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).

There are approximately 400,000 families home schooling approximately 1 million children in this country. It is the fastest growing educational movement in our Nation.

By way of personal background, I am a constitutional litigator with an emphasis in free exercise litigation. I last testified before this committee as the cochairman of the drafting committee for the coalition supporting the Religious Freedom Restoration Act.

Home School Legal Defense Association opposes the nomination of Stephen Breyer to the Supreme Court of the United States, because his views on the subject of the free exercise of religion, especially within the context of education, are so far beyond the pale of acceptability, that we believe his presence on the Supreme Court would represent a clear and present danger to our freedoms.

Senator METZENBAUM. Mr. Farris, I don't want to interrupt you, but I would just like you to clarify. I am not quite clear what the home school concept is. Do you believe that all children should be educated in the home and not in the public school system? Is that the thrust of your organization?

Mr. FARRIS. No, Senator, it is not. The thrust is that we want to defend the right of parents who choose to do that to legally do so without unreasonable fetters. We want home schooling to be a legal alternative in this country. When we started the organization, only three States allowed home schooling as a matter of statutory right. Now it is legal in all 50 States, although there are undue restrictions placed by various school districts and various laws. It is a matter of legal freedom, not a matter of saying everyone should choose this method.

Senator METZENBAUM. And the parents can opt for that alternative to teach their children at home, and not send them to public school or private school?

Mr. FARRIS. We would oppose any coercion of any parent to choose any form of education, whether it is public, private or home. We simply think that this choice should be made available.

Senator METZENBAUM. Thank you for that clarification. Thank you.

Mr. FARRIS. You are welcome.

We base our opposition of Judge Breyer on his exhaustive—there is no question about Judge Breyer's scholarship. He is a very scholarly judge and writes very clear and articulate opinions, but that does not make them right.

His decision in *New Life Baptist Academy* v. *East Longmeadow School District,* decided in 1989, is the focus of our opposition. I wrote an amicus brief in that case submitted to Judge Breyer and his fellow panel members in that case. He did reverse an excellent opinion by the Federal district court. And later, when the private school was unable to continue the case with private counsel, our organization undertook their case at that point and I became lead counsel and personally wrote the cert petition to the U.S. Supreme Court, which was denied during the same period of time within a few weeks of their issuance of the decision of *Employment Division* v. *Smith,* which was overturned, in effect, by the Senate's passage of the Religious Freedom Restoration Act.

We believe and are greatly concerned with the fact that Judge Breyer's legal philosophy is in full accord with the majority opinion

in *Smith,* and we believe totally out of sync with the philosophy of this committee and Congress as a whole, which was endorsed by passing the Religious Freedom Restoration Act.

We bring to this committee's attention four brief specific problems of Judge Breyer's opinion in *New Life.* First, he endorses the notion that private schools can be regulated by subjective, unwritten, discretionary opinions of public school officials.

Under Massachusetts law, private schools, including home schools, must be "approved" by local school officials. Many school districts in Massachusetts have adopted written policies which specify objective criteria which they will evaluate for an approval. But some districts, like the one involved in this case, merely say they want to review the curriculum, teacher qualifications, lessons, and enter the private school and make a wholly discretionary decision.

The Federal district court in this case held that the system of subjective discretion violated the free exercise and establishment clause rights of this private religious school. A system of unwritten, subjective, prior restraints I believe is simply unacceptable to a nation with a historical commitment to the freedom of conscience and expression.

Judge Breyer rejected the private school's offer of an objective means of analysis. The school had offered to voluntarily submit to achievement tests, and Breyer rejected this offer as untrustworthy.

I see that my time is up. The written testimony has been submitted and I ask you to read it. But if I could just summarize in this way:

Judge Breyer's views are in lock-step opinion and sympathy with the majority opinion in *Smith.* He gives very low opinion and value to the free exercise of religion. Although he claims to be enforcing the compelling State interest test, if you read his opinion closely, he really says all the State has to do is enact reasonable laws. Mere reasonableness is not enough to override the free exercise of religion. There must be a compelling governmental interest for the particular regulation at stake, and that particular regulation cannot have any less restrictive alternatives.

Judge Breyer substituted his own judgment for the judgment of that religious school as to what was acceptable to their religions views and what would burden their religion. And the substitution of a judge for his determination of someone else's religion is such a departure from an appropriate judicial methodology of evaluating religious freedom, we view it very dangerous. He gratuitously said that home schooling can be constitutionally banned entirely by a State. We think that was not a necessary decision and very dangerous to have someone on the Supreme Court who thinks that that form of education can be constitutionally banned outright.

[The prepared statement and a letter of Mr. Farris follow:]

PREPARED STATEMENT OF MICHAEL P. FARRIS

Mr. Chairman and members of the Judiciary Committee:

My name is Michael Farris. I am the president of the Home School Legal Defense Association (HSLDA) and our affiliated group, the National Center for Home Education. HSLDA has over 40,000 member families. We have members in all fifty states and every U.S. territory.