

STATEMENT BY SENATOR STROM THURMOND (R-S.C.) BEFORE THE COMMITTEE ON THE JUDICIARY REFERENCE CONFIRMATION HEARINGS ON CLARENCE THOMAS TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, SR-325, SENATE CAUCUS ROOM, 10:00 A.M., SEPTEMBER 10, 1991.

MR. CHAIRMAN:

Today, the Committee begins hearings to consider the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States. This makes the seventh nominee to the Supreme Court that this Committee has considered in the past ten years and, once confirmed, will be the 106th person to serve as a justice. As well, I might say, it is the 24th Supreme Court nomination that I have had the opportunity to review during my almost 37 years in the Senate.

As these hearings begin, we must remain keenly aware that we face a solemn responsibility. This Committee undertakes no greater responsibility than the review of nominees to the federal judiciary. 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.

Mr. Chairman, 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 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.

Mr. Chairman, 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 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 23 nominees to the high Court in my almost 37 years, I have often reflected on the attributes I believe a Supreme Court justice should possess. As we again consider 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 only Congress makes the laws, that the Constitution is only changed by amendment, and that all 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.

As we begin these hearings, there is every indication that Judge Thomas possesses the necessary attributes to be an

outstanding member of the Supreme Court. He was born in Pinpoint, Georgia, on June 23, 1948, and raised in Savannah by his grandparents, Myers and Christine Anderson. In his youth, Judge Thomas overcame difficult economic conditions and excelled in his studies. He later attended the Immaculate Conception Seminary for two years before transferring to Holy Cross College. At Holy Cross, Judge Thomas distinguished himself as a member of the Honors Program, receiving his undergraduate degree in 1971. He then attended Yale Law School, one of our Nation's top law schools, graduating in 1974.

In addition to his impressive academic background, Judge Thomas has vast practical experience. Following law school, he worked for Senator Danforth, then the Attorney General for the State of Missouri. As an Assistant Attorney General for three years, Judge Thomas represented the State of Missouri before the trial courts, appellate courts, and the State Supreme Court on matters ranging from taxation to criminal law. From 1977-1979, he worked for the Monsanto Company handling corporate, antitrust, contract, and government regulation law.

In 1979, Judge Thomas again went to work for Senator Danforth in Washington, this time as a legislative assistant, responsible for energy, environment, federal lands, and public works issues. President Reagan nominated Judge Thomas to the position of Assistant Secretary for Civil Rights for the Department of Education in 1981. He was confirmed by the Senate for this position. Then, in 1982, President Reagan nominated him to serve as Chairman of the U.S. Equal Employment Opportunity

Commission where he ably served almost two terms, being confirmed by the Senate for each term. He was then nominated by President Bush for a position on the U.S. Court of Appeals for the D.C. Circuit, called by many the Nation's second highest court. Since his confirmation, Judge Thomas has participated in over 140 decisions, writing opinions in areas such as criminal law, antitrust law and trade regulation, as well as constitutional and administrative law. Without question, Judge Thomas has distinguished himself on the D.C. Circuit, and has served in an exemplary capacity as a member of this Court.

Mr. Chairman, upon reviewing the decisions Judge Thomas wrote and in which he participated on the Court of Appeals, I have concluded that Judge Thomas has exhibited an adherence to the rule of law, and the true principles upon which our Nation was founded. Without question, the decisions he has written are within the mainstream of judicial thinking. He has articulated a clear and concise understanding of the law and conformance to established principles of Constitution interpretations. Some have stated that Judge Thomas has articulated a personal philosophy of law and constitutional interpretation which would curtail individual rights. I strongly disagree with those who have reached that conclusion. In fact, Judge Thomas has stated that he believes, and I quote, that "equality is the basis for aggressive enforcement of civil rights laws and equal opportunity laws designed to protect individual rights." Those are words stated by a person who truly believes in the civil rights of the individual and a commitment to the principles of fairness and

equality, not a nominee who is out of the mainstream of judicial interpretation and analysis. An examination of the professional record of Judge Thomas provides no valid reason to believe he would seek to diminish the rights of any American citizen. Judge Thomas acknowledges that he has been a beneficiary of the diligent work of individuals such as Justice Thurgood Marshall and others involved in civil rights efforts.

Mr. Chairman, 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.

Mr. Chairman, I want to comment briefly on the tenure of Judge Thomas as Chairman of the Equal Employment Opportunity Commission. When he was before the Judiciary Committee for a position on the Court of Appeals, an exhaustive evaluation of his role as Chairman of the EEOC was undertaken. Some of the issues related to the EEOC have again been raised since his nomination to the Supreme Court was announced. These issues were fully reviewed and discussed in detail when Judge Thomas was under consideration for a position on the D.C. Circuit. At that time, this Committee was informed that Judge Thomas was responsible for implementing policies designed to reform the EEOC, invigorating its mission to assure the fair treatment of all persons in the workplace, and incurring the vigorous enforcement of our equal employment laws. I strongly believe that Judge Thomas performed admirably as Chairman of the EEOC. His successor, Mr. Evan Kemp, stated that the EEOC "made a miraculous turnaround...under [Judge] Thomas." While Judge Thomas was Chairman, the Washington Post ran an editorial piece entitled "The EEOC is Thriving" and praised him for his "quiet but persistent leadership." I commend Judge Thomas for his diligent, successful efforts while Chairman of the EEOC.

In closing, I believe Judge Thomas is well qualified to serve as a justice on our Nation's highest court. He possesses the integrity, intellect, professional competence, and judicial temperament to make an outstanding justice. In addition, his

personal struggle to overcome difficult circumstances early in his life is admirable. A review of his background shows he is a man of immense courage who has prevailed over many obstacles to attain remarkable success.

Mr. Chairman, the Supreme Court is the final arbiter of our Nation's most important legal disputes; its authority is immense. This immense authority places a great responsibility on each of us as we begin the thorough review of Judge Thomas to be an Associate Justice of that Court.

I look forward to a fair hearing with swift consideration of this nominee by the Committee and the full Senate.

Judge Thomas, we welcome you to the Committee and look forward to your testimony.

Thank you, Mr. Chairman.