

The CHAIRMAN. Thank you very much.
Ms. Neuborne.

STATEMENT OF HELEN NEUBORNE

Ms. NEUBORNE. Mr. Chairman and members of the committee, my name is Helen Neuborne. As executive director of the NOW Legal Defense and Education Fund, I thank you for this opportunity to express our view that Judge Clarence Thomas should not be confirmed as an Associate Justice of the Supreme Court.

We appreciate the efforts of the committee, especially its Chair, to develop a complete record on which to base the Senate's decision whether to confirm the nomination of Judge Thomas.

That record, as developed before this committee, contains three troubling components:

First, Judge Thomas' past record, including his articles, speeches, and performance as EEOC Chair;

Second, his decision at the hearing to stonewall and to present the committee with a selective silence concerning his views on the constitutional issues surrounding abortion; and

Third, his disavowals of most of his past record.

There is no need for me to detail the record at length. Among the items that raise the most serious concerns are Judge Thomas' signature on a White House report calling for the repeal of *Roe v. Wade*; his praise for a speech calling for the criminalization of abortion; his adamant, and selective, refusal to discuss the legal issues surrounding abortion; his record at the EEOC; and his utterly unconvincing disavowals of his past statements on topics ranging from the competence of Congress to the separation of powers.

Viewing the record in the light most favorable to Judge Thomas, the best you can say is that serious doubt exists concerning his commitment to existing constitutional rights of critical importance to women and minorities.

The real issue, therefore, is what is the role of a Senator under the advice and consent clause when he or she is confronted with a nominee whose commitment to the constitutional rights of millions of Americans is seriously in doubt. Should you defer to the President, or should you exercise an independent judgment under the advice and consent clause?

We have now listened to Judge Thomas' testimony before this committee and have heard nothing to calm our fears about the effect Judge Thomas' personal philosophy would have on the existing constitutional and statutory rights of women. His assertions that he has set aside his most dearly held and often expressed views in the name of judicial impartiality simply do not ring true. He has stated that he praised extremist rightwing articles he says he has never even read in an effort to convince conservatives to accept his agenda. And he is apparently ready to disavow almost all his prior statements if it will convince this committee to vote for his confirmation.

His sudden and unconvincing confirmation conversion is not the only reason for our negative position. We are also profoundly troubled by his retreat during these hearings into silence on crucial issues affecting women, in stark contrast to his open and forthcom-

ing discussion of numerous other controversial legal issues that will undoubtedly arise during his tenure on the Supreme Court. Judge Thomas has sought to defend his selective refusal to reveal his judicial philosophy in the abortion area as necessary to maintain his impartiality as a judge. However, a similar concern with impartiality did not prevent him from discussing the equally controversial legal issues of church and state, the binding quality of precedent, and the balance between the rights of the accused and the rights of victims—issues that will certainly arise before the Court during his tenure.

His selective refusal on the issue of abortion does not, therefore, foster an appearance of impartiality. Quite the contrary, it sends an ominous message that Judge Thomas has views on the subject that he dare not reveal because they would jeopardize his nomination, an ominous message of covert partiality that is reinforced by his numerous public statements and actions in the area.

Just 1 year ago, I urged this committee to refuse to permit then-Judge Souter to avoid discussing his legal philosophy in this area with the committee. Unfortunately, in the absence of clear prior statements from Justice Souter, a majority of the committee elected to gamble on Justice Souter's silence. American women suffered the first consequences of the committee's gamble when Justice Souter cast the crucial fifth vote in *Rust v. Sullivan* depriving poor women of desperately needed information from their doctors concerning the availability of abortion as a lawful treatment option. President Bush, who nominated both Justice Souter and Judge Thomas, threatens to veto any bill which undoes the Supreme Court's handiwork in *Rust*. We are asking you not to gamble with the lives of women yet again.

The Constitution vests advice-and-consent power in the Senate precisely to prevent the President from stacking the Supreme Court with nominees that reflect a single, narrow judicial philosophy. When, as now, a profound national division on many issues has resulted in a sustained division in control of the Presidency and the Senate, the Senate's advice and consent power takes on extraordinary importance since, unless the Senate fulfills its responsibility in the confirmation process, the resulting Supreme Court may exclude the mainstream philosophies that have broad support in the American people.

The closest analogue to the Senate's advice-and-consent power is the President's power to veto legislation passed by both Houses of Congress. Both the veto and the advice-and-consent power permit one political branch of the Government to check the other in order to assure an accurate reflection of the Nation's democratic will.

President Bush has vetoed congressional legislation 21 times in 3 years. He never defers to Congress' role. It is inconceivable that the Senate, exercising its veto power over Supreme Court appointments, will defer to the President's drive to stack the Supreme Court with nominees hostile to the rights of women and minorities.

If the advice-and-consent power is to fulfill its constitutional role, Senators must be prepared to exercise the same independent judgment in vetoing a Supreme Court nominee as the President exercises when he repeatedly vetoes the will of Congress. Many of you

have spoken out before on the importance of this role to ensure that the Court reflects the core values of our society today.

If, after reviewing the record before this committee, you have no doubt about Judge Thomas' willingness to support and defend critical constitutional rights of women and minorities, you should vote to confirm him. If, however, after reviewing the record, you believe—as so many witnesses before you have stated—that Judge Thomas poses a risk to the rights of millions of Americans, you should oppose his confirmation. Thank you.

[The prepared statement of Ms. Neuborne follows:]