

Senator SPECTER. I think that is a core question. Candidly, it is not the core question for me, but I think it is for some Senators, and there has been a contention—I have stated my view and it is worth just a momentary summary.

I think I have pressed hard on answers to questions, but I believe that when it comes to an issue like *Roe v. Wade* or a specific case. You have to have it in the context of a specific factual situation, you have to have briefs, arguments, deliberation among the Justices and then a decision. There are a lot of permutations of the way the issue can arise.

But I would be interested to hear your views on that question. Professor King.

Ms. KING. As I stated, Senator Specter, my opposition to Judge Thomas has a number of sources, not just his lack I think of understanding about the reproductive needs of black women, but I do indeed believe that the right of privacy, a right of privacy that includes a broad range of choice, is one of the bottom principles or basic principles that I would look for in a Supreme Court Justice. It is not the only one.

I feel that way about the principles articulated in *Brown v. Board of Topeka*, and I would be opposed to any nominee whose record did not demonstrate an appreciation of the fundamental nature of that principle for our jurisprudence.

I am not suggesting that he needs to be examined on *Roe v. Wade* as a specific case holding. I am, in fact, concerned about his views about the right to privacy and reproduction.

Senator SPECTER. So, you would not disqualify him, Professor King, solely on his failure to answer how he would rule on *Roe v. Wade*?

Ms. KING. Not on how he would rule on that specific case, but I would disqualify him, if I were not satisfied about how he felt about the right to privacy and reproductive choices, more generally, yes.

Senator SPECTER. So, you would want an inquiry as to his philosophy?

Ms. KING. Yes, indeed, Senator.

Senator SPECTER. Well, he testified fairly extensively about his recognition of a right to privacy and a right to marital privacy and a right to privacy for those who were not married. Do you think his testimony went far enough in that respect?

Ms. KING. Let me say, Senator, that by examining his record before these hearings and listening as well as I could, with my other responsibilities while the hearings were going on, yes, he indeed made those statements, but I would say that he certainly was not as clear as I would like him to be about exactly what right to privacy he was affirming.

Senator SPECTER. Ms. Greenberger, how do you respond to those issues?

Ms. GREENBERGER. I think there are several bases for my concerns with Judge Thomas' testimony here with respect to the right to privacy in general, as well as covering the issue of abortion in particular that go beyond the concerns with respect to Judge Souter, which I had, as well.

Senator SPECTER. By all means, it is your turn.

Ms. LICHTMAN. I want to lay out with you for 1 minute the analogy that Professor King began a few minutes ago around *Brown v. Board of Education*, because, indeed, I think your questions suggest, to me at least, that you think perhaps we are being overly rigid in what we are expecting.

While I do not think anybody is asking, certainly we are not, that someone come here and prejudge a particular fact situation before it is presented in a courtroom, we are saying that there are some fundamental principles about which a nominee must assure us in its application, or that person is not worthy of confirmation.

For instance, could a nominee in 1991 come before this committee and assert that they believed that States sanctioned separation or apartheid if you will, it is constitutionally based? I doubt it. I don't think that a nominee could be neutral on the application of those constitutional principles and get confirmed either.

I think there is wide agreement that there are some fundamental rights, and that is really the analogy here. What are the fundamental rights, the application of those constitutional principles that Judge Thomas was unwilling to come forward and assert. And I find that very troubling.

If I take the *Brown* analogy further, he was quite willing, by the way, to criticize *Brown* historically, but say he agreed in the holding. Now, he may have found that right in a clause of the 14th amendment that you and I might not agree with, but he was willing to say that there were constitutional principles—

Senator SPECTER. Ms. Lichtman, I am sorry to interrupt you, but I have just 5 minutes to get to vote, and that is a minimum time. So, the committee will stand in recess for 10 minutes. Thank you.

[Recess.]

The CHAIRMAN. The hearing will come to order.

Thank you for helping me accommodate the Senate schedule here.

Now, who is on first and who is on second? Who has not testified yet?

Ms. GREENBERGER. I would be happy to.

The CHAIRMAN. Ms. Greenberger, if you would, please, we would appreciate it.

STATEMENT OF MS. MARCIA GREENBERGER

Ms. GREENBERGER. Thank you, Chairman Biden.

The National Women's Law Center is opposed to the confirmation of Judge Clarence Thomas to the Supreme Court. We do not take this position lightly, and I know that is the case for many of the witnesses who have indicated their opposition.

We oppose Judge Thomas because of our grave concerns that, based on his record, Judge Thomas does not have a commitment to the core constitutional and statutory protections that form the basis for women's legal rights in this country. Instead, Judge Thomas has taken positions that conflict with women's rights under the equal protection clause of the Constitution; the constitutional right to privacy; and women's rights to education and employment secured by Federal law.

First of all, in the case of Judge Thomas, he came to these hearings with a record of having criticized the right to privacy, having endorsed statements of others and reports, especially the Lehrman article that has been discussed in some detail in a lavish way.

Senator SPECTER. Well, anything besides the Lehrman article?

Ms. GREENBERGER. Yes, well, the White House Study Group, which he endorsed and then said he had not read. There was his citation to *Roe v. Wade* in an article that he had written with some implicit criticism of it as a controversial case, his discussion of the right to privacy as being an invented right in another forum, his discussion in political context of abortion as an issue that was troublesome. I think there are a number of specific statements that were a part of his record before these hearings that were the cause for concern, to begin with.

His statements with respect to his record I think added to the concern immeasurably. This is an issue, regardless of where one ultimately comes out, which is enormously important to every American, and certainly to every American woman and her life and health. For him to have picked out the Lehrman article, regardless of where he was located when he did so, and say that it was a splendid article, a splendid example of the application of natural law, had to have signaled, because it was such an extreme article, taking a position, in essence, that abortion should be illegal across the country, a gross insensitivity to the importance of the issue, if one credits at full value his statement that he skimmed it at best and barely read it.

The fact that during these hearings, after so much had been made of the article, he said that he had not even read it, really I think was a devastating comment to those of us who looked for something that we could come away with, a sense of reassurance that he was approaching this with an open mind. He certainly said he had an open mind, but when he discounted these extreme statements and treated the issue in such a cavalier way, however he were to come down on it, I think that in and of itself set off enormous concern and worry and exacerbated what had been a very troublesome record.

Finally, I add the contrast between his answers in the area of privacy, which were not very specific, which never did deal with the explicit right to privacy for an individual who was not married in any clear way, let alone moving up to some of the more specific principles underlying *Roe*. When we contrast that failure to respond to the very specific responses he gave to other issues that are of burning importance that will come before the Court, where he not only talked about the legal analysis, but the bottom line holdings, I think that we see a very different and very extreme cause for worry here that is even greater than it was in the case of Judge Souter.

Senator SPECTER. Ms. Greenberger, let us examine that for just a minute. He had the single line approving the Lehrman article and he commented about that, that he was crediting Lehrman, because he was in Lehrman Hall, and the Lehrman dealt in detail with the abortion issue, but Judge Thomas' comment about Lehrman did not deal with it at all.