

The CHAIRMAN. Thank you very much, Senator. Senator Kennedy.

**OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS**

Senator KENNEDY. Thank you, Mr. Chairman. Good morning, Judge.

I would just mention at the outset we come to the nomination on the basis that the President makes the nomination but it is a shared responsibility, an important responsibility for us to make a judgment on this. I might have some difference with my good friend and colleague from South Carolina on whether there is the presumption. I think any fair reading of the Constitutional Convention would show that this was to be a shared responsibility. I think at least I and other members of the committee would look so.

Two hundred years ago this year, the Bill of Rights became part of the Constitution. The Constitution itself confers upon the Federal Government the powers necessary to govern the country. But the Bill of Rights protects the fundamental rights that enable us to be truly free and to enjoy the full benefits of our democracy. Most important, the Constitution and the Bill of Rights preserve our individual liberty, and they are the Nation's promise to the people that no American will ever be forced to stand before a column of tanks in any battle to keep our democracy. It is our guarantee that majority rule is limited and that each individual has certain basic rights that the government cannot invade.

As we celebrate the bicentennial of the Bill of Rights, as we watch brave citizens in the Soviet Union and other lands struggle to attain similar rights and liberties, we feel justifiably proud of our system of government and the enduring achievements of the past two centuries. But we cannot permit our pride to diminish our commitment to preserving and strengthening our own democracy or dealing with the serious challenges that continue to confront us.

The nomination which we begin considering today is an essential part of the process by which we safeguard the Constitution, the Bill of Rights, and our democracy itself. If confirmed, Judge Clarence Thomas will become one of nine Supreme Court Justices with the ultimate power to define the Constitution, interpret the Bill of Rights, and ensure that the limited powers of government stay limited.

Many of us are concerned about the direction the Supreme Court has taken in recent years. It has increasingly abandoned its role as the guardian of the powerless in our society. It has repeatedly sought to turn back the clock on civil rights. It has relaxed the rules prohibiting the use of coerced confessions obtained by law enforcement officers. It has begun to retreat on the right to privacy. It has ruled that government officials can prohibit doctors in publicly funded clinics from practicing their profession to the best of their ability in giving their patients full medical advice.

The Court has not hesitated to overrule earlier decisions with which the new majority disagrees. Justice Thurgood Marshall warned us in his final Supreme Court opinion that power, not reason, is the new currency of the Court's decision-making. Justice

Marshall has been one of the greatest Justices in the history of the Supreme Court. His courageous career is an inspiration to the Nation, and his vision of the rule of law is an example to the world of the best in American justice.

The person who replaces Thurgood Marshall on the Court will be deeply involved in fundamental decisions that will affect the rights of all Americans in the years ahead and may well determine the very nature of our democracy and the future of the Bill of Rights. For this reason, the Senate has a special responsibility: to assess Judge Thomas' view of the Constitution and his dedication to individual rights and the separation of powers. We must decide whether he possesses a clear commitment to the fundamental values at the core of our democracy.

In his life and in his career, Judge Thomas has overcome large barriers of poverty and injustice, and he deserves great credit for the eminence he has attained. In many ways, he exemplifies the promise of the Constitution and the American ideal of equal opportunity for all.

But much more is at stake than Judge Thomas' background. Statements he has made and actions he has taken raise significant issues that must be addressed if he is to be confirmed by the Senate.

For example, on the right to privacy, Judge Thomas has strongly commended an article entitled "The Declaration of Independence and the Right to Life." One leads unmistakably from the other. That article refers to the constitutional right to abortion in *Roe v. Wade* as a conjured right with not a single trace of lawful authority. According to the article, which Judge Thomas has called "splendid," abortion is the constitutional equivalent of murder.

If this view is accepted by the Supreme Court, not only *Roe v. Wade* will be overruled, neither the Congress nor any State legislature will have the power to protect a woman's right to choose an abortion even in cases of rape or incest. And Federal and State governments will have an engraved invitation to invade other basic aspects of individuals' private lives.

Judge Thomas' record also raises serious questions about his view of ongoing efforts to end discrimination in our society against women and minorities. The civil rights revolution of the past generation has been called the "Second American Revolution." But it is a revolution that is far from complete. Millions of our fellow citizens are still left out and behind because of unacceptable conditions of discrimination based on race, sex, age, disability, and other forms of bigotry that continue to plague our society.

As Congress and the administration struggle to deal with these urgent challenges, we will need a Supreme Court that is sensitive, not hostile, to our efforts. At the same time, Judge Thomas has stated that the Constitution protects economic rights as much as any other rights. Until the 1930's, a similar doctrine was used by the Supreme Court to strike down attempts by Congress and the States to protect the rights and very health and safety of workers against unfair abuses of power by unscrupulous employers and corporations. Few Americans today would want the Supreme Court to revive that discredited doctrine of constitutional protection for the rights of business at the expense of working men and women.

Finally, Judge Thomas' role as Chairman of the Equal Opportunity Commission has given him extensive experience in dealing with Congress. As a result of that experience, however, he has made some harsh statements about congressional oversight of executive agencies. Obviously, such oversight is an essential part of the constitutional system of checks and balances. It has served the Nation well, and it must continue to do so.

The Senate's constitutional role in confirmation of Justices to the Supreme Court is one of our most important functions. I look forward to these hearings and to working with my colleagues on the committee and in the Senate to address these complex issues as thoroughly and as fairly as possible. The country deserves no less.

[The prepared statement of Senator Kennedy follows:]