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BEFORE THE UNITED STATES SENATE JUDICIARY COMMITTEE, SENATOR JOSEPH BIDEN, CHAIRMAN, REGARDING THE CONFIRMATION OF JUDGE CLARENCE THOMAS.

SEPTEMBER 19, 1991

Mr. Chairman, and members of the committee. I thank you for giving me the opportunity to testify regarding the confirmation of Judge Clarence Thomas as an Associate Justice of the Supreme Court.

You have spent months pouring over his record, marshaled squadrons of researchers, and he in turn, engaged his supporters to help him edit that record. You have each done your job exceedingly well, but something has been overlooked.

It is we, the people, who have lost out.

The message is that there is a direct correlation between the amount of information a nominee reveals and the likelihood of his confirmation. Less, in fact, is more.

By stripping himself of past opinions and emotion, particularly in the area of privacy, Judge Thomas hopes to be impartial.

I do not believe it can work.

It is our emotions which give us our humanity, which enable us to empathize with others. That is the essential quality of justice.

I cannot accept the premise that there is some objective legal truth which all naturally reveal itself; that the answers to the most divisive social questions of our time now before the court, will emerge if our Judges purge themselves of all ambiguity, opinion, and feeling, and focus, without blinking, on the facts.

If that were the case, these questions would have been decided long ago. There are many competent Judge who could determine questions of law. That is the easy part.

If is the contradictions within the human condition, the agony of ambiguous moral choices, the pain of weighing one truth against another, that is what is hard and those are the heavy burdens that we ask the highest Judges of our land to carry.

My political experience has taught me that in our quest to make just laws, we must constantly remind ourselves of the nexus between the orderly world of public policy and the real world of human beings. It is their faces, their circumstances which we

must bear in mind.

This is particularly true in regard to the ability of a woman to make a personal moral decision on the difficult question of whether to continue or terminate a pregnancy. It is essential to humanize this question, to visualize the anguish, the confusion, the inequity that will result if we continue to erode Roe v. Wade.

As a former Governor I am acutely aware of the unequal burdens that would be born by states, if this fundamental right is determine on a state by state basis, and I am equally cognizant of the unequal rights that would be meted out to women, heavily dependent on which state they resided in, their access to information, money, and transportation.

It is Judge Thomas' silence on this question that causes anxiety for so many women, who fear that his ascendancy to the Court will inaugurate a most painful era for American families, in contrast to the post Roe v. Wade period, when women have made this decision, each according to her own conscience.

Judge Thomas has indicated that he is sensitive to the effect that the law can have on individual lives when he movingly described the impact of Jim Crow Laws on his grandmother, and the effect of those laws, on the humiliating reference to his grandfather as "boy."

What many Americans are asking is, can he bring the same sensitivity to the contemporary question of reproductive freedom?

Can he understand the humiliation, embarrassment, and fear felt today by a woman escorted into a health clinic, past a yelling, threatening mob? Can he understand what it means to be patronized, to be dependent on charity and chance, instead of the equal protection of the law?

I do not ask Judge Thomas to tell the American people how he would rule on a particular case. I do, however, ask that Judge Thomas share with us his general outlook criteria and approach to this divisive American dilemma.

As a former elected official, like you, I know that my constituency would not tolerate any candidate for public office who would not make her or his position clear on this question.

The Judiciary is different. We need not exact a pledge on how he would vote on a specific case. But neither should we absolve him of all accountability.

I must tell you, the very fact that he has succeeded in not clarifying his views on this issue which is of such great importance to all Americans, creates a quiet fury in many women.

Once again, when it comes to our issues, we find ourselves

repeating the ancient cycle of helplessness that women have experienced throughout history.

This sense of powerlessness is painful. It is apparent, right here in this room, where women are not equally represented in the decision making process of this country.

We are put in the position of pleaders, asking you to ask our questions for us, to be our stand-ins, to intercede on our behalf.

Once again, our question, central to our lives, the one that women all over this country are asking, is not being answered.

We have to take our chances.

We have to live on hope.

We have to believe that silence equals fairness, when in fact, we fear that silence equals just the opposite.

I believe I speak for many women when I say we have a right to a forthright answer on this most wrenching moral issue of our time.

The American people--regardless of their view of this issue--have a right to expect any nominee to the Supreme Court of the United States to describe his or her record and philosophy.

In a democracy, it is a sad day indeed, when silence assures victory.

I respect that each Senator, after a great deal of thought, will reach his decision on whether Judge Thomas has met a basic standard for the Supreme Court.

My conclusion is that Judge Thomas has not provided sufficient information to earn confirmation.

After two weeks of hearings, the question remains unanswered, who is Judge Thomas?

Any nominee to the Supreme Court has the obligation to give that answer to the American people.

Thank you most kindly for permitting me to share my views.

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