

and I don't want the witnesses, either these or others who preceded them or will follow them, I don't want them or others who will follow them to feel that it's a lack of interest, but if there's a bill of yours on the floor you must be there. I am saying to them as well as the other witnesses who will be here today that I'm absent, but not intentionally. It's just because of another responsibility.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Metzenbaum.

Ms. MICHELMAN. Thank you, Senator, we appreciate that.

The CHAIRMAN. My time is up. Let me conclude by saying this and you may not be able to answer this. Is the basis of your testimony here today that we know this man will overrule *Roe v. Wade*, therefore, we're against him, or because we don't know that he won't overrule *Roe v. Wade*, we are against him?

Ms. MICHELMAN. All the evidence points to the fact that he will overrule *Roe* and he has said nothing to allay our concerns.

Ms. WATTLETON. We're opposed to him because he has refused to answer the question straightforwardly and it is our fear that he would vote not to continue the constitutional protections of privacy that extend to the right to abortion.

The CHAIRMAN. Well, I have a number of other questions, but my time is up. Let me yield to my colleague from South Carolina.

Thank you, very much.

Senator THURMOND. Thank you, Mr. Chairman.

I want to welcome you ladies here.

Ms. WATTLETON. Thank you, Senator.

Ms. MICHELMAN. Thank you, Senator.

Senator THURMOND. A member of the Supreme Court must make decisions about hundreds, even thousands, of issues. Now, Judge Souter has been a judge for some 14 years. The American Bar Association has held him well qualified. They have given him the highest rating they can give any candidate for a judgeship.

Now, without regard to your specific concern on the abortion question, do you believe Judge Souter has the professional qualifications to serve on the Supreme Court?

Ms. MICHELMAN. Well, I certainly wouldn't quibble with the evaluation of the American Bar Association about his professional qualifications. We might note that the American Bar does not evaluate judicial philosophy. I mean that qualification does not concern itself with judicial philosophy which I think is very much at issue here, and judicial approach.

Senator THURMOND. Now, either one of you can answer these questions.

Do you feel he has the integrity to be on the Supreme Court?

Ms. WATTLETON. There is no evidence that there is any reason to besmirch this particular candidate's integrity.

Senator THURMOND. Do you feel he has the judicial temperament to be on the Supreme Court?

Ms. WATTLETON. The judicial what?

Senator THURMOND. Temperament?

Ms. WATTLETON. I find his judicial temperament very disturbing, both in the cases that—

Senator THURMOND. Disturbing, you say?

Ms. WATTLETON. Disturbing, yes. Both—

Senator THURMOND. Would you explain why?

Ms. WATTLETON. Yes; I am about to. Both in the cases that we read prior to these hearings as well as in the discussions that he had with you, during the proceedings.

Senator THURMOND. Do you feel he has had the professional qualifications, the professional competence to be on the Supreme Court, regardless of his views on abortion?

Ms. WATTLETON. Well, I don't believe that we can really judge beyond what has been evaluated by professional groups that he has the professional qualifications to sit on the Court, but that does not mean that everyone who is professionally qualified to sit on the Court should sit on the Court.

Senator THURMOND. Now, again, I want to ask you without regard to your specific concern on the abortion question, do you believe Judge Souter has the professional qualifications to serve on the Supreme Court?

Ms. MICHELMAN. I think we both have said, Senator, that we have left that evaluation to the professional organizations and we have no reason to dispute it. But as Ms. Wattleton just said, professional qualifications alone do not make a Supreme Court Justice.

Senator THURMOND. If he doesn't favor the position that you favor on abortion would you favor turning him down?

Ms. MICHELMAN. We have established that unless Judge Souter openly recognized a fundamental constitutional right to privacy, including the right to choose, he should not be confirmed.

Senator THURMOND. In other words, if his position on abortion is not the same as yours, you would oppose him?

Ms. WATTLETON. Senator Thurmond—

Senator THURMOND. That's a very plain question, I think.

Ms. WATTLETON. That is a question that I think we have to make clear that we are representing specific groups and constituencies. Now, what our views may be as Americans are one thing in terms of the broader context of his nomination. But, here today, we are speaking on this specific area of our concern. And, yes, we would oppose him if he does not and as he has not taken a position on reproductive rights.

Senator THURMOND. In other words, if he opposes your position on abortion you would be against him?

Ms. MICHELMAN. If he does not acknowledge the right to privacy to include the right to choose. It is not his personal view on abortion—

Senator THURMOND. That is what I'm asking. That is the very question I'm asking you.

Ms. MICHELMAN. The issue before us is whether there is a right, a right, a fundamental right to choose and that is what is at issue. I'm not really interested in his personal views. We all have different views on abortion. It's really what, how he views the Constitution's role in protecting the individual's right to make this decision. And he has not satisfied our concerns in that area.

Senator THURMOND. Even though he has other qualifications to be on the Supreme Court, if he doesn't take your view on abortion, then you would be opposed to him.

Ms. WATTLETON. Well, Senator, I think that I would put that in a context of most Americans who see these issues as fundamental

rights and are not interested in giving away any of our rights. If this was a justice, or a judge that was totally qualified professionally to sit on the Supreme Court and could find little protection or questionable protections for my freedom of speech, he would not be qualified to sit on the Court.

So I see these questions as fundamental and if a justice does not find constitutional protections for what Americans believe are their fundamental rights, then, no, he should not sit on the Court.

Senator THURMOND. What evidence do you have that he is against your position, anyway?

Ms. WATTLETON. Well, the evidence is as Mr. Biden asked him to remember that the burden of proof is on him to present to the committee his views, to convince this committee that it should confirm him. With respect to privacy and reproductive rights, he steadfastly declined to do so.

Senator THURMOND. Well this question will be coming before the Supreme Court again probably—

Ms. WATTLETON. So will a myriad of other questions.

Ms. MICHELMAN. So will many other questions in areas of law that he was much more, I should say somewhat more forthcoming. I'm not sure—

Senator THURMOND. Well, he declined to answer on a lot of questions there—

Ms. MICHELMAN [continuing]. He was much more, but somewhat more.

Senator THURMOND [continuing]. Questions that may come before the Supreme Court.

Ms. WATTLETON. He certainly didn't decline to answer on questions of capital punishment. He certainly didn't decline to answer on questions of—

Senator THURMOND. Do you remember what he said, that I will listen, do you remember him saying that?

Ms. WATTLETON. I hope he will listen.

Senator THURMOND. I will listen, I will listen and if he listens and formed his own honest opinion about it what more can you ask of a person?

Ms. MICHELMAN. But, Senator, in our view, this law and this body of law is old. He should have a view, and we have a right, the American people have a right to know what his view is. He singled this area of law out to avoid discussing, and as we have said over and over other areas he was more open and more forthcoming, and singled this one out. So I think that suggests some real concern.

Ms. WATTLETON. I think also that we ought to expect any judge who sits on the bench to have the capacity to listen, but from what perspective will he listen is the question that is before us. So that we were not comforted by his claims that he would listen. I think that's a remedial requirement for any judge.

Senator THURMOND. Well, people change their minds. Prior to this decision, *Roe v. Wade*, the matters was with the States. The judges change their minds and they took it to the Federal level and now some of them would like to take it back; they changed their minds.

In the *Plessy v. Ferguson* decision of 1896 which required separate but equal facilities, the judges changed their minds in 1954.

This man is openminded he says. He will listen and he impressed me as the kind of man who would change his mind if he felt that something in the past had gone wrong or conditions warranted changing his mind.

In fact, if I recollect correctly, he said he hadn't made up his mind on the abortion question. Didn't he say that?

Ms. WATTLETON. Well, he did say that and that is very disturbing—

Senator THURMOND. Well, if he said that, wouldn't you accept his words on that?

Ms. WATTLETON. Could I just finish? He did say that but after 18 years we find it enormously disturbing that an area of major constitutional law is such that this person, who wants to sit on the Supreme Court, doesn't have a view on it and has not made up his mind on it. Yes, there is no question that courts do change their minds, but I believe this would be the first time that we would see a Supreme Court position in which it has established a right, take it away.

I'm not interested as an African-American and as a woman seeing the rights that I have come to expect as an American be reversed because a court changes its mind, and I believe we have to speak out against any such development.

Senator THURMOND. Well, my time is up. I just want to say, if he is a man of integrity and character and says he hasn't made up his mind, and he will listen, what more could you ask?

That's all. Thank you. My time is up, Mr. Chairman.

Senator LEAHY. Mr. Chairman, if Senator Kennedy could withhold just a moment, I would also like to note something similar to Senator Metzenbaum. We are in the process of putting together the conference committee on the 5-year farm bill and while I was here for all but 4 or 5 minutes of Judge Souter's testimony, I am going to have to miss much of the testimony over the next couple of days. I will follow it fully and my staff is going to brief me on it fully. I do apologize to the witnesses, especially the two here, but that is the reason why I'm not going to be here.

The CHAIRMAN. Thank you, Senator.

Senator Kennedy.

Senator KENNEDY. Thank you.

I want to join in welcoming our witness and our panel this morning. In just listening to the exchange and the presentation to date, I imagine that point you are making, and correct me if I'm wrong, that you believe that this kind of a right is as basic and as fundamental to the Constitution as other rights, which are regularly accepted: the free speech, separation of church and State, the ability to assemble, the basic guarantees of the 14th amendment in terms of the protections of minorities in our country.

As I understand you believe that those are basic and fundamental and the right that you speak of is as basic and fundamental as that.

Ms. MICHELMAN. Absolutely.

Senator KENNEDY. And that if we were at another period in our history we would not be being asked to confirm someone who did not accept those basic and fundamental rights?

Ms. MICHELMAN. That's right.