

All of the evidence before he wanted your confirmation was that he was opposed to abortion. I cannot believe what he says here. He has never said, I believe *Roe v. Wade* should be the law; I believe in the right of privacy; it applies to people under the *Roe v. Wade* doctrine. He has evaded and skirted.

I say 10; he will not vote to uphold *Roe v. Wade*.

Ms. MICHELMAN. I would have to agree with Sarah, Senator. I think the evidence is very clear; his record is clear. In all the years he was a policy official, as he describes himself, and was, he spoke out on many issues, and when he spoke about the right to privacy it was always a critical comment, you know, suggesting that the right was an invented right, criticizing *Roe v. Wade*, applying natural law saying it was a splendid example, choosing that one article that is an extreme attack on the right to choose as a splendid example.

He had many opportunities during the years to say something positive. Now, he comes before this committee and he says he has only skimmed the article. He says he signed a report, but he did not read it. He says that, you know, he took an extreme position, but he did not mean it. It is very hard to believe; it just raises serious questions of credibility.

I just do not have any doubt in my mind that if he is on the Court, he will join the others, Rehnquist and Scalia, in moving this Court to overturn *Roe*, and my fear is that he will go much further than any sitting Justice. That Lehrman article suggests that States would have no right to even legislate in the area of abortion; that it would require States to outlaw all abortions even in the cases of life endangerment.

I just do not think he would uphold this fundamental right, and I think this right is so basic and so fundamental, just like the right to free speech, that unless he is acknowledging that right and that it exists in the Constitution—you know, protects that right just like free speech—I just don't think he should sit on this Court.

Senator SIMON. So you give him—

Ms. MICHELMAN. I am a 10.

Senator SIMON. Ten. Ms. Wattleton?

Ms. WATTLETON. I would add to that. My view is that this is not a candidate that would uphold the doctrine that recognized women's rights to the integrity of our bodies. And since Mr. Souter, whom you all expressed your hope would find such privacy residing in the Constitution, has joined the Court and has voted not only to—well, has not been asked to vote on *Roe*, but has voted on something even more extreme, and that is whether Americans' freedom of speech will be restricted by the Government.

And a candidate whom you had high hopes for just a year ago has gone on to say that with respect to Government policy and the intervention of Government, our very thoughts can be controlled and the words that we say can be restricted. It seems to me to leave this in a very unusually charged environment.

So it is within the context of a failure to answer those questions that we are opposing him, and I would add that I believe that he is a 10 and that he would vote with the majority, as he has voted with his political benefactors and has spoken philosophically in their behalf.

I would only ask whether this committee would be willing to trust a candidate if, as Kate has indicated, it was a matter of free speech and he had said one thing before confirmation and left the slate quite blank during confirmation.

One of the points that Mr. Thomas has made which I find very curious is that to decline or to give you some sense of his philosophical views with respect to constitutional protections for reproduction would somehow disqualify him as an unbiased and impartial Justice. If we applied that reasoning, we would have to say that all of the sitting Justices have given us their views on this issue and so therefore they are unqualified to consider future cases in an impartial fashion. It really begs the imagination.

Finally, I would oppose him because he has been so willing to expound on every other subject, including capital punishment, cases that are before the Court right now. So why fail to answer the question on this most important constitutional issue that is so important to my integrity as a woman?

So, as a woman, I would vote against him as a ten, and as representative of an organization that is firmly committed to preserving this right for all women, we would hold that he should not be confirmed.

Senator SIMON. Governor.

Ms. KUNIN. Senator, technically, what we are asked to believe is that silence equals impartiality; that the fact that he has said nothing and declared nothing really asks us to believe that this is a blank slate and that the facts as they appear to him will determine how he will rule.

In effect, that presumes that there is sort of an equal struggle. Both sides are vying to fill up that blank page, but in reality one side has gotten a head start because there is a record and there is evidence of his past beliefs. So what looks like a totally even tug of war for the opinion of this judge really is not. It is already weighted on one side, unless one believes that he totally dismisses everything he has said and written before, and I think few human beings change as much as that.

So in that sense, while one could say, yes, he has not said and we should not presume his conclusion, when we look at the larger picture a conclusion really pushes forth from at least a reasonable perspective.

What bothers me, in addition, is that there is not an acknowledgement that this is a divisive issue that everybody is struggling with on one side or the other, and that the best way to deal with such wrenching issues is to be straightforward with your own views and say, all right, I am going to put them in perspective, but this is generally what I believe, and as a judge I know cannot just act on my beliefs. But at least I think you deal with controversy by acknowledging where you stand to begin with and then try to find an equitable solution.

Senator SIMON. And give me a numerical—

Ms. KUNIN. I guess I would put it at nine; I would give him one line that he might have some other perspective, but all the evidence is certainly weighted the other way.

Senator SIMON. And I see my time is about up, Mr. Chairman. I would like to put into the record an article that appeared in the