Senator KENNEDY. Thank you very much.
Mr. Ryder?

STATEMENT OF CHRISTOPHER F.D. RYDER

Mr. RYDER. Mr. Chairman and members of the committee, with your permission, I would like to submit Supreme Court Watch's full written testimony for inclusion in the record.

My name is Chris Ryder. I am an attorney with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, in New York City, and appear before you today on behalf of Supreme Court Watch, a project of the Nation Institute.

Supreme Court Watch is dedicated to research on and public education about decisions and trends of the Supreme Court. For many years, Supreme Court Watch has analyzed and reported on the judicial records of Supreme Court nominees, with particular attention to their dedication to the protection of civil rights and civil liberties.

Supreme Court Watch's review of Judge Souter's record and testimony leaves it with questions and concerns in the areas of due process and equal protection, fourth, fifth, and sixth amendment protections, reproductive choice, separation of church and state, and discrimination on the basis of race, gender, age, and sexual preference. Indeed, Supreme Court Watch is troubled that Judge Souter's record reflects a relatively narrow and technical regard for the law with respect to civil liberties.

Although by his record and testimony, Judge Souter appears well equipped to handle the complex, technical legal issues that confront a Supreme Court Justice, Supreme Court Watch remains concerned that he has demonstrated no clear commitment to upholding and ensuring the civil rights and civil liberties of all Americans. Consequently, Supreme Court Watch believes that the Senate should decline to confirm his nomination.

One basis for this conclusion lies in Judge Souter's judicial record. Although he has testified about his concern for the victims of crime, neither his record nor his testimony fully appreciates the distinction between effective law enforcement and upholding the constitutional guarantees implicated in criminal jurisprudence.

For example, Judge Souter dissented from a majority opinion of the Justices rejecting a proposed law permitting the disposal of blood alcohol evidence, without giving the suspect an opportunity to test the evidence independently. Judge Souter saw no due process interest in requiring that the State preserve this evidence for possible challenge.

Further, Judge Souter's views on the writ of habeas corpus, of profound importance to the Founding Fathers, are unduly restrictive. Judge Souter's view that Federal courts should not charge State courts retroactively with law which, ion his words, was not there to follow at the time of the State court's judgments, does not reflect a broader vision that the same constitutional rights identified in later Federal decisions were fully present at the time of the State judgments.

In the *Colbath* case, Judge Souter limited the protection afforded rape victims by New Hampshire's rape shield law, and in so doing,

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even wrote that the victim might have alleged rape as a way to excuse, his words, "her undignified predicament."

Judge Souter's due process and equal protection analysis also raises concerns about his commitment to furthering civil rights and civil liberties. In *Bosselait,* Judge Souter's cramped equal protection analysis disregarded the compelling facts of this case, and his testimony has ont allayed any of Supreme Court Watch's concerns regarding that position.

Supreme Court Watch is also concerned that Judge Souter joined in an opinion refusing to follow numerous States in rejecting the use of sexual orientation as a bar to being an adoptive or foster parent.

Perhaps in his prior role, Judge Souter did not have ample opportunity to demonstrate a commitment to extending the Constitution's guarantees to each person in this Nation. However, only last week, in discussing literacy tests, he characterized the potential disenfranchisement of countless Americans as nothing more than "a mathematical statement."

Moreover, he testified that, at the time he was attorney general, he personally agreed with New Hampshire's literacy restrictions, although he now disagrees with those positions.

Supreme Court Watch fears, as should this committee and the Senate as a whole, the consequences of entrusting the guarantees of the Constitution to a man with two circumscribed division of the democratic process.

Indeed, now, as the Congress has felt the need to consider civil rights legislation specifically overruling certain recent Supreme Court holdings, the Senate should be particularly sensitive to this nominee's constitutional vision.

The second area of Supreme Court Watch's concern with this nomination is Judge Souter's failure to respond to a significant quantity of legitimate questioning by this committee. Where, as here, the candidate's judicial record is silent or raises concerns on important matters, the candidate's testimony becomes especially significant. Judge Souter has not been as forthcoming as necessary, and was inconsistent in his choice of subject matters about which to decline to testify.

In a concurrence, Judge Souter went out of his way to express concern for hypothetical physicians' personal feelings about abortions. However, Judge Souter has refused to express any concern about the real and present legal challenge to well-established Supreme Court precedent guaranteeing a woman's constitutional right to choose, even though he appears to be unconstrained with respect to such equally vital and unsettled areas as separation of church and state.

Judge Souter was willing to discuss *Lemon* v. *Kurtzman* and Judge O'Connor's views on applying its reasoning to recent cases before the Supreme Court. He expressed his approval of the result in *Employment Division of Oregon,* a case decided this year, affirmed the principles underlying that decision and specifically agreed with Justice O'Connor's concurrence.

Judge Souter gave this testimony, despite his belief at the time that a motion for rehearing in that case was pending before the Court, although we believe that that motion was denied in June.

This his inconsistent with his refusal to discuss either the constitutional principles underlying *Roe* v. *Wade* or the constitutionality of an intervention in the Korean conflict over 30 years ago, although it should be noted that he modified his position on the intervention on Monday, to say that he did not know whether it was consitutional.

Moreover, Judge Souter declined to discuss before this committee his personal view of the morality of the right to choose, in contrast, Justice O'Connor did so and assured the committee that it would play no role in her legal analysis.

Judge Souter has stated his personal views on other issues, such as the morality of the death penalty and white collar crime. It is difficult to reconcile his apparent willingness to discuss certain cases, constitutional principles and personal viewpoints, but not others.

Mr. Chairman, to conclude, Supreme Court Watch believes that Judge Souter's record raises numerous concerns regarding his commitment to the protection of civil rights and liberties. His testimony before this committee has not sufficiently allayed these concerns.

At a time when major constitutional issues hang in the balance, Supreme Court Watch cannot, on the available record, support this nominee.

Thank you.

[The prepared statement of Mr. Ryder follows:]