertaken with the clear awareness of the importance of our role in the confirmation process. The significance of this Committee’s role cannot be understated. In this century, *no* nominee to the Supreme Court has been confirmed by the full Senate after failing to attain a majority of the votes of members of this Committee.

The role of the Supreme Court in our history has been vital because the Court has been called upon to solve many difficult and controversial problems — using its collective intellectual capacity, precedent, and constitutional interpretation to solve them. Throughout the course of our nation’s history the Court has been called on to administer justice. As George Washington said, “The due administration of justice is the firmest pillar of good government.” There is every reason to expect that the Court’s role in the administration of justice will continue to be a major factor in the future.

For this reason, an individual chosen to serve on the Supreme Court must be one who possesses outstanding qualities. The impact of the decisions of the Court require that a nominee is eminently qualified to serve. During my consideration of the previous twenty-three nominees to the High Court in the last thirty-seven years, I have often reflected on the attributes I believe a Supreme Court justice should possess. When the Senate considers a nominee to the Supreme Court, I believe these special qualities warrant reiterating:

- First — Unquestioned integrity. A nominee must be honest, absolutely incorruptible, and completely fair.
- Second — Courage. The courage to decide tough cases according to the law and the Constitution.
- Third — Compassion. While a nominee must be firm in his decisions, he should show mercy when appropriate.
- Fourth — Professional Competence. The ability to master the complexity of the law.
- Fifth — Proper Judicial Temperament. The self-discipline to base decisions on logic, not emotion, and to have respect for lawyers, litigants, and court personnel.
- Sixth — An understanding of the majesty of our system of government. The understanding that Congress makes the laws, that the Constitution is changed by amendment, and that powers not delegated to the federal government are reserved to the States.

I believe an individual who possesses these qualities will not fail the cause of justice.

The issue of judicial philosophy, or ideology, has often been raised in relation to recent nominees to the Supreme Court. Some argue that philosophy should not be considered at all in the nomination process, while others state that philosophy should be the sole criteria. It is not appropriate that philosophy alone should bar a nominee from the Supreme Court unless that nominee holds a belief that is contrary to the fundamental, longstanding principles of our nation.

Clearly, if a philosophical “litmus test” can be applied to defeat a nominee, then the independence of the federal judiciary would be undermined. Judges are not politicians put in place to decide cases based on the views of a political constituency, but are sworn to apply constitutional and legal principles to arrive at decisions that do justice to the parties before them. The prerogative to choose a nominee to the Supreme Court belongs to the President — an individual elected by the people of this country. The full Senate has the opportunity to review that nominee who comes to this body with a presumption in his favor. To reject a nominee based solely on ideology, is inappropriate. Requiring a nominee to pass an ideological “litmus test” would seriously jeopardize the efficacy and independence of the federal judiciary.

## ADDENDUM

*The above remarks represent a portion of my opening statement during the confirmation hearings of Supreme Court Justice Clarence Thomas. The Supreme Court is the final arbiter of our nation's legal disputes. Its authority is immense. The Court is not, however, infallible, and history has shown us instances where the Court has overruled itself to alter an earlier decision. I continue to strongly believe that the Supreme Court's role in the federal system is of essential importance to the past, present and future of the United States of America.*

Strom Thurmond

Spring, 1992