

and judges and a variety of people on the due process of enemy combatants—even a judge in our State raised concerns about how you balance protecting rights and security interests.

I know in Washington State these are among the key issues that the citizenry of Washington State cares about. They care about their personal privacy and they care about it being protected. They also care about that personal privacy as it relates to a variety of rights that they have come to expect.

In fact, in Washington State, a right of privacy is guaranteed in our Constitution. Article 1, section 7, which says—quote—“no person shall be disturbed in his private affairs or his home invaded without the authority of law.” We adopted this constitutional right of privacy upon the founding of our State and the deep respect that we have for those individual rights.

It has been settled for decades by the courts of Washington State. Washington State law even goes further than the Federal Government in protecting people’s privacy in a search and seizure context, for example. And I think it is very important to understand how much the State of Washington cares about these constitutional protections.

Now, as it relates specifically to a woman’s right to choose, Washingtonians again have been very outspoken. In fact, in 1970, 3 years before the Federal courts spoke on this matter, the residents of my State passed a referendum legalizing abortion rights through the first trimester. That is in 1970. In 1991, the voters of my State passed by initiative a codification of *Roe v. Wade* into State statute.

I would hope that any nominee to the Supreme Court would understand how important the privacy rights are in not just Washington State but throughout the country and how challenged they are going to be in the next decades as the information age rolls out and more and more issues confront Americans about their privacy and the privacy of information about them.

During my tenure on the Judiciary Committee, I heard many conservative nominees express views in opposition

to abortion rights and some were very critical of the decision in *Roe v. Wade*. I did not agree with these views, but where those nominees demonstrated an understanding that privacy in the choice context is an accepted right, and that the Nation and the courts have determined that right should be upheld, I voted to confirm these judges.

Sixty-one percent of Americans said that they wanted Judge Roberts to answer questions about how he would have ruled on past Supreme Court precedent. And I know that more than a majority of Americans believe that we should do our job in asking judicial nominees about their judicial philosophy.

But as my colleagues have pointed out, I have some concerns about Judge Roberts’ views on the rights to privacy as it relates to how those will continue to protect a woman’s right to choose. And I am concerned, as he talks about stare decisis exactly what he will uphold.

Now, I think a very important case that probably hasn’t gotten a lot of attention on the floor but it is something that again Washingtonians care a lot about is Judge Roberts’ dissent in the *Rancho Viejo* case. Judge Roberts went out of his way in this dissent to raise issues about whether Congress had overstepped its bound in enacting the Endangered Species Act. Courts have already decided this issue: Congress has the authority to protect our most precious species without concern that these efforts might be thrown out bit by bit. Judge Roberts has told us how important longstanding precedent is in his philosophy, yet he questions congress’ longstanding authority to enact environmental protections.

In the Northwest, we absolutely rely on a very robust interpretation of the interstate commerce clause, both in its environmental context and with regard to other laws. We have a great, wonderful environment in the Northwest that we want to protect. And just as with the privacy context, Judge Roberts was asked during the hearing about his views on Congress’s power to enact environmental protections and he declined to answer them specifically.

The Pacific Northwest is blessed with incredible beauty, complemented by the diverse wildlife that inhabits our lands and coastal waters. Unfortunately, habitat loss and other pressures threaten some of my State’s most iconic species, whether that be the salmon that spawn our great rivers, birds that depend on old-growth forests, or even the orca whale that holds a special plan in the heart of everyone who lives near the Puget Sound. The Endangered Species Act is helping protect these animals from extinction. I have concerns about what Judge Roberts says about precedent yet in the case of the Endangered Species Act; his concern for following precedent wasn’t there.

I share the concerns of my colleagues who have been to the floor that we want to know how Judge Roberts is going to make his philosophy about the right to privacy clearer for the individuals who have to vote for him. I am not clear what he considers the privacy rights in the Constitution that aren’t enumerated. And I know that that may not be the same opinion of our Members on the floor of the Senate, but I think Washingtonians have come to expect that these privacy rights mean a great deal to them.

And so I cannot vote to confirm Judge Roberts until I know more about his philosophy. I am doing the job that I think the State of Washington wants me to do in fighting for these protections that have been constitutionally guaranteed, that have been voted on by initiative of the people in our State, and for the great protection of those privacy rights that they know need to be protected in the future.

I yield the floor.

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ADJOURNMENT UNTIL 9:30 A.M.  
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 7:40 p.m., adjourned until Wednesday, September 28, 2005, at 9:30 a.m.