

Senator SIMPSON. I don't know whether that will happen.

Ms. WATTLETON. Or that, for that matter, it will turn back to the States as the representative of an organization that provides services to millions of women each year, we know the practical application of that, the poor and the young.

That most often means minority women will be the first to be injured and the first to die and that is not what we want to see.

Senator SIMPSON. I know, but you see you have effectively diverted it again and again and again. We are back to the issue of a man that you have watched and heard. A man who is bright, intelligent, studious, caring, chivalrous, patient, probative, civilized, and a great listener and if that ain't enough for you, I think you are making a real mistake.

Ms. WATTLETON. I think we have a difference of opinion and we believe in the process.

The CHAIRMAN. I think that is clear, you do have a difference of opinion. [Laughter.]

Ms. MICHELMAN. We do have a difference of opinion.

The CHAIRMAN. Let me ask you one question, because I did not understand one thing you said. Had Judge Souter said, "I believe that the right to determine whether or not to remain pregnant is a fundamental right of privacy," even though that would not have told you how he would rule on any case relating to abortion, because it would not tell you what burden of proof he would think is necessary to interpose the State's will between an individual's exercise of that right and the State's requirement that they put up, if he had merely said it is a fundamental right that continues after pregnancy, would you be here this morning?

Ms. WATTLETON. If he had said that it was a fundamental right that continued throughout procreation and throughout pregnancy, he would have said that the State must show—in essence, he would have been affirming *Roe*, which is to say that the State must show a compelling interest in order for it to be a fundamental right to intercede and to prevent the exercise of that right.

The CHAIRMAN. I am not asking you what it means. I am asking you whether or not you would be here.

Ms. WATTLETON. That is the way we interpret it.

Ms. MICHELMAN. Probably not.

Ms. WATTLETON. We probably would not be.

The CHAIRMAN. OK. I thank you.

Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman.

You equate the *Brown v. Board of Education* cases with the issue and the problem that your organizations and those you represent face and it seems to me there is no reconsidering of *Brown v. Board of Education* before us or the Court. There are no organizations that I know of, there is no split in society of any significant numbers, where there is a great split in our society regarding reproductive rights and the right to choose.

I think you would agree that there is as tremendous split in our society as it relates to your position versus the right to life?

Ms. WATTLETON. There is virtually little disagreement, and that is not to say there is no disagreement, on the question of whether the Government should be the one to decide or to intervene. There

is broad consensus that the Government should stay out of it, regardless of the individuals' moral views on abortion.

Senator DECONCINI. You do not quite answer my question, or maybe I do not quite make it clear. Do you agree that there is a great number of people, including women, who take a different position than your organizations on the issue of *Roe v. Wade* and, specifically, abortion?

Ms. MICHELMAN. The majority of Americans—

Senator DECONCINI. I am not talking about the majority, I am saying there are a number of Americans who disagree with your position on this issue.

Ms. MICHELMAN. There are people who differ on the moral questions about abortion, but—

Senator DECONCINI. Right.

Ms. WATTLETON. In fact, there is—

Ms. MICHELMAN. But as they said, the question before the Court in 1973 was who should decide, and the majority of Americans agreed with the Court that it should be the individual who decides, so there is a difference in the moral aspects—

Senator DECONCINI. But as you—

Ms. MICHELMAN [continuing]. But there is not much of a difference in—there is great support.

Senator DECONCINI. As you have indicated, if a moral position is a principle, you ought not sacrifice that principle, and many in this country believe that there is a principle regarding the life that is there. In the judgment of some of us that decision should be left to the individual—and I understand that you may disagree with that, and rightfully so.

Ms. WATTLETON. To the individual.

Ms. MICHELMAN. To the individual, that's right.

Senator DECONCINI [continuing]. To make that determination—

Ms. MICHELMAN. That is right.

Senator DECONCINI [continuing]. Where many of us do not believe that is a proper decision to be left to someone, because of the fact of the moral principle that life is there.

Ms. MICHELMAN. Well, the Government should no more, be able to compel a woman to have an abortion than governments should be able to compel a woman to continue a pregnancy against her will. It is just not a realm for the State, for politicians, for Government, and that is what the issue was in 1973.

Senator DECONCINI. Why do you think, then, that there were 48—

Ms. WATTLETON. Well, the reason that we—

Senator DECONCINI. Wait, just a minute.

Ms. WATTLETON. I am sorry.

Senator DECONCINI. Why do you think there were 48 or 49 votes for a constitutional amendment to reverse *Roe v. Wade* on the Senate floor? Although not enough to pass an amendment, close to a majority felt *Roe v. Wade* should be reversed. It seems to me that there is a great distinction here regarding this issue before the Court, the abortion order, *Roe v. Wade*, than there is between *Brown v. Board of Education*. I do not see any amendments to re-

verse *Brown v. Board of Education* or any movement in society that differs with that longstanding decision.

My point is that we have a tremendous split, and you have narrowed it down to who may tell the woman whether or not she may or may not make a choice; I have narrowed it down to the moral decision of life. That is your right and I think that is my right to look at it.

So, my point is, it seems to me proper that the Court would consider and continue to consider this issue, when there is a great divergency in our society as to the moral issue or as to the issue that you point out as to who, if anyone, should restrict a woman's right.

Ms. WATTLETON. Well, the Court in 1973 pointed out the moral diversity in our society, and it was for that reason it felt that it should be left to the individual to decide. We think that was properly decided—

Senator DECONCINI. I understand.

Ms. WATTLETON [continuing]. And that it continues to be properly decided. That is not to say that when we have established rights, that there will not be continuing public debate or, for that matter, political debate, although we think that is inappropriate, and that is what we are arguing here today.

Senator DECONCINI. I understand.

Ms. WATTLETON. Now, the comment with respect to why there may have been so many votes in the Senate with respect to a constitutional amendment, I think that was a very different time and I think that there were many politicians and Senators who were very concerned about the politics of the issue, not that they may have felt that it was right to, in fact, support a constitutional amendment.

So, while I respectfully submit that we can acknowledge your view on this, Senator, we also recognize, and I think we all have an obligation in public life to recognize, that there is wide-ranging diversity on this from a religious perspective, from a moral perspective, from an economic perspective, that really simply cannot be resolved in the political process—

Senator DECONCINI. Well, that may be—

Ms. WATTLETON [continuing]. And that is why we believe that the Court's wisdom to remove it from that process was correct.

Senator DECONCINI. You may be correct that you cannot resolve it, but the politics is not going to end attempting to resolve it, in my opinion, neither the political process nor the judicial process is going to end, because of that difference of moral conviction or legal conviction or personal conviction, whatever you care to call it. It is going to continue, which gets me to the point of why Judge Souter would make such a statement regarding racial discrimination as it relates to school and the *Brown* case, and would not want to at least satisfy you in the area of abortion, even though you said he did not have to state his position on *Roe v. Wade*. It seems to me quite a distinction, and it is foolish for us not to think and understand that this is going to continue for a long time.

Mr. MICHELMAN. But, Senator, we are really concerned about the principles that underlie *Brown* and the principles that underlie *Roe v. Wade* and the whole area of privacy, that we were concerned to hear Judge Souter discuss, and he refused, after I thought very

thoughtful questioning by Senators Biden and Kennedy and Metz-enbaum and Simon and others, he refused to discuss that area. It is the principles that we are concerned about—

Senator DECONCINI. And my point—

Ms. MICHELMAN [continuing]. And I think it is appropriate, without getting into how he would rule on a specific case before the Court, to discuss the principles involved, and I—

Senator DECONCINI. I heard him a little differently, he did discuss the principles, but he did not go far enough for you to be comfortable that he would satisfy your position. That is how I heard it.

Quite frankly, as someone who differs with you on that view, on that principle, it seems to me that he left an impression here that his mind was not made up. I do not think he sat there under oath and would deliberately lie to us, if his mind was made up. Second—

Ms. WATTLETON. But I—

Ms. MICHELMAN. But the point—

Senator DECONCINI. Excuse me, and then I will let you respond. Second, he left me with the impression that he is very cognizant of the importance of the decision, as well as its history. He also recognizes what the law was, by virtue of his experience sitting on a hospital board. He did not indicate his personal view, but he showed a willingness to stand by the law. This leaves me with some impression that his experience is going to be part of his thinking process.

If you do not get Souter from this President, who, since he has been Vice President, I might add, has taken a very different view on the issue of reproductive right to choose, who better can you get?

I find that this man is quite qualified and quite open, more open, quite frankly, than Scalia, based on what I knew about Scalia—but for other reasons we did not go into Scalia—and certainly different than Judge Bork.

Mr. WATTLETON. What Mr. Souter did not say troubles us, as much as what he said, Senator, and the fact that he was prepared to comment on the morality of the death penalty and white collar crime, and not prepared to comment even on whether the Constitution protected the right not to procreate was eminently disturbing.

We were not comforted by his vote on the hospital board, because he made it clear that his vote emanated from his recognition that abortion was the law of the land and, as such, the hospital, as a provider of services to the community, should permit its facilities to be used for abortions.

Senator DECONCINI. Yes, I understand that distinction. The only—

Ms. WATTLETON. That in no way, in the face of declining to comment on whether he felt the Constitution extended to the protection not to procreate comforted us.

I think that it also, from our view, is analogous to—there are some parallels that can be drawn between this issue and other questions that may or may not come before the Court.

Senator DECONCINI. Including *Brown v. Board of Education*?

Ms. WATTLETON. Racial discrimination is very much still before the Court, on many issues, on many aspects. Certainly, the *Grove City*—

Senator DECONCINI. Certainly not school discrimination or integration—

Ms. WATTLETON. School discrimination in the form of busing—
Senator DECONCINI. School integration, excuse me.

Ms. WATTLETON [continuing]. In the form of busing is a question, I know, because I have a personal family member who is integrally involved, and desegregation and implementation even to this point.

Senator DECONCINI. You think school integration is still an issue, in this country—

Mr. WATTLETON. I think that school integration is still an issue.

Senator DECONCINI [continuing]. Whether or not separate but equal is still before us?

Mr. WATTLETON. I think that there is no question that it is still an issue in this country.

Senator DECONCINI. I disagree with you.

Ms. WATTLETON. It may not be expressed in the direct ways that perhaps we saw before the end of Jim Crow laws, but it is still a major issue in this country.

Senator DECONCINI. Do you know any organizations that promote separate but equal schools today, or any resolutions that have been introduced in the Congress—

Ms. WATTLETON. We have a State legislator who is running for this great august body who promotes such an ideal.

Senator DECONCINI. And do you think he has a great following behind him, that he is—

Ms. WATTLETON. He has managed to get himself elected to a State legislature, and I think that it does not matter whether he has as great following or not.

Senator DECONCINI. You think—

Ms. WATTLETON. We do not have a great following in this country to end legal abortion, but still it is a matter of the political process that we must be concerned and worried about—

Senator DECONCINI. So, you think—

Ms. WATTLETON [continuing]. That a narrow minority can, in fact, wreak tyranny on the majority.

Senator DECONCINI. Do you think Mr. Duke in Louisiana symbolizes a great movement similar to the right to life movement and those that disagree with your position on abortion, do you think there is a great similarity there?

Ms. WATTLETON. The point that I made was that I believe that a small group of people or a small segment of our society can, in fact, have an impact on the process and that the segment of our society who would like to see legal abortion become, once again, illegal is such a small segment. It is not the great majority of the American people who want to see that.

Ms. MICHELMAN. Senator, I would agree with you, that the majority of Americans absolutely—a majority, I would say, you know, Americans are committed to the principle of equal education. I mean there are some like David Duke.

Senator DECONCINI. I think so, too.

Ms. MICHELMAN. What we are saying is that *Roe v. Wade* and the principles involved in *Roe*, the dignity, the integrity of the right of the individual to make this very personal and important

decision should be as well accepted in area of law as *Brown v. Board of Education*.

Senator DECONCINI. Well, that is—

Ms. MICHELMAN. And if there were any question about Judge Souter's views in *Brown*, I think, without giving us assurances, he would have much more difficulty being confirmed and that is what we—

Senator DECONCINI. I guess that is where I disagree with you, I think there is a great distinction here, because, quite frankly, I think the majority of Americans, are opposed to abortion, even though the polls show that a majority feel that choice should be left to the individual. So, to me you have a great weight of authority and great following here in opposition to the moral issue, maybe not the *Roe v. Wade* decision in and of itself, far different than *Brown v. Board of Education*, but that may be just a difference of opinion.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

The Senator from Iowa, Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman.

Thank you, both of you, for being good witnesses and for your testimony. I have a different view than you do and I hope you can respect my view, as I respect your view.

Let me start by saying that I have no more insight into this question I am going to ask you than anyone else. I am worried, too, but for different reasons, as you can imagine.

What if the nominee, Mr. Souter, would have said that he thought that *Roe v. Wade* was wrongly decided, but that he would uphold it, as a matter of precedent, as a matter of settled law? Would that have been good enough for you and your organization?

Ms. MICHELMAN. It certainly would have been a much stronger statement and it would have reassured us more than we have now. If he categorically made the statement that he would uphold *Roe v. Wade*, we would feel much differently about his position on the Court.

Senator GRASSLEY. What is the history of both of your organizations, when it comes to Supreme Court nominees? I do not know the answer to this, either, but my supposition, I have a supposition—has either of the groups you represent ever supported a nominee to the Supreme Court?

Ms. WATTLETON. We have not actively supported a nominee to the Supreme Court. This is the second or, I should say, the third nominee that we have opposed.

Ms. MICHELMAN. We have—I think we have in the past, but I have not been with NARAL more than 5 years. We have been concerned over the last 10 years with an administration's deliberate use of the judicial process, judicial appointment process to explicitly reach the goal of overturning this right, of taking away this right, so we have been very careful in scrutinizing the nominees to come before the Court in the last 10 years.

Senator GRASSLEY. So, in the case of Kennedy, Scalia, O'Connor, Rehnquist, you did not support them. Do you—