have, under the Senate rules that could easily be done. It could be slowed. The Senator has been totally and completely cooperative from the outset. He has been a man of his word in suggesting that he would move where there was no controversy from his perspective, would move judiciously, warning me that there may be future occasions when he might not be ready to be so cooperative. But I thank him for his cooperation, and I appreciate it very much.

Senator HATCH. Well, thank you, Senator Biden, for your kind words, and welcome, Judge Ginsburg, to the committee. We are very happy and pleased to have you here and to finally have these proceedings start.

I want to personally pay tribute to my colleague, Senator Specter. We are happy to have him back and happy to have him in such good health and good condition. I do think he could have gotten a little better Pennsylvania hat than that one myself.

The CHAIRMAN. And I wish you would fold the brim a little bit, Arlen.

Senator HATCH. At least curve the brim, Arlen. [Laughter.]

OPENING STATEMENT OF SENATOR HATCH

Senator HATCH. Well, I want to congratulate you, Judge Ginsburg, for this wonderful opportunity to be Associate Justice of the Supreme Court. You have had a distinguished career in the law. You have been a law professor and pioneering advocate for equal rights for women, and for over 13 years, you have served as a thoughtful member of the Court of Appeals for the District of Columbia Circuit.

You have been nominated to replace a really fine member of the Court, a distinguished public servant and patriot, Justice Byron White, a person I have had a personal, strong friendship and relationship with, who I think is a great Justice. And I pay him tribute and wish him well as he enters into a well-deserved retirement.

Judge Ginsburg's ability, character, intellect, and temperament to serve on the Supreme Court are not, in my mind, in question. I don't have any doubts at all about that. I have been favorably impressed with Judge Ginsburg for some time.

A Supreme Court Justice, in my view, however, must meet an additional qualification. He or she must understand the role of the judiciary, including the Supreme Court, in our system of government. Under our system, a Supreme Court Justice should interpret the law and not legislate his or her own policy preferences from the bench. The role of the judicial branch is to enforce the provisions of the Constitution and the laws we enact in Congress as their meaning was originally intended by the Framers.

Any other philosophy of judging requires unelected Federal judges to impose their own personal views on the American people in the guise of construing the Constitution and Federal statutes. There is no way around this conclusion. Such an approach is judicial activism, plain and simple. And it is wrong, whether it comes from the political left or whether it comes from the political right.

Let there be no mistake: The Constitution, in its original meaning, can be readily applied to changing circumstances. That telephones did not exist in 1791, for example, does not mean that the fourth amendment's ban on unreasonable searches is inapplicable

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to a person's use of the telephone. But while circumstances may change, the meaning—the principle—of the text, which applies to those new circumstances, does not change.

Reasonable jurists can sometimes disagree over what a particular constitutional or statutory provision was intended to mean and over how such meaning is properly applied to a given set of facts. But if the judicial branch is not governed by a jurisprudence of original meaning, the judiciary usurps the role the Constitution reserves to the people through their elected representatives.

When judges depart from those principles of construction, they elevate themselves not only over the executive and legislative branches, but over the Constitution itself and, of course, over the American people. These judicial activists, whether of the left or right, undemocratically exercise a power of governance that the Constitution commits to the people and their elected representatives. And these judicial activists are limited, as Alexander Hamilton shrewdly recognized over 200 years ago, only by their own will—which is no limit at all.

As a consequence of judicial activism, we witnessed in an earlier era the invalidation of State social welfare legislation, such as wage and hour laws. Since the advent of the Warren court, judicial activism has resulted in the elevation of the rights of criminals and criminal suspects and the concomitant strengthening of the criminal forces against the police forces of our country; the twisting of the constitutional and statutory guarantees of equal protection of the law such that reverse discrimination often results; prayer being chased out of the schools; and the Court's creating out of thin air a constitutional right to abortion on demand, to just cite a few instances and a few examples. One of the objectives of the judicial activists for the future is the elimination of the death penalty.

The Constitution, as it has been amended through the years, in its original meaning, is our proper guide on all of these issues. It places primary responsibility in the people to govern themselves. It provides means of amendment through the agency of the people and their elected representatives, not by a majority of the Supreme Court. That is why appointing and confirming judges and Supreme Court Justices who won't let their own personal policy preferences sway their judgment is so important.

A President is entitled to some deference in a selection of a Supreme Court Justice. President Clinton and I are unlikely to agree on the person who ought to be nominated. But so long as the nominee is experienced in the law, intelligent, of good character and temperament, and gives clear and convincing evidence of understanding the proper role of the judiciary in our system of government, I can support that nomination and that nominee.

Moreover, I do not expect to agree with any nominee, especially one chosen by a President of the other party, on every issue before the judicial branch. The key question is whether the nominee can put aside his or her own policy preferences and interpret the Constitution and the laws in a neutral fashion.

Finally, I would point out that I disagree very much with some of Judge Ginsburg's academic writings and some views she held prior to ascending to the bench in 1980. I believe that Judge Ginsburg's judicial opinions, however, indicate her understanding that

her policy views and earlier role as advocate are distinct from her role as a judge. I will explore that distinction in these hearings.

It is my hope that Judge Ginsburg will satisfy this committee that she shares the judicial philosophy of applying the original meaning of our Constitution and laws in the cases which come before her on the Supreme Court, if she is confirmed.

[The prepared statement of Senator Hatch follows:]

PREPARED STATEMENT OF SENATOR HATCH

Thank you, Mr. Chairman. I congratulate the nominee, Judge Ruth Bader Ginsburg, on her nomination to be Associate Justice of the Supreme Court. Judge Ginsburg has had a distinguished career in the law. She has been a law professor and pioneering advocate for equal opportunity for women. For over 13 years, she has served as a thoughtful member of the Court of Appeals for the District of Columbia Circuit.

She has been nominated to replace a fine member of the Court, a distinguished public servant and patriot, Justice Byron White. I pay him tribute and wish him well as he enters a well deserved retirement.

Judge Ginsburg's ability, character, intellect, and temperament to serve on the Supreme Court are not, in my mind, in question. I have been favorably impressed with Judge Ginsburg for some time.

A Supreme Court Justice, in my view, however, must meet an additional qualification. He or she must understand the role of the judiciary, including the Supreme Court, in our system of government. Under our system, a Supreme Court Justice should interpret the law and not legislate his or her own policy preferences from the bench. The role of the judicial branch is to enforce the provisions of the Constitution and the laws we enact in Congress as their meaning was originally intended by their framers.

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Let there be no mistake: the Constitution, in its original meaning, can readily be applied to changing circumstances. That telephones did not exist in 1791, for example, does not mean that the fourth amendment's ban on unreasonable searches is inapplicable to a person's use of the telephone. But, while circumstances may change, the meaning—the principle—of the text, which applies to those new circumstances, does not change.

Reasonable jurists can sometimes disagree over what a particular Constitutional or statutory provision was intended to mean and over how such meaning is properly applied to a given set of facts. But, if the judicial branch is not governed by a jurisprudence of original meaning, the judiciary usurps the role the Constitution reserves to the people through their elected representatives.

Alexander Hamilton, an advocate of a vigorous central government, in defending the judiciary's right to review and invalidate the Legislative Branch's acts which contravene the Constitution, made clear that federal judges are not to be guided by personal predilection. He rejected the concern that such judicial review made the judiciary superior to the legislature: "A constitution, is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body * * *. It can be of no weight to say that the courts, on the pretense of a repugnancy [between a legislative enactment and the Constitution], may substitute their own pleasure to the constitutional intentions of the legislature. The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislature body. [This] observation * * * would prove that there ought to be no judges distinct from that body." (Federalist 78.) And this commingling of the legislative and judicial functions, of course, would tend to start us down the road to the kind of tyranny the Framers warned about when the separate executive, legislative, and judicial functions are united in the same hands.

When judges depart from these principles of construction, they elevate themselves not only over the executive and legislative branches, but over the Constitution itself, and, of course, over the American people. These judicial activists, whether of the left or right, undemocratically exercise a power of governance that the Constitution com-