

JUDGE ROBERTS SHOULD BE TREATED LIKE ANY OTHER NOMINEE

The following statement was made by Kenneth Whitehead on September 8 at a news conference held in Washington, D.C. by the Family Research Council. Mr. Whitehead is an author, a former official in the Reagan administration and a member of the Catholic League's Board of Directors.

The Catholic League for Religious and Civil Rights believes that President George W. Bush's nominee to become the Chief Justice of the United States Supreme Court, Judge John G. Roberts, Jr., should be evaluated on the basis of his qualifications as a lawyer and a judge, not on the basis of his religion. The fact that Judge Roberts is a Catholic Christian should have no more bearing on his ability and suitability to be a Supreme Court justice than the fact that other sitting justices on the court profess the same faith—while yet others profess different faiths or perhaps no religious faith at all.

The Constitution of the United States, in fact, in very plain language forbids any religious test for public office. Yet merely by raising the question of Judge Roberts' religion, some of those who oppose his nomination are, in effect, attempting to impose such a religious test. Another very large question here, from the standpoint of the Catholic League, is the question of whether the religious issue would have come up at all if Judge Roberts were not a Catholic. No such question arose in the case of Justices Ruth Bader Ginsburg or Stephen Breyer, for example, and it should not arise in the case of Judge Roberts either.

Again, Justices Ginsburg and Breyer were not required to state

how they might judge hypothetical future court cases on currently controversial issues, and Judge Roberts should not be required to answer any such hypothetical questions either. To change the rules because a nominee who happens to be Catholic is under scrutiny unmistakably sends the signal that a religious test is being attempted. This is inadmissible.

Similarly, the questions which former New York Governor Mario Cuomo said on "Meet the Press" on August 7 should be posed to Judge Roberts by senators are inadmissible and out of bounds as acceptable public discourse in the United States. Governor Cuomo said that senators should ask the nominee the following questions, among others:

"Are you going to impose a religious test on the Constitution"?

"Are you going to say that because the pope says this or the Church says that that you will do it no matter what"?

The idea that a reasoned position on any public issue could be declared suspect merely because it happens to be held by a Catholic citizen, or happens to accord with a Church teaching, is demagoguery of the first water and should be rejected out of hand as un-American. The same thing is true of the idea implied in Governor Cuomo's second question that somehow Catholics are mere robots or puppets who automatically and mechanically carry out the "orders" of the pope. This bespeaks gross religious prejudice, which is no less offensive just because it is mouthed by someone who is ostensibly Catholic himself. In reality, Governor Cuomo seems to be cheaply using his own religion here in order to advance his political preferences.

The Catholic League believes that Judge Roberts should be treated by the Senate Judiciary Committee exactly as every other nominee for judicial office is treated. Certainly he can be questioned, even sharply, concerning his own

qualifications, his legal training and legal philosophy, and even his view of the judiciary. It would surely even be the duty of the Judiciary Committee to try to ascertain his views on the Constitution of the United States which he would be sworn to uphold as Chief Justice of the U.S. Supreme Court.

In no way, however, should Judge Roberts be questioned about his religious beliefs; nor should he be subjected to any kind of a "litmus test" on any of the controversial issues of the day which might come before the court during his tenure. On the contrary, he should be pledged to judge such cases on their merits in accordance with the law and facts that apply. This latter pledge is something that the Senate Judiciary Committee should require. Following that, Judge Roberts should be given a clear up-or-down vote by the full Senate.