

I would only ask whether this committee would be willing to trust a candidate if, as Kate has indicated, it was a matter of free speech and he had said one thing before confirmation and left the slate quite blank during confirmation.

One of the points that Mr. Thomas has made which I find very curious is that to decline or to give you some sense of his philosophical views with respect to constitutional protections for reproduction would somehow disqualify him as an unbiased and impartial Justice. If we applied that reasoning, we would have to say that all of the sitting Justices have given us their views on this issue and so therefore they are unqualified to consider future cases in an impartial fashion. It really begs the imagination.

Finally, I would oppose him because he has been so willing to expound on every other subject, including capital punishment, cases that are before the Court right now. So why fail to answer the question on this most important constitutional issue that is so important to my integrity as a woman?

So, as a woman, I would vote against him as a ten, and as representative of an organization that is firmly committed to preserving this right for all women, we would hold that he should not be confirmed.

Senator SIMON. Governor.

Ms. KUNIN. Senator, technically, what we are asked to believe is that silence equals impartiality; that the fact that he has said nothing and declared nothing really asks us to believe that this is a blank slate and that the facts as they appear to him will determine how he will rule.

In effect, that presumes that there is sort of an equal struggle. Both sides are vying to fill up that blank page, but in reality one side has gotten a head start because there is a record and there is evidence of his past beliefs. So what looks like a totally even tug of war for the opinion of this judge really is not. It is already weighted on one side, unless one believes that he totally dismisses everything he has said and written before, and I think few human beings change as much as that.

So in that sense, while one could say, yes, he has not said and we should not presume his conclusion, when we look at the larger picture a conclusion really pushes forth from at least a reasonable perspective.

What bothers me, in addition, is that there is not an acknowledgement that this is a divisive issue that everybody is struggling with on one side or the other, and that the best way to deal with such wrenching issues is to be straightforward with your own views and say, all right, I am going to put them in perspective, but this is generally what I believe, and as a judge I know cannot just act on my beliefs. But at least I think you deal with controversy by acknowledging where you stand to begin with and then try to find an equitable solution.

Senator SIMON. And give me a numerical—

Ms. KUNIN. I guess I would put it at nine; I would give him one line that he might have some other perspective, but all the evidence is certainly weighted the other way.

Senator SIMON. And I see my time is about up, Mr. Chairman. I would like to put into the record an article that appeared in the

New York Times about 4 weeks ago, about the experience in Brazil. Brazil outlaws all abortions. The second leading cause for women coming into the hospitals of Brazil—the second leading cause of anyone coming in, men and women, is botched abortions in Brazil.

And if I had additional time, I would have asked the witnesses if they believe, if we overturn *Roe v. Wade*, we are going to reduce the number of abortions in our country. I think the evidence is pretty overwhelming from Brazil, as well as in the United States, prior to *Roe v. Wade*. England, Scotland and Wales had much more liberal abortion laws than we did, had far fewer abortions per thousand people.

The evidence is that the culture and other things determine the number of abortions rather than the law, and the question we face in part in this nomination, not the sole question, obviously, is whether abortions will be safe or not safe.

Thank you, Mr. Chairman.

[The aforementioned follows:]