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BATTLE LINES DRAWN ON SUPREME COURT NOMINEE

Who Is John Glover Roberts, Jr.?

by Douglas R. Scott

United States Supreme Court justices are nominated by the president and confirmed by the Senate. Each of the nine justices may serve for life, which makes careful consideration of a nominee essential.

The Supreme Court has the power to nullify any law passed by Congress or state legislatures if a majority of justices believe it violates the Constitution of the United States. But some justices have forgotten their role is to *interpret* the Constitution, not rewrite it. After all, justices are not supposed to be the legislative branch, which is elected by the people.

As written in the Constitution, the separation of powers is a brilliant system of checks and balances. But all of this breaks down when someone abuses his powers and/or usurps those of another branch of government. When this happens we end up with decisions like *Roe v. Wade*—a ruling that even many people who support legal abortion recognize as a perfect example of “legislating from the bench.”

A Nominee



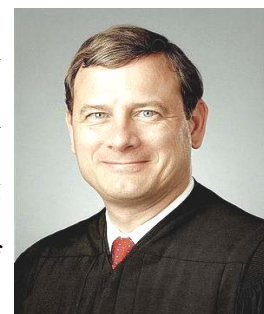
Sandra Day O'Connor

On July 1, 2005, Justice Sandra Day O'Connor announced she would retire from the Supreme Court. Her decision was a great surprise to court watchers. Despite his comments to the contrary, most people thought ailing Chief Justice William H. Rehnquist would be the first member of the Court to resign in more than eleven years.

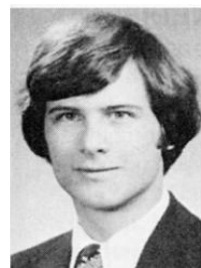
The most stunned—and gravely disappointed—groups in the United States were clearly those that support *Roe v. Wade*. They were losing a person who had voted to uphold *Roe*. On the other hand, the surprise resignation left pro-family leaders with a sense of hope since O'Connor was going and a feeling of relief because Rehnquist, who had consistently voted to overturn *Roe*, was staying on the Court.

Eighteen days after O'Connor announced her resignation, President George W. Bush nominated Judge John G. Roberts, Jr., to replace her. The pick was a surprise to many observers. Who is John Roberts and what do we know about his judicial philosophy?

John Glover Roberts, Jr., was born on January 27, 1955, in Buffalo, New York. He has three sisters and is the second oldest child. In 1960, the Roberts family moved to Long Beach, Indiana. In 1973, Roberts graduated first in a class of 23 from La Lumiere, a small, and at the time, all-male Catholic boarding school near LaPorte, Indiana. He studied six years of Latin and some French. He was co-captain of the football team, a wrestler, co-editor of the student newspaper, in the choir, served on the athletic council and the executive committee of the student council, and was involved in drama.



John G. Roberts, Jr.



Roberts in his 1976 Harvard University year book photo.

Roberts spent three years at Harvard, having entered as a sophomore. He graduated in summa cum laude with a Bachelor of Arts degree in 1976. Roberts received a law degree magna cum laude from Harvard Law School, where he was managing editor of the *Harvard Law Review*, in 1979. After graduation he became a law clerk for a judge on the Second Circuit Court of Appeals.

From 1980 to 1981, Roberts worked as a law clerk to then-Associate United States Supreme Court Justice Rehnquist. In 1981 Roberts served as a special assistant to U.S. Attorney General William French Smith. One year later he became associate legal counsel to President Ronald W. Reagan.



George H. W. Bush

Roberts entered private practice in 1986 as an associate at the Washington, D.C. law firm of Hogan & Hartson, but he left to serve as deputy solicitor general under President George H. W. Bush. In this capacity, he argued 39 cases for the government before the Supreme Court. President Bush nominated Roberts to the U.S. Court of Appeals for the District of Columbia Circuit in 1992, but the Senate had not confirmed him before Bush left office after losing his bid for reelection. Roberts returned to the law firm as a partner.

President George W. Bush nominated Roberts to the Circuit Court of Appeals for the District of Columbia in 2001, but the nomination—along with 29 others—failed to make it out of the Senate Judiciary Committee. He was renominated and confirmed by the Committee by a vote of 16-3. Roberts was approved by the Senate by unanimous consent and received his commission on June 2, 2003.



President George W. Bush announced his nomination of Judge John G. Roberts, Jr., to the American people on primetime television.

Roberts resides in Maryland. He married Jane Marie Sullivan in 1996. She is a lawyer with the firm of Pillsbury Winthrop Shaw Pitman LLP and legal counsel for Feminists for Life of America. Roberts and his wife are Catholics who attend Little Flower Parish in Bethesda, Maryland. They adopted two infants from Ireland in 2000, Josephine (“Josie”) and Jack. (Jack’s dancing during the President’s introduction of his father on primetime television brought the four-year-old international media attention. There had not been such a big case of a child stealing the limelight since John “John-John” F. Kennedy, Jr., resided in the White House.)

As a normal part of the confirmation process, Roberts released information about his assets. He is worth about \$6 million, with sizable stock investments, a golf club membership, and a \$1.3 million house in Chevy Chase, Maryland. Roberts’ portfolio includes more than \$290,000 in XM Satellite Radio, \$264,000 in Dell computers and \$106,553 in Texas Instruments.

Pro-Family Reaction

At first glance it seems that Roberts is a strict constructionist; one who understands the importance of playing a limited and constitutional role in govern-

ment. Many people are referring to Roberts as “pro-life,” saying he will definitely vote to overturn *Roe v. Wade*. Life Issues Institute released a statement with a rather transparent endorsement of the nominee. “We join the President in asking the Senate to conduct quick and efficient hearings so that our nation’s highest Court will be fully staffed upon the beginning of its next term,” the press release read.

The influential Knights of Columbus (KC) passed resolutions at its 123rd annual convention urging the Senate to “conduct prompt, fair and expeditious hearings on the nomination” and condemned the use of a pro-*Roe v. Wade* litmus test by senators when considering any federal court nominee.

A resolution on Judge Roberts asked the Senate “to consider his nomination without delay or filibuster, and to allow him an up-or-down vote on his confirmation.” It also said the KC “strongly condemn(s) any effort to block or impede his confirmation based upon his position on whether *Roe v. Wade* should be reconsidered.” The resolution urged Knights “to contact their senators asking them to support an up-or-down vote” on the nomination. Convention delegates also called on all senators who identify themselves as “Catholic” to “cease and desist from opposing, directly or indirectly, the teaching of the Catholic Church on the inviolability of innocent human life.”

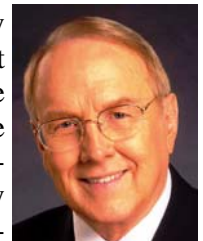


Lou Sheldon

Rev. Lou Sheldon of the Traditional Values Coalition said President Bush had fulfilled his promise and given them a nominee they can fully support. Concurring with that opinion was Rev. Pat Robertson, founder of the Christian Broadcasting Network.

Operation Rescue issued a statement saying Roberts has “strong conservative credentials with indications that he will not uphold *Roe v. Wade*.”

Tony Perkins, president of the Family Research Council, said President Bush had “promised to nominate someone along the lines of a [Justice Antonin] Scalia or a [Justice Clarence] Thomas and that is exactly what he has done.” Focus on the Family Chairman Dr. James C. Dobson



James C. Dobson

urged pro-family Americans to call their U.S. Senators and “encourage them to make every effort to ensure that Judge Roberts receives an up-or-down vote.”



Beverly LaHaye

Beverly LaHaye, founder and chairman of the very effective Concerned Women for America (CWA), praised the President's choice "I'm thrilled with the president's nomination of John G. Roberts as associate justice of the Supreme Court," LaHaye said. "Every indication suggests that Judge Roberts meets the key test of the president's own promise to nominate someone like Justice Scalia or Justice Thomas." The statement continued:

Judge Roberts respects the Constitution as a document that says what it means—not more, not less. His extensive experience shows that he is well equipped to resist the temptation to substitute the actual words of the Constitution with his own whim. It's clear to me that the president has earned the praise he is receiving for his choice and I join in applauding President Bush for his decisive and well-considered selection. Liberal Democrats on the Senate Judiciary Committee, spurred on by their leftist abortion lobby, will do all that they can to attack Judge Roberts but they will fail. Concerned Women for America will do all in our power to support him all the way to confirmation.

One pro-family leader announced that his organization was withdrawing its support for Roberts. Eugene Delgaudio, president of Public Advocate, said he was "concerned and distressed" to read a story in the *Los Angeles Times* that said Roberts gave free legal advice to homosexual activists in *Romer v. Evans*, which Delgaudio said "overturned a democratic vote of the citizens of Colorado in an appalling act of judicial activism."



Eugene Delgaudio

"We hope against hope that this report is false, and if it is, we call on Judge Roberts to correct the record immediately," Delgaudio said. "If the report is true, and Judge Roberts did provide advice on how to overturn this pro-family measure overwhelmingly supported by the people of Colorado, then Public Advocate calls on President Bush to withdraw his nomination of Judge Roberts immediately."

Planned Parenthood Federation of America (PPFA)

Pro-abortion leaders are universally critical of the President's selection. Interim PPFA President Karen Pearl wrote that she has "grave and growing concerns" about the nominee's "commitment to constitutional protections for women's health and reproductive freedom." She



Karen Pearl

said the Senate should confirm only those people who are "committed to protecting women's health and safety." Pearl believes that unless Roberts specifically states he would vote to uphold *Roe v. Wade*, the Senate should gut the President's nomination:

When we say that our reproductive rights are in danger, we mean that all these things are on the line—all the privileges, rights, and freedoms that, as Americans, we've come to cherish, and that form the very fabric of our life.

That's why it's so important for our senators to fulfill their duty to us, their constituents, to make sure the confirmation process is thoughtful, intelligent, and fully deliberated. It is our senators' responsibility to get definitive, clear, and complete answers from Judge John Roberts about his position on reproductive freedom, constitutional protections for women's health and safety, and constitutional rights like our right to privacy.

The most important thing right now is to ask questions and to get answers. If Judge Roberts does not pledge to protect our constitutional rights and reproductive freedoms, the Senate must not confirm him. But just as important, the Senate must not confirm Judge Roberts if he refuses to provide the answers we need.

It's not just women's lives that are on the line, but also the way we are allowed to live our lives.

In an e-mail sent to its supporters, PPFA urged people to sign a petition in support of "reproductive rights." PPFA leaders set a goal of two million signatures:

Subject: Two Million for Roe: Join the Roe Call Now!

Roe v. Wade: Saving Women's Lives Since 1973

Do you want John Roberts to reveal his views about a woman's right to choose abortion before the Senate votes on whether to elevate him to the U.S. Supreme Court? If you're like more than half of Americans, your answer is a resounding yes. Join us in demanding that Roberts let us know if he will uphold the protections for women's health guaranteed by *Roe v. Wade*, or if he believes this decision should be overturned.

Sign our Two Million for Roe petition today and be listed among millions on our "Roe Call."

100,000 MORE SIGNATURES NEEDED BY SEPTEMBER

This isn't just another ordinary petition, but an overwhelming show of America's support for women's health, safety, and privacy. And we need 100,000 more signatures for our "Roe Call" by the time the hearings begin in early September. Just think—if every one of you signs it now, we will surpass our goal of 100,000 ahead of schedule and will be well on our way to Two Million for *Roe*.

OUR PLAN

was bombed seven years after Roberts signed the brief that NARAL finds offensive. Furthermore, the brief “is from a civil lawsuit brought by abortion clinics against protesters who were blockading the clinics. Bombing was not an issue.”

“In words and images,” read the factcheck.org analysis, “the ad conveys the idea that Roberts took a legal position excusing bombing of abortion clinics, which is false...The ad uses the classic tactic of guilt by association, linking Roberts with ‘violent fringe groups’ and a ‘convicted...bomber’ because he made the same legal arguments as they did in the case. But, contrary to the ad’s message, Roberts didn’t argue in favor of them or their actions.” In fact, a 1986 White House memo, endorsed by Roberts, argued that, “No matter how lofty or sincerely held the goal, those who resort to violence to achieve it are criminals.”

NARAL’s first response to criticism was an attempt to soften the blow of the ad by disputing its obvious insinuations. “I want to be very clear that we are not suggesting Mr. Roberts condones or supports clinic violence,” said Nancy Keenan, the group’s president, at a press conference where the ad was unveiled. “I’m sure he finds bombings and murder abhorrent, but still his ideological view of the law compelled him to go out of his way to argue on behalf of someone like Michael Bray, who had already been convicted of a string of bombings.”



Fund-raising link on NARAL website.

Keenan was pressed by reporters to explain why, if NARAL was not suggesting Roberts condones or supports violence against abortion facilities and/or their employees, the ad says his “ideology leads him to excuse violence.” Keenan was asked, “Aren’t ‘condone’ and ‘excuse’ the same thing?” She responded:

I think there’s a difference with the...the brief that he filed was purely discretionary. And I think that is why when he, as the government, came in and he, as a political appointee, as deputy Solicitor General, said that the law did not cover as a civil rights law that protects those of us as Americans, that it did not cover the violence, or the groups in protecting women’s lives in these clinics. So again, this was a way that he proactively...proactively...went and supported these groups that were perpetrating violence against women’s clinics.

“So does he condone clinic violence or does he not?” a reporter asked. “Again, I don’t think he does condone violence at abortion facilities. We are not saying

that...” Keenan said, but she was interrupted by another reporter, “But you say he excuses it.” Keenan responded:

He sided with groups that supported clinic violence. He sided...the government did not have to file in amicus. They could have stood down on that issue, and they did not. He, in that leadership role, decided to file that amicus brief as a friend of the court to say that these groups had a right to be outside of these clinics and protest as they were doing.

C. Boyden Gray, chairman of the Committee for Justice, said Keenan’s statement “compounds the injury by dishonestly stating, ‘we are not suggesting Mr. Roberts condones or supports clinic violence,’ when that of course is exactly what their ad does.” NARAL had planned to spend \$500,000 to place the ad on FOX and CNN.



Arlen Specter

NARAL pulled the ad after pro-abortion Senator Arlen Specter, R-Penn., chairman of the Senate Judiciary Committee, sent a biting letter to the group, calling the ad “blatantly untrue and unfair.” Specter continued: “In our free society, anyone can speak out as they choose on any subject. I am concerned that the Roberts nomination, or others to follow, may provide an occasion for such advertising to get out of hand.” Specter offered some advice. “May I also suggest that the NARAL advertisement is not helpful to the pro-choice cause which I support [sic]. When NARAL puts on such an advertisement, in my opinion it undercuts its credibility and injures the pro-choice cause.”

In response to Specter, Keenan wrote, “Unfortunately, the debate over that advertisement has become a distraction from the serious discussion we hoped to have with the American public. We also regret that many people have misconstrued our recent advertisement about Mr. Roberts’ record,” Keenan said. She told Specter the group “will continue to educate the public about the threat we firmly believe Mr. Roberts’ elevation to the Supreme Court would have on American women’s reproductive health and, ultimately, their lives.”



Nancy Keenan

CWA’s Bob Knight thinks liberal groups are “hoping that enough people can be influenced initially by the ‘hit’ piece that even if they withdraw it, they’ll have drawn some blood.” Jay Sekulow of the American

Center for Law and Justice (ACLJ) believes a stern response is the key to dealing with such attacks. “We’ve got to deal with reality here. I expect more of these. And we need to be prepared each time to go after them aggressively as we did with this NARAL ad and respond aggressively as well.”

The ad of lies and distortion is being replaced. Keenan said the new one “examines Mr. Roberts’ record on several points, including his advocacy for overturning *Roe v. Wade*, his statement questioning the right to privacy, and his arguments against using a federal civil rights law to protect women and their doctors and nurses from those who use blockades and intimidation.”

National Organization for Women (NOW)

It did not take NOW leaders long to come out strong against John Roberts. Kim Grady, the radical group’s president, released a statement shortly after President Bush announced his pick:

Once again, George Bush has chosen partisan politics and paybacks over uniting the country. Roberts’ background shows a political ideology that is inconsistent with the independence we have a right to expect from the Supreme Court. He does not have a commitment to the basic values of fairness and equality, and our hard-won rights will be in jeopardy if he is confirmed.

NOW will fight Roberts’ confirmation through a nationwide grassroots lobbying campaign. Sandra Day O’Connor, the first woman on the Supreme Court, leaves us a legacy as a centrist and independent jurist who upheld the rights of women. We don’t need someone with an extremist political agenda, tied to special interests, who will tarnish that legacy.



Fund-raising link on NOW website.

NOW argued that Roberts could “cast the deciding vote on countless matters of individual rights.” Abortion, birth control, affirmative action, privacy rights, health care, and environmental protection were among the issues specifically named by the group. “For young women, Roberts’ votes could determine their access to birth control and abortion for their entire reproductive lifetimes.” NOW asserted that Roberts “actively opposes *Roe v. Wade*.”

“Sandra Day O’Connor broke barriers as the first woman on the Supreme Court, where she cast decisive votes to preserve and expand rights for women and to

eliminate sex discrimination,” Gandy said. “George Bush could have chosen a moderate conservative who would be a voice of reason on the Court. Instead he chose, characteristically, to pick a fight. We intend to give him one.”

NOW published flyers for its members to distribute that falsely claim *Roe v. Wade* and other “rights” are but one vote away from being abolished:

Think your rights are safe?
THINK AGAIN.

Fundamental rights for women hang by a 5-4 thread.
With the confirmation of extremist justices, that thread could snap.

family & medical leave
pay equity
access to contraception
protection from violence
abortion rights
affirmative action
lesbian rights
privacy in our homes
title ix: equality in education

OUR INDEPENDENCE

**We have fought long and hard for these rights.
We can't afford to take them for granted now.**

Call your Senators today! Urge them to oppose any Supreme Court nominee who would overturn *Roe v. Wade* and limit rights of women and girls in the U.S.
Senate switchboard: 202-224-3121.
For more info, visit www.now.org or call 202-628-8669.

Act NOW. Because women's lives are at stake. We won't go back.

NOW is also asking its supporters to send postcards to members of the United States Senate, especially those on the Judiciary Committee. The text is the same on each of the four available postcards:

As you debate and vote on the next nominee to the Supreme Court, I ask you to carefully and fairly deliberate the qualifications of this nominee. Please consider how important it is to protect the lives and futures of the girls and women who rely on the guarantees and protections of *Roe v. Wade*. The impact of the Court’s decisions will determine and affect women’s safety, livelihood, family health and their very future. We won’t go back...

The postcards included the usual NOW rhetoric:



People for the American Way (PAW)

PAW is urging people to sign a petition: “I expect you to demand the White House fully and promptly comply with all Senators’ requests for information relevant to Judge John Roberts’ nomination to be a Supreme Court Justice. Anything less would be an abdication of your constitutional responsibility to provide advice and consent on all Supreme Court nominations.” PAW presented its reasoning:

Americans know very little about Judge John Roberts, or what Mr. Roberts would do to our rights and freedoms if confirmed by the U.S. Senate to a seat on our Supreme Court. In order to make an informed decision, Senators must receive the same kind of information that they have been given during previous nominations. Right now, the White House is refusing to give your senators such information. Let your senators know you expect them to stand up for their constitutional role in the confirmation process!

Judge Roberts’ short public record as an appeals court judge has already raised concerns among progressives, and no one knows how the rest of his record as a political and legal strategist for several Republican administrations might inform the Senate, thanks to the Bush administration’s tightly choreographed refusal to share key documents.

Sign this petition to your senators demanding they press the administration for all relevant documents.

Nothing less than full cooperation from the White House should be tolerated, wherever your senators stand on the nominee.

The White House has proudly announced that it will drop thousands of pages of documents on the Senate, giving the appearance of cooperation. But the White House is slow-rolling release of the overwhelming majority of these documents—which relate to Roberts’ work in the Reagan administration—so there will be insufficient time for Senators to assess the papers before Roberts’ confirmation hearings. At the same time, the Bush Administration is refusing to give the Senate Roberts’ papers from his tenure as a deputy to the Solicitor General under the first President Bush, Ken Starr.

The Right Wing is confident President Bush’s selection is great news for them—why?

Sign the petition now—and then send it on to your friends. As your friends sign this and send it on to their friends, you can see your impact spread across the nation on this map.

“It is clearer than ever that the confirmation of John Roberts would mean replacing Sandra Day O’Connor with someone who has viewed her as an impediment to the ultraconservative legal movement he helped lead as a political appointee during the Reagan and first Bush administrations,” said PAW President Ralph G. Neas. “Roberts’ careful way with words cannot be allowed to mask the truth about his approach to the Constitution.”

American Civil Liberties Union (ACLU)

The ACLU expressed “deep concern” about Judge Roberts with regard to his position on civil liberties. While serving as principal deputy solicitor general, he authored briefs calling for *Roe v. Wade* to be overruled, supporting graduation prayer, and seeking to criminalize flag burning as a form of political protest. “All these positions were rejected by the Supreme Court,” said Steven Shapiro, national legal director of the ACLU. “But the Supreme Court remains closely divided on many of these questions.”

“The Supreme Court has played a pivotal role in advancing freedom,” said Anthony D. Romero, executive director of the ACLU. “Without the Supreme Court, the South would still be segregated, illegal abortions would be claiming thousands of lives, the indigent would have no right to a lawyer, and lesbian and gay Americans could be imprisoned for their private sexual conduct.” Romero added, “The stakes could not be higher.”

It should be noted that the legal briefs written by Roberts promoted the position of the Department of Justice and the administration, which is the job of a solicitor general regardless of which political party is in the White House. If Roberts had been in private practice and were the attorney for a drunk driver, would the ACLU be accusing him of supporting drunk driving?

Anti-Roberts Coalition

Pro-abortion groups have come together to oppose Senate confirmation of John Roberts just as they did when President Ronald W. Reagan nominated Robert Bork to the Supreme Court. The Coalition for a Fair and Independent Judiciary's (CFIJ) first advertisement raised questions about Roberts that are specifically designed to create public suspicion about the nominee.

"Americans have a right to know where John Roberts stands on critical issues," the ad declares. "John Roberts' record raises serious concerns about whether he will be fair, independent and will protect the rights and freedoms of all Americans. The American people must know the whole truth before the Senate decides whether Judge Roberts should sit on our nation's highest court for life." The ad calls on the Bush Administration to turn over all documents regarding the nominee. Considering the rhetoric used in the commercial, it may have simply said, "Americans have a right to know if John Roberts beats his wife and molests his children." The suspicion is established and the damage is done without having to prove anything.



This CFIJ ad is titled, "What Kind of Justice?"

Even before President Bush announced a candidate to replace O'Connor, CFIJ member groups signed a letter sent to every U.S. senator:

PROTECT THE RIGHTS OF ALL AMERICANS IN FILLING SUPREME COURT VACANCY

We, the undersigned organizations, urge you to ensure that the upcoming nomination and confirmation of a new Supreme Court justice is undertaken in a thorough and deliberate manner that produces a justice who serves the interests of all Americans.

We believe that it is critically important that anyone confirmed to the Supreme Court is committed to the protection of individual rights and liberties, has an open, independent mind without a political agenda, and will ensure that the Court will protect all Ameri-

cans and not powerful special interests. Choosing a Supreme Court justice is one of the most important national decisions to be made, as justices are appointed for life and they have the last word on our constitutional rights. Their decisions affect us all, as the high Court is the final arbiter of questions relating to the individual rights of minorities and women, individual rights and freedoms of all, the rights of workers, environmental and consumer protections, and a host of other important issues now and in the future.

We strongly urge President Bush to engage in meaningful consultation with the Senate, prior to announcing any nominee, as presidents from both parties have done in the past.

The Constitution, through its "advice and consent" clause, makes the president and the Senate equal partners in the appointment and confirmation of federal judges. As such, President Bush should reach out to both Republican and Democratic senators to identify and nominate a consensus candidate who is committed to the protection of the rights, liberties, and freedom of all Americans. At this time in our history, with our nation divided along partisan lines, it is critically important that any nominee be independent and free from partisan and ideological biases. If the president engages in true consultation, which we urged him to do in a letter sent today, the process will produce a nominee who is respected by both sides and can be confirmed on a bipartisan basis.

Given the extraordinary impact of the Supreme Court on civil and human rights and on legal protections in general, and given Justice O'Connor's distinguished record as a frequent independent voice of reason on the Court, the Senate has an obligation, to all Americans, to assert its role as an equal partner in the process of filling her seat on the Court.

To that end, we urge you to support a thorough and deliberative confirmation process. The Senate Judiciary Committee should conduct full and complete hearings on the nominee, all relevant documents pertaining to the nominee should be produced and examined, and Committee members should have the opportunity to ask exhaustive questions.

A project of the Coalition for a Fair and Independent Judiciary 2 In addition, the Senate can only do its job, and ensure that a new Supreme Court justice will uphold our constitutional rights and freedoms, if the nominee and the administration are forthcoming about his or her qualifications, background, and constitutional philosophy.

Concealing or withholding vital information from senators and the American people is unacceptable when the consequences for our nation's future are so great.

Finally, given the tremendous public interest in the next justice of the Supreme Court, we urge you to ensure adequate time between the selection of a nominee

and his or her confirmation hearing. This will eliminate any appearance of an effort to rush or “rubber-stamp” the confirmation, and will maximize the confidence of the public in the process. In previous Supreme Court nominations since 1980, an average of 54 days has elapsed between the announcement of a nominee and the first day of confirmation hearings.

There is no entitlement to confirmation. Only a nominee who can clearly and convincingly demonstrate a commitment to fairness and independence should earn a lifetime seat on our nation’s highest court. The President must select someone from inside the judicial mainstream, and ensure that anyone who receives a lifetime appointment to our highest court is impartial in upholding the law and the Constitution, independent of partisan politics, and committed to protecting the rights and freedoms of every American. Justice O’Connor’s legacy demands no less.

The following is a list of CFIJ member groups, all of which signed the letter sent to the Senate. It reads like a who’s who of leftist groups:

- ADA Watch/National Coalition for Disability Rights
- Alliance for Justice
- American-Arab Anti-Discrimination Committee
- American Association for Affirmative Action
- American Association of People with Disabilities
- American Association of University Women
- American Federation of Government Employees (AFGE), AFL-CIO
- American Federation of Labor—Congress of Industrial Organizations (AFL-CIO)
- American Federation of State, County and Municipal Employees (AFSCME)
- American Humanist Association and Equal Partners in Faith
- Americans for Democratic Action
- Americans for Religious Liberty
- Americans United for Separation of Church and State
- Bazelon Center for Mental Health Law
- Bill of Rights Defense Committee
- Center for American Progress
- Center for Community Change
- Center for Prophetic Renewal, Los Angeles
- Center for Reproductive Rights
- Central Conference of American Rabbis
- Christians for Justice Action (United Church of Christ)
- Citizens’ Commission on Civil Rights
- Committee for Judicial Independence
- Community Rights Counsel
- Disability Rights Education and Defense Fund
- Disciples Justice Action Network (Disciples of Christ)
- Earthjustice
- Equal Partners in Faith
- Faith Voices for the Common Good
- Friends Committee on National Legislation (Quaker)
- Friends of the Earth
- Human Rights Campaign
- The Interfaith Alliance (TIA)
- Lambda Legal
- Lawyers’ Committee for Civil Rights Under Law
- Leadership Conference on Civil Rights
- Legal Momentum
- Methodist Federation for Social Action

- Mexican American Legal Defense and Educational Fund (MALDEF)
- MoveOn PAC
- NARAL Pro-Choice America
- National Abortion Federation
- National Alliance of Postal and Federal Employees
- National Asian Pacific American Legal Consortium (NAPALC)
- National Association for the Advancement of Colored People (NAACP)
- National Association of Muslim Lawyers (NAML)
- National Association of the Deaf
- National Coalition on Black Civic Participation
- National Council of Jewish Women
- National Council of La Raza
- National Council on Independent Living (NCIL)
- National Employment Lawyers Association
- National Fair Housing Alliance
- National Family Planning and Reproductive Health Association
- National Gay and Lesbian Task Force
- National Latina Institute for Reproductive Health
- National Partnership for Women & Families
- National Puerto Rican Coalition
- National Senior Citizens Law Center
- National Urban League
- National Women’s Law Center
- National Women’s Political Caucus
- NETWORK: A Catholic Social Justice Lobby
- New Mexico Religious Coalition for Reproductive Choice
- Open Society Policy Center
- Parents, Families and Friends of Lesbians and Gays (PFLAG)
- People for the American Way
- Physicians for Reproductive Choice and Health
- Planned Parenthood Federation of America
- Rabbinical Assembly
- Religious Coalition for Reproductive Choice
- Religious Institute on Sexual Morality, Justice, and Healing
- Service Employees International Union (SEIU)
- The Shalom Center
- Sierra Club
- Union for Reform Judaism
- Unitarian Universalist Association
- United Food and Commercial Workers International Union
- USAction
- The Witherspoon Society (Presbyterian Church, USA)
- Women Employed
- Women of Reform Judaism
- YWCA USA

They Really Think Someone Is Listening?

As usual, pro-abortion contingents are turning to celebrity allies for support. As you read the comments supposedly made by each celebrity, pay particular attention to the rhetoric used. It appears as though the same person wrote each statement and they simply received permission of the celebrity to attribute it to him or her.



Kathleen Turner

Actress Kathleen Turner heads PPFA’s Board of Advocates. “We’ve all been bracing for a Supreme Court resignation, and now that it’s come, I can feel the chill wind blow,” Turner said in her usual overly dramatic style. “Sandra Day O’Connor upheld constitutional protections for

women. Now that she's leaving, we can expect Bush to nominate a replacement who is hostile to women's freedoms. I urge everyone to stay involved and let it be known that we have a pro-choice majority in this country."

Author Ann Crittenden said O'Connor's retirement comes at a time "when the president is determined to pack the Supreme Court with extremists, [which] jeopardizes the independence of the court and our very system of checks and balances. Americans, on guard!"



Giancarlo Esposito

Giancarlo Esposito said, "Now more than ever, people who support reproductive rights—and that's most of us in this country—have to hold strong and make our voices heard. So much is at stake." And just what does the actor believe is at stake? "The very lives of women," he said.

Actress Judy Reyes said, "This is a pivotal moment in our country's history. The president can choose to be balanced in his selection of a nominee to replace Justice Sandra Day O'Connor, or he can nominate an ideologue who does not believe in protecting women's freedoms. Now, more than ever, we who are pro-choice need to speak up."



Heather Tom

"Sandra Day O'Connor was often a 'swing' voter, the moderate voice on the bench who consistently refused to impose her morality on the law," said actress Heather Tom. "Her retirement could have a devastating effect on the preservation of *Roe v. Wade* and the health and lives of women."

"Our rights should not be taken for granted, nor should they be taken away for political gain," said model Cheryl Tiegs. "With the retirement of Supreme Court Justice Sandra Day O'Connor, our reproductive rights are at stake. We must speak out now and demand that the Supreme Court be a balanced court, not one that reflects the views of the president. Please join me and make your voice heard!"

Actress Camryn Manheim said Supreme Court justices "have enormous power to affect the health and safety of women. *Roe v. Wade* changed the lives of millions of American women for the better.



Camryn Manheim

That's why so much is riding on Bush's nominee to

replace Sandra Day O'Connor, who was a moderate voice on the bench. The nation cannot afford to have an extremist who will trample on civil and reproductive rights." It is important to remember that Manheim is not a legal expert; she just played one on TV.

"*Roe v. Wade* will never be safe as long as the theocratic right insists on imposing its beliefs on the entire society," said actress Kathryn Joosten. "I do not think the populace will accept any curtailing of the rights of women to make choices about their own bodies."

"The days and weeks ahead are going to define reproductive rights for decades to come," predicted actress Julianne Moore. "These will be perilous times for women if, as expected, Justice O'Connor's replacement is not a moderate, but an extremist who does not believe that the lives of women have value."

Actor Peter Boyle is concerned that Justice O'Connor's resignation could have a far-reaching and devastating impact. "The next justice will have the power to change the way we live our lives," he said, "so we must do everything in our power to ensure that women are not stripped of their right to choose." (What are the chances that Planned Parenthood actively sought out an actor on "Everybody Loves Raymond" to counteract the pro-life advocacy of Patricia Heaton? Nah, just a silly thought.)



Peter Boyle

Comedian and actress Wanda Sykes said, "We've made so many gains when it comes to women's health and rights. We can't let right-wing extremists force us back to the days when women did not have control over their reproductive lives."

"The resignation of Sandra O'Connor is a shock and is going to make activism crucial for every woman who cares about her own personal freedom and private choices," actress Patricia Richardson said. "Other people do not belong in the office with you and your doctor."

Songstress Sarah McLachlan said, "I feel sickened to think that in this day and age the possibility exists that *Roe v. Wade* might be overturned. With Justice O'Connor stepping down, this fear is real. Our freedom is being threatened. I'm telling everyone I know and so should you."



Ali MacGraw

Ali MacGraw said “reproductive freedom is at grave risk. Now more than ever, women and men must stand together to demonstrate that this country is pro-choice and pro-woman.” The actress said she hopes members of the Senate “fulfill their constitutional duties and conduct a thorough and independent review of Supreme Court nominee John Roberts. Several generations depend on this one lifetime appointment.”

Actor David Eigenberg wants everyone to know “the issue of reproductive freedom is not just a woman’s issue. All you pro-choice guys out there should be screaming from the rooftops, telling the world that if we get a right-wing extremist to replace Justice O’Connor, all of us are going to be in big trouble. Last I heard, this is a pro-choice country we’re living in.”

Celebrities who claim most Americans support current abortion laws need to get a new pollster. If pro-abortion activists really believed most people support *Roe v. Wade* they would have no problem with letting the voting public and/or their duly elected representatives legislate on abortion. (Most people have no idea what *Roe v. Wade* and *Doe v. Bolton* actually did.) Moreover, pro-abortion leaders have apparently not learned from the past two national elections that virtually no one cares what celebrities think. And when it comes to moral issues, Hollywood is the last place people look for a positive example.

A Confirmation Mêlée?

Assuming that new and damaging information about John Roberts is not uncovered before the full Senate votes on the nomination, it appears that Senate Democrats will not launch a major fight to block confirmation. Democrats plan to subject Roberts to tough questioning at confirmation hearings but they are unwilling to expend political capital in what will likely be a futile effort. It is even likely that a filibuster would fail.

“No one’s planning all-out warfare,” a Senate Democratic staffer told the *Washington Post*. For now the strategy is to make it appear as though Roberts was subjected to fair but intensive scrutiny while avoiding pointless attacks. “We’re going to come out of this looking dignified and will show we took the constitutional process seriously,” the aide said.

“This was a smart political choice from the White House,” said one congressional Democrat who requested anonymity because he was departing from his

party’s public position. “I don’t think people see a close vote here.” In fact, a list of “talking points” that circulated among the offices of Senate Democrats included no specific criticism of the nominee. It merely said that a thorough review of the nominee’s record is required “to guarantee that Judge Roberts will support the rights and freedoms of all Americans if he is confirmed.”

Democratic leaders are worried that the party’s core constituency will be irate if a large number of its senators vote to confirm Roberts. Several party activists outside Washington, D.C. are urging senators to show more backbone. “The Democrats don’t have a lot of starch in their spines,” former PPFa president Gloria Feldt told *Newsweek*. “We’re going to be pushing a big boulder up a hill.”



Gloria Feldt

“There’s nothing the White House would rather have seen than having us come out reflexively swinging at a nominee in order to accuse us of politicizing the debate,” Jim Manley, spokesman for Senate Minority Leader Harry M. Reid, D-Nev., told the *Washington Post*. “There was a strategic decision to keep our powder dry, to reserve judgment until the committee does its work. We want Democrats to be able to fight on principles, not politics.”



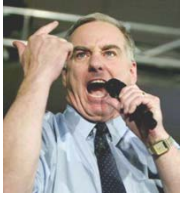
Christopher Dodd

Even pro-abortion Christopher J. Dodd, D-Conn., one of the more combative members of the Senate, said on “Fox News Sunday” that Roberts is “probably a good choice.” And before President Bush announced a nominee, Senator Joseph I. Lieberman, D-Conn., said Roberts was the type of person who could be considered without a filibuster.

PPFA is apparently even concerned about Roberts’ charm. Kate Rounds, editor of the group’s magazine, *Choice!*, said “the quiet and wily can be more dangerous than the noisy and brazen.” She lamented over the images that appeared in newspapers and on television the day after President Bush nominated Roberts. Rounds described the projected image as “a calm, blue-eyed Midwesterner, flanked by his family, kids in saddle shoes and Mary Janes, holding their mother’s hands.”

Progress for America, a group working to confirm Judge Roberts, had initially planned to spend \$18 million to promote the nominee. But given the weak

negative response to the President's pick, it now expects to spend less than \$9 million.



Howard Dean

According to *Newsweek*, Democrats may use their lack of a case against Roberts to test a new strategy designed to move moderates to the party. In July, Democratic Party Chairman Howard Dean met with members of Democrats for Life. Later the same day he told the party's national finance board that he does not want to change the Democrats' fundamental position, but he does want to "reframe" it. "He said he wanted to take 'abortion' out of the political lexicon," former Democratic National Committee head Steve Grossman, who attended the meeting, told the magazine.

This past spring, pro-abortion activists in New York City and Seattle invited Berkeley linguist George Lakoff to speak about how to reframe the abortion issue. "They found that 'choice' wasn't playing very well," Lakoff said. He told the groups it was because "choice" comes from a "consumerist" vocabulary, while "life" comes from a moral one.

In May 2005, NARAL pollster Celinda Lake released results of a study that said there are excellent alternatives to "choice-speak." According to the report, "the culture of freedom and responsibility" is much more persuasive than "choice." Lake said the study showed that emphasizing the new rhetoric "soundly beats culture of life."

In a national poll and focus groups, Lake tested a "prevention first" agenda that sought to reduce unwanted pregnancies through better birth control and access to the morning-after pill. The broader approach, she argued, "will help combat the widespread view that pro-choice groups are extreme and militant." (Yes, their own research shows that the *widespread view* of the American public is that pro-abortion activists are "extreme" and "militant." Are not these the labels pro-abortion groups have sought to apply to pro-life people? It seems their rhetorical strategy has backfired—in a big way.)

Democrats plan to utilize the "expert" advice when dealing with the confirmation of John Roberts. Rather than attacking him squarely on *Roe v. Wade*, they will "raise broader questions about his support for a right to privacy and personal freedom," *Newsweek* reported. "Pro-choicers worry that even if Roberts doesn't overturn *Roe* itself, he could uphold abortion restrictions in several upcoming cases."

Despite the odds, pro-abortion leaders feel they have to take a stand on Roberts. "This is the swing vote. This is the one that shifts the court to the right," said NARAL's Nancy Keenan. Interestingly, those working for the confirmation of Roberts were actually aided by the response to the television ad released by NARAL. Democrats are now less willing to put their reputations on the line in the event their guns are loaded with blanks.

Urging Caution

In a Senate questionnaire, John Roberts said "judges must be constantly aware that their role, while important, is limited." He also said judges "do not have a commission to solve society's problems, as they see them, but simply to decide cases before them according to the rule of law." This sounds good enough, but some pro-life eyebrows were raised about a comment Roberts made regarding past decisions of the Supreme Court.

"Precedent plays an important role in promoting the stability of the legal system," Roberts wrote. "A sound judicial philosophy should reflect recognition of the fact that the judge operates within a system of rules developed over the years by other judges equally striving to live up to the judicial oath." Roberts said this principle would apply even if it were clear that a decision by the Supreme Court was an example of a judicial branch legislating from the bench.



Thomas J. Euteneuer

Fearful of getting "burned" by another "pro-life" Republican president, two pro-life leaders have urged that the movement take a cautious approach to the Roberts nomination. Rev. Thomas J. Euteneuer, president of Human Life International (HLI), began his statement by quoting from Scripture:

"Jesus for his part did not entrust himself to them because he knew what was in the heart of man," says the Gospel of John about the Lord's attitude toward His first group of enthusiastic supporters. Jesus clearly never judged the merits of a man or a situation on hype or emotion or superficial criteria but rather employed another standard in proving the effectiveness of a man: "You judge a tree by its fruits." This sentiment and standard expresses the same reserve that HLI takes toward President Bush's nomination of Judge John Roberts to the Supreme Court. We have not yet seen the reason for the hype.

"Quite frankly," Euteneuer said, "the fruits of Judge Roberts' few recorded opinions on the life issues are mixed and a lot less hopeful for turning back the dam-

age of *Roe* than any respectable pro-lifer should want.” But Euteneuer left the door of hope open. “Is it possible that, given the chance, Roberts will make a difference in the fight for life? Yes, and if that is the case we will bless him as a pro-lifer in word and deed. Is it possible that he will turn into another [Justice] David Souter...in which case he will bear the guilt of the murder of all the babies he might have saved by his 1/9 share in the mightiest deliberative body known to man.”

Euteneuer said that, “As front lines activists who have experienced repeated dashed, naïve hopes for conscientious action by our ‘pro-life’ public figures, we... will not ‘entrust’ ourselves or our hopes to Judge Roberts until we actually see some good fruits.”

Thomas Strobhar, president of Pro Vita Advisors, urged that pro-life leaders withhold an outright and unequivocal endorsement of Roberts:

Admittedly, John Roberts has the right smell about him, but we don’t know if he would vote to overturn *Roe v. Wade*. If Roberts turns out to be a bit disappointing, pro-life groups will have themselves to blame. Just because NARAL opposes him that doesn’t mean we have to support him. NARAL will oppose anyone unless they are on record for upholding *Roe*. They were powerful enough to get every Democratic candidate to pledge they would only nominate judges who wouldn’t overturn *Roe*. We are still settling for a wink...Strangely, some cautionary notes...might do him [Roberts] some good.

Strobhar raises a point that merits careful consideration. Regardless of how good a nominee may appear on paper or in his personal life, one does not know how he will vote on *Roe v. Wade* until it happens. Still, it *appears* that President Bush has kept his word and nominated a man who will please pro-life activists.

President Bush surely understands the great importance of this nomination as it could positively impact the lives of all Americans. Maybe Roberts will turn out to be the kind of justice pro-family Americans have been yearning for since President William Jefferson Clinton put leftists Ruth Bader Ginsburg and Stephen G. Breyer on the Supreme Court. If this is the case, President Bush may be unintentionally establishing a legacy that will be applauded for many generations to come.

Before the announcement that John Roberts would be nominated to succeed O’Connor, some pro-life leaders feared the President would “play politics” with the choice. Maybe he would want to be the first president

to pick a Latino to sit on the Supreme Court. Maybe he would feel pressured to replace a woman with a woman. Maybe the President would believe it wise to nominate a moderate to replace a moderate. Maybe he would put personal relationships ahead of policy and nominate a close friend who was nothing “like a Scalia or a Thomas.” But it appears that President Bush put policy and judicial temperament ahead of everything else, which suggests that the nomination of Roberts is an example of the President at his best. President Bush did what he thought was right. Doing so will serve him and the nation well.

President Bush was not fooled by those who desired to mislead him. Pro-family leaders remember the nomination of David H. Souter by the President’s father. John Sununu, who served as Chief of Staff to the senior Bush, gave pro-family leaders his personal assurance they would be happy with Souter because the nominee was a conservative who respects the Constitution. But Souter has proven to be a moderate at best; one who is willing to legislate from the bench whenever he desires to force his personal opinions into law.

Pro-life Americans cannot continue to work for candidates only to be disappointed when the hard choices must be made. Thankfully, with the nomination of John Roberts, all indications are that President Bush has relied on his instincts and the record. This is certainly a good thing.

One very reassuring fact is Jane Sullivan Roberts’ involvement with Feminists for Life (FL), one of the best pro-life organizations in the world. This has not been some fleeting activism. All of her work for FL was done pro bono. We trust her husband does not want to sleep on the sofa for the rest of his life.

We need to pray that Roberts is and will remain strong so he does not end up like Justice Anthony Kennedy, who shocked every pro-life activist when he voted to uphold *Roe*. The truth is that this is all we can really do anyway. Thankfully, prayer can be the most potent tool in the pro-life arsenal. The battle—and the prayer—begin now.

Douglas R. Scott is co-founder and president of Life Decisions International. He is the author of several books including Bad Choices: A Look Inside Planned Parenthood. Scott is former vice president for public policy of the Christian Action Council. He also served as executive director of HUMAN LIFE of Washington State and Arizona Right to Life, both of which are affiliates of the National Right to Life Committee.

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