

Senator KENNEDY. Thank you very much.
Urvashi Vaid. Is that the right pronunciation?

STATEMENT OF URVASHI VAID

Ms. VAID. Actually, it is Urvashi Vaid, but you join an honorable tradition of people who mispronounce the name.

Senator KENNEDY. I apologize. Thank you very much.

Ms. VAID. Thank you very much, Mr. Chairman and members of the committee. My name is Urvashi Vaid, and I am executive director of the National Gay and Lesbian Task Force.

On behalf of millions of gay and lesbian Americans, I want to thank you for this opportunity to testify in opposition to the nomination of Judge David Souter to the U.S. Supreme Court.

Founded in 1973, the National Gay and Lesbian Task Force is a membership organization, whose mission is to educate, organize and advocate for full equality for the 10 percent of the American population that is estimated to be lesbian and gay.

The gay and lesbian community seeks from a Supreme Court nominee nothing more or less than other Americans. We seek a nominee committed to the concept that the rights embodied in the Constitution are meant to be inclusive of all Americans.

Unfortunately, in recent years, the Supreme Court has taken an increasingly restrictive view of the Constitution's reach in protecting minorities. The Court today fails to countenance the claims of gay and lesbian Americans who seek basic equal rights that most Americans take for granted.

The gay and lesbian plaintiffs who will come before the Supreme Court in the coming years to vindicate their rights bring stories of stark and unjust discrimination. I think many on this committee know better than perhaps some of your colleagues the issues that we are talking about, pervasive violence, pervasive prejudice, documented employment discrimination, housing discrimination.

The plaintiffs who will come before the Supreme Court from my community will petition for justice, for freedom from unwarranted governmental intrusion into our private adult lives, for equal protection, for due process, for the freedom of association that we all cherish, for the freedom of expression that allows me to sit here before you, for privacy rights and for other basic constitutional freedoms that are still denied to gay men and lesbians in this country.

Perhaps the most poignant question of constitutional equal protection I believe the Court will face in the near future will involve the long-standing efforts of gay and lesbian veterans and members of the U.S. Armed Forces to end the unjust policy banning openly gay people from serving our country.

These courageous men and women are even today stationed on the front lines in the Middle East, yet we are hunted like criminals at our home bases in this country, persecuted by our own country, because of an outdated and needless ban on service by openly gay and lesbian Americans, which forbids us from contributing our valor and our talent.

With this backdrop of interests and concerns, we have considered Judge Souter's record, in the hope of finding comfort that his defi-

nition of American society and his definition of the Constitution will be inclusive and unbiased.

We have listened expectantly to his testimony this past week, to glean hope that the constitutional rights of gay and lesbian Americans will be honored by the nominee, and we have come to the painful conclusion that Judge Souter's record indicates that his confirmation by this body would not only continue the shameful denial of equal justice under which gay and lesbian Americans live, but will do great harm by tilting the Court to the right in critical areas of civil rights and privacy.

I want to focus on the foster care and adoptive parenting decision that my colleague Paula Ettelbrick referred to. Millions of lesbians and gay men today are parents of children. Whether it is natural birth parents, adoptive parents, parents by foster care or by guardianship, lesbian and gay Americans strive to be parents for the same reasons as our heterosexual counterparts do, and we have submitted for the record as part of our testimony an excellent article which outlines the rights and the lack of rights that gay and lesbian families encounter in our society.

This issue is of great concern to my organization and to the broader gay community. We are very troubled by the fact that Judge Souter joined in the majority opinion of the New Hampshire Supreme Court in a decision barring gay and lesbian applicants from adopting or foster parenting in all circumstances. Again, the decision is appended as part of our testimony for your consideration.

The case, as Ms. Ettelbrick pointed out, centered on the constitutionality of a proposed New Hampshire law that would have banned all gay people from becoming adoptive or foster parents and from operating child care agencies.

The majority of the State court held that the exclusion of gay people from parenting was a reasonable legislative response to the bill's stated concern of providing "appropriate role models for children." While the court struck down the portion of the law banning us from operating child care agencies, the proposed ban on all parenting through adoption or foster care programs was passed by the New Hampshire Legislature.

We are very concerned that Judge Souter ignored the record in that case. It was an extensive record. I was pleased to hear Senator Heflin ask the question on Monday afternoon of Judge Souter about the record in that case, and contrary to Judge Souter's assertion that there was not enough evidence, indeed there was in the written submissions made by a variety of parties and in the conclusion of the House Judiciary Committee itself.

The dissenting judge noted that, indeed, the overwhelming weight of the professional study on the subject concludes that there is no difference in psychological and psychosexual development between children raised by heterosexual parents and children raised by homosexual parents.

I know that my time is short before you, so I want to switch focus from Judge Souter's ignoring of the record and participating in a biased holding in that foster care case, to some privacy concerns that we also share with our colleagues.

Like other constituencies concerned about the future Supreme Court's handling of the tested constitutional right to privacy, we have considered his record on testimony and privacy doctrine with great interest, and again, these confirmation hearings have offered little solace to gay and lesbian Americans concerned with securing our freedom from inappropriate and discriminatory State regulation of our private lives.

In his testimony before this committee, the Judge commented that he believes in a constitutional right to privacy, a fundamental right to privacy for married couples. As I am sure you know, this narrow statement would be a step backward from the current status of the privacy doctrine, where the Court has recognized the broadest right in situations involving unmarried persons, as well.

Judge Souter's testimony on privacy also contained his repeated claim to listen to the other side. We respectfully submit that listening without any willingness to change one's position is not helpful to those of us who seek a more expansive interpretation of privacy.

Mr. Chairman, the coming decades will continue to witness the further advancement toward equality of lesbian and gay Americans. We believe that we and all Americans will benefit from a Supreme Court committed to just and equitable application of basic constitutional principle, and a court committed to extending the reach of the Constitution to encompass all segments of society.

For these reasons, we respectfully urge you to vote against the nomination of Judge Souter.

Thank you for your consideration.

[The prepared statement of Ms. Vaid follows:]