Senator HATCH. Thank you.

Ms. Rogers, we will turn to you and then to Mr. Rauh.

STATEMENT OF ESTELLE ROGERS

Ms. ROGERS. Thank you, Mr. Chairman.

Members of the Judiciary Committee, my name is Estelle Rogers, and I appreciate the opportunity to testify today on behalf of the Federation of Women Lawyers of which I am national director.

I am also testifying on behalf of the Women's Legal Defense Fund and the NOW Legal Defense and Education Fund.

Our opposition to the nomination of William H. Rehnquist as Chief Justice of the United States stems from our concern that Mr. Justice Rehnquist has not demonstrated a commitment to equal justice under law. In fact, the evidence is to the contrary.

Since he has been on the bench, and in his earlier career, he has made a remarkably consistent and concerted effort to restrict and withhold the protections of constitutional rights and liberties from minorities, from the poor, from political dissidents, and from women.

The committee should be aware that in approximately 58 cases in which Mr. Justice Rehnquist has adjudicated a claim involving discrimination on the basis of sex, he has voted against the party asserting the bias 47 times, or nearly 81 percent of the time, while, in the same cases, the decision of the Supreme Court has been adverse to that party only 25 times, less than 43 percent. This is no coincidence.

A reading of the cases leads to the inescapable conclusion that Justice Rehnquist views the scope of constitutional protection for women extremely narrowly. The guarantees of the equal protection clause, for example, can, according to him, be vitiated by almost any governmental explanation for State-sponsored discrimination on the basis of sex. In fact, in the 11 times out of 58 that Justice Rehnquist did vote with the Supreme Court in sex discrimination cases, in only two cases did the claim rest on the basis of the equal protection clause.

It has been said many times during this confirmation process that, in his 15 years as an Associate Justice, Mr. Rehnquist has dissented alone in 54 cases. Although any civil libertarian is tempted to admire his independence of spirit, our concerns run much deeper.

The Constitution according to Rehnquist leads ultimately to the triumph of the State over the individual, in sharp contrast to the finest tradition of the Supreme Court, and in direct opposition to the founding principles of the American Nation. Nowhere is this clearer than in his lone dissent in equal protection cases, which number 12 of the 54 lone dissents.

He has indeed carved out a solitary place for himself on the far frontier of constitutional thought. His steadfast unwillingness to afford the equal protection of the laws to all of the people renders him unqualified for the position of Chief Justice.

Nor is Mr. Justice Rehnquist much more generous with the rights established by Congress in its 20 years of civil rights legislation. Although the Supreme Court majority has consistently held

that title VII of the Civil Rights Act of 1964 prohibits a wide variety of discriminatory practices in hiring, promotion, and compensation, Justice Rehnquist's reading of the statute's coverage is far more restrictive.

The overarching tenets of Justice Rehnquist's judicial philosophy are his deference to State and institutional interests, and his disregard for individual and civil rights.

In his 15 years on the Supreme Court, he has exhibited almost consistent hostility to the rights of women, choosing in case after case to deny or circumscribe venerable constitutional rights.

It truly——

Senator HATCH. Ms. Rogers, your time has expired.

Ms. ROGERS. Thank you, sir.

Senator HATCH. We appreciate it. We will now turn to Mr. Rauh.

STATEMENT OF JOSEPH L. RAUH, JR.

Mr. RAUH. My name is Joseph L. Rauh, Jr. I am general counsel of the Leadership Conference on Civil Rights.

You will forgive me, Mr. Chairman, if I speak from the heart. I was the law clerk to two great Justices 50 years ago, Justices Frankfurter and Cardozo. And I say to you very seriously, Mr. Chairman, this nomination is a desecration of the Supreme Court of the United States.

What we are doing is rewarding a lifetime of opposition to individual rights—a lifetime of that opposition—with the highest judicial and legal post in the country. The Senate cannot let that happen. I do not care whether you look at him as a law clerk—and do not fool yourself that memorandum was his views—or as a lawyer or justice. I challenge any Senator to read the Kugler book on simple Justice and then say the memorandum was not his own views. Then you have all the way through Phoenix when he opposed voting, when he opposed the slightest civil rights law, all the way up through the Court where he opposed everything, dissenting alone in *Bob Jones* and *Keyes,* even dissenting in the *Columbus* case.

No, he cannot change. All stages of his life are so consistent that he is not going to change. Do not try to think you can be hopeful in this situation. No, he will not change.

As a good lawyer, Chairman Hatch, you tried to get him out of his statement that this country is no more committed to an integrated society—you were very good at it—than a segregated society. [Laughter].

But, sir, no matter how good you were in trying to get him out of that, the remainder of the sentence which you said changed it only reinforced it. Because what it says is that we are dedicated to a free society. We were always dedicated to a free society, but we had a segregationist society.

I do not know whether this man is a bigot or not. It is very hard to say. But I do know that the things he has done in his lifetime are the same as they would have been if he were a bigot.

I think it is better to describe him as a statist. He thinks the State is always right. Whether it is women, blacks, Hispanics, homosexuals, aliens, people on welfare, the State always is right