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Statement of Faye Wattleton  
President  
Planned Parenthood Federation of America  
before the  
Senate Judiciary Committee  
on the nomination of David H. Souter  
to the U.S. Supreme Court

September 18, 1990

Mr. Chairman:

Planned Parenthood Federation of America is the nation's oldest and largest non-profit, private provider of reproductive health care. For 75 years we have given women and men access to the information and medical care that enable them to decide when and whether to have children. Every year nearly two million Americans -- most of them young and many of them poor -- find their way into our 879 medical centers. We help Americans plan their families, enhance their lives, and assure that children are born wanted and loved.

For some in politics, the debate over Roe v. Wade boils down to concerns about polls and votes and constituency pressure. For many trained in the law, Roe is an interesting debating point. But for most Americans, the Roe v. Wade decision was a liberating and life-saving pronouncement. Its real-life consequences have been matched by only a few judicial acts in the history of our republic. For women and their families, the right to reproductive choice creates a foundation for exercising many of the other constitutional privileges we enjoy as Americans.

But last year and again this year, the court that produced Roe issued decisions that seriously weakened Roe and unleashed wholesale assaults on reproductive rights in state legislatures nationwide. Now, the judge nominated to fill a vacancy on that court is in a position to turn back the clock even further on reproductive rights, to an era when providing or obtaining an abortion was a criminal act.

Until these hearings, Mr. Bush's nominee was a virtual unknown. Rather than oppose his nomination, Planned Parenthood asserted Americans' right to know Judge Souter's views on fundamental rights

of privacy and reproductive freedom, which are taken for granted by the vast majority of Americans.

Today, however, after days of evasive answers and filibusters, we know nothing more about Judge Souter's views on reproductive rights than we did before the hearings began.

Judge Souter has acknowledged the existence of a constitutional right to marital privacy and a right to procreate, but would not acknowledge the right of married people to use contraception as outlined in Griswold. He also refused to comment on the later Rianstadt decision that extended this right to unmarried people.

Judge Souter steadfastly refused to answer questions about a woman's right to abortion, saying it would be inappropriate for him to comment, because of the likelihood of Roe coming back to the Supreme Court. Yet, as Senator Biden pointed out, Judge Souter was willing to comment quite extensively on his views on the appropriate standard of review for cases involving gender discrimination, the free exercise clause and racial discrimination, all of which -- like Roe -- are likely to come back to the Supreme Court.

Mr. Souter refused to answer Senator Kennedy's question about whether he considers abortion moral or immoral, even in cases of rape or incest, saying it would "dispel the promise of impartiality in approaching this issue" if it came before him. Yet, Mr. Souter had no qualms about expressing his own moral beliefs about the death penalty and white collar crime.

Judge Souter's story of having "counselled" a pregnant young woman who planned to self-abort before abortion was legal in Massachusetts clearly was meant to assure pro-choice Americans that

he recognized the pain and desperation of women who face unwanted pregnancies. The story, however, only reveals that Mr. Souter advised the young woman not to attempt a self-abortion; it gives us no clue as to his views on the issue of legality.

Judge Souter also refused to address the countervailing interest the state has that weighs against the woman's "liberty" interest in terminating a pregnancy. Nor would he say whether he believes in the concept of constitutional "personhood" from the moment of conception.

Justice Brandeis once said, "If we would guide by the light of reason, we must let our minds be bold." Judge Souter has displayed no boldness whatsoever during these hearings. The general opinion is that he has acquitted himself very well. That may be true in the sense that he made no mistakes and no commitments that would hurt him.

But the health and lives of millions of American women, for generations to come, may depend on where David Souter stands on fundamental rights of privacy and reproductive freedom. The American people will not tolerate a Supreme Court justice who refuses to acknowledge these rights -- openly and unequivocally. Any Supreme Court nominee who rejects the fundamental nature of such rights in a democracy must likewise be rejected by the citizens of that democracy.

We urge you to reject the nomination of David Hackett Souter to the U.S. Supreme Court, and thereby send a message that the period of tolerance for political gamesmanship around our fundamental reproductive rights has ended.