

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.

The CHAIRMAN. Well, my time is up. Let me ask you this question. I realize that—well, I won't characterize it. Let me ask you this question. When he made the two speeches that I am aware of where he talks about the privileges and immunities clause being of greater consequence than it has been recognized to be, from his perspective, and when he argues that its application in *Brown* would have been appropriate, do you believe that his argument was based on and that he understood that its application might exclude—following his logic, exclude individuals who are not American citizens? Or do you believe he was just making a point to sustain his overall argument relative to black America and desegregation? Or does it matter?

Ms. HERNANDEZ. Well, one, I do not know. Two, it does not matter. If a certain individual places such importance on those matters which are critical to the interpretation of law and does not think through the implications that that would have to a broad-based, diverse community that this country is, then I would question, once again, the qualifications of that individual to say such matters. And I would urge that this issue be further looked into because, from my community's perspective, it is an additional factor that very directly impacts our community.

The CHAIRMAN. I appreciate your testimony and your answering my questions.

Senator Hatch.

Senator HATCH. Let me reserve my time.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Thank you very much.

I want to join in welcoming this panel of witnesses. They have been in the vanguard of so many important efforts to ensure our freedoms and our equalities. I have had, as other members of the panel, the good opportunity to work with many of them for over a very considerable period of time, and this country is in debt to many of them for all of their tireless work on behalf of the Bill of Rights and the Constitution.

Mr. Chambers, you are aware of the time restraints that we have. I would like to cover a few areas. Judge Thomas criticized some of the Supreme Court decisions, primarily in the areas of voting rights. We had an exchange with him there. It was really unclear from the exchange what he was really driving at.

In your own study, were you able to determine the nature of the criticisms and the value of the criticisms of Supreme Court holdings, particularly in regard to the voting rights cases?

Mr. CHAMBERS. Senator Kennedy, the best that we have been able to determine was his statement here that he disapproved of the effects test and he disapproved of the types of districting or remedies that the courts were directing in voting rights cases.

It wasn't clear why he disapproves of the effects test except his continued questioning of the possible use of statistics to establish a violation. And under the effects test, if one demonstrates that a certain practice results in a deprivation, one makes that showing frequently through the use of statistics.

In terms of the remedy, the remedies, of course, of the record have been the only ones the courts have found effective. Exactly why he disapproves of those remedies, again, unless he is raising