JOHN ROBERTS AND PLYLER v. DOE

Nominee Objected to Supreme Court Overturning Texas Law that Authorized and Encouraged Public Schools to Deny Education to Children of Undocumented Immigrants

Thirty years ago, as part of a wave of anti-immigrant sentiment and activity, the Texas legislature passed a law designed to keep the children of undocumented immigrants from attending public schools in the state. In *Plyler v. Doe*, a lawsuit filed on behalf of parents, the Supreme Court struck down the Texas law as unconstitutional in 1982. The Court ruled that the equal protection clause of the 14th Amendment protected children, who had done nothing wrong, from discrimination by the state. The decision was a major victory for the constitutional principle of equal protection under the law, and made a huge difference in the lives of thousands – if not millions – of children and their families.

The Court majority said it was “difficult to conceive of a rational justification for penalizing these children” for being in the U.S. based on the actions of their parents. “By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our nation.”

Supreme Court nominee John Roberts was at the time of the decision a special assistant to the attorney general. In sharp contrast to the Supreme Court’s ruling in favor of equal protection, Roberts argued that the Reagan administration should have weighed in on the case to advance its policy of “judicial restraint” – which in this case meant weakening the federal courts’ role in protecting individual rights and liberties. This is a major goal of the ultraconservative legal movement now advocating for Roberts’ confirmation. (Documents from the era demonstrate that Roberts also advocated severely undermining voting rights, affirmative action, and other civil and constitutional rights protections.)

While some aspects of Roberts’ judicial philosophy remain hidden, his views on this case are crystal clear. In a 1982 memo to the attorney general, Roberts and a colleague lamented that the solicitor general’s office (the litigation arm of the federal government in the Supreme Court) had not filed a brief supporting Texas. Roberts contended that if the solicitor general had done so – as Roberts clearly believed he should – it “could well have” changed the outcome of the case.

It is apparent that had Roberts been on the Court in 1982, he would have voted to keep that Texas law in place, denying a generation of children the most basic of tools with which to build their future. Other states would have been given a green light to engage in the same discrimination. A generation of doctors, nurses, teachers, firefighters, military leaders and role models could have instead been marginalized by illiteracy and lost hope. Justice William J. Brennan viewed this alternative as an “affront to one of the goals of the equal protection clause: the abolition of government barriers presenting unreasonable obstacles to advancement on the basis of individual merit.”

Americans who care about equal opportunity, equal protection, and the rights of immigrants should be deeply troubled about Roberts’ opposition to the Supreme Court ruling in *Plyler v. Doe*, and should urge senators to question Roberts carefully on when and how his theory of “judicial restraint” trumps fundamental constitutional principles like equal protection under the law.