Now, you may not have seen the assault on them, you could not have heard their cries. But in the short time I have spoken to you, over 15 children have felt the violent pain of abortion.

Because we believe this onslaught must end, we must respectfully and regretfully oppose this nomination.

Thank you.

[The prepared statement of Ms. Cunningham follows:]

PREPARED STATEMENT OF PAIGE COMSTOCK CUNNINGHAM

Mr. Chairman, Members of the Judiciary Committee, thank you for this opportunity to testify concerning the nomination of Judge Stephen Breyer to the United States Supreme Court.

My name is Paige Cunningham. I am an attorney and the president of Americans United for Life, the legal arm of the pro-life movement. Americans United for Life (AUL) is the only national legal organization dedicated exclusively to writing, passing and defending laws—laws that shield innocent children and their mothers from abortion. AUL also works to change law and public policy to protect the sick, the elderly, and the disabled from euthanasia and assisted suicide.

We are here today because we are haunted by the image of millions of women and their children who have been injured and destroyed by abortion. We have fought on their behalf in the courts for twenty-one years, and it may be another twenty years—just as it was for the abolition, women's suffrage, and the civil rights movements—before we succeed. But one thing is clear. We will not give up the fight for women and their little ones in the judicial arena.

Although Judge Breyer clearly has the credentials to sit on the Supreme Court, we are concerned about one flaw which we believe to be fatal. That flaw is the process by which he was selected and its impact on the courts, the law, and American society.

President Clinton made it clear that he would appoint to the Supreme Court only a supporter of *Roe* v. *Wade*[1]. A nominee for the Supreme Court must now pass a test—an abortion litmus test, a test which other presidents were wrongfully accused of applying. His position as a nominee implies that Judge Breyer has passed this test. Members of this Committee and other Senators warned several years ago that we should not require a judicial nominee to commit himself to a particular position on an issue that may come before him as a judge. As Abraham Lincoln said, "[W]e cannot ask a nominee how he would vote, and if he told us, we would despise him."

It should be obvious that an abortion litmus test is an insult to the integrity of the Highest Court in the land. But what is far more disturbing is the abortion doctrine that Judge Breyer will be expected to support. In 1973, the Supreme Court ruled in *Roe* v. *Wade* that a mother may end the life of the child in her womb for any reason, throughout all nine months of her pregnancy. And it did so with no constitutional basis. The Court's decision in *Roe* openly defied a social and legal tradition condemning abortion that dates back at least to the beginnings of the common law in England, almost eight hundred years ago.

*Roe* has been condemned as unprincipled both by Members of the Court and by constitutional scholars, including those who favor abortion as a matter of legislative policy. Unlike *Brown* v. *Board of Education*,[2] the once-controversial school desegregation case which is now universally accepted, *Roe* v. *Wade* has never been settled in our society. In fact, by overriding the democratic process, the Court created the very division it now claims to have healed.

Women would be better off without this abortion policy. *Roe* has done nothing to advance women's legal, social or economic rights. The real progress has come through Congress and state legislatures. They have passed dozens of laws mandating equal pay for equal work and banning sex discrimination in public and private employment, sale and rental of housing, education and other areas. Not one of these laws depends on *Roe* or on a right to abortion.

Even more troubling is the Court's current belief that abortion is necessary for women's equality. This is profoundly anti-woman. The Court seemed to suggest two years ago in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*[3] that we women can be made "equal" to men only if we are given the right to destroy our own children through abortion. But it is offensive and sexist to imply that we must

[1] 410 U.S. 113 (1973).
[2] 347 U.S. 483 (1954).
[3] 112 S. Ct. 2791 (1992).

deny what makes us unique as women (our ability to conceive and bear children) in order to be treated "equally" by men. True equality between the sexes will be reached on the day when we can affirm what makes us unique as women and still be treated fairly by the law and society.

As our feminist pioneers agreed, abortion goes against core values of womanhood: equality, care, nurturing, compassion, inclusion, and non-violence.

*Roe* was supposed to answer the causing concerns of a woman in a troubled pregnancy. But what has been the legacy of *Roe*? Has a generation of abortion on demand solved any of the problems for which it was offered? Has abortion reduced the rates of child abuse? Or absentee fathers? Or teen pregnancy? Or spousal abuse? Or has the violence of abortion, both to our unborn children and to ourselves, desensitized us to violence?

Has the availability of abortion reduced the numbers of women in poverty? Or has it actually aggravated the feminization of poverty? Has abortion enhanced respect for women? Or has it encouraged casual sexual relationships and male irresponsibility?

After more than twenty years of abortion on demand, abortion has flunked the test as the miracle cure for the social problems abortion advocates promised it would solve. The destruction and tragedy caused by more than thirty million abortions—nearly 30,000 every week, or half the population city of Chicago every year—performed at all stages of pregnancy, is a gaping national wound, a wound whose ugliness is covered up by polite tolerance and rhetoric about "a woman's right to choose" and "keeping government out of private choices."

The devastation of *Roe* is not limited to those millions of children who will never be born, or to the mothers and families who will never cuddle their babies and hear them laugh or comfort them when they cry. *Roe* has seeped into other areas of law, with an "abortion distortion" lens that clouds our laws and Constitution. We should pay attention to the warning signs.

Just two weeks ago, the Supreme Court sacrificed the First Amendment to so-called abortion rights. It upheld restrictions on peaceful, nonviolent, and otherwise lawful protests at abortion clinics that in all likelihood would have been struck down if anything other than abortion had been the subject of the protests.[4] What have we come to as a nation and society when abortion centers must be protected by speech-free "muzzle zones," when the truth about abortion must be relegated to the outfield of the public square?

And in May of this year, a Federal district court in the State of Washington made an unprecedented decision to strike down a 140-year-old law to protect assisted suicide.[5] The judge squarely based her opinion on *Roe's* step-child, *Planned Parenthood* v. *Casey*.

Unless this Committee is presented with convincing evidence to the contrary, we must assume that Judge Breyer has passed President Clinton's "abortion-litmus test." But the Senate is not obliged to rubber-stamp this nomination. In light of the unprincipled nature of the decision in *Roe* and the enormous damage to millions of men, women, and children, we must oppose a nominee who supports the abortion regime that the Supreme Court has imposed on the American people, against their wishes and profound beliefs. As a result, we must oppose the nomination of Stephen Breyer to become Associate Justice of the United States Supreme Court.

Thank you.

Senator METZENBAUM [presiding]. Thank you very much, Ms. Cunningham.

Mr. Farris, we are happy to hear from you, sir.

## STATEMENT OF MICHAEL P. FARRIS

Mr. FARRIS. Thank you, Mr. Chairman and members of the committee.

My name is Michael Farris, and I am the president of the Home School Legal Defense Association and our affiliated group, the National Center for Home Education. We have over 40,000 members in all 50 States and every U.S. territory. We network with approximately 150 State and regional home school organizations, which in turn network with 3,000 to 4,000 local home school support groups.

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[4] *Madsen* v. *Women's Health Center, Inc.*, 62 U.S.L.W. 4686 (U.S. June 30, 1994).

[5] *Compassion in Dying* v. *State of Washington*, No. C94–119 (W.D. Wash. May 20, 1994).