

NARAL REPORT
SUPREME COURT NOMINEES
Rehnquist and Scalia

THE THREAT TO ROE: A LEGAL ANALYSIS

Prepared for the National Abortion
Rights Action League
by Harmon and Weiss

INTRODUCTION

On Tuesday, June 17, 1986, President Reagan announced his nomination of conservative Justice William H. Rehnquist to the position of Chief Justice of the United States Supreme Court, replacing the retiring Warren E. Burger. To fill Rehnquist's seat on the Supreme Court, Reagan also nominated Antonin Scalia, another conservative, currently serving on the U.S. Court of Appeals for the District of Columbia. These nominations, if confirmed by the U.S. Senate, could have devastating consequences for the future of abortion rights.

While it does not appear on the surface that confirmation of these nominees will change the current pro-choice, anti-choice vote configuration on the Supreme Court, a closer look at the different personalities of the incoming justices reveals that the nominations may have a subtle, but nonetheless powerful, influence on future Supreme Court decision-making. Both nominees are considered to be personally and intellectually persuasive. Despite his record of frequent lone dissents, Rehnquist has been regarded warmly by all of the Justices from the most conservative to the most liberal. His cleverness and humor make him a strong political leader for the right wing of the Court. Scalia's personality, too, is generally liked by political foes as well as allies. Since he rigidly adheres to his ideological biases, it is ironic that he has developed a reputation as a consensus builder; his skills at building consensus enable him to exert a great deal of influence on people of opposing views. Both men have reputations for intellectual capacity as well. If these men

are confirmed by the Senate, while the number of pro-choice vs. anti-choice votes may remain the same, the anti-choice minority will then be armed with stronger and more persuasive justices in its efforts to win a majority vote.

POTENTIAL FUTURE VACANCIES

The nominations of Rehnquist and Scalia may be only the beginning of Reagan's effort to pack the Supreme Court with anti-choice votes. Although the decision in Thornburgh v. American College of Obstetricians and Gynecologists was an encouraging reaffirmation of the principles of Roe that women decide their reproductive health and future lives, the pro-choice majority has narrowed to 5-4 (from a 6 to 3 decision in Akron in 1983), and a close look at the pro-choice voters on the court gives cause for substantial concern. The five justices who voted with the majority in Thornburgh are Blackmun, Brennan, Marshall, Powell and Stevens. Except for Stevens, who is 66, these justices are the oldest on the Court. At respective ages of 77, 80, 77 and 78, the possibility is high that we will soon lose to death or retirement a justice who will uphold and protect women's constitutional right to abortion.

Of the four justices who dissented in Thornburgh, White, Rehnquist, O'Connor and Burger, all but Burger are likely to be on the Court for quite some time. O'Connor, 56, and (if confirmed) Scalia, 50, are youthful Reagan appointees; Rehnquist at 61 would be a relatively young chief justice. All of Reagan's nominees to the Supreme Court are strongly anti-choice. And we have to expect that any other appointments Reagan might make to the Supreme Court will also be predisposed towards restricting or eliminating abortion rights.

The threat to Roe imposed by the pending nominations to the Court is very real. The advanced ages of the pro-choice justices increase the possibility of another Reagan appointee who is ideologically opposed to abortion. The personal charm and intellectual power of William Rehnquist will in all likelihood make him, if confirmed, an influential chief justice. Similarly,

Scalia's personal popularity will enable him to become a persuasive majority leader on a slightly varied Reagan court. All of these facts will quickly make Roe more vulnerable than at any time since it was decided in 1973.

POWERS OF THE CHIEF JUSTICE

Although William Rehnquist is already an associate justice of the Supreme Court, his move to chief justice could dramatically increase his influence on the Court. Whenever the chief justice is in the majority, she or he may, and usually does, assign the writing of the majority opinion. This prerogative gives the chief justice great power. It enables him or her to woo allies on the Court by offering the prize of the opportunity to write historic opinions and also enables him or her to influence the outcome of specific Court rulings.

After argument, all cases are discussed in a conference attended by only the nine justices. Though votes are cast at that time, they are tentative, and frequently change depending on the reasoning used in the draft opinions. By assigning the majority opinion to a justice who is extreme in his or her views, the chief justice is likely to affect a change in the tentative votes, while by assigning it to a more moderate justice, the chief will probably keep the vote intact. Because the initial conference votes are not binding, the assigning and drafting of opinions is critical to the Court's final decision.

There are a number of ways a chief justice can maneuver to take maximum advantage of the power to assign opinions. She or he can vote with the majority to retain the privilege of making the assignment, but assign the case to such an extreme justice that the vote changes. She or he can also vote with the majority, assign the opinion, and then change her or his vote and write a dissenting opinion. She or he can self-assign the writing, and retain the writing of ground-breaking decisions for herself or himself.

The discussions in conference can be long and confusing, and it is the chief justice's responsibility to keep track of where

each justice stands. This vote counting prerogative can be very significant. For example, at the end of the conference discussing Roe v. Wade, then Chief Justice Burger concluded that no decision could be determined, claiming in a memo, "At the close of discussion of this case there were, literally, not enough columns to mark up an accurate reflection of the voting." He "therefore marked down no vote and said this was a case that would have to stand or fall on the writing, when it was done." By exercising his prerogatives as chief justice, he both assigned the writing of the opinion and declared that the decision would be based on the words of his chosen justice.

WILLIAM REHNQUIST

Justice Rehnquist is solidly anti-choice and therefore likely to use the position of chief justice to chip away or attempt to eliminate constitutionally protected abortion rights. He wrote the dissent in the early abortion rights case Roe v. Wade and the reasoning used in that dissent now represents the new orthodoxy of conservative judicial thinkers. In Roe, Rehnquist focused on an historical review of state laws in effect in the mid-nineteenth century, and refused to recognize as fundamental liberties any rights but those given effect at the time the states adopted the Due Process clause of the Fourteenth Amendment, prohibiting states from taking away life or liberty without due process of law. (Other conservative legal thinkers use a similar method, cataloging eighteenth century state laws or procedures to impede the twentieth century development of concepts such as religious freedom and cruel and unusual punishment.) Like his ideological cohort Scalia, Rehnquist believes that the courts must defer to the judgment of the legislature when asked to apply constitutional principles to controversial issues (a majoritarian analysis) and concludes that since in 1973 most states had anti-abortion statutes on their books, the right to choose abortion could not be fundamental and is therefore entitled to a lesser degree of protection. The Bill of Rights would quickly disappear if the Supreme Court adopted this theory

that the only rights deserving of constitutional protection are those already protected by majority approval.

Most recently in Thornburgh v. A.C.O.G., Rehnquist and White took the highly unusual step of suggesting that the court overrule Roe v. Wade, even though the parties to the case did not seek a re-examination of Roe. In calling for the reversal of Roe, Justice Rehnquist would have the Court abandon the concept that the court should follow its earlier precedents and destroy the complex body of abortion rights law developed by decisions over the last thirteen years. Rehnquist continues to be willing to sacrifice constitutional rights to the will of the majority stating that since "abortion is a hotly contested moral and political issue, [it should be] resolved by the will of the people." White and Rehnquist ignore the reality of women's lives, explicitly rejecting the notion that a woman's right to control her reproductive life is so fundamental that "neither liberty nor justice would exist if [it were] sacrificed."

Rehnquist is generally insensitive to women's rights, refusing to apply to sex discrimination the same level of judicial review ordinarily applied to race discrimination. When state laws or practices which contain racial or other classifications found to be "suspect" are reviewed by the Supreme Court to determine if they violate the Constitution, they are subject to a "heightened scrutiny" and survive only if they are narrowly drawn to accomplish a compelling state interest. In a move which indicates a willingness to tolerate and condone discrimination against women, Rehnquist has refused to apply this strict scrutiny to gender classification, believing instead that statutes containing sex-based classifications should be upheld if they have any rational basis whatsoever. Laws which incorporate and perpetuate discriminatory stereotypes of women can usually be found to have some rational basis, however dubious, and under Rehnquist's reasoning would therefore be upheld.

Finally and most dramatically, in a majority opinion which ignores the critical role that reproductive capacity plays in the lives of almost all women, Rehnquist wrote in General Electric

Co. v. Gilbert that an employer did not discriminate against women when it sponsored health insurance plans which covered almost every conceivable medical expense except those associated with pregnancy. The opinion virtually ignored a court record indicating that General Electric's practices had historically undercut the employment opportunities of its women employees who became pregnant and that the policy of excluding pregnancy benefits was motivated by an intentionally discriminatory attitude. Rehnquist's analysis, called "simplistic and misleading" by the dissent, stated in essence that classifications based on pregnancy do not constitute sex discrimination, since despite the fact that only women can become pregnant, not every female becomes pregnant.

ANTONIN SCALIA

In nominating Antonin Scalia, Reagan has selected a judge who shares his ideological opposition to abortion rights, and his view that the courts should play a very limited role in protecting constitutional rights in cases involving "morally controversial" issues. The intersection of these two views poses a serious threat to the individual liberty of women to make decisions about their lives, as well as to the continued ability of American political and racial minorities, as perennial targets of discrimination, to seek vindication of their constitutional rights in court.

Scalia's most dangerous view, which he shares with Justice Rehnquist, is his belief that the courts, in analyzing constitutional questions, must abstain from ruling on issues on which society has not reached a broad consensus. Not only is this a purely subjective determination, but there is no mechanism for accurately determining whether a societal consensus exists.

This jurisprudence is reflected in Dronenberg v. Zech, in which Scalia joined an opinion by Judge Bork which held that consensual homosexual conduct was not protected by the constitutional right to privacy. In discussing the right of privacy, the opinion stated:

When the Constitution does not speak to the contrary, the choices of those put in authority by the electoral process, or those who are accountable to such persons, come before us not as suspect because majoritarian but as conclusively valid for that very reason.

Needless to say, such a philosophy would have prevented even the meager gains made by Black Americans during the 1960s, since at that time, the "majoritarian" judgment of a number of state legislatures was that Black Americans were not entitled to equal protection under the law.

While Scalia has never decided a case dealing specifically with abortion rights, we know from his public statements that he can be expected to vote against women's choice. At an American Enterprise Institute for Public Policy Research Forum, Scalia said, "We have no quarrel when the right in question is one that the whole society agrees upon," but of rights that might not be recognized or protected by the majority, specifically including abortion, Scalia added, "the courts have no business being there. That is one of the problems; they are calling rights things which we do not all agree on." (December 12, 1978). Because for many abortion is a morally complex issue, Scalia would defer to the various judgments of the Congress, the fifty state legislatures and the hundreds of local legislative bodies--where decision-making is often based on what is politically expedient today rather than on a reasoned application of constitutional principles and precedents. As a Supreme Court Justice, Scalia, in all likelihood, would rule that the liberty to make a personal private decision about abortion is not a fundamental right, because some people disagree with it.

There are other cases in which Scalia has shown himself hostile to the rights of women and minorities. For example, in Vinson v. Taylor, in which the Supreme Court upheld the D.C. Court of Appeals' decision that sexual harassment constitutes discrimination in violation of Title VII, Scalia joined Judge Bork at the appellate level in a dissenting opinion which uses language which insults and degrades women. The dissent characterizes a supervisor's sexual harassment of an employee as mere sexual "dalliance" and "solicitation" of sexual favors; the

plaintiff's problems are ignored or trivialized while Scalia and Bork play intellectual games with the combinations and permutations resulting from mixing and matching hetero-, homo- and bisexual supervisors and employees. Scalia's concurrence in this decision indicates a great insensitivity to the real and serious problems of sex discrimination in our society.

Scalia's dissent in Carter v. Duncan-Huggins, Ltd., in which the D.C. Court of Appeals upheld a lower court finding that a black employee had been intentionally discriminated against by her employer, reflects a similar insensitivity to the problems of race discrimination. Scalia would have disregarded the clear evidence of intentional discrimination and formulated a principle that would have effectively prevented employees in small businesses from ever proving discrimination.

ANTI-CHOICE LITIGATION STRATEGY

The composition of the Supreme Court is critical to the future of abortion rights because anti-choice strategists see legislation coupled with litigation as the most fruitful avenue for overturning Roe v. Wade. Having failed in their efforts to overturn Roe v. Wade by amending the United States Constitution, the anti-choice groups have now adopted a legislation-litigation strategy. This focus on the courts was announced and developed at an important 1984 conference entitled "Reversing Roe v. Wade through the Courts," organized by the Americans United for Life Legal Defense Fund. Basically, the anti-choice lawyers are developing a gradual step-by-step litigation attack on the doctrines on which Roe is based. State laws which superficially appear to be reasonable regulation of abortion are introduced, and cases apparently limited to unusual facts are brought to the courts.

At this very moment, the pro-choice community is fighting, in both state legislatures and the courts, a host of these apparently reasonable statutes which purport to "regulate" abortion. In fact, the statutes restrict the right to abortion by making it impossible for clinics to locate in some communi-

ties, increasing astronomically the costs of providing abortion services and creating almost insurmountable hurdles for young women seeking abortion.

Only last month in Thornburgh v. A.C.O.G., the Supreme Court reviewed, yet again, another one of these state laws purporting to advance legitimate state interests in protecting the health of the pregnant woman or potential life. After looking at the provisions closely, Justice Blackmun characterized them merely as "attempts to intimidate women into continuing pregnancies." Needless to say, the regulations did not withstand constitutional scrutiny. However, a rigidly ideological court could rationalize these regulations and use them as vehicles to limit abortion rights.

ATTEMPT TO IMPOSE WAITING PERIODS

The Supreme Court will soon decide whether or not to hear Zbaraz v. Hartigan, a case challenging the Illinois Parental Notice Abortion Act of 1983. The case provides an excellent example of the issues which anti-choice lawyers have chosen to litigate; the Court will review the burdens imposed by a 24-hour waiting period for young pregnant women and a set of judicial procedures required for minors who need to avoid obligatory parental consent.

Courts have held that states may have an interest in promoting parental consultation by a minor seeking an abortion. On the other hand, in a series of cases culminating in Akron, the courts have said that since a mandatory waiting period before an abortion procedure poses a direct and substantial burden on women who seek to obtain an abortion, a waiting period can only be upheld if it is narrowly drawn to further compelling state interests. The Court will decide whether the state's asserted interest in promoting parental consultation justifies the burden imposed by the mandatory waiting period on the constitutional right to choose abortion. Scalia and Rehnquist are not likely to engage in a thoughtful analysis of whether a mandatory waiting period really accomplishes the state's asserted interest, and are also likely to ignore precedent recognizing the paramount

interest of protecting a woman's right to abortion. This case provides an opportunity for the newly constituted Supreme Court to try to limit abortion rights by approving yet another restriction on the rights of young women. The Seventh Circuit struck down the mandatory waiting period and we believe that if the Supreme Court follows its precedents, it should also uphold the appellate court's decision.

The Zbaraz case also involves questions concerning anonymity and speed of judicial procedures which constitutionally must be available to minors seeking a judicial alternative to parental notification. Again, a long line of cases provides legal standards which must be met to assure that judicial alternatives to required parental consent for abortion meet constitutional guidelines; at a minimum, they must be fair, expeditious and protect a minor's confidentiality. If a Reagan Court hears Zbaraz, we fear it might give mere lip service to the asserted safeguards of speed and anonymity. By not even requiring clear rules, the Court could further erode abortion rights for young women.

CHALLENGE TO ABORTION AFTER THE FIRST TRIMESTER

Anti-choice strategists see viability (the statistical probability of sustained life outside the uterus) as a good way to attack Roe v. Wade. In Roe, the court divided a pregnancy into three trimesters and held that in the first trimester, a state could not prohibit abortion. Around the end of the first trimester, the state could regulate abortion, but only to protect the pregnant woman's health. In the third, which the Court believed was the point at which viability began, the state could choose to severely curtail abortion except to protect the life and health of pregnant women. In her dissent to Akron, Justice Sandra Day O'Connor speculated that in the ten years since Roe was decided, advances in medical technology were pushing back the date of viability, rendering the trimester analysis obsolete, and that Roe v. Wade was on a collision course with itself. Despite the extremely speculative nature of O'Connor's predictions about technological progress, anti-choice activists are now seeking to

implement the strategy suggested by Justice O'Connor's opinion. They hope to make physicians unwilling to perform abortions by imposing burdensome and complex procedures for determining when a fetus might possibly be viable, and by imposing a risk of criminal sanctions on physicians whose estimates of viability are second-guessed.

The issue of criminal sanctions for abortions of possibly viable fetuses was before the Supreme Court in the 1985-1986 term in Diamond v. Charles, but the Court dismissed the case on technical procedural grounds. Insiders speculate that the case was dismissed by anti-choice justices disappointed that they were unable to put together a majority to uphold these regulations. Their chance may come again, however. Another challenge to a similar Illinois statute, Keith v. Daley, is now in the early stages in a Federal District Court in Illinois.

The Keith v. Daley Illinois abortion statute imposes criminal sanctions on a physician who aborts a viable or potentially viable fetus. The legislation would require a doctor to exercise the same care in performing these abortions as would be required in bringing a viable fetus to live birth. In Diamond v. Charles, the Seventh Circuit declared a similar provision unconstitutional but inadvertently provided guidelines which inspired the current anti-choice efforts to devise criminal sanctions to frighten physicians away from abortions and to thereby chill the pregnant woman's exercise of her constitutional rights.

Not content to rely on scientific definitions of viability, the Illinois legislature has also decreed that life begins at fertilization of the egg by the sperm. Under the statute currently being challenged in Keith v. Daley, doctors prescribing intra-uterine devices, certain birth control medications, and other birth control methods are required to recite a misleading litany or face prosecution.

CHALLENGE TO ABORTION IN THE FIRST TRIMESTER

One of the ways the anti-choice strategists seek to undermine the abortion right is to present it in a manner which

appears narcissistic and trivial. The Illinois legislature has taken this tack with a statute which prohibits the performance of abortion at any time during a pregnancy when the pregnant woman is seeking the abortion solely on account of the sex of the fetus. This ploy was specifically suggested in the Americans United for Life conference; other similar suggestions included prohibitions if the abortion were based on emotional, eugenic or racial reasons. By using highly inflammatory examples, the anti-choice forces seek to mask the underlying principle that the individual woman and not the state can best make the decision. In this manner, they hope to drive a wedge between those who believe in the unqualified right of a woman to choose abortion and those who are most comfortable with abortion if it is justified by a compelling reason, particularly a medical one.

The Illinois law is being challenged in a case, Keith v. Daley, now in its early stages in the Illinois Federal District Court. If this case works its way up to the Supreme Court, it could provide the Court with an opportunity to re-examine Roe v. Wade, and probably restrict its application. A Reagan court could look at the Illinois statute and take the first step toward overruling Roe by substituting for the trimester framework an analysis based on socially approved reasons for abortion. When Justice Blackmun wrote Roe, he stated that the right to choose abortion was not unlimited or unqualified. Justice Blackmun chose to use trimesters of pregnancy to define when the right was absolute and when it was qualified; under that decision, during the first trimester the state cannot interfere with the abortion decision. The introductory section of Roe, however, devotes substantial time to rationalizations for the abortion decision (medical problems, psychological harm, health, stigma of unwed motherhood, etc.). A court dominated by anti-choice ideologues could use Keith v. Daley to undercut the constitutional right to abortion in the first trimester; it would only be absolute in the first trimester if all of society approved of the reason for seeking an abortion.

BURDENSOME CLINIC REGULATION

Another strategy of anti-abortionists is to seek the passage of state laws which burden abortion clinics with costly and unnecessary rules and procedures unrelated to health or good medical practice, in a badly disguised effort to limit access to abortion. Careful judicial review of these laws is particularly critical because upholding these burdensome regulations as "reasonable" provides a pretext for whittling away abortion rights. The 1983 Akron decision articulated the judicial standard of review of these regulations: they fail if they have a "significant impact" on a woman's ability to choose abortion. Nevertheless even a well-intentioned judge might have difficulty applying the standard to particular regulations. Faced with the spectre of a Reagan court, it's particularly alarming to realize that one must rely on the good faith of the justices to abstain from disingenuous decision-making.

Birth Control Centers, Inc. v. Reizen 743 F.2d 352 (6th Cir. 1984), demonstrates the pitfalls a judge can fall into while determining if these state rules impermissibly burden the abortion decision. In that case, the judges were asked to review various regulations related to staffing, physical structure of the clinic--even width of the corridors, equipment, and review of medical records by outside physicians--and determine whether these regulations, by increasing the cost of an abortion, would have a significant impact on a woman's right to terminate her pregnancy. An increase in the cost of an abortion which might seem incidental or trivial to a judge might nonetheless impose a significant financial barrier to a poor woman's access to abortion. When the Supreme Court Justices are asked to review similarly costly and burdensome regulations, women cannot and should not be at the mercy of the clever, glib, anti-choice Rehnquist and Scalia.

IMPACT ON WOMEN IF ROE V. WADE IS OVERTURNED

If President Reagan has his way, a Supreme Court consisting of anti-choice justices will reverse the landmark case of Roe v. Wade and the protection of abortion rights will be left to the

vagaries of fifty state legislatures. The probable result is that abortion will be criminalized and absolutely prohibited in some states. In other states it might be available but expensive due to unnecessary regulation. In a few states, abortion might continue to be both safe and legal, and those states would then be overburdened by an influx of women from other states--at least those who can afford to travel. Such a crazy patchwork of conflicting laws will not eliminate abortion; it will just make access to safe and legal abortion more costly and burdensome, particularly for the indigent, the uneducated and the powerless women in our society, and force these women to resort to dangerous self-induced or illegal abortions.

After thirteen years of legalized abortion, it is hard to imagine what women's lives would be like if the choice of safe and legal abortion were eliminated. To try to get an accurate picture of how women would be affected by the loss of abortion rights, it is instructive to turn to the many letters NARAL collected as part of its Silent No More campaign.

Some letters tell the tale of women's experiences when abortion was illegal. Illegal abortions are not likely to be performed in safe and sanitary conditions nor are they likely to be performed by skilled practitioners. Many women who obtained illegal abortions did not survive.

On November 18, 1971, my twin sister, Rose Elizabeth, died from an illegal abortion. This was after a very brutal rape . . . The traumas of being raped and pregnant, knowing she would die if she didn't have an abortion, the embarrassment, the pain, the guilt. She called a close friend who knew of a person who would do the abortion. She decided to wait until we all had left for church, then called her friend to pick her up (I can still remember opening the door of that old half abandoned building, and seeing her laid out on the table bleeding to death). She never made it out alive. . . For this reason I speak out today, for I believe if there had been a place where women, especially young women, could have gone for an abortion, where the environment was safe and clean, Rose Elizabeth, would still be with us today.

Those who lived often suffered serious medical complications:

Becoming pregnant just two months after the birth of her first child, [my mother] was not well recovered from this experience. Her doctor was concerned for her health, but in 1940 there were no options. She and my father chose to abort this child, fearful her health was too fragile to manage another pregnancy so soon.

Done by a backstreet butcher, the abortion put my mother's life in jeopardy and led to complications which nearly killed her during her pregnancy with me a few months later. She and I were in the hospital for 21 days following my birth and her health was permanently ruined. She underwent a hysterectomy by the age of 30 and has had two spinal fusions to attempt to repair the damage done to her body because of her pregnancies. Many of those who obtained illegal abortions were forced to

endure serious pain, terror and humiliation:

I think the thing I will always remember most vividly was walking up three flights of darkened stairs and down that pitchy corridor and knocking at the door at the end of it, not knowing what lie behind it, not knowing whether I would ever walk back down those stairs again. More than the incredible filth of the place, and my fear on seeing it that I would surely become infected; more than the fact that the man was an alcoholic, that he was drinking throughout the procedure, a whiskey glass in one hand, a sharp instrument in the other; more than the indescribable pain, the most intense pain I have ever been subject to; more than the humiliation of being told, "You can take your pants down now, but you shoulda'--ha!ha!--kept 'em on before;" more than the degradation of being asked to perform a deviate sex act after he had aborted me (he offered me 20 of my 1000 bucks back for a "quick blow job"); more than the hemorrhaging and the peritonitis and the hospitalization that followed; more even than the gut-twisting fear of being "found out" and locked away for perhaps 20 years; more than all of these things, those pitchy stairs and that dank, dark hallway and the door at the end of it stay with me and chills my blood still.

Because I saw in that darkness the clear and distinct possibility that at the age of 23 I might very well be taking the last walk of my life; that I might never again see my two children, or my husband, or anything else of this world.

Some women who did not or could not obtain abortions resorted to suicide:

This is not a letter about an abortion. I wish it were. Instead, it is about an incident which took place over forty years ago in a small mid-western town on the bank of the original "Old Mill Stream". One night a young girl jumped off the railroad bridge to be drowned in that river. I will always remember the town coming alive with gossip over the fact that she was pregnant and unmarried. . . I could imagine the young girl's despair as she made her decision to end her life rather than face the stigma of giving illegitimate birth. . . I still grieve for the girl.

Without the right to control their reproductive destiny, women are not able to exercise fully their rights to liberty, "to enjoy those privileges long recognized. . . as essential to the orderly pursuit of happiness by free men." In amplifying the meaning of liberty, the Supreme Court, in the case of Meyer v. Nebraska, explained:

Without doubt [liberty] denotes not merely freedom from bodily restraint but also the right of the individual. . . to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children.

Again, letters received from women who have had abortions demonstrate that abortion rights are necessary to enable women "to engage in the common occupations of life."

My job on the assembly line at the plant was going well and I needed that job desperately to support the kids. Also I had started night school to improve my chances to get a better job. I just couldn't have another baby--5 kids were enough for me to support.

I felt badly for a day or two after the abortion. I didn't like the idea of having to go thru with it. But it was the right thing for me to do. If I had had the baby I would have had to quit my job and go on welfare. Instead I was able to make ends meet and get the kids thru school.

To this day I am profoundly grateful for having been able to have a safe abortion. To this day I am not a mother, which has been my choice. I have been safe and lucky in not becoming pregnant again. I love people and work in a helping profession which gives me much satisfaction.

The epidemic of teenage pregnancy is a constant topic for the press. We do not need the Silent No More letters to tell us about the tragedies of missed opportunities and wasted lives which follow unwanted teenage births. The drop-out teen mother is seldom able "to acquire useful knowledge." Abolishing abortion rights will only expand the problems of unwed, teenage births.

Abortion rights are also necessary to enable older students to pursue their studies. As one writer explains,

I am a junior in college and am putting myself through because my father has been unemployed and my mother barely makes enough to support the rest of the family. I have promised to help put my brother through when I graduate next year and it's his turn. I was using a diaphragm for birth control but I got pregnant anyhow. There is no way I could continue this pregnancy because of my responsibilities to my family. I never wanted to be pregnant and if abortion were not legal I would do one on myself.

Although conservative groups like the Moral Majority refuse to acknowledge it, the freedom to choose abortion may be necessary to enable some women to enjoy a loving marriage and responsible family life. Some women chose abortion to avoid an ill-fated forced marriage:

I had an abortion in 1949 because I could not go through with a loveless marriage for the sake of a child I did not want. . . The benefits were incalculable. I was able to terminate the pregnancy, to complete my education, start a professional career, and three years later marry a man I did love. We subsequently had three beautiful children by choice, children who were welcomed with joy, cherished always, and raised with deep pleasure because we attained economic security and the maturity necessary to provide properly for them.

Other women need the option to choose abortion so that they can cope with the complex, competing demands of a responsible, caring family life.

Ten years ago when abortions were illegal I was in a situation that would seem unbelievable on a soap opera. My husband was about to go to Vietnam as a physician. I had three children under the age of five, my mother was dying of a brain tumor diagnosed the week that my husband got his orders, my father had been earlier diagnosed as having leukemia, and my younger sister was within a year of getting married. I consider myself capable of handling most situations but on top of this I found myself pregnant. My first obligation was to my husband and my children but I felt a strong obligation to my parents as well. I simply did not feel I could or should cope with another baby. I was thirty years old.