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**Subject:** : fcfnnn072502 Inside: John Nowacki's Commentary: What's Fair For Chuck Schumer Is Not Fair For Litigants

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An excellent piece.

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Free Congress Foundation's  
Notable News Now  
July 25, 2002

The Free Congress Commentary  
What's Fair For Chuck Schumer  
Is Not Fair For Litigants  
By John Nowacki

When Senate Democrats put federal appeals court nominee Priscilla Owen through the wringer at her nomination hearing on Tuesday, no one was more antagonistic than New York's Chuck Schumer.

After lecturing the Texas Supreme Court Justice on how jurists really decide cases, Schumer demanded that Owen discuss whatever personal thoughts she had on abortion. When she repeated that her views on any issue have nothing to do with reading or applying U.S. Supreme Court precedent, the Senator got a little testy.

"I don't think it's fair to us" on the Judiciary Committee, he declared after her polite refusal to answer. More importantly, he added: "I don't think it's fair to me."

Schumer, as he usually does when it comes to judges, had his priorities completely backwards. Whether Owen answered his question had everything to do with fairness, just not fairness to him. The impact would be on her fairness to litigants, which most people would agree is a far more important consideration.

People who come before a court of law want reassurance that they are going to get a fair hearing. They want a judge who strives to be impartial, one who hasn't prejudged their case. So imagine the feelings of someone facing a judge who has publicly and under oath committed to holding certain acceptable views as the price of confirmation. If the case has anything to do with the political issue the judge took sides on, the litigant will naturally wonder whether he's going to get a fair shake. And if that judge might someday face the Senate again, the chances are good that he won't.

But that doesn't seem to matter to Schumer. He's the point man for Democrats who want federal judicial nominees to openly take sides on political issues like abortion and gun control. Last summer, he tried to give this idea academic cover by holding hearings on "ideological litmus tests" and "shifting the burden of proof to nominees."

On Tuesday, Schumer admitted Owen's fitness for the Fifth Circuit Court of Appeals. "You've had a distinguished academic and professional career," he said, noting that the American Bar Association -which he calls "the gold standard"-has rated her "well qualified" with good reason. Nevertheless, in his quest for political judges instead of impartial ones, Schumer is set to oppose a nominee who has demonstrated time and again a commitment to following the law instead of personal whim.

When ruling on Texas's parental notification statute, Owen consistently adhered to the law and U.S. Supreme Court precedent. When ruling on buffer zones around abortion clinics, she did the same. As her record shows, her personal views-whatever they are-are utterly irrelevant to her application of the law to cases before her. That's as it should be.

Her refusal to even discuss those views confirms that she's the right person for the job. Chuck Schumer's insistence that she answer shows that when it comes to judge picking, he's not.

John Nowacki is Director of Legal Policy for the Free Congress Foundation.