

## Roberts Parries Queries on Roe and End of Life

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WASHINGTON, Sept. 14 — Judge John G. Roberts Jr. faced increasingly contentious questions from Democrats on Wednesday as he outlined his views on an array of legal issues, but repeatedly declined to address some of the most ideologically charged matters, including whether the Constitution establishes a right to abortion and a right to die.

"I'm not standing for election," Judge Roberts said in one testy exchange on end-of-life issues on the third day of his confirmation hearings for chief justice of the United States.

His refusal to elaborate on his statement that there is a constitutionally protected right to privacy drew criticism from Senator Joseph R. Biden Jr. of Delaware, one of several Democrats on the Judiciary Committee who challenged him with growing frustration on Wednesday.

"Without any knowledge of your understanding of the law, because you will not share it with us," Mr. Biden said, "we are rolling the dice with you, Judge."

But Judge Roberts, by the end of a second long day of careful, unflappable testimony, appeared in comfortable position for a confirmation vote next Thursday in the Republican-controlled Senate Judiciary Committee and, many Republicans predicted, a strong vote the following week in the full Senate, where Republicans have a 10-vote majority.

"If people can't vote for you," Senator Orrin G. Hatch, Republican of Utah, told Judge Roberts, "then I doubt that they can vote for any Republican nominee."

Leading Democrats on the committee refused to discuss how they would vote, saying Judge Roberts's views were still largely unknown.

"The American people are entitled to answers," said Senator Edward M. Kennedy, Democrat of Massachusetts.

Judge Roberts did respond to questions on capital punishment, affirmative action, the limits of Congressional power and other legal issues during 10 hours of testimony before the committee's 18 senators.

He said, for instance, that he agreed with an aspect of Justice Sandra Day O'Connor's decision in a recent case that allowed public colleges and universities to take race into account in admissions decisions. The decision took note of the practical consequences for minority applicants.

"You do need to look at the real-world impact in this area," Judge Roberts said.

He also discussed a Supreme Court death penalty case in which he filed a brief as a government lawyer in 1992. The brief said that newly discovered evidence of a death row inmate's innocence should not be considered by the courts if it is raised too late.

"Does the Constitution permit the execution of an innocent person?" asked Senator Patrick J. Leahy, Democrat of Vermont.

"I would think not," Judge Roberts said, adding later that the 1992 case did not involve DNA evidence that could provide categorical proof of innocence.

Also, while acknowledging that as a young lawyer in the Reagan administration he opposed a provision that made it easier to prove voting rights violations, Judge Roberts defended his position on the Voting Rights Act.

"It wasn't a dispute about the goal," he said. "It wasn't a dispute about the objective." He said that he now believed that the broader approach ultimately adopted by Congress was constitutional.

While most of the questions ran along party lines — friendly from the Republicans, decidedly less so from the Democrats — senators from both parties expressed frustration with and even hostility toward the current court. That left Judge Roberts in the uncomfortable position of trying to protect the reputation and prerogatives of the institution he hopes to join while appearing attentive to the concerns of those who will decide whether he can.

Over and over, Judge Roberts was questioned by senators in both parties about *Roe v. Wade*, the 1973 Supreme Court decision recognizing a constitutional right to abortion. As on Tuesday, he refused to discuss his views on whether the case should be overruled. Under questioning from Senator Dianne Feinstein, Democrat of California, he did say that no one in the Bush administration had asked him for his views on the case.

Judge Roberts listened carefully to questions touching on any area related to abortion and hesitated to answer many of them. He was noticeably suspicious, for instance, when Senator Tom Coburn, Republican of Oklahoma, asked him, "Would you agree that the opposite of being dead is being alive?"

Judge Roberts paused and said, hesitantly and to laughter, "Yes," adding, "I don't mean to be overly cautious in answering it."

The line of questioning did indeed end at abortion, and Judge Roberts declined to answer direct questions concerning it.

Judge Roberts also declined to answer questions about his personal views on issues like assisted suicide.

"I'm trying to see your feelings as a man," Ms. Feinstein said. "I'm not asking you for a legal view."

But Judge Roberts resisted, saying that a judge's personal views and values should play no role in his judicial decisions.

He also declined to comment on *Bush v. Gore*, the 2000 decision that resolved the presidential election that year.

He was less reluctant to talk about his judicial philosophy, so long as the discussion remained relatively abstract. He distanced himself, for instance, from the most conservative members of the current Supreme Court, Justices Antonin Scalia and Clarence Thomas, who have said they view themselves as bound by the original meaning of the Constitution.

"I depart from some views of original intent," Judge Roberts said, without naming names. "I think you need to look at the words they use," referring to the framers of the Constitution, "and if the words adopt a broader principle, it applies more broadly."

He added, "I think the framers, when they used broad language like 'liberty,' like 'due process,' like 'unreasonable' with respect to searches and seizures, they were crafting a document that they intended to apply in a meaningful way down the ages."

He similarly distanced himself from members of the court, including Justices Anthony M. Kennedy and Stephen G. Breyer, who have endorsed the citation of decisions from foreign courts in some cases. But Judge Roberts drew the line when Mr. Coburn suggested that Supreme Court justices who cite foreign judicial precedents in their decisions should be subject to impeachment.

Judge Roberts said he agreed that the citation of foreign law was "not a good approach." But, he added, "I wouldn't accuse judges or justices who disagree with that, though, of violating their oath."

In a somewhat similar vein, Senator Sam Brownback, Republican of Kansas, asked Judge Roberts whether the Constitution authorizes Congress to limit the Supreme Court's jurisdiction to hear certain sorts of cases. Judge Roberts discussed the legal arguments on both sides of the question but suggested that he viewed any such efforts as unwise. "The primary check on the courts," he said, "has always been judicial self-restraint."

But Judge Roberts also said he was reluctant to pick too many fights with Congress, at least for now.

Mr. Coburn asked him, for instance, whether there was room for improvement in the clarity of the legislation Congress passes.

"Sitting where I am," Judge Roberts said, "I'm not terribly inclined to be critical of the Congress and wouldn't be, in any event."

Supporters of abortion rights remained wary of Judge Roberts. Planned Parenthood Federation of America formally announced its opposition to his nomination on Wednesday, saying Judge Roberts's record and testimony "leave grave doubt about whether he will protect, not take away, a woman's right to choose."

Most Democrats of the Judiciary Committee seem inclined to oppose the Roberts nomination, but it is still unclear how Democrats as a whole will vote. Republicans are all but challenging them not to vote for a jurist who is unquestionably qualified.

Ed Gillespie, the former Republican Party chairman who is overseeing the nomination on behalf of the White House, said, "If you apply the historical standard — is he intellectually qualified, is he ethically qualified, is he fair and even-handed, the standard that allowed Justice Scalia to get close to 100 votes and Justice Ginsburg to get close to 100 votes, then clearly Judge Roberts deserves to get close to 100 votes."

But some Democrats argue that times have changed, that the nation and the courts are far more ideologically divided than they were during those earlier nominations and that they have a right to know where Judge Roberts stands on some of the most divisive issues.

"There's so much water under the dam since then," Mrs. Feinstein said.

"The nation is divided, it's polarized, we're at war," she said, adding, "Executive authority is very much on people's minds."

Moreover, the prospect of another nomination — and how conservative he or she might be — is an unpredictable variable in any political calculation, many strategists said.

Judge Roberts gave expansive answers, seeming most at ease when he was given the opportunity to explain the state of the law in complex areas like eminent domain and antitrust. He did not give much detail about his own views on these topics, but his discussion of the leading cases and governing principles was informal, confident and lucid.

After declining to answer any questions on Tuesday about charges that he had acted improperly in participating in a case earlier this year, he gave some basic information about it on Wednesday. The case concerned the military commissions the Bush administration intends to use to try several of those being held as enemy combatants at the naval base at Guantánamo Bay, Cuba. Judge Roberts joined a decision ruling for the administration in July.

Experts on legal ethics have been divided about whether Judge Roberts should have recused himself given that he was then under consideration for the Supreme Court. On Wednesday, Judge Roberts said that the decision was drafted before there was a Supreme Court vacancy and completed before he was first interviewed by President Bush.

Senator Charles E. Schumer, Democrat of New York, said that Judge Roberts's refusal to answer many questions had rendered the hearings absurd. Mr. Schumer suggested that Judge Roberts would not even name his favorite movies.

Judge Roberts named two: "Doctor Zhivago" and "North by Northwest."