

Senator KENNEDY. Thank you very much.  
Paula Ettelbrick, we will be glad to hear from you.

#### STATEMENT OF PAULA L. ETTELBRICK

Ms. ETTELBRICK. Thank you, Mr. Chairman. Good morning to the rest of the committee.

My name is Paula Ettelbrick. I am the legal director of Lambda Legal Defense and Education Fund, a nonprofit legal organization dedicated to enhancing and promoting the rights of lesbians, gay men, and people with AIDS in our society. I very much thank the committee for the opportunity to be heard this morning on issues of grave concern to us related to the nomination of Judge David Souter to the U.S. Supreme Court.

Lambda Legal Defense models itself in the fine tradition of our colleagues of the NAACP Legal Defense and Education Fund, NOW Legal Defense and Education Fund, Mexican-American Legal Defense and Education Fund, Asian-American Legal Defense Fund, Puerto Rican Legal Defense Fund, and others who believe that the Constitution belongs to the people, that the Constitution belongs to all of us, that the Constitution does not inherently discriminate and draw lines between those of us in society who most need its protections and who are most concerned about our ability to maintain our lives, to live our lives under the rule of majoritarian rule.

We tend to be those constituencies, those citizens of American society who most look to the courts as a protector of our rights against the majority. We tend to be those citizens in the United States who have the least ability to impact on the majority rule in our society. Lesbians and gay men, in particular, of all of those groups tend to still be people who are not able to impact on the majority, and we look to the Court and to the Constitution, with grave concern, particularly in light of a nomination to the Supreme Court.

Lambda Legal Defense opposes the nomination of David Souter, primarily because of his participation in a case while on the New Hampshire Court, called *Opinion of the Justice*, which is cited in my testimony. We believe that this committee should give very close scrutiny to this opinion. It is the one major inroad or insight into Judge Souter's view of the Constitution. In that opinion, the court dealt with equal protection, it dealt with the right to privacy, it dealt with due process, it dealt with the right of assembly, all in one decision, and we believe that this committee should look at that decision closely.

The first question I would ask Judge Souter is whether he wrote that decision. It was an advisory opinion, it went up to the court at the request of the New Hampshire Legislature, to try to determine whether or not the State might adopt a blanket exclusion of lesbians and gay men from being adoptive or foster parents or from running day-care centers.

The court, in its advisory opinion capacity, upheld the bar of foster and adoptive parenting, upheld the ban that the Legislature had imposed against lesbian and gay men being able to apply for adoption.

We feel that the opinion indicated a gross insensitivity and unwillingness to look at the evidence presented in the case. In *Advisory Opinion*, attorneys and other advocates are invited to present evidence to the New Hampshire Supreme Court, in order to persuade them one way or another, and such evidence was presented, evidence indicating that there is no connection between a parent's sexual orientation and harm to the child.

Evidence was presented not only by certain advocates, but, as well, the majority of the House Judiciary Committee of the New Hampshire Legislature. Affidavits were submitted by gay and lesbian parents in New Hampshire, criticizing the legislature's ban on their ability to provide love and support to children. The court ruled, however, that, despite the overwhelming evidence, despite the fact that the social science data does not support the notion that gay and lesbian parents per se make bad parents, per se are unfit, the court ruled that the statute was constitutional, under both the Federal and State Constitutions.

The fear, of course, of the legislature and the fear, of course, of the New Hampshire Supreme Court was that gay parents might influence the sexual orientation of their children, a totally discredited fear and one that is out of sync with the lead of the majority of States in this country.

If it were in fact true that parents had such an influence on the sexual orientation of their children, it would certainly not be the fact that I was a lesbian or that any other gay person in this country was a lesbian. I come from parents who are very dedicated to their heterosexuality, and not ones who necessarily represented role models otherwise.

Yet, Judge Souter ascribed to a view of equal protection which looked only at face value at this legislation and was willing to institute a total ban against lesbian and gay parenting. Contrary to his testimony before this committee, where he indicated his willingness and his desire to look at all of the evidence, I think his record belies his statements to this committee. Had he truly looked at the evidence, I think Judge Souter would have been persuaded by the dissent, who recognized in that case that the State is never less humanitarian than when it denies public benefits to a group of citizens, because of ancient prejudice against that group.

Judge Souter and his colleagues also ruled that gay men and lesbians are not entitled to due process of law in their applications for adoption and foster parenting, not entitled to an individual assessment, not entitled to an assessment about their ability to love and nurture children, to provide financial stability or a home life to children, education to children, and what have you, per se, gay men and lesbians, in the view of Judge Souter, are unfit to parent.

This due process ruling was made, in fact, in light of a previous New Hampshire Supreme Court decision, holding that a high school student had a due process right to be heard regarding his eligibility to compete in sports. Apparently, in New Hampshire, under David Souter and his colleagues, there is more of a right to play sports in high school than there is to take on the difficult task of parenting under the due process clause.

With regard to privacy, Judge Souter and his colleagues also ruled that the privacy claim is irrelevant, when an individual vol-

untarily requests a public benefit. By relying on the U.S. Supreme Court decision in *Bowers v. Hardwick*, decided 4 years ago, in which the Supreme Court held that lesbians and gay men have no right to privacy, no right to engage in private adult sexual conduct, the court confirmed all of our constituency's worst fears, that that privacy ruling of the U.S. Supreme Court in *Bowers v. Hardwick* would, in fact, impact on every aspect of our lives.

No longer would we just be criminals in jurisdictions such as the District of Columbia and 24 other jurisdictions throughout this country, but, in fact, that Supreme Court pronouncement would deny us rights in every facet of our lives, regardless of who we are, regardless of what facet of our life, whether we are trying to come into this country as foreigners who happen to be lesbians or gay men, whether we are trying to serve in the military and serve it well, whether we are trying to maintain a right to parent and keep our children, whether we are trying to maintain our right to keep a job in this society, all such things boil down to only one fact, that we are nothing more than people who commit crimes against nature.

Reliance on stereotype and prejudice against the great weight of the evidence cannot be tolerated on the U.S. Supreme Court.

Senator KENNEDY. We will give you just a couple more moments.

Ms. ETTLEBRICK. I am almost done, Senator. Thank you.

We believe that Judge Souter's reasoning does not affect only lesbians and gay men, but also women, racial and ethnic minorities and others for whom prejudice and the burdens of history have been used to discriminate against us. We are all affected by such a decision.

We ask respectfully that this committee consider the fact that the Bill of Rights does belong to all of us, regardless of who we are, and that this committee not find in favor of Judge Souter, and, on fact, oppose the nomination to the Supreme Court.

Thank you.

[The prepared statement of Ms. Ettelbrick follows.]