

The CHAIRMAN. Thank you all very much. Mr. Chambers, let me begin with you, if I may. It was obviously a comprehensive brief filed with the committee. You say on page 8—and I realize you didn't have the opportunity to read all that is in here, but I had a chance to read it.

You said,

It is argued in support of Judge Thomas that he is merely a judicial philosophy, but these and other similar remarks are not judicial and involve no philosophy. Judge Thomas does not reach these conclusions,

Referencing things you have said in the previous seven pages,

By any general legal methodology that might be characterized as conservative or by any methodology that could plausibly be characterized as legal at all. There is no analysis of the language of relevant statutory constitutional provisions or regulations, no discussions of precedent, no consideration of Congressional debates or reports, no evaluation of experience of lower courts. There is in these and other statements no pretense that Judge Thomas arrived at his conclusion by conventional legal analysis. His evaluation of legal decisions follows directly from his personal ideological preferences about the matter at issue.

Now, let me ask you, does not that lend credibility to his assertion that these were just musings of a—how does he phrase it, part-time political theorist, and that they were not notions that were born out of a view of the Constitution that would lead him to those conclusions by applying whatever methodology he has to the Constitution?

Mr. CHAMBERS. Mr. Chairman, I think they would suggest more a lack of appreciation by the candidate on the proper basis for going through, analyzing legal judicial issues. What we get when presented with a number of facts—and when we look at history and when we look at where Congress, for example, in the voting rights area goes through and says that based on this evidence, it is imperative that we enact an effects test in the voting rights area, he condemns it without any kind of analysis.

And rather than talk about whether it is just a muse, I think more it is a question about the candidate's ability or judicial qualifications for serving as a Justice of the Supreme Court.

The CHAIRMAN. In exhibit A that you submitted, you indicated that each of the Justices—and exhibit A, for the record, is a listing beginning with Oliver Wendell Holmes, Jr., who served on the Court from 1902 to 1932, going all the way up through Justice Souter.

Mr. CHAMBERS. That is correct.

The CHAIRMAN. And you list the qualifications as they are from your perspective of Judge Thomas.

Mr. CHAMBERS. That is correct.

The CHAIRMAN. Now, you said each of these people possessed two qualifications, and I thought I was listening closely. I didn't hear what those two qualifications were.

Mr. CHAMBERS. They differed. We have in footnote 5 on page 12 of the submitted text listed 7 of the important qualifications we think that the nominees—each of the nominees possessed at least 2 of these qualifications.

The CHAIRMAN. I see.

Mr. CHAMBERS. They are identified in footnote 5 on page 12.

The CHAIRMAN. A substantial law practice either in the private or the public sector generally covering more than 10 years. You would suggest he does not have that, I assume.

Mr. CHAMBERS. That is correct.

The CHAIRMAN. Extensive legal scholarship or teaching; you would argue he does not possess that. Significant experience as a judge generally for five or more years; he clearly does not have that. The highest level of expertise in a particular area of law; he does not argue that.

Mr. CHAMBERS. That is correct.

The CHAIRMAN. Superior intellect. You have made a subjective judgment that he does not possess that, is that correct?

Mr. CHAMBERS. That is correct.

The CHAIRMAN. Ability to persuade and lead; generally outstanding achievement over the course of his career. "These are, in our view," quoting your report in footnote 5, "the most important qualifications to stand out in reviewing the more than 120-year span by the legal careers of 20th century judges."

I understand what you are saying now.

Let me go to you, Ms. Hernandez. You make a very telling point that all the focus, at least all of my focus on the equal protection clause in these hearings has related to the question of whether or not he was using that to avoid dealing with whether or not single individuals had a right to privacy. I think it is important for the record that you restate it. You raise the point that since many people that you represent are not American citizens and are, to use your phrase, if I am not mistaken, undocumented aliens, that arguably, based on his view of the equal protection clause, they would—to put it in laymen's terms, not be equally protected under the Constitution as American citizens are protected. Is that the point you are making?

Ms. HERNANDEZ. Well, it is even more than that, and let me restate it. The benefits and privileges guaranteed by the Constitution differ, and there are different protections whether you are a citizen, whether you a legal resident alien, and whether you are non-documented individual. And the equal protection, if you look at the 14th amendment, there are two clauses, and very little attention is given to those clauses. One is the equal protection that clearly says every person, and then it goes to—

The CHAIRMAN. And your argument is that he relies more on privileges and immunities, which applies to American citizens?

Ms. HERNANDEZ. Only. And in reading some of his writings, if you understand, he would—and he argues that Brown, too—he doesn't quarrel with the conclusion of the *Brown* decision. He quarrels with the reliance of the Court on the equal protection. He feels that it should rather be the privilege or immunities clause. And if you carry that argument through its conclusion and if his view were to prevail, the impact to the immigrant community, whether they be Asian, Hispanic, Ethiopian, Polish, whatever, will be significant, because the privilege or immunity says "every citizen." And as you know, the Supreme Court has just ruled on a case involving Hispanics and the issue of citizenship.

It is an issue that comes up quite a bit for our community.