

TESTIMONY
concerning the nomination of RUTH BADER GINSBURG
to be a Justice of the U.S. Supreme Court

by

HOWARD PHILLIPS
Chairman
The Conservative Caucus
450 Maple Avenue East
Vienna, Virginia 22180

before the

United States Senate
Judiciary Committee
Washington, D.C.

submitted
Wednesday, July 21, 1993

Mr. Chairman, Members of the Committee, my name is Howard Phillips. Thank you for giving me this opportunity to testify on behalf of The Conservative Caucus with respect to the nomination of Ruth Bader Ginsburg to be a Justice of the Supreme Court of the United States.

On Monday evening, June 14, I saw Senators Orrin Hatch and Patrick Leahy on CNN talking with Larry King about the nomination of Mrs. Ginsburg, whose appointment had been announced earlier that day. Both Senator Hatch and Senator Leahy were effusive in their praise of Mrs. Ginsburg, and Senator Hatch opined that Mrs. Ginsburg would, in all likelihood, be confirmed by a Senate vote of 100 to nothing.

It is particularly interesting to note that Mrs. Ginsburg's nomination seems also to be warmly appreciated by Ross Perot who, according to published reports, has for many years benefited from the professional counsel of Mrs. Ginsburg's husband, Professor Martin Ginsburg. Mr. Perot reportedly thought so highly of Professor Ginsburg that in 1986 he contributed \$1 million in his honor to Georgetown University.

And as Mr. Perot would put it, "isn't it interesting" that Mrs. Ginsburg's nomination occurred only a number of days after Mr. Perot and David Gergen had communed on the island of Bermuda, immediately prior to Mr. Gergen formally joining President Clinton's White House staff?

It is indeed a small world.

Whenever all one hundred Senators, Republican and Democrat alike, agree on something, it's time for ordinary citizens to wonder why. And when Ross Perot is also part of the "amen chorus", it's time to ask "who owns the franchise on happiness pills?".

Are there no issues at controversy which might stir a serious debate? Are there no conflicts in philosophy among the members of the Senate, which is so often characterized "as the world's greatest deliberative body"?

Or is it possible that for various reasons, perhaps even including gender or ethnicity, some nominees are beyond substantive criticism. In such instances, it may even be "politically incorrect" to question the worthiness of a nominee who might otherwise be controversial.

When we are told that a unanimous vote is in the offing, the American people have the right to ask in all seriousness: "Do all Senators share the same standard of judgment?"

Or does it seem politically awkward for some to openly express their privately held concerns by voting against confirmation of a nominee who has benefited from uncritical media coverage.

Presuming that standards of judgment do vary, is it not surprising that a virtually unanimous coincidence of conclusion seems to have emerged with respect to this nomination---as it has on certain prior occasions---but not when Judge Bork and Judge Thomas were under consideration?

Is it not possible that some views are not being adequately represented in what should be a great debate on this important lifetime appointment?

On September 19, 1990, when you accorded me the opportunity to testify in opposition to the nomination of David Souter to be a Justice of the Supreme Court, I asserted that "The overarching moral issue in the political life of the United States in the last third of the 20th Century is, in my opinion, the question of abortion. Is the unborn child a human person, entitled to the protections pledged to each of us by the Founders of our Nation?"

The first duty of the law---and of the civil government established to enforce that law---is to prevent the shedding of innocent blood. As Notre Dame law professor Charles Rice has pointed out, "This is so, because the common law does not permit a person to kill an innocent non-aggressor, even to save his own life."

My objections to Justice Souter were premised not only on his legal philosophy, but on his personal history of having facilitated the liberalization of abortion policies at two hospitals for which he was an overseer.

I presented facts which established without rebuttal that Mr. Souter's posture of neutrality on this great question of life and death was contradicted by his personal complicity in the performance of many hundreds of abortions at Concord Memorial Hospital and Dartmouth Hitchcock Hospital in New Hampshire.

I have no reason to believe that Mrs. Ginsburg has personally caused human lives to be extinguished, as was clearly the case with

David Souter when President Bush put his name forward. Nor do I in any other way challenge Mrs. Ginsburg's nomination on grounds of personal character.

I do, however, urge that Mrs. Ginsburg's nomination be rejected by the Senate on grounds that the standard of judgment she would bring to the Supreme Court on the overriding issue of whether the Constitution protects our God-given right to life, is a wrong standard.

Instead of defending the humanity and divinely imparted right to life of pre-born children, she would simply be another vote for the proposition that our unborn children are less than human and that their lives may be snuffed out without due process of law, and with impunity.

As a matter of practice and belief, Mrs. Ginsburg has failed to acknowledge or recognize that the first duty of the law is indeed the defense of innocent human life.

If it is Mrs. Ginsburg's position---and it does seem to be her view---that the extinguishment of innocent unborn human lives, without due process of law, is not only Constitutionally permissible, but that those who engage in the practice of destroying unborn lives should enjoy Constitutional protection for doing so, she may have a perspective consistent with that held by members of this committee, but it is not one which is consistent with either the plain language of the Constitution or with the revulsion toward abortion which prevailed at the time when our Constitution was drafted and ratified.

While Mrs. Ginsburg has disagreed with the reasoning in *Roe v. Wade*, at no point has she expressed dissatisfaction with the millions of legal abortions which were facilitated by that decision, even though she would have argued that "discrimination" rather than "privacy" was the core issue.

By Mrs. Ginsburg's logic, it is unconstitutional discrimination to deny females the opportunity to extinguish any lives which may result from their sexual conduct. Her argument would seem to be with our Creator, inasmuch as he did not equally assign the same childbearing function to males. Consistent with her warped perspective, Mrs. Ginsburg, as a litigator, argued that pregnancy should be treated as a disability rather than as a gift from God.

Indeed, in a 1972 brief, Mrs. Ginsburg argued that "exaltation of

woman's unique role in bearing children has, in effect, restrained women from developing their individual talents...and has impelled them to accept a dependent, subordinate status in society."¹

Moreover, in 1984, in a speech at the University of North Carolina, Mrs. Ginsburg went so far as to maintain that the government has a legal "duty" to use taxpayer funds to subsidize abortion.

The question of personhood, and of the humanity of the pre-born child is at the very heart of the abortion issue---in law, in morals, and in fact.

Justice John Paul Stevens expressed his opinion in the 1986 *Thornburgh* case that "there is a fundamental and well-recognized difference between a fetus and a human being". He admitted that "indeed, if there is not such a difference, the permissibility of terminating the life of a fetus could scarcely be left to the will of the state legislatures."²

In the *Roe v. Wade* decision, the Supreme Court indicated that if the unborn child is a person, the State could not allow abortion, even to save the life of the mother. In fact, in the majority opinion deciding *Roe v. Wade*, the Supreme Court said that, if the "personhood [of the unborn child] is established, [the pro-abortion] case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the [Fourteenth] Amendment."³

Although my reasoning is different, I agree with Justice Stevens when he argues that, if the unborn child is recognized as a human person, there is no Constitutional basis to justify Federal protection of abortion anywhere in the United States of America. Indeed, on the contrary, if the pre-born child is, in fact, a human person created in God's image, premeditated abortion is unconstitutional in every one of the fifty states.

Justice Stevens bases his reasoning on the Fourteenth Amendment. I base mine on Article IV, Section 4 of the Constitution, which stipulates that "The United States shall guarantee to every State in

¹ *Struck v. Secretary of Defense*, 1972 (*The New Republic*, 8/2/93, p. 19)

² Supreme Court decision 6/10/86: *Richard Thornburgh v. American College of Obstetricians and Gynecologists*, Justice John Paul Stevens concurring

³ Supreme Court decision, 1/22/73: *Roe v. Wade*, Justice Harry Blackmun writing the majority opinion

this Union a Republican Form of Government...." What distinguishes a republic from a democracy is the fact that, in our republic, due process protections of our God-given rights to life, liberty, and property cannot properly be snuffed out by legislative whim---whether reflected in the vote of a simple majority, a super majority of two-thirds or three-fourths, or even by unanimous vote.

Mrs. Ginsburg should be closely questioned by members of the Judiciary Committee concerning whether she believes the unborn child is a human person created in God's image.

If this is not her understanding (and it does not seem to be), she should be asked to indicate by what logic she reaches a contrary conclusion.

The Constitution of the United States accords this body the right to provide advice and consent with respect to the judicial nominees of the President. As I read the Constitution, you can confirm a nominee for any reason you choose. Moreover, you can reject a nominee for any reason you choose.

There are two categories of review which, in every case involving a nominee to our highest court, ought to be part of the confirmation process: One, is the nominee a person whose character, judgment, and ability is compatible with the office? A second factor to be considered in the case of Supreme Court nominees is whether the nominee can reasonably be expected to render judgement in a manner which is faithful to the Constitution, taking care to honor its specific words rather than to rely on interpretations of the Constitution which are clearly inconsistent with its plain meaning.

It has been reported⁴ concerning Mrs. Ginsburg that "Several of her writings provide a glimpse into her approach to the Constitution. In an article in *Law and Inequality: A Journal of Theory and Practice*, she wrote that 'a too strict jurisprudence of the framers' original intent seems to me unworkable.' She went on to write that adherence to 'our eighteenth century Constitution' is dependent on 'change in society's practices, constitutional amendment, and judicial interpretation.' Furthermore, in the *Washington University Law Quarterly*, she remarked that 'boldly dynamic interpretation departing radically from

⁴ *Legal Times*, 7/12/93, p. 19, "An Activist in Moderate Garb" by Mark R. Levin and Andrew P. Zappia; *Law and Inequality*, Vol. 6, Number 1, pp. 17-25, May 1988

the original understanding' of the Constitution is sometimes necessary."⁵

"In a speech this March at New York University, Judge Ginsburg advocated using the Supreme Court to enact 'social change.'....

"...without taking giant strides...the court, through constitutional adjudication, can reinforce or signal a green light for social change."⁶

It is not surprising that different people might reach different conclusions about the intent of the Framers. But it is quite another thing for a prospective Justice of the Supreme Court to presume to substitute his or her own opinion for the plain meaning of the original document as lawfully amended. I hope the members of the committee will probe more deeply into Mrs. Ginsburg's present view of the opinion she expressed in that article. If she is unwilling to repudiate it credibly and entirely, then, even aside from her apparent failure to recognize the duty of the state to safeguard innocent humanity, she would seem to have disqualified herself from a position in which she is expected to be a guardian of the Constitution. Otherwise, a vote to confirm Mrs. Ginsburg becomes a vote to empower a permanent one-woman Constitutional Convention which never goes out of session.

Indeed, in view of the position taken by Mrs. Ginsburg that it is the duty of Supreme Court justices to disregard the plain words and intentions of the Constitution, it is particularly important that her personal opinions be closely scrutinized.

As you know, it is the practice of judges below the Supreme Court level to indicate deference to the decisions of the Supreme Court, and to avoid the appearance of competing with the Supreme Court in breaking new Constitutional ground.

There are those who argue that Mrs. Ginsburg's performance as a judge of the U.S. Court of Appeals in the District of Columbia stands in clear contrast with her role as advocate when she was in private practice and when she functioned as general counsel of the American Civil Liberties Union. But, it would be a mistake to conclude that

⁵ *Legal Times*, 7/12/93, "An Activist in Moderate Garb" by Mark R. Levin and Andrew P. Zappia: *Washington University Law Quarterly*, 1979 Volume, beginning p. 161.

⁶ Terry Jeffrey, *The Washington Times*, 7/20/93, p. F4

Mrs. Ginsburg's performance on the Court of Appeals is evidence that she has abandoned her previous perspective or philosophy.

The clear problem is that, at least at one point, as a mature adult, a law school graduate and a seasoned attorney, Mrs. Ginsburg expressed the view that it was not only the privilege, but the duty, of Supreme Court Justices to become supreme legislators, supplanting the Founding Fathers in determining the scope and meaning of our organic law, the Constitution of the United States.

For this reason, Mrs. Ginsburg's views on virtually every subject which might conceivably be addressed by the Supreme Court are relevant to the consideration of this body.

Of course, it is my view that a Supreme Court nominee who sees her role as that of supreme legislator should, ipso facto, be disqualified. But, I have no doubt that there are many in this body who, presuming that they will agree with Mrs. Ginsburg's policy conclusions, intend to set aside any concerns they might have on that score.

It is, therefore, the particular obligation of those who might disagree with Mrs. Ginsburg's ideology and policy objectives to either oppose her nomination on the basis of such disagreement, or to henceforth cease their personal professions of conviction on those particular issues---whether they relate to abortion, to homosexuality, or to some other issue where Mrs. Ginsburg's philosophical predilections are a matter of public record.

For example, the records of the American Civil Liberties Union disclose that, Mrs. Ginsburg, as a member of the ACLU board, voted to oppose the authority of state governments to preserve laws prohibiting prostitution and homosexuality. She opposed the right of the Federal government to screen out homosexuals from the military, and she even attacked the right of state and local governments to arrest and prosecute adult sex offenders who prey upon the young.⁷

I would argue that those Senators who believe that states and communities have a right of self-defense against the threats to public health and public morals posed by homosexual conduct should act on their professed concerns by voting against the confirmation of Mrs. Ginsburg.

⁷ *Human Events*, 7/3/93, "Ruth Ginsburg's Role With the ACLU" by Bill Donohue

Similarly, if you sincerely believe that homosexual conduct is incompatible with military service, you cannot, conscientiously or consistently, vote to confirm Mrs. Ginsburg---because as an unelected Supreme Court legislator she could be expected to regularly vote to overturn not only your opinion but that of your constituents.

In the same vein, is it not clear that Mrs. Ginsburg's view of the Fourteenth Amendment would preclude any distinctions being drawn on the basis of gender with respect to the assignment of women to combat?

And whether or not Mrs. Ginsburg has expressed, or even developed, a clearly defined view on other issues of Constitutional import, I would suggest that they are worth raising---not just in terms of her philosophical conformity to prevailing opinion, but in seeking to discern her willingness to accord overriding consideration to the original intentions of the Framers.

This committee has, over the years, asked Supreme Court nominees questions in detail on a variety of subjects ranging from contraception to bilingual ballots, but it has not probed in depth the views of the nominees on other issues of Constitutional significance.

By way of illustration, this year, this Senate is scheduled to conduct hearings on the question of D.C. statehood. What is the opinion of the nominee with respect to Article I, Section 8 of the Constitution, which makes clear that, without Constitutional amendment, the District of Columbia must operate as a Federal city under the jurisdiction of laws approved by the Congress?

What is the opinion of the nominee with respect to the Second Amendment? On what basis does she believe that Congress may be authorized to restrict the right of the people to keep and bear arms? Would she concede that the people have a Constitutional right to effective self-defense by bearing arms---a right reserved to them under the Ninth Amendment as well as the Second?

How does the nominee interpret that provision in Article I, Section 8, which extends to Congress---not to the President, not to the GATT, and not to NAFTA---the authority to "regulate commerce"?

The Constitution gives Congress authority "to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures". Our Federal Reserve system is clearly incon-

sistent with this Constitutional provision. What is the nominee's conclusion concerning this?

The First Amendment says "Congress shall make no law respecting an establishment of religion". Do not subsidies to educational and cultural entities inescapably involve the funding of activities which are religious in character? If so, is it not unconstitutional for the Federal government to subsidize such entities, even those which are purportedly secular?

Is it not in conflict with the First Amendment to require taxpayers to subsidize a National Endowment for the Arts, which underwrites some highly parochial views concerning the nature of God and man?

What is her opinion of the wanton destruction of human life in Waco, Texas and in Ruby Creek, Idaho initiated lawlessly by the Bureau of Alcohol, Tobacco and Firearms and by the United States Department of Justice?

Is the nominee willing to literally apply the Tenth Amendment to the Constitution, which states unequivocally that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people?

Mr. Chairman, members of the committee, Mrs. Ginsburg's nomination should be rejected:

As a Justice, she would not safeguard the God-given right to life. She would further subvert it. Freed of the constraints which tend to bind lower court judges to the decisions of the Supreme Court, we are obliged, on the record, to assume she would act on her belief that it is necessary to offer interpretations which depart radically from the original meaning of the Constitution.

And, rather than protect the Constitutional prerogatives of the Congress to set policy, it seems clear that Mrs. Ginsburg would, at least in some crucial areas, seek to establish herself as a "super-legislator".

I urge you to recall the words of Thomas Jefferson who recognized the danger of allowing members of the judiciary to substitute their own preferences for the clear intention of the Framers of the Constitution. In 1804 he warned that:

"...the opinion which gives to the judges the right to decide what laws are Constitutional and what not, not only for themselves in their own sphere of action, but for the legislature and executive also in their spheres, would make the judiciary a despotic branch."⁸

The members of the Senate in general, and of this committee in particular, have a unique responsibility to preserve not only the prerogatives of the Congress in relation to those of the Judiciary, but of the people with respect to the government.

⁸ *The Real Thomas Jefferson*, National Center for Constitutional Studies, Second Edition 1983, p. 497

The CHAIRMAN. I thank you very much for your testimony, and I have no questions. It seems very clear that your statements are crisp and self-explanatory, as were the previous panels', and I have no questions.

I yield to my friend from Utah.

Senator HATCH. Well, I want to welcome all of you here. I appreciate having your testimony. I have to say that your point, Ms. Cunningham, that through all those Reagan-Bush years both of those Presidents were accused of using the litmus test on abortion for the selection of their Supreme Court nominees—it is pretty apparent that they did not, and having known who did the vetting down there, who used to be a staff member of mine, I know they didn't. Yet, in this particular case there is no question that there was an abortion test.

But then again, this President won the election and, frankly, he has picked a Supreme Court nominee and I have to say that I personally disagree with her on this issue, but she is an excellent person and a fine judicial scholar, and I have said other things as well. But I appreciate having your testimony. I think it takes courage to come in and to express your viewpoints and the viewpoints of millions of people out there with regard to some of the problems surrounding this very important issue, and we appreciate having the testimony.

The CHAIRMAN. Senator Heflin.

Senator HEFLIN. I have no questions.

The CHAIRMAN. Senator Feinstein.

Senator FEINSTEIN. I have no questions other than to say I appreciate your point of view. I managed to hear most of the testimony and appreciate it very much.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. I have no questions. I join my colleagues in thanking you for coming in. I think it is very important that this committee hear your views and consider them. Thank you all very much.

The CHAIRMAN. Let me state one thing, if I may, before I dismiss the panel. It is true that during the nomination, if my recollection serves me correctly, the President did say he would, in fact, look for and appoint someone who holds the view that they are, quote, "pro-choice," I think was the phrase he used.

At the time, I publicly criticized that view because I don't think there should be any test. But with regard to the more narrow issue of whether or not this nominee was, to use the phrase the Senator from Utah used, vetted, which is sort of a term of art used up here—you remember those days, Kay—that question was specifically asked of the nominee and answered.

The question was—and I would ask that this be entered in the record, the whole question. I will read part of it:

Has anyone involved in the process of selecting you as a judicial nominee (including but not limited to a member of the White House staff, the Justice Department, or the Senate or its staff) discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question.

and it goes on from there.

The answer to the question by the nominee is,

I repeated on June 14, 1993, just after the President announced his nomination for the Supreme Court vacancy, that a judge is bound to decide each case fairly, in accord with the relevant facts and the applicable law.

It goes on to say,

No such person discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

During the six months prior to the announcement of my nomination, I had no communication with any member of the White House staff, the Justice Department or the Senate or its staff referring or relating to my views on any case, issue or subject that could come before the United States Supreme Court.

[The question and answer referred to follow:]

Question. Has anyone involved in the process of selecting you as a judicial nominee (including but not limited to a member of the White House staff, the Justice Department, or the Senate or its staff) discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully. Please identify each communication you had during the 6 months prior to the announcement of your nomination with any member of the White House staff, the Justice Department, or the Senate or its staff referring or relating to your views on any case, issue or subject that could come before the United States Supreme Court, state who was present or participated in such communication, and describe briefly what transpired.

Answer. I repeated on June 14, 1993, just after the President announced his nomination for the Supreme Court vacancy, that a judge is bound to decide each case fairly, in accord with the relevant facts and the applicable law. The day a judge is tempted to be guided, instead, by what "the home crowd wants" is the day that judge should resign and pursue other work. It is inappropriate, in my judgment, to seek from any nominee for judicial office assurance on how that individual would rule in a future case. That judgment was shared by those involved in the process of selecting me. No such person discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

During the six months prior to the announcement of my nomination, I had no communication with any member of the White House staff, the Justice Department or the Senate or its staff referring or relating to my views on any case, issue or subject that could come before the United States Supreme Court.

The CHAIRMAN. Now, that may be a distinction in practical effect without a difference, but it is not a distinction without a difference as it relates to whether or not the issue that was before us in the past, and will be before us with every nominee while it is included as far as anyone, when asked and nominated or considered or being vetted, is asked a specific position on a specific issue. That is in the record.

I will ask, since the nominee is still under oath for purposes of questions that are submitted to her in writing—although this is the same effect, but for precision reasons and for strict legal reasons, I will ask this question to be submitted, along with the others that are being submitted on other matters, to the nominee so we have on the record from the nominee under oath whether or not the assertion made by her in this questionnaire is precisely accurate.

I thank you all.

Senator HATCH. Could I just add one other thing? I was interested in the Washington Post's editorial—I believe it was today—on litmus tests. The point that needs to be made is that this Senator rejects the concept that any single litmus test should stop somebody from serving on the Supreme Court because if we start deciding who serves there purely on political grounds, then we will politicize that institution which I think means so much to all of us.

It is precisely that position that I think rebuts that editorial because we have had Senators on this committee say that they will not vote for somebody who does not support *Roe v. Wade*, and I think that is wrong. I think that no single issue rises to the dignity of foreclosing the right of people to serve on the Supreme Court, as important as all of you believe this to be and as important as I believe it to be.

Mr. PHILLIPS. Senator, may I respectfully say that while you may choose to vote for or against on any other basis, it is in that same spirit clear from the Constitution that every Senator may, for any reason, choose to confirm or any reason choose to reject.

Senator HATCH. Oh, sure.

Mr. PHILLIPS. And I would argue that the question of equal protection of innocent life, the defense of the unborn, is more important than the color of our hair or the neckties we choose to wear, and that the Supreme Court has, in effect, been permitted to become a supreme legislature.

We are kidding ourselves if we believe that the Supreme Court is not a political body. As Charles Evans Hughes said very eloquently in *Riley* at an early point, the Constitution is what the members of the Supreme Court say it is. I don't happen to agree with that, but that is the prevailing situation.

Senator HATCH. I have made some of those same arguments, but my point is that it is one thing to criticize for litmus tests when people hold candidates or nominees liable for them, and it is another thing to criticize for litmus tests when they don't. Frankly, I don't think that there should be a single litmus test.

Sure, the Supreme Court has its political aspects, but it is the least politicized institution in our society, and I would like to keep it that way as much as I can. I think there is a difference, and it is a significant difference, and personally I felt that the editorial was somewhat anti-intellectual.

Mr. PHILLIPS. The American people have manifested growing dissatisfaction with their political system, with the accountability of that system, and that is because very often those whom they elect to office, professing to take a particular position on a certain issue, in office do not vote in a manner consistent with that. That is one of the reasons I am trying to build a new political party called the U.S. Taxpayers Party.

Senator HATCH. I understand that.

Mr. PHILLIPS. There are a number of Senators in the Republican Party, in particular, who profess to take a strong prolife position who, in fact, know that in voting for the confirmation of Ms. Ginsburg they are voting to advance the cause of abortion, and I think that is a tragedy and, frankly, I think it is a violation of the good-faith commitments which were made to the electorate by them.

Senator HATCH. Well, I respectfully disagree with you on that because I think that the place to make the change is in the legislature, not in the Supreme Court. I think that the place to make the change is in the elected representatives of the people. As you and I both well know, the vast majority of Members of Congress are not on our side on this issue and we have been losing regularly, except with regard to Federal funding of abortion.

So don't try and change the Supreme Court in the sense of politicizing it and electing people who will be prolife. I think that we have got to do is elect people who—by the way, I think you could have started with the President of the United States last time. We now have a President who believes this way and he has picked a person who believes this way, and he has a right to do so and that is the point.

Well, we could argue about it all day. All I can say is the place to change it is in the Congress of the United States, not the Court.

The CHAIRMAN. Thank you, Senator, and I want reiterate what Senator Feinstein said. It is important that your viewpoint be represented, and it is important that the American people hear a different perspective on this issue, and we thank you for being here to do that, and you have all delivered your point of view concisely and well. So thank you very much for being here.

Mr. PHILLIPS. Thank you for your courtesy. We appreciate it.

The CHAIRMAN. Now, our last, but certainly not our least panel is comprised of the presidents of three additional bar associations: California Women Lawyers, Hispanic National Bar Association, and the Association of the Bar of the City of New York. We all know New York is an independent, standing nation in and of itself. That is kind of a joke.

At any rate, every time I say this to Mr.—is it pronounced Feerick?

Mr. FEERICK. Yes, Senator.

The CHAIRMAN. Mr. Feerick, I am always reminded of that poster of one of the leading political figures in American politics of the day, and probably the most dynamic—Mr. Wiesenfeld is here, too? Would he come forward, too? He was on the last panel, but would he come forward as well?

I am reminded of that poster that they sell in New York, which is my favorite city in the country, a picture of this very significant American politician, one of the dynamic forces in American politics today, standing on Seventh Avenue and astride Seventh Avenue. It is a map of the United States, and Seventh Avenue is in stark relief and California is minuscule as he looks out over the Nation, which has always sort of been my view of how most New Yorkers view the world and the Nation. There is New York and then there is the rest. The New York City Bar Association is one of the only city bar associations that asks to testify, and I know its members are clear that from their perspective, it is more important than the New York State Bar Association.

Thank you for your good humor. It is getting late in the process, and I apologize for my digression here.

Angela M. Bradstreet is the current president of California Women Lawyers, which probably has more members than the constituents in my entire State.

Ms. BRADSTREET. That is correct, Senator.

The CHAIRMAN. How many members, Angela?

Ms. BRADSTREET. 30,000, Senator.

The CHAIRMAN. No; our State is bigger than that.

It is the largest women's bar association in America. She is also a partner at Carroll, Burdick and McDonough in San Francisco. Is that correct?

Ms. BRADSTREET. That is correct, Senator.

The CHAIRMAN. Carlos Ortiz is the national president of the Hispanic National Bar and has been before this committee—the bar has been represented here and is one of the premier organizations in the country, and we are delighted to have you here to testify.

John Feerick is the president of the Association of the Bar of the City of New York. He is also the dean of one of the fine law schools in the country, Fordham Law School.

Also from a previous panel—and we apologize if we have confused you, Mr. Wiesenfeld, as to when we were going to ask you to be here, but thank you for being here. I am looking for your bio here as I go through my—anyway, you were a client of the soon-to-be-Justice.

Mr. WIESENFELD. Stephen Wiesenfeld from *Weinberger v. Wiesenfeld*.

The CHAIRMAN. Yes, but we had more information about you as well I was going to read in the record, but if you are satisfied with that description and that introduction we'll let it stand.

Why don't we begin in the order that I have asked you to testify and, Ms. Bradstreet, why don't you begin your testimony. Thank you for coming across the country to be here.

PANEL CONSISTING OF ANGELA M. BRADSTREET, CALIFORNIA WOMEN LAWYERS, SAN FRANCISCO, CA; CARLOS G. ORTIZ, PRESIDENT, HISPANIC NATIONAL BAR ASSOCIATION; JOHN D. FEERICK, PRESIDENT, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK; AND STEPHEN WIESENFELD, FORT LAUDERDALE, FL

STATEMENT OF ANGELA M. BRADSTREET

Ms. BRADSTREET. Thank you, Senator. It has been the thrill of a lifetime.

Chairman Biden, distinguished members of this committee, I am deeply honored to be here on behalf of California Women Lawyers to express our strong support of President Clinton's nomination of Judge Ruth Bader Ginsburg as an Associate Justice of the Supreme Court.

California Women Lawyers is, in fact, the largest women's bar association in the Nation, representing the interests of over 30,000 women attorneys in the State of California.

The CHAIRMAN. Excuse me for interrupting. When you say represent the interests, does that mean there are 30,000 women who are dues-paying members of the bar association?

Ms. BRADSTREET. We have about 10,000 who are actually dues-paying members of our organization, Senator.

The CHAIRMAN. Thank you very much.

Ms. BRADSTREET. By the way, I did get the statistics for your State, if you are interested.

The CHAIRMAN. I am.

Ms. BRADSTREET. Well, I got them from the American Bar Association yesterday, and there are 495 women attorneys out of a total of 2,150.

The CHAIRMAN. Well, 25 percent; we are getting there.

Ms. BRADSTREET. Yes.

Our mission, Senator, is the advancement of women in the legal profession and the complete eradication of gender bias in our society. We are privileged to currently be assisting Senator Feinstein in her tireless work on issues affecting women, and it is a special honor to be appearing before our first senior woman Senator from California.

After a thorough and formal evaluation process involving a review of her legal opinions, cases argued, writings, and interviews with respected peers which examined her intellectual qualifications, judicial temperament, lack of bias, and analytical skills, California Women Lawyers found Judge Ruth Ginsburg to merit the highest rating possible to serve as an Associate Justice.

Judge Ginsburg's contribution as a pioneer of women's rights cannot be overstated, for, as has been noted, she won five of the most important sex discrimination cases that have ever before been argued before the Supreme Court of the United States. Indeed, the case of *Frontiero* has been hailed as a landmark decision in establishing gender parity as a constitutional mandate in the workplace.

When only 20 years ago she persuaded a majority of Justices that a law which, in essence, denied a working woman equal pay to a working man, Judge Ginsburg forged not only a dynamic reinterpretation of the equal protection clause, but also a fundamental positive change in society's previous stereotypical attitudes toward women in the workplace.

Her explicit recognition that, and I quote:

The shape of the law on gender-based classification indicates and influences the opportunity women will have to participate as men's full partners in the Nation's social, political and economic life.

is cause for great optimism that this nominee's presence on the Supreme Court will make a major difference in the achievement of complete gender equality for all.

Her prolific writings also demonstrate that Judge Ginsburg recognizes and will work earnestly to protect a woman's right to choose. Her approach to choice, suggesting that a constitutionally protected sex-equality perspective should also be adopted, in addition to a due process privacy perspective, is a well-reasoned one, for the notion that we as women should be in control of our own destiny is crucial to our attaining an equal place in society.

It is therefore, Mr. Chairman, particularly apt that the appointment of one who has paved the way for women's equality as the second woman Justice on the Supreme Court should symbolize an historic departure from the tokenism that has traditionally existed in the appointment of women to positions of power.

With still only 14.5 percent of circuit court positions and barely 13 percent of district court positions being filled by women today, Judge Ginsburg's appointment to the highest court in the land will take this Nation a giant step forward in shattering the glass ceiling of our legal profession and indeed in other professions, too.

In conclusion, California Women Lawyers most respectfully urges the distinguished members of this committee to vote in favor of the nomination of this outstanding woman to whom all women today owe a great debt.

Thank you so much.

[The prepared statement of Ms. Bradstreet follows:]