

Advise & Consent: Gov. Msg. No. 4 (Leonard)

Senator Hemmings rose to speak in support of the nominee as follows:

“In the course of our deliberations, colleagues, and for the last ten years, we have seen, in the Senate process, numerous important votes concerning representation in the executive and the judicial branches of government. I would suggest that today, at this time and this hour, is one of the most important votes we’ll make for the State Judiciary, for the State of Hawai‘i, and, I might add, for the integrity of the Senate.

“In the course of public discourse, we, in one way or another, do what most journalists learn in their first year of journalism: who, what, where, when, and why. Well, we know who: Judge Katherine Leonard. We know what: the highest office in the judicial branch of government, the chief justice. And we certainly know where: in our State Judiciary. And we know when: now, this hour, this day. But what each one of us has to dig deep in our soul to determine is why—why we vote the way we do. That’s the question we ask ourselves over and over and over again.

“Qualification—that’s an important question in this process, certainly. The highest judge in the highest court in the state should be judicially qualified. Just recently, the United States Senate voted on advice and consent of Elena Kagan, a political advocate from the White House; never served a day in the judiciary. So what we can conclude is that judicially and legally, this candidate is one of the most eminently qualified in the entire state. Judicially, this candidate can

be said to be more eminently qualified than the recently confirmed Supreme Court Justice of the United States of America, if experience means anything, as it should in this Senate.

“Much has been said about administrative leadership, and I’m sure that some of you may have something to say about that today. I watched the proceedings of the Judiciary Committee on our closed circuit system here at the State Capitol. This nominee is a leader. The fact that she’s here demonstrates she’s a leader, and she knows what good leadership is. Good leadership is picking good people and letting them do their job and holding them accountable, and she articulated that so well in front of the Judiciary Committee.

“When we ask ourselves why we vote the way we do, of course politics play a role in this game. But certainly, we’re going to do what’s best for the judiciary and all the people of Hawai‘i, not what political label is stamped on a nominee’s papers. This nominee has no political label. There should be no politics, as there should be no politics in the judicial branch of government. The fact that this nominee came from the nomination of a Republican governor is inconsequential. If we truly want a judiciary that’s void of the vagrancies of politics, our decision should not be based on politics.

“Gender. There’s a resolution passed, and you’ve all heard about it. It’s been rehashed and rehashed in the media. The resolution was passed in the Senate and House that said we should consider having more women on the court. Curiously, the vote was 23 to 2. Two senators voted against it; I happened to be one of them. What’s more curious is that every woman in the Senate wholeheartedly endorsed it. Now, it comes time for you women to cast a vote consistent, and

you men, with the values articulated in the resolution you so wholeheartedly supported. Hawaii Women Lawyers said something about it; they said, in short, 'We found Judge Leonard eminently qualified—eminently qualified—not because she's a woman, but because she's qualified on merits.' And I think that I vaguely recall that the good senator from Hawai'i Kai said something about judge nominees being first and foremost nominated based on their merit.

"So for those of you that voted in favor of that resolution, I offer you today the best of both worlds. You have a nominee who is proven, through her record, through 150 incredibly intelligent, balanced decisions; someone who is eminently qualified, and is also a woman. You have a chance today to achieve your goals. What an honor for the State of Hawai'i to put aside politics and have a woman lead the judicial branch of government. Madam President, I think you would attest that women are fully capable of leading, so I know you'll vote in favor of this nominee.

"I watched the proceedings with great interest, and the Judiciary Committee, and we all have special interests. And we all bring to this process different visions of what the future should be. I saw one senator question the nominee regarding—and I have grown to have a tremendous amount of respect for this senator's intellect, brought in part by experience and years of being part of this process. It's no secret that this senator's interests were the affairs of the native Hawaiians. The question was very interesting because it laid the foundation for a very vexing problem in our country concerning the judiciary. Do we have a judiciary that legislates or do we have a judiciary that adjudicates? I'd say that is the question, but it's been said before. This one learned senator said, 'Look what happened.' A man named Thurgood Marshall filed a suit

against the Board of Education, and if it wasn't for an activist Supreme Court that overruled Faubus, Maddox, Wallace, Berg, and those Southerners who were denying equal rights to the African Americans, if it wasn't for the Supreme Court's activism, those schools would not have been segregated. And that goes to the very essence of the question, and that question answered itself because the Supreme Court did not make law. They did what they first and foremost should do in any proceeding: They adhered to the Constitution of the United States. They did not make law, make no mistake about it.

"This nominee has complimented us time and time again with her testimony and her decisions. She respects the legislative branch of government. And trust me, there have been decisions in Hawai'i where the judicial branch of government, specifically the Supreme Court, has rendered our responsibility constitutionally to make law moot by their errant decisions. There is gray area in the process, and that's why they call them judges. I won't go into those decisions.

"I also worry about, in making the decision here today, about our credibility. Much has been said about Attorney Seitz. You know what? I give Seitz credit. I don't agree with him, but he had the courage to come down here and state his case publicly and on the record. What is particularly disturbing and what oftentimes filters into our decision-making and our asking ourselves 'why' is those anonymous calls, and some senator saying, 'Well, I got an anonymous call that said so and so is a nasty word.' The very fact that a senator would say that defies fairness and logic. We don't know about anonymous testimony. The anonymous call could have come from the Kaneohe mental institution. The anonymous call could have come from a convicted, violent criminal. The anonymous call could have come from the most vile, vicious

person or someone who has tremendous credibility, but the fact that it is anonymous invalidates that. I pray that you, my colleagues, the 22 of you sitting here today, do not make the question 'why' partially answered by anything offered to you anonymously.

"This decision is momentous. It's no secret that many of you have made up your mind. I will leave you with this: I too made up my mind this last session on a nominee to the Land Board. In our long, deliberative caucuses, in the Republican Caucus, where all two of us debate the issues at hand—we also have split decisions—both of us decided that the nominee to the Land Board was great. We knew him, we were going to support him, and I was on the subject matter committee, and I was going to stand up and, as we always do, say laudatory compliments on those people who have gained the confidence of this Legislature. But a funny thing happened. We got to the floor and a respected leader on the other side of the aisle stood up, and he said something very interesting. He said that this nominee was the nominee to be a native practitioner, and he very intelligently laid a foundation for the necessity of having a native practitioner on the Land Board. It's because a law we made. You might remember it, Senate President; I think you're familiar with the author of that law. So, how could we defy our own law by confirming someone who himself said he was not a native practitioner. It was painful, but Senator Slom and I looked at each other and we agreed and voted 'no'.

"Well, I would suggest that you have an opportunity today to do just the opposite. You have an opportunity today to search your conscience. You have an opportunity today to vote consistent with the very resolution you passed this last session. But more importantly, you have an opportunity today to put in leadership of the State Judiciary a human being—not a woman,

not a man, a human being—who is eminently qualified to lead the State Judiciary. You have a chance today to affirm the integrity of this process and the integrity of this Senate, and I hope you make Hawai‘i proud. I hope you first and foremost will make yourselves proud by voting ‘yes’ for this nominee. Thank you, Madam President.”