

Watching these hearings, reviewing Judge Souter's record, has been a disquieting experience. People in general, women in particular, feel they have been left in a void.

A vote to affirm Judge Souter could be a vote against important rights, a vote against rape victims, a vote against a woman's right to control her body, a vote against birth control, a vote against the right to equal opportunity.

Instead of tearing down the walls of discrimination, Judge Souter's confirmation could mean the erection of new barriers, a step backwards into dark ages we will no longer accept. I urge the rejection of Mr. Souter as a Justice to the United States Supreme Court.

The CHAIRMAN. Thank you very much.

Before I move to you, Ms. Neuborne—by the way, I would like to thank you for all the help you have personally given me and the committee on the Violence Against Women's Act that you played a major part in helping us draft.

I say that and now I am going to say something else, that I would really appreciate it, if it is possible, to try to keep the statements to 5 minutes. We have roughly 20 or 25 more witnesses and a lot of questions, and so to the extent that you can all keep it at 5 minutes, we would appreciate it. I understand that may not be able to be done, and I am not going to go banging the gavel down, but it will give us a chance to ask some more questions, as well.

With that, Helen, why don't you proceed.

STATEMENT OF HELEN NEUBORNE

Ms. NEUBORNE. Thank you, Senator. We look forward to continuing working with you on this legislation which, we agree, is very important.

I will keep my statement to 5 minutes and would ask that a longer women's rights analysis that we have prepared on Judge Souter be placed in the record.

The CHAIRMAN. Your entire statement will be placed in the record.

Ms. NEUBORNE. Thank you.

I am the executive director of the NOW Legal Defense and Education Fund, which is a women's rights organization founded 20 years ago. During those 20 years, the status of women in American society has advanced dramatically, not to the point where a woman sits on the Senate Judiciary Committee, but certainly to the point where concerns of women, half of the electorate, must be taken seriously by the Senate.

NOW Legal Defense and Education Fund is not a single-issue organization, any more than women are single-issue citizens. It is Judge Souter in these hearings who has arbitrarily singled out one issue, an issue of bedrock importance to all women, the scope of the right to privacy. He has refused to answer questions about this one issue, in the same forthcoming way that he has addressed all other questions. This selective refusal and Judge Souter's own imposition of a "litmus test" to determine what he will or will not tell the public about his opinions on prevailing law requires us to oppose him.

We call upon members of this committee and the Senate to vote against this nomination. When privacy hangs in the balance, as it does today, and women live under the threat that our fundamental constitutional right to decide for ourselves when and whether to have children may be taken away, Supreme Court nominees must be assessed according to their candor on that subject. Judge Souter has made up his own rules on what he will answer, which are different for privacy than for all other issues. This is not a game and we cannot condone such a selective approach.

We know that you cannot force Judge Souter to answer, but just as you would in a civil proceeding, it is fair in this proceeding to draw a negative inference from his selective silence, especially when so much is at stake. He has failed to meet the burden that so many of you so eloquently described. Therefore, the responsibility is now yours to reinforce the integrity of the confirmation process and the important role that you play under the advice and consent clause of the Constitution.

If you do not know—and none of us know—where Judge Souter stands on the settled law that was announced in *Roe v. Wade* and applied in every abortion-related case since, you must oppose him. You have no right to gamble with our bodies and our lives.

What has Judge Souter said and what has he refused to say? His insistence on referring to marital privacy instead of the generally accepted individual privacy rights that now exist, and his statement that not all privacy rights, even marital privacy rights are fundamental, in themselves mark a retreat from the principles articulated by the Supreme Court, even before *Roe*. It is, therefore, meaningless to say, as he did, that he has no agenda on what should be done with *Roe v. Wade*, when it is clear that his view of the law diverges from the established practice of the past generation. The Court will overrule its settled privacy precedents, only if Judge Souter wants it to and becomes the fifth vote to make that change.

The current Supreme Court is divided on, and constantly re-evaluating, many issues other than privacy, issues like affirmative action, church-state, equal protection doctrine, aspects of criminal procedure, modes of statutory construction, as well as the role of the 10th amendment. However, the real prospect of Supreme Court reevaluation has not precluded Judge Souter from discussing his views on these subjects, sometimes very forthrightly and fully with this committee.

For example, Judge Souter was prepared to tell this committee where he stands on affirmative action ordered by Congress to remedy past discrimination, always a controversial subject. He was also prepared to discuss fully his views on the continuing development of legal doctrine based on the religion clauses of the first amendment. He criticized existing law, but expressed reluctance to overrule precedent, without knowing what comes next.

Similarly, he discussed equal protection doctrine critically, but cautiously.

By contrast, his adamant refusal to be candid in the area of privacy and abortion can do nothing but create the very reasonable and strong inference that he is prepared to jettison established law in this most important area for women. It was, therefore, simply

wrong for Judge Souter to have told Senator Biden that the reason he was so expansive on some issues, yet so reticent on privacy, is because "there is no serious possibility" that the Court will change its basic approach on any issue but privacy and abortion. Judge Souter provides that serious possibility; where the Court is closely divided, he will dictate its future direction.

Judge Souter has created the single-issue problem. The only area he declined to discuss openly was privacy and abortion. It is your responsibility to look beyond what he has said to what he has refused to say. Judge Souter's selective silence on the issue of privacy speaks louder than words.

Thank you.

[Ms. Neuborne submitted the following analysis for the record:]