

STATEMENT OF A PANEL CONSISTING OF HAYWOOD BURNS, SUPREME COURT WATCH; PATRICIA WILLIAMS, CENTER FOR CONSTITUTIONAL RIGHTS; JAMES J. BISHOP, AMERICANS FOR DEMOCRATIC ACTION; AND WILLIAM B. MOFFITT, NATIONAL CENTER FOR CRIMINAL DEFENSE LAWYERS

Mr. BURNS. Senator Simon, Senator Thurmond, my name is Haywood Burns. I am dean and professor of Law at the City University of New York Law School, at Queens College, and president of the Nation Institute.

I appear before you today on behalf of Supreme Court Watch, a project of the institute dedicated to scholarly research and public education on the civil rights and civil liberties records of Supreme Court nominees.

Supreme Court Watch has testified before his committee regarding nominees since Judge Sandra Day O'Connor. We have previously submitted an extensive report on Judge Clarence Thomas, as the Senator has indicated. I now formally request, with respect, Senator, that it be made a part of the record.

Based on the past week's hearings, it would appear that Judge Thomas believes there are four rules of confirmation of Justices: First, disown your past record; second, don't predict your future; third, smile with self-deprecating humor; and, fourth, express virtually no opinions on any subject with which anyone would likely disagree.

But this committee knows those are not the rules. You have a high constitutional duty to perform, which is being frustrated. As Senators, you should not be asked to approve a nominee who so dodges and distorts his own long record, who refuses to address broad questions of social and judicial philosophy well within the scope of this committee's mandate. Candid answers to reasonable questions ought to be a minimum qualification for a lifetime Supreme Court appointment.

Supreme Court Watch, like others who preceded us before this committee, opposes Judge Thomas, because of his record of disdain for the law while in previous government service. His willingness to elevate personal political preference over the mandate of Congress and the courts, his long record of attacks on established constitutional precedents in the areas of civil rights and civil liberties.

We are deeply troubled, as are tens of millions of other Americans, by his attitudes and actions as they affect women, racial minorities, the poor, the elderly, and the environment.

Beyond the record, however, we ask that you also consider the grave implications of Judge Thomas' lack of forthrightness with this committee.

You have all witnessed Judge Thomas' numerous equivocations. His past vociferous attacks on civil rights and privacy were simply philosophical musings. Despite his extravagant praise for the Lewis Lehrman antiabortion article, he now tells us he doubts he ever read it. Judge Thomas signed a White House report calling for an end to a woman's right of choice, and now claims he hasn't read that, either.

In response to questions from Senator Leahy, he stated, incredibly, that not once since *Roe v. Wade* came down during his law

school days has he engaged in a discussion or held a view on this most controversial case. While refusing to discuss reproductive rights, he readily discusses capital punishment.

In response to questions from Senator Simon, he asked us to believe that he had no knowledge of his close friend and mentor Jay Parker's paid representation of the race in South African Government, though, as Senator Simon noted, others have come forward to say that they engage in long meetings with Judge Thomas on this very subject.

Unfortunately, Judge Thomas' performance before this committee is consistent with a history of lack of candor, compassion, and ethical judgment. As head of the EEOC, he misrepresented to Congress the number of lapsed Age Discrimination in Employment Act cases. In callous and intemperate terms, he has repeatedly attacked the country's civil rights leadership. In the most opportunistic and self-serving manner, he has publicly degraded and humiliated his own sister, to make a point about his views on welfare.

Despite his supposed commitment to impartiality repeated several times to this committee, Judge Thomas did not recuse himself in the 1990 District of Columbia Circuit Court decision to reject Special Prosecutor Lawrence Walsh's request for an en banc hearing of Colonel Oliver North's criminal conviction, notwithstanding having spoken out publicly in support of Colonel North on several occasions.

Perhaps most egregiously, he participated in the *Alpo Petfoods v. Ralston Purina* case, involving a company in which his mentor and political sponsor Senator John Danforth holds a significant financial interest. Rather than recuse himself from this case, Judge Thomas voted to overturn a multi-million-dollar judgment against the Ralston Purina Co. Without in any way impugning Senator Danforth, it should be clear that Judge Thomas' participation in the case showed a serious ethical blind spot unworthy of someone who would sit on the High Court.

Over and over in these hearings, members of this committee have asked who is the real Clarence Thomas. Indeed, on the surface, Judge Thomas seems profoundly inconsistent. But, in fact, in avoiding this committee's reasonable inquiries, Judge Thomas displays a lack of regard for the role of the legislative branch and acceptance of unchecked Presidential authority quite similar to that which he displayed repeatedly as a government official.

What is more—

Senator SIMON. If you would conclude your remarks.

Mr. BURNS. Thank you, Senator. I will.

What is more, it is here on the bench that Judge Thomas has shown several examples of the same disturbing deference to executive authority.

Against the backdrop of this record, we urge the members of this committee to assert the full constitutional authority that is theirs. As coequal partners with the President in the appointment of a Supreme Court Justice, do not permit us to go unchecked further along the road to what has been called the imperial presidency. The next Justice, probably serving well into the 21st century, will affect the hearts, minds, and bodies of Americans in ways not likely to soon be undone.

To Judge Thomas and to anyone who follows in his train who lacks the requisite qualifications for this high office, we urge the Senate to firmly and resolutely say no.

Thank you.

[Report follows:]