

The CHAIRMAN. Dr. Bishop.

STATEMENT OF JAMES J. BISHOP

Mr. BISHOP. Thank you very much, Chairman Biden. To you, to other members of the Judiciary Committee, and particularly to my own Senator Metzenbaum, I thank you for allowing me to testify today on behalf of the nomination of Judge Thomas.

The CHAIRMAN. By the way, Dr. Bishop, let me interrupt you—and I apologize for not mentioning this earlier. Senator Metzenbaum asked me to extend his regrets. He is in the Gates hearing for the new director of Central Intelligence, and that is why he is not here, and he apologizes for not being here to welcome you.

Mr. BISHOP. Thank you very much. I understand that it has been difficult at times trying to figure out which TV program to watch—the one of these hearings or the one on the Gates nomination, and our Senator is involved in both of those. But thank you.

I am here on behalf of Americans for Democratic Action, a national, liberal, multi-issue public policy organization. We in ADA share nearly all of the concerns that have been addressed so eloquently by other groups. But at this time, in the interest of brevity, I would like to confine my remarks to three specific considerations and to ask, Senator, if my extended remarks could be submitted for the record.

The CHAIRMAN. They will be.

Mr. BISHOP. First, reasoned and principled discharge of the Senate's constitutional advice-and-consent role requires vigorous application of a confirmation standard that legitimately takes into account, among other things, a nominee's ideology.

Second, and related to the first point, in determining whether Judge Thomas would faithfully and fairly discharge his duty of constitutional and statutory interpretation, his entire record at the Office of Civil Rights and the EEOC, as well as his writings and other activities, not only should, but must be considered. That record demonstrates that Judge Thomas does not satisfy the standard for confirmation that this committee and the Senate must apply.

Finally, Judge Thomas' frequent strident and hostile public pronouncements on various civil rights, social issues and programs reflect a genuine insensitivity and indifference to the plight of individuals who have not been as fortunate as he in their attempts to overcome barriers of discrimination, poverty, and intolerance.

There is simply no basis for concluding on Judge Thomas' record that he can be counted on to champion the rights of the disadvantaged and the disenfranchised.

At the beginning of these hearings, a majority of this committee expressed serious doubts regarding Judge Thomas. Those doubts seem to persist. Some members of this committee have referred to him as an enigma. These doubts, these concerns must be resolved in favor of the interests and the needs of the entire country, not simply those of the nominee or the executive branch.

Throughout Judge Thomas' testimony, he has steadfastly attempted to run away from his public record. He has repeatedly contended that many of his more pointed and abhorrent public pro-

nouncements were throw-away lines or comments designed to invite debate.

The committee should reject Judge Thomas' sweeping request that he start a clean slate for two reasons.

First, a failure to do so would invite an essentially standardless review of his fitness to receive life tenure on the Nation's highest court. Never has a Supreme Court nominee asked the American people, and this committee, and the Senate to overlook so much.

Second, Judge Thomas' efforts to nullify his past public records ignore the fact that, as EEOC chair, he was not only a policymaker; he was first and foremost the Nation's chief civil rights law enforcement officer. He was sworn to uphold and to enforce a host of antidiscrimination laws.

In addition to his law enforcement capacity, Judge Thomas was also a quasi-judicial officer. Indeed, while Chair, the EEOC consistently and successfully argued that it was a quasi-judicial agency, and as such its proceedings are entitled to various of the common law protections that prevail in judicial actions.

Because of his dual role as an enforcement officer and a quasi-judicial officer, his record should be held more accountable than that of a mere policymaker. But in those roles, it should be noted that he improperly expressed opinions on matters that were pending before the Commission for consideration. Indeed, his willingness to do so is in marked contrast to his reserve on many items before these proceedings.

For example, early in his tenure as EEOC chair, Judge Thomas publicly criticized a major pending systemic title VII lawsuit that the EEOC was then litigating against Sears Roebuck and Co. In his comments, he disparaged statistical evidence—

The CHAIRMAN. Sir, excuse me. I hope you don't have another 5 minutes' worth of material, because you are beyond the time; so if you'd get ready to summarize, I'd appreciate it.

Mr. BISHOP. No, we do not, Senator. Thank you.

Because of that, Judge Greene, a respected jurist, openly castigated the EEOC for its failure under Thomas to move forward in revising admittedly unlawful regulations along the way.

Senator I would like to conclude by indicating that we in ADA would also like to point out that despite the great strides that have been made, it is sad to say that the need for affirmative action persists in this Nation. A recent test by the Urban Institute on employment indicates that blacks, regardless of their backgrounds, when all other factors are taken into consideration, fared less in employment-securing than whites who were tested.

As an educator, as a scientist, as an activist, and also, like Judge Thomas, as an African-American, I have witnessed the need for affirmative action programs, especially those for students from economically disadvantaged backgrounds.

We in ADA at this point believe that the committee has no choice but to reject Judge Thomas' nomination. His speeches and writings; his frequent attacks on Congress, the courts and Federal judges; his intolerance of viewpoints that differ from his; his expressed admiration for extremist causes; his apparent disdain for the Nation's civil rights leaders; his contempt, at times, for con-

gressional records—all bespeak an ideological extremism that ill-suits a nominee for this court.

Equally significant, his confirmation would serve primarily to solidify a block of such extremism on the court and would ensure its perpetuation for decades to come. The Senate would abrogate its constitutional responsibility if it were to allow this nomination to occur.

On behalf of ADA, I thank you very much.

[The prepared statement of Mr. Bishop follows.]