

Then in one of his speeches he had made a reference to *Roe v. Wade* as being an issue that the conservatives sharply disagreed with. Then you have his refusals to respond on the question on privacy beyond a short distance on agreeing that there was a right to privacy, marital privacy, and then privacy for unmarried people. Then you do have him answering some questions, which he may have been ill-advised to answer, on the separation of church and state, for example, the establishment clause, and I wondered—nobody asked him whether he knew that case was on the docket for next year, but I do not think anybody can be expected to know everything about the docket. He answered to some extent on the exercise clause, he answered the death penalty question, and that is about it.

Ms. GREENBERGER. Well, those are quite a number of burning issues, no doubt.

Senator SPECTER. All right.

Ms. GREENBERGER. I would like to go back for 1 minute to some of the—

Senator SPECTER. I would like to just review the record as to your basis and just understand that those are the operative facts that lead you to conclude that if he answered on the ones I articulated and did not further on the abortion question, that leads you to your concern and essentially to your opposition.

Ms. GREENBERGER. I think, as I said, there were multiple bases. If you look first at the Lehrman article and the fact that he said he complimented it because he was in Lehrman Hall, the article is a radical approach to banning abortion across the country. If one wanted to be gracious and kind in making a speech in a hall named after someone, there were many, many ways that he could have complimented Mr. Lehrman. There were many things he could have said that he admired about the article in a way that was qualified.

We saw that he was very skilled at qualifying his answers over all these days. It was not a qualified statement, and the fact that he called it a throw-away, to me, if we credit the fact that he skimmed the article, it was as throw-away, it was, in essence, a gratuitous compliment on an issue of such burning importance in this country, an issue that is of such heartfelt importance to the health and lives of women, I cannot credit that as an acceptable response. That is my first basis.

With respect to his saying that conservatives find *Roe v. Wade* controversial, he called himself a conservative. He did not distance himself in any way. That is, in fact, his trademark, that he is a conservative. He did not say some conservatives may view it as controversial and, as we all know, some conservatives might not. He pulled himself in. These were implications, these were statements, these were praise.

The fact that he signed onto the White House Working Committee report on the family and did not read it, and to this point had not in the hearing really gone through it—at best, for him, if we credit all of those statements as true, show the kind of insensitivity that Professor King talked about and is so concerned about.

Senator SPECTER. Ms. Lichtman.

Ms. LICHTMAN. Senator, can I jump in for 1 second?

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.