

Senator SPECTER. I had understood that to be your position. The follow-up question to that is, given the political realities of where the President stands on the issue, and he has had two nominees he has put forward, Judge Souter and Judge Thomas, do you think it is realistic for the President to do more than submit a nominee who, at least on the record, is not committed one way or another? Do you think it is politically realistic to expect the President to submit a nominee who is committed to uphold *Roe v. Wade*?

Ms. MICHELMAN. There is no question that the President, the last two Presidents have adhered to the platform which says that judicial nominations will be used to attain the goal of overturning *Roe*. The last four or five nominations I think have showed us that is true.

What I do think, Senator, is this, that if this committee and the Senate as a whole were to deny confirmation to this man, to Judge Thomas, because he, among things—I think it is not the only reason, but, among other things, he does not acknowledge the fundamental right to choose, it would be sending such a powerful message to President Bush, that we could very likely get a nomination that is a much more moderate person.

Remember when President Nixon nominated Carswell and Haynsworth, we got Justice Blackmun. So, I think it is possible that we could get someone who does not hold such extreme views. I mean the question here is—and this is the way I view Judge Thomas—that maybe the difference between having a Justice on the Court who would uphold the Louisiana and Utah laws, which outlaw all abortions, as opposed to someone like Justice O'Connor, who is much more judicious, if I could use that word, in her approach.

I do think there is a degree of how far this Court is going to go in assaulting our rights. For years to come, as you know, Senator, there are many cases on the right to choose, abortion cases working their way through the judicial pipeline as we speak. You know, whether we are going to have laws that require women to get permission from their husbands or whether we are going to have outright bans on abortion, how far the right to privacy will be cut back is really an issue here.

I think we have to stand up, and even if another nominee does come before us who does not acknowledge the right to choose, then we must not confirm that nominee. This right is so fundamental, so we just have to keep at it.

Senator SPECTER. Ms. Wattleton, you have expressed concern over Justice Souter, and he voted with the majority in *Rust v. Sullivan*, an opinion that I have already disagreed with on a number of grounds in the course of the hearings, and the Congress is moving to change that in terms of a regulation which existed for 17 years which allowed for freedom of speech and counseling as being consistent with the prohibition against the use of abortion as a method of family planning.

Why do you think that Justice Souter is committed to overturn *Roe v. Wade*, because of that decision, in light of the fact that there are many other considerations there, administrative procedure, the regulation process, and so forth?

Ms. WATTLETON. Mr. Specter, I think it does not take a wild imagination to think of a view of a judge who can find no protection in the Constitution for freedom of speech and a family planning clinic on abortion, to not find any protection in the Constitution for the exercise of the decision to have an abortion. It is the extremism with respect to restricting speech that leaves us very concerned, if not doubtful, about that Justice's vote to uphold *Roe v. Wade*, when it is once again tested before the Court.

We were hopeful that Mr. Souter would find that, in all matters, the Government must not restrict American speech, must not gag us, must not allow the Government to impose certain propaganda in family planning clinics, and this particular decision was of the most extreme, because it also encroached upon our right to free speech, and that is why we are very concerned about Mr. Souter's position on the continuing recognition of the right to abortion.

Senator SPECTER. Well, you may be right or you may not be right. I would not conclude that he is necessarily on the other side of the issue. I do not know, but in the event he is watching, and I think there is some interest across the street in these hearings, I would like to say that I think the issue is still open there.

One other brief question, Ms. Wattleton. You commented about the special concern of African-Americans and the plight of the poor women. Would you have some expectation, at least, of Judge Thomas, given his own roots and his concern for African-Americans, would have some special sensitivity to that kind of African-American concern among the poor people of this country?

Ms. WATTLETON. I would hope so, but I am not comforted by this candidate's steadfast refusal to acknowledge them. I, as an African-American, have similar roots to Judge Thomas'. Most African-Americans who have achieved and grew up in the 1950's and 1960's of the South know the pain of discrimination. It was not my grandmother who was refused a toilet in a service station, it was I who was refused a toilet and told to go behind the service station and to excuse myself in a hole, because that is what I was expected to do, as a child traveling through the South with my parents.

So, it brings with me a certain level of sensitivity and commitment, that if I were ever to sit before you for confirmation for any purpose, I would not be able to say that I have not thought about this issue, that I do not know about it, one that has divided the country, that has taken over a city in this country in the State of Kansas for several months now. It really does beg reality to suggest that this candidate is sensitive, truly sensitive to what I feel, as an African-American woman, when I see my life threatened.

I come from similar roots. He is not unique. But the ascension to the Supreme Court of the United States should not be on the basis of our roots, but on the philosophy in which we want to keep and see this country moving. That is really what is at issue here.

Senator SPECTER. Governor Kunin, your testimony has been significantly different from the other three women here today, in that you have specifically stated that you would not ask Judge Thomas for a statement as to how he would decide a specific case. I infer from that that you mean that you would not ask him to decide if he would uphold or reject *Roe v. Wade*.