

Now, I think your comment, saying what would happen, I do think there will be some States where abortion will remain legal. I think in those States women will have access. But I have difficulty thinking of our country as a place where women, if they live in Louisiana, have much lesser rights than some place else.

I appreciated Senator Brown having read my written comments so carefully, because there were some things in there I wasn't able to say in oral testimony, and what I was trying to point out was the abortion issue was not for abortion. It was an issue that was so integral, it was so inherent in all of the other things we were trying to achieve amidst a background of discrimination, that it was important.

Senator Specter, I do understand his concern about what we think Souter's position will ultimately be. I don't know what he is going to do on the ultimate *Roe v. Wade* issue. What bothered me was that when he was in the *Rust* hearing, he asked the Government's attorney, "do you mean if a woman has a medical condition that makes continuing a pregnancy unwise, the doctor can't tell her?" and the Government said, "Yes, that's what it means, he can't tell her."

We thought from reading his expression that he understood how terrible that would be, and so we were shocked when the decision was as it was.

The CHAIRMAN. You know, as a lawyer, and everyone else should know, it is still left open, if *Roe* is overruled, that States like Louisiana may very well pass a law that not only affects—they have passed a law—that not only affects poor women, but the wealthiest of women, because it may very well say, we in the State of Louisiana conclude that anyone domiciled in the State of Louisiana cannot have an abortion anywhere in the world, without breaking the law—

Ms. WEDDINGTON. That is right.

The CHAIRMAN [continuing]. Which I think would be a horrible step. At any rate, let me yield to my friend from Wisconsin, and I am going to yield him the Chair, as well, so after he questions, maybe he could come up here and take the Chair.

Senator KOHL [presiding]. Thank you very much, Mr. Chairman.

I would like to be certain that I understand where you are on this issue in a fairly conclusive manner. Are you all saying that, with respect to this person or somebody coming after this person, if they do not have a clear expressed position on choice which is positive, that person should not be on the Supreme Court; and that it should be the responsibility of this committee to clearly, without ambiguity, ascertain that position and vote—among other things, but vote particularly on that issue?

Ms. MICHELMAN. We are saying that, Senator.

Senator KOHL. Anybody disagreeing on that?

Ms. MICHELMAN. No, because that—

Senator KOHL. So you don't—I respect your position—but you don't take any inconclusiveness as satisfactory?

Ms. WATTLETON. That is correct.

Ms. MICHELMAN. That is correct.

Senator KOHL. So you are saying that trying to figure out what he did or didn't say when he endorsed Lehrman is almost beside

the point? You want to know particularly and clearly that the person believes in a woman's right to choice? Otherwise, in today's United States of America, that person does not belong on the Supreme Court?

Ms. WATTLETON. That is correct.

Ms. MICHELMAN. That is correct. It is whether he believes or acknowledges, recognizes that there is a fundamental right to choose and that that right is equal in its nature to other fundamental rights, such as freedom of speech, freedom of religion, other fundamental rights.

We don't think that you would confirm someone who might suggest there is not a fundamental right to free speech. This is that kind of right, Senator, and we think the area of law—*Roe v. Wade* is 18 years old now. We think it is as settled an area of law as *Brown v. Board of Education*. And I think Faye and I, last year when we sat here before you with Justice Souter's nomination, said that we believed very strongly that if you had any question that Justice Souter would have any difficulty with the *Brown v. Board of Education* ruling, you would be very concerned about confirming him. We believe that this right is as fundamental and as settled as that case was.

The risk to women's lives is so enormous. It is so enormous. If you take this right away, you take away the very foundation of women's lives and their families' lives. There is nothing left. Everything crumbles around it. It is so fundamental.

And, yes, we think it is absolutely appropriate and fair for him to be judged on this issue, and he has singled out—and Faye again said it very eloquently. He has singled out this one area of law to refuse to talk about. He has talked about other areas of law that are controversial, are before the Court. He has singled out this one. You have to ask why. Is it because if he did speak about it he would not be confirmed?

I mean, he can't—it is no longer acceptable. The Court has moved. The President has really made these nominations based on his commitment to overturn *Roe*, and the last four nominees have shown us that they, indeed, are voting with the others to take away this right.

We have no chance anymore. This may be the last opportunity we have to protect *Roe v. Wade*, that you have, the last opportunity you have in your co-equal role with the President in preserving fundamental rights.

Ms. WATTLETON. I guess I would ask the committee to consider what it would do if a candidate sitting before it held that almost every question that you put to him or her could be found to be constitutional or divisive or in other ways politically laden and decline to give you his or her views on those subjects across the board. It would make a mockery of the whole process of advice and consent. And that is why we do not find it as excusable that he chose this and this question alone, singularly, to decline to comment, but to extend it throughout the process and ask ourselves what would that make of the very process of governance that is set forth by the Framers with respect to the selection and the seeding of the other branch of government at the highest levels people who are selected for the rest of their lives.