

The CHAIRMAN. Again, you are all going about twice the time to three times the time. I understand, but pretty soon what is going to happen is, just like this cumulative effect upon nominees, there is going to be a cumulative effect upon witnesses.

And, Judith, you are getting the cumulative effect of this panel.

Ms. LICHTMAN. I believe my statement will come in under 5 minutes.

The CHAIRMAN. Thank you very much.

Ms. LICHTMAN. I believe that wholeheartedly.

The CHAIRMAN. All right, I always believe you, so I will believe you believe it.

#### STATEMENT OF JUDITH L. LICHTMAN

Ms. LICHTMAN. I respectfully request to submit to you a longer statement, if you will, and, as well, to put into the record the report that the Women's Legal Defense Fund did.

The CHAIRMAN. Without objection, it will be placed in the record.

Ms. LICHTMAN. Mr. Chairman and members of the committee, I come here reluctantly, for it is not easy to testify in opposition to a judicial nominee. When these hearings opened, it was clear that the record cast grave doubt on Judge Clarence Thomas' commitment to affirm and support fundamental principles of equal employment opportunity, constitutional protections against gender discrimination, and reproductive freedom.

After 5 days of testimony from the nominee, our alarm has increased. The next U.S. Supreme Court Justice will help determine the outcome in cases that will affect our lives well into the next century. Judge Clarence Thomas' record is deeply troubling, because it includes an extensive pattern of disregard for principles of fundamental importance to women and their families.

In his testimony, Judge Thomas has intensified, rather than allayed, our concerns. While trying to distance himself from statements and positions articulated during 10 years as a public figure, Judge Thomas has alternately suggested that his record is not relevant to this inquiry or that he cannot be held to words he did not mean or to references he did not thoroughly explore. We urge this committee not to allow Judge Thomas to selectively choose which portions of his record are relevant to conformation.

Judge Thomas has tried to use judicial impartiality to justify his refusal to respond to questions on women's fundamental right to reproductive choice, while failing to apply the same standard to other constitutional issues. This tactic blurs the distinction between prejudging a specific case that may come before the Court and discussing the constitutional analysis applicable generally in cases of that type.

A woman's ability to enjoy all other personal liberties guaranteed by the Constitution depends upon her freedom to make personal decisions about procreation. Judge Thomas' professed lack of opinion on the constitutional right to choose—particularly in light of his record—strains credulity.

But reproductive choice is not the only area in which Judge Thomas has been less than forthcoming. He did not provide adequate assurance that he is committed to striking down invidious

sex-based discrimination, failing to make a commitment to apply a rigorous level of scrutiny to sex-based distinctions in the law. It is not clear that this nominee is willing or able to ferret out and reject stereotypes reflected in the law.

Under Judge Thomas' leadership, the EEOC failed to prevent employers from excluding women of child-bearing age from certain high-paying jobs, because hazards associated with those jobs could harm their fetuses they might carry. These policies allowed employers to selectively discriminate against women workers, rather than cleaning up the workplace for all employees, women and men. Several women were sterilized, so that they could keep their jobs under these "forced-sterilization" or "fetal protection" policies. The analysis finally adopted under Judge Thomas' leadership would have allowed employers to continue to exclude all fertile women of child-bearing age from these jobs. Fortunately, the Supreme Court soundly rejected Judge Thomas' analysis.

Judge Thomas also has attempted to distance himself from his praise for academic Thomas Sowell's analysis of working women, suggesting that he did not necessarily adopt or agree with all of Sowell's conclusions. Yet, in a 1987 interview, Judge Thomas referred to Sowell as "not only an intellectual mentor, but my salvation as far as thinking through these issues." This is particularly significant, because Mr. Sowell's commentary—lauded in 1988 by Judge Thomas as a "much-needed antidote to clichés about women"—is riddled with just the sort of stereotypes that the Court has consistently rejected as constitutionally repugnant.

Since his nomination, Judge Thomas has abandoned candor and consistency and offered little real assurance of his commitment to protecting women's freedom and equality. Judge Thomas either is running from his record or he has not carefully thought through critical issues that have enormous significance for Americans. Either way, it is evident that a lifetime appointment on our Highest Court for Judge Clarence Thomas would pose a danger to the economic security and personal freedom of American women.

The Court's vigilance is needed now more than ever, as gender-based discrimination still tarnish the American dream. The stakes simply are too high to entrust our constitutional future to a nominee like Clarence Thomas, who does not demonstrate unwavering commitment to the law's essential guarantees of individual rights and liberties.

I urge you to refuse to confirm Judge Thomas to the U.S. Supreme Court.

I went over, and I apologize. Thank you.

[Prepared statement and report follow.]