

Editorial Excerpts on John Roberts’ Chief Justice Nomination and the Environment

***USA Today*, Roberts eases concerns, but leaves plenty of wiggle room (Sept. 14, 2005)**

Most notably, the nominee resolutely refused to discuss his views on abortion, and in doing so he gave both sides in the debate something to worry about. He seemed to signal that the barrier to reversing *Roe v. Wade* would be high but not impossible.

Similarly, on civil rights and women's rights, the most critical question was left unanswered: What remedies would he allow the government to apply?

That is a matter of concern, and it was reinforced by his refusal to discuss the reach of Congress' power to regulate issues affecting health, safety, the environment, the workplace and other matters. His previous record has been raising questions.

Though no one expects Roberts to discuss pending cases, he could have been more forthcoming on key issues of settled law.

http://www.usatoday.com/news/opinion/editorials/2005-09-13-roberts-edit_x.htm

***Daily Illini*, Judging the future (Sept. 14, 2005)**

[I]t also is important to know Roberts' stance on the interstate commerce clause. Should he, as seen in his 2003 dissent in *Rancho v. Viejo*, take a narrow reading of the pillar of federal regulation, the federal legislature's powers would be greatly diminished and would wipe out a century of advances on commerce, environmental and labor laws.

<http://www.dailyillini.com/media/paper736/news/2005/09/14/Opinions/Judging.The.Future-984649.shtml>

***Newsday*, Roberts' power play**

Washington's worries about change in balance of power emerge at hearing (Sept. 13, 2005)

Senator after senator spoke passionately about recent decisions in which the court cut back on the power of Congress to protect the environment and women's rights. The court's restrictive reading of the Constitution's commerce clause, in invalidating the Violence Against Women Act and a federal law barring guns near schools, has members of Congress worried that their power is shrinking as that of the states is growing.

Justices aren't elected and they serve for life. This hearing is the only opportunity the public will have to take the measure of the man in line to become one of nine justices who will decide the limits of individual rights and congressional and presidential power for a generation to come. It should be a tough job interview. It's quite a job.

<http://www.newsday.com/news/opinion/ny-vprob134423875sep13.0.626568.story?coll=ny-editorials-headlines>

The Virginian-Pilot, Reasonable questions for Judge Roberts (Sept. 13, 2005)

The nation deserves a reasonably clear idea of where he would take us on several critical matters. Among them:

- Federal-state boundaries. How strictly would Roberts interpret the so-called Commerce Clause of the Constitution, which allows Congress to regulate interstate commerce? In recent years, the court has thrown out a number of federal laws justified by the clause, including a law establishing drug-free school zones and another combating violence against women.

The fewer surprises the Supreme Court inflicts on the nation, the better. A frank discussion this week of Roberts' views serves that end.

<http://home.hamptonroads.com/stories/story.cfm?story=92043&ran=143741>

The Washington Post, The Roberts Hearings (Sept. 12, 2005)

Another critical issue is the balance of power between the federal government and the states -- an area in which Judge Roberts could move the court in either a positive or a negative direction. His work on this subject as a judge has been Delphic, raising troubling questions but not providing evidence to indicate where he would go. Senators need to satisfy themselves that he does not envision a radical departure from the past several decades of American jurisprudence on federalism.

<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/11/AR2005091100958.html>

Palm Beach Post, Find out Roberts' views on privacy, federalism (September 12, 2005)

There is more that the country needs to know about Judge John G. Roberts Jr. and his view of the law before the Senate votes on his nomination to the Supreme Court.

Another broad topic is federalism, the relationship between the national government and the state governments. Under Chief Justice William Rehnquist, the court repeatedly has sided with states in challenges to key portions of federal law. Judge Roberts' writings indicate that he also favors unrealistically strict limits on federal power, especially in the area of civil rights. As a government lawyer, for example, Judge Roberts wanted courts to move cautiously when deciding cases of discrimination. He seems to favor restrictions on how strongly the government can impose environmental standards. He needs to explain his views on this subject.

http://www.palmbeachpost.com/opinion/content/opinion/epaper/2005/09/12/m18a_roberts_edit_0912.html

[Dallas Fort Worth] Star-Telegram, Who are you? (Sept. 12, 2005)

Federal vs. state authority: Your predecessor favored curbing Congress' regulatory reach and its ability to require states to comply with civil rights and environmental laws. Some members of

Congress don't much care for having the laws we pass tossed out by unelected judges. How broad do you consider the Commerce Clause? What restraints does the Constitution allow the court to put on Congress?

<http://www.dfw.com/mld/dfw/news/opinion/12610638.htm>

USA Today, Roberts' past vs. U.S. future (Sept. 11, 2005)

The records and the changing times combine to raise other issues, as well: about Congress' power to regulate the environment, commerce and the workplace

Nevertheless, his record bears close scrutiny - and his answers should go a long way toward determining whether he should be confirmed for a lifetime appointment as the nation's most powerful jurist, deciding issues barely imaginable today and influencing the lives of generations to come.

http://www.usatoday.com/news/opinion/2005-09-11-roberts-past_x.htm

The Dallas Morning News, Judge Roberts' Hearing: Keep the questions direct, the answers honest (Sept. 11, 2005)

While we agree with the president on many issues likely to come before the court, such as the role of religion in the public square and the primacy of markets, we disagree with him on others, such as reproductive rights, civil rights, the scope of federal authority in environmental matters. So do many Americans, especially women and people of color.

It is natural and reasonable for those people to feel anxious about Judge Roberts, whose writings suggest (but do not prove) that he would narrow the application of those legal principles. It will be much to the good of the court and the nation if he can allay their fears.

http://www.dallasnews.com/sharedcontent/dws/dn/opinion/editorials/stories/DN-roberts_11edi.ART.State.Edition1.429ca4c.html

The Courier-Journal [Louisville, KY], Not So Fast (Sept. 7, 2005)

Judge Roberts should also be asked about such topics as his commitment to the judicial practice of generally permitting Supreme Court precedents to stand (even if one disagrees with the ruling); his opinion on whether the Constitution grants an implicit right to privacy, and his perspective of how much power Congress has to regulate industry and protect the environment through the Constitution's "interstate commerce" clause.

<http://www.courier-journal.com/apps/pbcs.dll/article?AID=/20050907/OPINION01/509070411>

***Florida Today*, Need straight answers: Judge Roberts should get even more scrutiny, now that he's tabbed for chief justice (Sept. 7, 2005)**

He served only two years on the U.S. Court of Appeals in Washington, D.C., and that has left his views on a host of divisive issues unclear.

Those include:

Environmental protection and the Endangered Species Act.

On the appellate court, Roberts questioned the scope of the federal government's power to enforce long-established environmental and anti-pollution laws, as well as legal protections of citizens' health and safety.

The public deserves no less than full, honest explanations of the direction he'll steer the high court, and the Senate committee must require Robert to provide it.

<http://www.floridatoday.com/apps/pbcs.dll/article?AID=/20050907/OPINION/509070326/1004>

***The Times [Trenton, NJ]*, Change of plans (Sept. 6, 2005)**

It will be the Judiciary Committee's task, as surrogate for the full Senate and the American people, to learn as much as possible about Judge Roberts' views of the law and the role of the courts, and then decide whether to send the nomination to the Senate floor with a recommendation to confirm. The great number of briefs, memos and other papers written by the nominee during his years as a lawyer for Republican administrations show him to be a smart, thoughtful, knowledgeable, sometimes witty - and solidly conservative - advocate and adviser. But they shed little light on how he would approach the responsibility of being the final arbiter of what the Constitution means and its applicability to laws that are under challenge. Judge Roberts' views on such towering questions as the importance of judicial precedent, the scope of presidential power, the reach of congressional authority under the interstate commerce clause, the meaning of the equal-protection and due-process provisions of the Fourteenth Amendment and the existence (or not) of a constitutional right to privacy must be thoroughly explored - and they can be, without inappropriately asking the nominee to prejudge cases that may come before the court. After the hearings, senators who are comfortable with his answers should vote to confirm; those who are not satisfied should feel free to vote no.

***Sacramento Bee*, Feinstein in the spotlight
She's set to be key to Roberts hearings (Sept. 6, 2005)**

Feinstein and her colleagues next should focus on a pattern of court decisions in the last 10 years limiting the ability of Congress to act on many national issues.

In 1995, the Supreme Court for the first time in 60 years struck down a law based on a narrow reading of the Commerce Clause in the Constitution. That clause is the legal foundation for the full range of national laws in our interconnected economy and society, from civil rights to the environment to public health and safety. Since 1995, the court, often on narrow 5-4 votes, has struck down part or all of such laws as the Gun-Free School Zones Act, Violence Against Women Act, the Brady Handgun Violence Protection Act and the Age Discrimination in Employment Act.

Clearly, some justices would like to use a restricted view of the Commerce Clause to limit Congress' ability to act on national issues. It is fair, then, to ask what views Roberts, who as chief justice would have the power to mold opinion among the justices, holds on that constitutional provision.

One indication of Roberts' view is in a dissenting opinion in a case about a housing development, where seven other judges rejected his narrow reading of congressional power. In his dissent, Roberts wrote about congressional regulation of a "hapless toad that, for reasons of its own, lives its entire life in California."

Senators should ask whether Roberts would extend this dissenting logic to laws protecting lakes or rivers within a state, impacting the ability of Congress to pass such laws as the Clean Water Act and Safe Drinking Water Act. He needs to be pressed on this.

<http://www.sacbee.com/content/opinion/story/13525535p-14366340c.html>

San Francisco Chronicle, Ten questions for John Roberts (Sept. 6, 2005)

What is your view on the scope of the Commerce Clause? (The breadth of congressional authority to regulate interstate commerce is a monumental issue before the high court. It is the foundation of many environmental and civil-rights laws. Some conservatives want it to be interpreted much more narrowly.)

Many of your writings during your service in the Reagan and first Bush administrations are causing great alarm in Americans who worry about your forcefully expressed arguments against laws designed to protect civil rights, the environment and privacy. How can you assure Americans of your objectivity in approaching these issues in the future?

Senators need to ask these pointed questions of John G. Roberts Jr. at the upcoming confirmation hearings. The nominee's answers will determine whether he is suitable to become chief justice of the United States.

<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/09/06/EDG35EHP8L1.DTL>

USA Today, How would Roberts, as chief justice, affect you? (Sept. 5, 2005)

[T]he most important question about him remains largely unanswered: How would a Chief Justice Roberts affect the country?

Would he limit Congress' ability to protect the environment, public health and civil rights? That, too, is open to question.

Politically, he's conservative but not an outspoken ideologue, with little history of brash pronouncements. But which of the several sharply opposed conservative camps he falls into is in doubt, and the difference stands to affect every American.

Roberts' public record — inconclusive but provocative — raises questions whether he prefers limited government and cautious change, or whether he is an activist who would seek to overturn important Supreme Court precedents and legal protections:

Powers of Congress. Roberts parted company with the majority of conservative judges on his appeals court two years ago to take a swipe at the constitutional basis of the Endangered Species Act. The narrower interpretation he seemed to suggest could also limit the reach of federal laws regulating health, safety, civil rights, commerce and the workplace.

To suggest that the Senate should simply ignore the impact Roberts would have on constituents is to suggest that it stick its collective head in the sand.

<http://www.usatoday.com/printedition/news/20050906/edit06.art.htm>

The New York Times, Quizzing Judge Roberts (Sept. 4, 2005)

One Supreme Court justice can make a huge difference in what kind of nation America is. Consider Sandra Day O'Connor, who in a series of 5-to-4 decisions cast the deciding vote holding: (1) that the federal government has broad power under the Clean Air Act to fight air pollution;

At the hearings, senators should ask Judge Roberts tough questions about a number of key issues:

Congressional Power Judge Roberts appears to be sympathetic to a far-right "federalism" campaign that seeks to restrict Congress's power to pass laws that protect the environment, keep workplaces safe and prevent discrimination. He wrote an opinion in a case involving the Endangered Species Act that is particularly troubling in this regard. Does he believe Congressional power should be reduced, and if so, in what ways?

The burden is on Judge Roberts to show that he is the right person for this monumentally important job.

<http://www.nytimes.com/2005/09/04/opinion/04sun1.html?ex=1283486400&en=d04baf7a3df5a24&ei=5090&partner=rssuserland&emc=rss>

The Philadelphia Inquirer, The Roberts Hearings Look behind the veil (Sept. 4, 2005)

[H]ere is a list of questions for which the committee should press for answers:

For many years, Congress has relied on the Commerce Clause in the Constitution as the basis for its authority to regulate everything from labor standards to anti-discrimination practices. Increasingly, however, the Supreme Court has struck down federal laws based on the Commerce Clause. Do you agree with this trend toward curtailing congressional authority? And how does that trend square with conservatives' stated goal to leave legislating to legislators? How, generally, do you think the Constitution speaks to the task of balancing the interests of industry versus environmental interests?

The public has a right to hear Roberts' views on such issues. It's up to Roberts to be candid with the public.

<http://www.philly.com/mld/inquirer/news/editorial/12554031.htm>

Times Argus, Getting down to brass tacks (Sept. 4, 2005)

It is important to inquire aggressively and thoroughly into Roberts' thinking, but it would undermine the advantage gained by the inquiry if Leahy were to be seen as a tool of the civil liberties and women's rights groups who oppose Roberts.

Leahy should avoid the petty politics of exaggerated grievances and concentrate on the weighty questions of political philosophy that underlie Roberts' views.

For example:

- How does Roberts construe the Commerce Clause of the Constitution? In the early 20th century, the Supreme Court used the limitations of the Commerce Clause to limit the regulatory power of the state. At the time of the New Deal, the court interpreted the clause more expansively. The Rehnquist court has begun to narrow the reach of the Commerce Clause, a trend that ultimately could undermine the power of the government to protect the public welfare.

Leahy must make it clear that the American people want to know what Roberts thinks and that Leahy means to find out.

<http://www.timesargus.com/apps/pbcs.dll/article?AID=/20050904/NEWS/509040336/1021/OPINION01>

St. Petersburg Times, Congress, the courts and the Commerce Clause
With John Roberts set to replace the Supreme Court's swing vote on federalism, he should be rigorously questioned on the scope of congressional power.
(Aug. 29, 2005)

The term "activist judges" is typically hurled by those on the political right who believe that liberal federal judges are legislating social policy from the bench. But they are pointing fingers in the wrong direction. Conservative justices on the U.S. Supreme Court have made the Rehnquist court one of the most "activist" in history. Often by a one-vote margin, the court has repeatedly substituted its own judgment for that of Congress, setting aside federal statutes or making them

inapplicable to the states, on the grounds that Congress had overstepped its constitutional authority.

Sen. Arlen Specter, the Republican chairman of the Senate Judiciary Committee and a constitutional scholar, understands that the court's approach to federalism is important because it directly affects Congress' ability to address national problems. With Supreme Court nominee John Roberts Jr. set to replace the court's swing vote on federalism - Justice Sandra Day O'Connor - Specter has informed Roberts in a series of thoughtful letters that he should expect rigorous questioning on the scope of congressional power and whether courts should be second-guessing Congress' legislative intent. Roberts' confirmation hearings are set to begin Sept. 6.

Under Specter's leadership, the committee appears ready to focus on Roberts' interpretation of the Commerce Clause - from which Congress derives most of its regulatory authority. This is the linchpin of the federalism issue, with consequences for everything from environmental protection to civil rights to child labor.

While Roberts, who is a judge on the D.C. Circuit Court of Appeals, has a sparse record on states' rights, he did participate in one case involving the Endangered Species Act and the protection of the arroyo toad. Roberts suggested in a dissent that the law should not protect the "hapless toad" because the species does not live outside California. In other words, Congress does not have the power to regulate on behalf of a species that lives in a single state. If this cramped view of Congress' lawmaking power were to prevail, wholesale areas of federal law could be put at risk. Roberts was also a law clerk for Chief Justice William Rehnquist, who has been the driving force behind the court's federalism revolution.

The high court already has accepted a few cases with states' rights implications for next term, including one involving a disabled inmate and whether he can sue the state of Georgia over prison conditions under the Americans with Disabilities Act. Roberts should not be grilled on these specific matters. But as Specter laid out in his letters, it is reasonable to expect Roberts to fully explore his theory of the Commerce Clause and to what extent the court may put the brakes on Congress' policymaking.

http://www.sptimes.com/2005/08/29/news_pf/Opinion/Congress_the_courts_.shtml

Boston Globe, Questions for a judge (July 21, 2005)

Roberts, a member of the Federalist Society, wrote a dissenting opinion in a 2003 case regarding the reach of the Endangered Species Act. He argued against the notion advanced by a lower court, that a particular species of toad should get federal protection under the commerce clause of the Constitution, because, he said, the toad lives only in California. Although this was rather a cheeky opinion, an extreme federalist approach could challenge the underpinnings of a whole raft of environmental, health, labor, and civil rights protections -- all passed under a broad interpretation of the commerce clause, which gives Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

For nearly 60 years, from the Civil War to the New Deal, the Supreme Court had a laissez-faire attitude toward regulating the economy, ruling that certain spheres were off-limits to congressional action. Some legal scholars think that the court is returning to that period of limited federal government, sharply narrowing the uses of the commerce clause.

Questions: What do you think are the limits of Congress's power under the commerce clause? Should federal laws be invalidated if they trample on states' rights?

The answers to such questions are crucial.

http://www.boston.com/news/globe/editorial_opinion/editorials/articles/2005/07/21/questions_for_a_judge/

San Jose Mercury News, Critical That Senators Inquire Civilly But Vigorously (July 21, 2005)

But conservatives come in many flavors, from property-rights libertarians to anti-abortion activists, and it's not clear which applies to Roberts... But Roberts' views on the great issues before the court are not known -- despite having served two Republican presidents in key legal positions, argued 39 cases before the Supreme Court and, for the past two years, served on the Washington, D.C., federal Court of Appeals. That is why it is critical that senators inquire -- civilly but vigorously -- into Roberts' judicial philosophy and personal beliefs: his views about a constitutional right of privacy, the federal government's role in regulating interstate commerce and the environment, the balance between federal and states' rights, the powers of the president in wartime and the role of religion in public life.

The Albuquerque Journal, Let's carefully look at Bush's justice nominee (July 21, 2005)

[I]n his brief, two-year tenure as a Washington, D.C., federal circuit court judge, his views were at odds with affirmative action, the Endangered Species Act, basic legal protections for "enemy combatant" prisoners and public scrutiny of federal policy-making - such as in the Bush administration's secret meetings on energy.

No one of these should be a litmus test for his nomination. But collectively they should be of more than passing interest to Americans who treasure their Constitution, its Bill of Rights and liberty.

Considering that many of the court's recent decisions have been determined by the vote of a single justice, we all deserve to get to know Roberts just as completely and fully as possible.

http://www.abqtrib.com/albq/op_editorials/article/0,2565,ALBQ_19867_3943344,00.html