Supreme Court has looked down history in America and they have thought about it and they are saying we have got to stop, we have got to get out of this business of disbursing the goods and services of America based on what group you belong to. This is not the kind of principle upon which our country was founded, and that is what they meant by the Adarand decision, and that's why legal scholars consider it of thunderous importance, an extremely important decision.

OK. How does Mr. Lee feel about that? He opposed the Adarand decision. I asked him, does he still believe it is bad law? He says he believes it is bad law. He testified he does not agree with it. And he said something that is particularly troubling about it.

In his testimony, Mr. Lee stated that Adarand allowed affirmative action programs, which in this case means a kind of set-aside, in effect quotas. Sometimes affirmative action means affirmative outreach. Sometimes it means racial preferences and quotas. It just depends how it is used. But in this case we are talking about Adarand which had a set-aside in the law to favor some people. He said he thought they were legal under the Adarand decision if conducted in a limited and measured way.

That is not, Mr. President, what the Court in Adarand said. The Court in Adarand said that set-asides like this highway program are presumptively unconstitutional and can never be allowed except under the strictest of scrutiny. It is for the most significant of reasons that would justify these kinds of actions.

So what troubles me about that, and I know Senator HATCH raised it, is it suggests that as the top civil rights lawyer in this country he would not interpret Adarand the way the legal scholars do but would interpret Adarand in a way that would justify him applying the resources of the 250 attorneys in the Department of Justice to undermine the Adarand decision the Supreme Court has rendered.

So let me ask, am I against civil rights to say that? Do I not believe in civil rights to say that I agree with the Supreme Court of the United States, I agree with the ninth circuit of the United States with regard to Proposition 209? I submit not. I believe in civil rights for everyone and I think most Americans do.

I wanted to quote from the words of Congressman Charles Canady who testified before the Subcommittee on Constitution, Federalism and Property Rights of the Judiciary Committee just a few days ago actually. And this is what he says, Congressman CANADY from Florida:

> If we go back to 1961, when President KENNEDY promulgated the original Executive order on affirmative action, it was clear in that Executive order that steps were to be taken to reach out to all parts of the community to bring people into the pool of applicants for opportunities, but that people were to be treated without regard to their race. That specific language was used in the Executive order.
>
> So I believe that Senator MCCONNELL's proposal encompassing a number of outreach elements is [what we should do].

Congressman CANADY continued:

> Now, this system of set-asides [which was legally challenged in the Adarand decision] that is in place has been described as a remedial system. The problem with this system, however, is that it provides benefits to people who have not demonstrated that they are victims of any specific wrongdoing and it imposes cost on individuals who have been demonstrated to be guilty of no wrongdoing themselves.
>
> Do we get that? It provides benefits to people who do not demonstrate that they have been harmed and it provides costs on those who have not been demonstrated to have done anything wrong. Is it against civil rights to think such a policy is not good?

Congressman CANADY continued, I think saying it well:

> I believe if we step back from this system [step back, like the Supreme Court is doing] which was put in place with the best of intentions [these set-asides and preferences and quotas] we have to conclude on the basis of our history as Americans that racial distinctions are inherently pernicious. It is fundamentally wrong [Congressman CANADY continued] for our country to divide this country into groups based on race and gender and then award benefits to some people because they belong to the right group and deny benefits to other people because they belong to the wrong group. That is inconsistent with our fundamental American values. It is inconsistent with the way our Government should treat its citizens.

He concluded:

> I believe that the American people are becoming more and more weary of this failed system of race and gender preferences. They want to reaffirm the promise of America, that all Americans will be treated as individuals who are equal in the eyes of the law.

Well, I thought a good while about this. I think it was important to do so. I will just say this. We cannot end discrimination by practicing discrimination. That is fundamental. Make no mistake, when you benefit one person because of the color of his or her skin you are depriving another person because of the color of his or her skin. It is just that simple. It can be no other way. And the courts are agreeing with this. And Mr. Lee is outside the mainstream of judicial thought in America today. His opinion, opposing the most important Adarand decision, represents that he opposes the position of the Supreme Court of the United States. For that reason I feel compelled to vote ''no'' on his nomination.

I yield the floor.

N O T I C E

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR MONDAY, NOVEMBER 10, 1997

Mr. SESSIONS. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10 a.m. on Monday, November 10. I further ask that on Monday, immediately following the prayer, the routine requests through the morning hour be granted, and the Senate proceed to a period of morning business for not to extend beyond the hour of 10:30 a.m. with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SESSIONS. Mr. President, tomorrow the Senate will be in a period of morning business until 10:30 a.m.

Following morning business, the Senate intends to consider and complete action on the following:

The fast-track bill, if passed by the House; additional motions, if necessary, with respect to the omnibus appropriations bills; and any Legislative or Executive Calendar items cleared for action.

Therefore, Members can anticipate rollcall votes during Monday's session of the Senate. However, I would not expect votes before 11 a.m.

Mr. FORD. Mr. President, as the acting leader laid out at the beginning, at 10:30, following morning business, what do you expect to go to next? Would there be any time limitations on the fast-track? If it is here.

Mr. SESSIONS. I say to the distinguished Senator from Kentucky that, of course, it has to get here first.

Mr. FORD. I understand.

Mr. SESSIONS. If it does, this unanimous consent request says we will move to the fast-track bill, if passed by the House. Additional motions, if necessary, with respect to the omnibus appropriations bill, and any Legislative or Executive Calendar items cleared for action.

Mr. FORD. I am sure this has been agreed to. This has all been cleared.

Mr. SESSIONS. I thank the Senator from Kentucky.