

the Bill of Rights. Don't add one more. Don't take the historic voice out of this country. The Supreme Court has been the greatest protector of the Bill of Rights in America. Don't take the last shot here to complete the transition from the voice of liberty to now the silence on the Bill of Rights.

Thank you, sir.

The CHAIRMAN. Thank you very much, Mr. Rauh.

Ms. Hernandez, welcome back.

STATEMENT OF ANTONIA HERNANDEZ

Ms. HERNANDEZ. Thank you, and thank you for giving me the privilege to testify before you today. Not only do I represent the Mexican-American Legal Defense Fund, but today I also represent the Alliance for Justice, a coalition that represents legal, not-for-profit organizations concerned with the administration of justice. The alliance monitors judicial nominees and issues pertaining to the Court.

Because of the Nation's history of discrimination against Hispanics and because of the U.S. Supreme Court's unique role for more than 30 years in vindicating the civil and constitutional rights of Hispanics, we Hispanics have placed a particular reliance on the Supreme Court in assuring our civil and constitutional rights. Whether the Supreme Court's decision in 1989, hostile to the civil and constitutional rights of Hispanics, actually signals a Supreme Court retrenchment or turning back the clock, I have little doubt that the next person confirmed as an Associate Justice on the Supreme Court will, in fact, have a major impact on the future course of Supreme Court adjudications.

The reason for this determinative impact is obvious. The next nominee confirmed by the Senate will be replacing Justice Thurgood Marshall, whose fairness and compassion for civil and constitutional rights were crucial to the rights of Hispanics.

We have in our written document outlined the various reasons for our opposition. What I will do with my time is concentrate on two. The first matter deals with Judge Thomas' view of the equal protection clause and its impact on our community, which is an issue that I don't believe has been quite explored or discussed here today.

In reviewing Clarence Thomas' legal views on equal protection in the context of school desegregation and segregation, it reveals his preference to abandon the 14th amendment equal protection clause and substitute instead his views of the 14th amendment's privilege and immunities clause as paramount. Regardless of what freedoms Judge Thomas might find to be encompassed within the privilege and immunities clause, the fact of the matter is that his preferred privilege or immunity clause only protects citizens, whereas the equal protection clause protects any person.

As you know, within the Hispanic community, a large portion of our community are legal resident aliens, and a substantial percentage of our community are undocumented aliens. Some of the rights given by the Court—and let me go further. Since the privilege or immunities clause cannot and does not protect noncitizens, Judge Thomas may very likely reject the Supreme Court's historical ap-

plication of the equal protection doctrine to protect noncitizens in cases running from *Yick Ho v. Hopkins* back in 1886, a San Francisco ordinance invalidating a San Francisco ordinance that outlawed Chinese laundries and declared that it violated the equal protection clause, and also overrule *Doe v. Plyler*, which is a case involving a Texas law that denied education to undocumented children.

In fact, had Judge Thomas rather than Judge Marshall been on the Supreme Court at the time of *Plyler*, and had Judge Thomas rejected the equal protection analysis in favor of his privileges or immunities approach, MALDEF's 5-4 victory would have been a 5-4 loss.

Now, I would like to deal with the testimony of Judge Thomas and his 5 days and statements that he made. Apparently recognizing that many of the philosophical positions that he has taken in his speeches and his writings were out of the mainstream, Clarence Thomas appeared to pursue at least four strategies in his 5 days of testimony before this committee.

First, he occasionally reiterated and tried to defend several of his previously stated philosophical views, particularly his opposition to virtually all forms of affirmative action as unlawful and unconstitutional. Second, he tried to modify and, in fact, to moderate some of his most extreme views.

Third, he refused to answer questions in a few areas altogether, particularly with regard to whether he would overrule the constitutional right to reproductive freedom. And finally and most sweepingly, he argued that his past philosophical positions should be deemed irrelevant to the confirmation process because they were arrived at and presented when he was a policymaker rather than in his current role as an impartial judge. This position lacks substance and credibility.

Finally, in conclusion, presenting MALDEF's position in opposition to the confirmation of Clarence Thomas is not a task that I had looked forward to at all. I know Clarence Thomas; I consider him a friend. And as other witnesses have brought to the attention of this committee, there is no question that he has many positive qualities.

Additionally, on matters of importance to Hispanics, there similarly is no question that during his tenure at EEOC, he was accessible to me and I have gotten to know him then in trying to deal with him on the many matters that EEOC dealt with. He was sensitive to our concerns and we did discuss that.

He also was sensitive in supporting Spanish language forms and brochures, and commendable here was his testimony in response to Senator DeConcini about his opposition to English only. Nevertheless, in determining our position here, we at MALDEF had to look at the entire picture in the context of a Supreme Court nomination and we, in particular, had to look closely indeed at Judge Thomas' legal and philosophical views about the civil rights and constitutional provisions and about Supreme Court decisions interpreting them, all of such importance to protecting and advancing the rights of Hispanics. The big picture we found was not all very positive.

Based on his widely expressed legal and constitutional views which are summarized herein, we reached the inescapable conclusion that Judge Thomas should not be on the Supreme Court. We accordingly urge the Senate to exercise its coequal role in the process by not confirming Judge Thomas as an Associate Justice to the Supreme Court.

Thank you.

[The prepared statement of Ms. Hernandez follows:]