

some question about race, it isn't clear—under any circumstance. Again, this goes to his qualifications, I think.

He offers no alternative. He concedes that blacks have been deprived of voting opportunities. He concedes that the Senate and the Congress were looking at real practices when it was necessary to enact the 1972 amendments, and yet offers no remedy that would provide meaningful opportunities for minorities to participate in the electoral process.

Senator KENNEDY. Mr. Rauh, you have been very much involved, as most of the panel has, in the fashioning and shaping of various civil rights legislation. The key element of all of the legislation are remedies.

Going back to I guess even the 1957 Act, maybe even go back even further, but the importance of remedies in ensuring that the rights are going to be achieved and his approach as a case-by-case means, where would we really be if we had used a case-by-case approach in the various important pieces of legislation which have been accepted by the country, that had bipartisan support? When you look at public accommodations, the housing, the voting rights, the whole range of difference, where would we be as a society if we accepted or the Supreme Court accepted that route to try and remedy the discrimination in our society?

Mr. RAUH. We wouldn't have the right to vote in any serious sense. What happened in 1957 was, because it was on an individual basis, the law failed even though we all supported it because we wanted a civil rights law. In 1960 and 1964 there was tinkering, but it was always on a retail basis.

The whole thing changed in 1965 when it was on a wholesale basis. What happened in the 1965 law was that they said the Federal Government will register the people if these States continue to discriminate. The whole problem—I think one of the witnesses said it this morning. The distinction between wholesale and retail enforcement of the civil rights law is the distinction between success and failure.

Senator KENNEDY. Ms. Hernandez, it is good to see you back here again, and I commend you for your testimony.

The point that Judge Thomas makes—and I don't know whether Mr. Lucy will make a comment on this—is that given his particular background, he has a particular sensitivity. I mean, no one really disputes what has been an extraordinary life experience which he has had and admire his own personal determinations for self-improvement.

But you, Ms. Hernandez and Mr. Lucy, why doesn't that in and of itself—I think there are probably millions of Americans who have been watching these hearings and say, well, that is right, that will give him an insight in terms of the concerns for whether it is women, women of color, or minorities. Why doesn't that kind of emphasis or that kind of thrust give you a sense of confidence as to how the nominee might vote on questions of equal protection?

Ms. HERNANDEZ. Well, they haven't to date, and I must say that it is most commendable. Most Americans can relate to the strides, to the efforts, to the determination. I myself as an immigrant am familiar with that.

But one must look to the person and what he or she has done with that experience, and to date he doesn't have a clean slate. He has been in positions of power. He has been in positions of authority. He has been in a position to influence policy in a way that it would impact other people similarly situated. And we have the record on what he has done in those instances.

Mr. LUCY. I would certainly have to, Senator, support what was just said. In his public record as a public official, as a policymaker or policy implementor, he has never shown the kinds of sensitivity that ought to flow out of that past experience.

One of the Senators earlier on mentioned the fact that the polls show his—not necessarily approval rating but openmindedness waiting to hear. By and large, minorities want to be fair. But when you look at the record, his record doesn't suggest that he understands that.

I think, as he indicated, he believes discrimination exists. I think he is honest about that. But I think he believes it exists as it impacts on individuals as opposed to on groups.

I would so eagerly want to say to him, Senator, that when the sign said "No Irish Need Apply," that didn't mean Mr. O'Reilly or Mr. O'Rourke. That meant all. And he doesn't seem to grasp that even coming out of his own background. His resistance to class action remedies for the purpose of changing behavior strongly suggests that he thinks it is an individual personal situation.

Senator KENNEDY. My time is up, and I promise I won't ask a question of the next panel if I can ask Mr. Lucy the last one. But he will, I imagine, point out that the Constitution protects individuals, not groups.

Mr. LUCY. Well, certainly you would think that he would be aware of that in his own role and would have made more effort in his policymaking role to really apply the class action pursuit that had been given to them under the authority of the EEOC.

I would only add, Senator, that on the trade union side we are representing those who theoretically come through as beneficiaries of this entire civil rights-equal opportunity set of laws.

Senator KENNEDY. Thank you very much.

The CHAIRMAN. Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

Welcome to this panel. I know many of you and have worked with many of you. And I have disagreed with many of you. I have always enjoyed that, and I mean that. Antonia Hernandez, you and I worked long and hard with the immigration issues, and I think that we would both agree that we have been fair with each other and always direct. And I have great respect and rich regard for you.

And I have known John Buchanan for many years. I do not know the other folks as well, but I know, indeed, of your reputation as well and have had you testifying here, the chairman has.

So you speak powerfully in opposition to Clarence Thomas. I understand that. I guess I would ask a question of Ms. Hernandez because I know her well. We have worked together on serious issues with immigration reform, illegal immigration. We have often, as I say, disagreed, but we have done so in a very honest and candid