

Testimony

for

National Abortion Rights Action League

On Nomination of William Rehnquist
to Chief Justice of U.S. Supreme Court

Presented to

Senate Judiciary Committee

by

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Board Chair

Mr. Chairman, Members of the Senate Judiciary Committee, my name is Karen Shields and I am here representing the National Abortion Rights Action League, a grassroots political organization with a state and national membership of almost 200,000 women and men. I am NARAL's Board Chair. Speaking on behalf of our membership, I am here to persuade you that confirming William Rehnquist as Chief Justice of the US Supreme Court poses a direct and immediate threat to the health and well-being of millions of American women.

As an Associate Justice of the Supreme Court, William Rehnquist has stated time and again his willingness and desire to overturn Roe v. Wade. We believe that as Chief Justice he will take maximum advantage of the power of the position to influence the outcome of Court votes on key abortion cases.

If William Rehnquist prevails as Chief Justice, the Supreme Court could very well reverse the landmark case of Roe v. Wade and the protection of abortion rights will once again be left to the vagaries of the 50 state legislatures and local governments.

It is especially urgent that we face the immediacy of the threat to Roe under a Rehnquist Court. Every one of you is aware of the age of the sitting Justices and the reality that additional

vacancies in the next few years are all too likely. It is reasonable to believe that a Rehnquist Court might overturn Roe. How likely is it? That is up to you. You in the United States Senate can determine the future of women's reproductive health in this country. You shape that future as you consider this nomination.

Society has been strengthened by the continuum of progress in women's rights. When the Supreme Court decided Roe it moved society forward by recognizing the link between reproductive choice and women's ability to enjoy the full range of personal liberties.

The Roe decision was a significant achievement in our struggle towards freedom from biological and societal restrictions; towards self-determination and autonomy in our life roles; towards control of our bodies and our destinies. This progress has continued since 1973. Women have reached our current status after an effort spanning decades, and our progress has changed social practice, law, in fact almost every aspect of women's lives.

William Rehnquist, however, is not forward looking. He is a 19th century man willing to push society backwards.

After 13 years of legalized abortion, it is important to try to imagine what women's lives would be like if William Rehnquist succeeded in overturning Roe v. Wade. With history to remind us, we know that:

*In some states abortion will be criminalized; and legal safe abortion will be absolutely denied to women.

*In other states abortion might be legal, but services will be difficult to obtain, expensive, and accessible to only a few wealthy women due to restrictive regulation. The Akron and Thornburgh cases give us a good idea of the kinds of restrictive

legislation states may pass--restrictions unrelated to good medical practice but designed to intimidate women into continuing pregnancies.

*Those states where abortion continues to be both safe and legal, will shoulder the burden of an influx of women who have the money and resources to travel to another state for an abortion.¹

Let me remind you more specifically of that past time of terror which William Rehnquist wishes to re-establish, by telling you of my own experience with an abortion in the winter of 1970-71 before the Roe decision, when abortion law varied from state to state.

I have never before told my story publicly. But mine is not an unusual story, as NARAL learned when it collected tens of thousands of letters from women in our Silent No More campaign. Each of you has received copies of letters from women in your state, telling similar stories.

In late 1970 I was 18 years old, just out of high school, a student in Tampa, Florida, and pregnant. Abortion was legal in New York, but I couldn't afford the trip north. After several unsuccessful tries at self-induced abortion, one of my friends finally found a man with Mafia connections who knew how I could get an illegal abortion in Miami. It took every penny I had plus the help of friends to scrape together the necessary funds. By then I was four months pregnant.

The Mafia contact took me and one of my friends to Miami. A woman there inserted a catheter and told me I would abort in a few hours. I didn't. The contact who drove us to Miami disappeared. After 24 hours of waiting, I removed the catheter myself and my friend and I were left to hitchhike over 200 miles

¹See attached document The Threat to Roe: A Legal Analysis by Harmon and Weiss

home, convinced that nothing would work and I'd have to continue this pregnancy.

But a month later I developed alarming symptoms, and was rushed to the intensive care unit of the local hospital where I almost died as a result of that abortion.

In my vision of our country's future, no woman will be forced as I was to risk the dangers of self-induced abortion; no woman will be forced as I was into the hands of organized crime because she is too young, too poor to travel to another state; no woman will have to choose as I did between an unwanted pregnancy and an illegal, unsafe abortion.

It is your responsibility to ensure that the Supreme Court is not led by a man willing to re-establish that reign of terror for every woman of childbearing age.

The question is not whether William Rehnquist can eliminate abortion. He can not. Women had abortions before Roe, and women will have abortions in the future. The question is whether those women can obtain safe, accessible, legal abortions or whether a Rehnquist Court will tell women they must risk their lives and health to obtain this medical service.

NARAL wants to ensure that all women have full access to the prerequisites for true reproductive choice, including: bodily integrity, contraception, abortion, delivery, and a world that supports and encourages parents in the raising of loved and well cared for children.

We need a Supreme Court and a Chief Justice who fully realize that their decisions make a vital day to day difference in the lives of women. We need a Supreme Court and a Chief Justice who recognize that women's lives are valuable, who respect women's right to make for ourselves the decisions that shape our lives, and who believe that women too require the free exercise of

fundamental rights, including the rights to liberty and privacy.

William Rehnquist does not fit that description.

Some of you may question the propriety of examining a Justice's position on one particular issue. We are concerned about William Rehnquist's attitudes on abortion because abortion is an issue of importance and far reaching implications in the lives of women.

Without the right to control our reproductive destiny, women are not able to exercise fully our right to be free from oppressive restrictions imposed by sex; our right to self-determination and autonomy. Without the right to choose when and whether to have a child--and abortion is the guarantor of that choice--women cannot exercise other fundamental rights and liberties guaranteed by the Constitution.

The right to choose to have an abortion is so personal and so essential to women's lives and well-being that its denial would deprive women of the ability to exercise fully our right to liberty--liberty as it was so eloquently explained by the Supreme Court in Meyer v. Nebraska:

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, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.²

William Rehnquist's position on abortion is a good example of his beliefs and actions on other women's rights issues--safe and legal abortion will be only one casualty of the decisions of a man so insensitive to women's rights.

He refuses to apply to sex discrimination the same level of judicial review ordinarily applied to race discrimination. His

²Meyer v. Nebraska, 262 U.S. 390, 399 (1923)

record of extremism is reflected in at least 20 sex discrimination cases where he separated himself from the majority of the Court--cases that covered topics such as equal pay, medical benefits for dependents, promotion policies, the age of majority, benefits for widows and widowers.

Furthermore, William Rehnquist's position on abortion illustrates his thinking on issues that affect every citizen of this country. If liberty does not include the right to make certain decisions in privacy, we will not only lose the right to choose abortion but many other widely cherished decisions as well: decisions about marriage, family living, child rearing, what we read in our homes, our use of contraceptives.

We can not have a Chief Justice of the United States Supreme Court who does not believe in the constitutional protection of fundamental rights of the individual, but who believes instead in the right of the majority to impose its will in our private lives, and who is willing to interpret the Constitution for an age that ceased to exist over 100 years ago.

As author of a dissenting opinion in *Roe*, Justice Rehnquist focuses on a historical review of state laws in effect in the mid-1800's and refuses to validate any claims to rights except those rights recognized by the states at the time of the ratification of the 14th Amendment.

William Rehnquist has stated that since in 1973 most states had anti-abortion statutes on their books, the right to choose abortion could not be a part of the fundamental guarantees to liberty and privacy.³ He believes that the courts must defer to

³In *Roe v. Wade*, 410 U.S. 113 (1973) Justice Rehnquist dissented: "The fact that a majority of the states reflecting, after all, the majority sentiment in those States, have had restrictions on abortions for at least a century is a strong indication, it seems to me, that the asserted right to an abortion is not 'so rooted in the traditions and conscience of our people as to be ranked as fundamental.' Even today, when society's views on abortion are changing, the very existence of the debate is evidence that the 'right' to an abortion is not so universally accepted as the appellants would have us believe."

the judgment of the legislatures rather than apply Constitutional principles to controversial issues.

We must refuse to legitimize that kind of judicial philosophy, for it will affect almost every decision a Chief Justice makes, and almost every aspect of our lives.

There is no doubt that William Rehnquist refuses to recognize women's fundamental constitutional right in the area of abortion. He has signed opinions in at least 13 abortion cases in his years on the Court, and has clearly stated more than once his belief that Roe should be overturned.⁴

In his willingness to overturn Roe and return women to those dangerous times before our right to liberty and privacy in reproductive health matters had been recognized, he is willing to risk the life, health, and freedom of the women of this nation. This cavalier attitude towards women is not acceptable in the Chief Justice of the United States Supreme Court.

It is your Constitutional responsibility as Members of the Judiciary Committee and as Members of the United States Senate to consider the nominee before you and to consider the difference William Rehnquist as Chief Justice could make in the lives of the women of this country. It is your Constitutional responsibility to consider whether you trust William Rehnquist with the lives and health and liberty of American women.

Women make the choice of abortion because they take their responsibilities to existing family members seriously; because

⁴In Thornburgh v. American College of Obstetricians and Gynecologists, 54 LW 4618 (1986), Justice Rehnquist joined Justice White in saying ". . . If either or both of these facets of Roe v. Wade were rejected, a broad range of limitations on abortion (including outright prohibition) that are now unavailable to the States would again become constitutional possibilities.

In my view, such a state of affairs would be highly desirable from the standpoint of the Constitution." Thornburgh, at 4631.

they believe that they can escape from poverty; because they believe that their education is important; because they believe that they have talents and skills to offer the world; because they believe that someday they will find the right partner to raise a family with; and because they have hopes and dreams of better lives for themselves and those they love.⁵

The reasons why women choose abortion are numerous and profound. The Roe v. Wade decision recognized and preserved for women the right to make these crucial and highly personal decisions.

The National Abortion Rights Action League urges you to vote against William Rehnquist's confirmation as Chief Justice of the Supreme court, in order to preserve the health, privacy, life, and liberty of American women.

⁵see brief amici curiae on behalf of the National Abortion Rights Action League, et al. in Thornburgh v. American College of Obstetricians and Gynecologists, *supra*.