

Senator MATHIAS. Thank you very much. Mr. Fein.

#### STATEMENT OF BRUCE FEIN

Mr. FEIN. My name is Bruce Fein and I represent United Families of America. United Families enthusiastically urges the Senate to confirm Judge Antonin Scalia as Associate Justice of the United States.

Judge Scalia is more richly endowed with the experience and attributes necessary for outstanding performance on the Supreme Court than any nominee since Charles Evans Hughes over 50 years ago.

Judge Scalia has taught law, and taught law is intellectually tough law. Judge Scalia has occupied high-level positions within the executive branch. The experience has honed Scalia's mind to a deep appreciation of the Constitution's separation of powers, its subtleties, and its indispensability to energetic, accountable, and unoppressive government.

Finally, Judge Scalia has served several years on the U.S. Court of Appeals for the District of Columbia Circuit. His judicial performance has been exemplary. Always well prepared for oral argument, incisive in opinion writing, and a close intellectual companion of any judge searching for a constitutional or statutory principle in expounding the law.

Judge Scalia will bring to the Supreme Court desperately needed mental rigor and analytical power. Three areas of constitutional law illustrate the Court's recent departures from constitutional intent, and substitution of social policy concerns as a basis for decisionmaking. Abortion, obscenity, and church/state issues. Now the *Roe v. Wade* case has already been referred to today, and I could perhaps even rely on Senator Biden for suggesting that it was ill-reasoned and not a vindication of the intent of the 14th amendment architects.

Senator BIDEN. That is going a little far. I did not say that.

Mr. FEIN. We can come back to that. But as Senator Biden at least tactfully acknowledged, the Court's opinion consulted ancient attitudes, the Hippocratic oath, the common law, the English statutory law, the American law, the views of the American Medical Association, the views of the American Bar Association, the views of the American Public Health Association, but where were the views of the constitutional architects?

Senator BIDEN. I was not going to fight with you today until this. [Laughter.]

Mr. FEIN. A right of privacy found nowhere in the constitutional text or constitutional history was invoked to justify the Court's general denunciation of laws that regulated abortion in order to safeguard potential life.

And even last month, the Supreme Court extended its right of privacy concept to invalidate a State law that simply required the truthful provision of information relating to the abortion decision, because the Court thought that truthful information might convince the mother to choose childbirth over abortion.

Judge Scalia, we believe, will employ constitutionally pertinent criteria in examining abortion issues, and lead the Court out of its current confusion and constitutional lawlessness.

As Associate Justice White recently warned, the Court is most vulnerable, and comes nearest to illegitimacy, when it deals with judge-made law having little or no cognizable roots in the language or design of the Constitution, and Justice White was speaking for a majority of the Court.

Now as in the case of abortion and in other areas, rectifying the Supreme Court's decision will not require that abortions be restricted.

The rectification will simply return the question to State and local officials to struggle with the anguishing issues involving the fetus, the mother, the father, children, and social ethics.

It would be slanderous to the good name of the American people, and contrary to experience, to suggest that questions of abortion will not be responsibly handled by elected representatives of the people.

I have amplified on similar sentiments regarding abortion and church/state issues. I simply would close with these observations. Responsibility is the mother of courage and individual growth. If in contravention of constitutional intent, the people are denied responsibility over most questions of abortion, obscenity, or church/state relations, then nothing prevents the courts from arrogating responsibility for virtually any contentious public policy issue.

The consequence would be a demoralized citizenry, unconcerned, and untutored in the arts of self-government.

In conclusion, we strongly support Judge Scalia for confirmation as Associate Justice of the Supreme Court.

[Prepared statement follows:]