

you agree, which is that a single person has a right to privacy, not equal protection, privacy, the same right of privacy as married people on the issue of procreation." Answer, "I think that the Court has so found, and I agree with that."

Ms. WEDDINGTON. The language that I was looking at was on the 13th, where he said, "Senator, I think I answered earlier yes, based on the precedent of *Eisenstadt*, which was an equal protection case." Then he comes back and he says, "The question, then, became was there a right of privacy that applied to non-married individuals, and the point I was making"—I am quoting him—"was that the right of privacy in the intimate relationship was established using equal protection analysis under *Eisenstadt v. Baird*," and I think that is where we left it. So, that is what is causing me concern, although I know you have tried very hard and with great dexterity to try to ascertain that.

The CHAIRMAN. If on the Court—if he gets on the Court—he concludes there is no such right, I would have to conclude he is a liar. And they are very strong words. Because I do not know how anyone could read specifically what he just said, what he said to me, as anything else. And I specifically read the quote to Justice Brennan: "A marital couple is not an independent entity with a mind and heart of its own but an association of two individuals, each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as a decision whether to bear or beget a child."

Now, what I am going to do is I am going to submit to him a question in writing and ask him to answer me in writing for the record that specific issue once and for all before I vote on his confirmation.

Now I yield to my friend from Alabama who came in.

Senator HEFLIN. I want to ask you maybe just academic questions, but it has been raised and I think some thought should be given to what would be the state of the law, the status of legislative bodies' enforcement, and the general condition of society, under a situation which could arise out of the theory espoused by Lewis Lehrman, in his speech on "The Declaration of Independence and the Right to Life," which has become a part of this issue in answers that Judge Thomas has given pertaining to speeches and positions on this issue. Basically Mr. Lehrman, as I understand it, would advocate that the life of a child about to be born would become an inalienable right under the concept of the right to life. If that were to be constitutionally declared, then what regulations could legislative bodies consider and pass under such a constitutionally declared right by the Supreme Court?

Ms. WATTLETON. Well, I commented on that, and then my colleagues can certainly speak on it. But if you extend Mr. Lehrman's doctrine that Mr. Thomas so enthusiastically supported before his appearance before this committee, Mr. Lehrman's views suggest that there is an inalienable right to life after concept, not just at the time of birth when the Constitution recognizes the protections as such but from the moment of conception. In that case, it would render all State permissibles as unacceptable and unpermissible.

Let me just say that it would not allow any abortions to be performed even at the State level under restricted conditions. So that this doctrine really is the most extreme position with respect to the restriction on the right of a woman to choose abortion and goes far beyond even the current State legislation that places very severe restrictions but does make allowances for certain conditions.

Kate, you may want to comment.

Ms. MICHELMAN. I think Faye said it very well, Senator. That doctrine that is espoused in the Lehrman article goes beyond any holding that any current sitting Justice has articulated. It is, as Faye says, the most extreme view, and it would require that all abortions be outlawed. No State would have any right under that doctrine to even legislate in the area of abortion. It would completely annihilate every woman's right to choose.

It is such an extreme doctrine that it—that is why, by the way—you know, it is not acceptable just to hear him say, well, I just used that article to advance my views on civil rights. That article is nothing but an extreme attack on our right to privacy and our right to choose. And if Lehrman had written that article about natural law to apply to another fundamental right, like freedom of speech, and he had chosen that article as a "splendid example" of the application of natural law, I don't think any of you would allow him to be confirmed unless he were to speak to the issue of the fundamental right to free speech.

You just do not choose an article of such an extreme nature as a throw-away line in a speech and not be held accountable for it. It just does not square. It is really a radical, radical doctrine. It is a very scary doctrine.

Senator HEFLIN. Well, let me ask you this now, just hypothetically: If such a decision were to come down and then legislative bodies did not set forth any punitive sanctions in support of that position, how would it be enforced?

Ms. WATTLETON. It would be enforced because many providers of abortion services would decline to provide them. Doctors would refuse to do them.

Senator HEFLIN. Well, I am assuming that. But, I mean, suppose there was a person that would do it. I think it falls in the sort of a category as school prayer. In effect, in the absence of a legislative body in a State taking any actions to reinforce that position by passing criminal laws or putting some punitive sanction on it, and someone attempted to punish a person who had had an abortion, or punish the doctor or the nurse that are doing it, other than injunctive relief, where would you be? What I am trying to find out is where the status of society and law would be under such a concept.

Ms. KUNIN. Senator, if I may just try to envision such a world, I think you would have the worst of all possible worlds, and that is disrespect for the Constitution itself, because the interpretation of the Constitution would be so out of kilter with the majority view. And to have such a situation where disrespect for the law, disobeying the law, not enforcing the law becomes the law of the land, I think would be a very chaotic period for this country.

Ms. MICHELMAN. Senator, just a quick thought. I am not a lawyer, but I think that this doctrine would say that the Constitution requires treating abortion as murder, under the murder stat-

utes, and that is how the laws would be enforced. If that doctrine is established as law, then abortion would be murder. And murder, then doctors, women, and all who were deemed accomplices would, could be then charged with the crime of murder. Maybe a lawyer here can—

Ms. WATTLETON. I guess the point, however, is that the question raises in my mind, What would it mean in the real-life circumstances of women, and what would it mean for poor women? I think it really begs the imagination to think that there would be States who would not enforce—or legislate restrictions and attempt to enforce them since we now have such activities going on in States even though *Roe v. Wade* has not been overturned. And there would be a tremendous amount of pain and suffering for women in this country.

We could debate it, but I respectfully submit to you, Mr. Heflin, that the right to control my body is, indeed, really central and fundamental to my integrity. It is not quite the same as praying in school. It really is more central to my very being than those issues, and I think that is why we are arguing so passionately on behalf of preserving this right this morning.

Senator HEFLIN. Thank you. That is all the questions I have.

The CHAIRMAN. Thank you very much.

Senator BROWN.

Senator BROWN. Thank you, Mr. Chairman.

I want to commend this panel. It has been one of the most thoughtful and rational and helpful presentations I think we have had in the course of this hearing. You all have shared not only your knowledge but your personal experiences, and I think, it has been most helpful to all of us.

Ms. Weddington, I particularly appreciated your relating your personal experiences. I think there are a good many Americans who simply are not familiar with the struggles women have had to go through. And your sharing your personal experiences I think is most helpful. My mother had law school professors tell her that she was not welcome in their class and women were not welcome in the legal profession. That has been some years ago, but she has never forgotten it. I think it is helpful for Americans to understand what it was like.

Ms. Michelman, I particularly appreciate your sharing your personal, very personal experience. I think it is helpful because it speaks more clearly than I would ever know how to explain how this issue is really one about individual rights and human liberty, that it really relates to the question of whether or not as citizens of society we have our rights protected, whether the individual's rights are paramount.

That does not address the question of whether you like or dislike abortions. It relates to what our Constitution envisions as individual freedoms and liberties, and I think your sharing that personal example is very helpful to people to understand the issue.

I, as I go through the record, am concerned in this area. Through the chairman and others, I think you have shared some very relevant testimony. One thing that has not been mentioned that I did think was of interest, though, was a question and response by Senator Metzenbaum.