

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

some question about race, it isn't clear—under any circumstance. Again, this goes to his qualifications, I think.

He offers no alternative. He concedes that blacks have been deprived of voting opportunities. He concedes that the Senate and the Congress were looking at real practices when it was necessary to enact the 1972 amendments, and yet offers no remedy that would provide meaningful opportunities for minorities to participate in the electoral process.

Senator KENNEDY. Mr. Rauh, you have been very much involved, as most of the panel has, in the fashioning and shaping of various civil rights legislation. The key element of all of the legislation are remedies.

Going back to I guess even the 1957 Act, maybe even go back even further, but the importance of remedies in ensuring that the rights are going to be achieved and his approach as a case-by-case means, where would we really be if we had used a case-by-case approach in the various important pieces of legislation which have been accepted by the country, that had bipartisan support? When you look at public accommodations, the housing, the voting rights, the whole range of difference, where would we be as a society if we accepted or the Supreme Court accepted that route to try and remedy the discrimination in our society?

Mr. RAUH. We wouldn't have the right to vote in any serious sense. What happened in 1957 was, because it was on an individual basis, the law failed even though we all supported it because we wanted a civil rights law. In 1960 and 1964 there was tinkering, but it was always on a retail basis.

The whole thing changed in 1965 when it was on a wholesale basis. What happened in the 1965 law was that they said the Federal Government will register the people if these States continue to discriminate. The whole problem—I think one of the witnesses said it this morning. The distinction between wholesale and retail enforcement of the civil rights law is the distinction between success and failure.

Senator KENNEDY. Ms. Hernandez, it is good to see you back here again, and I commend you for your testimony.

The point that Judge Thomas makes—and I don't know whether Mr. Lucy will make a comment on this—is that given his particular background, he has a particular sensitivity. I mean, no one really disputes what has been an extraordinary life experience which he has had and admire his own personal determinations for self-improvement.

But you, Ms. Hernandez and Mr. Lucy, why doesn't that in and of itself—I think there are probably millions of Americans who have been watching these hearings and say, well, that is right, that will give him an insight in terms of the concerns for whether it is women, women of color, or minorities. Why doesn't that kind of emphasis or that kind of thrust give you a sense of confidence as to how the nominee might vote on questions of equal protection?

Ms. HERNANDEZ. Well, they haven't to date, and I must say that it is most commendable. Most Americans can relate to the strides, to the efforts, to the determination. I myself as an immigrant am familiar with that.