

recorded here on the record. And I ask that these affidavits be accepted for submission into the record.

Mr. CHABOT. Without objection, so ordered.

[The information referred to is available in the Appendix.]

Mr. FRANKS. Mr. Chairman, I think it's impossible, I suppose, for all of us to understand the impact that abortion has had on the women of the country, but I don't even think we realize as a people what the current reality of the law is. The courts, through *Roe v. Wade* and *Doe v. Bolton* and the cases that followed, leave us with no truly enforceable laws to protect unborn children from elective abortion at any age or any stage of the 9 months of pregnancy. Even the bill we passed to protect unborn children from the indescribable nightmare of partial-birth abortion passed by both the House and the Senate and signed into law by the President has been challenged as unconstitutional. And now the Supreme Court is once again going to determine whether Congress can protect living, kicking, half-born babies from this horrific, barbaric procedure.

Our courts, in overreaching their authority, have become the greatest threat to the survival of this Republic, and we should remember that at one time our courts determined in their infamous *Dred Scott v. Sanford* decision that all Blacks, slaves as well as free, were not and could never become citizens of the United States of America. The Supreme Court determined that Blacks "had no rights which the White man was bound to respect and that the Negro might justly and lawfully be reduced to slavery for his benefit."

We can all see the sickness in that reasoning today. But it was a sickness that precipitated a civil war and the greatest loss of American life in the history of our Nation—600,000 dead soldiers, husbands, fathers, sons, and brothers.

And now, Mr. Chairman, *Roe v. Wade* has returned that sickness to America, and the battlefield today is covered with over 45 million dead children who never raised a hand against anybody.

Mr. Chairman, a defining moment is upon America, and it's time for *Roe v. Wade*, the bloodiest decision in the history of humanity, to take its place along the *Dred Scott* decision in the ash heap of history.

Mr. Chairman, the right to life is the first civil right. It is the first most basic right that any human being has.

Thank you, sir.

Mr. CHABOT. Thank you very much, Mr. Franks.

The gentleman from Iowa, Mr. King, is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman, and I want to thank the witnesses for appearing here. Thank you, Mr. Chairman, for holding this hearing today, and if I could just lay out some parameters. I can't add to the eloquence of my colleague from Arizona, but perhaps I can add a little to the argument.

And, often, well, anybody that's under age, I'll say, 40 years old didn't live in the day before the first Supreme Court decision sent us down this path. And anyone who wasn't of the age of legal understanding by 1965 didn't understand it when it unfolded, and I think that perhaps there aren't very many people alive today that really understood what happened in 1965 when the infamous case,

at least in some circles, of *Griswold v. Connecticut* was decided by our Supreme Court.

And I'd like to illustrate how we got to this point where we're having this hearing today. It never was imagined, I don't believe, by the Supreme Court of that time, in '65, when the people of Connecticut were prohibited from purchasing contraceptives off the shelf, married couples. It was a State decision. In my opinion, the 10th amendment should have covered that. If the people in Connecticut weren't represented in their State legislature by those that reflected their values, they should have then voted some new people into office or voted with their feet and gone to some neighboring States.

That didn't happen. Instead they took the case to the Supreme Court and declared that they had a right to purchase contraceptives off the shelf, married people, and the Supreme Court ruled in concurrence with that argument because they discovered a right to privacy in the Constitution, that right to privacy in the emanations and penumbras of the Constitution.

Now we have one laying here in front of each one of us this Constitution, and I carry one around in my jacket pocket every day, and I've read every word in this Constitution multiple times. And I can't quite divine in the emanations and penumbras in this right to privacy that the Supreme Court declared existed in this Constitution.

And, in fact, I think the modern view of this jurisprudence, trying to unravel this backwards, would declare that there was no right to privacy, that it was created by the courts as a means, a vehicle, a tool, I'll say kind of the wild card to get to a conclusion rather than to be able to reason based upon the Constitution.

And so this right to privacy was imposed upon everyone in this country because of a desire for contraceptives in Connecticut in 1965. Not very many years later, 8 years later, *Roe v. Wade* was decided based upon that right to privacy. And then that right to privacy was expanded in between the twin cases of *Roe v. Wade* and *Doe v. Bolton* to be a right to an abortion at any time, at any period throughout the gestation period of the development of that innocent child.

And so most of America has grown up today with an understanding they believe that the Constitution includes in it a right to an abortion. In fact, it includes no such thing. And the activist reading of this Constitution by an activist court has taken us down this path that's been so articulately illustrated by my colleague from Arizona.

I'm looking forward to the day that we see the restoration of this Constitution because I believe in it, if it's read under its original intent and the text of the Constitution. It is the protection—it is written to be the protection of the minority against the will of the majority and the protection of the majority against the whims of the Court. And yet the whims of the Court have prevailed over the lives of 45,000 innocent—45 million innocent babies.

I would take us also to the ban on partial-birth abortion that this Congress has twice passed, and the careful crafting of the legislation from this Committee. And I want to thank Subcommittee Chairman Chabot for his leadership on this issue. Recognize that

there were two ways to put a ban on partial-birth abortion after reading Justice O'Connor's opinion, whom we just honored on the floor of the House of Representatives last night, and that those two means were that—her argument was that the definition of a partial-birth abortion was vague and it needed to be precise, and we held hearings in this very room over and over again, and Congress determined that a partial-birth abortion was never necessary to protect the health of the mother, the pregnant female. And yet those two distinctions that are clearly drafted into that ban on partial-birth abortion were ignored by three Federal judges in three circuits across America, one of them in my backyard just across the Missouri River from where I live. And now it does come before the Supreme Court.

The statement was made in that court in Lincoln that the attorneys before the court had done more due diligence than the United States Congress.

If I could ask unanimous consent for a couple more minutes, Mr. Chairman?

Mr. CHABOT. Without objection, the gentleman is granted 2 additional minutes.

Mr. KING. Thank you, Mr. Chairman.

And yet there is no higher level of standard of proof than the United States Congress in America. If Congress determines findings, we have access to more information than anyone else. We can subpoena and request more witnesses than anyone else. The highest witnesses in the land come here to testify. The people who are elected as an endorsement of their judgment are here to hear those witnesses, to deliberate upon that testimony, and to make a decision, which this Congress did.

Now I am hopeful that a new Supreme Court will take a new look at the ban on partial-birth abortion within the light that has been shone upon it by the United States Congress. And if they choose in their jurisprudence not to listen to congressional findings, then I think we need to take a look as a Congress on how we might decide to direct the courts, because we have the constitutional authority, the constitutional mandate to do so.

So I would pose that there are two questions that need to be asked by every—especially our young people in America, if—when you come to a conclusion on where you stand on the issue of abortion, and that first question is: Do you believe in the sanctity of human life? Is human life sacred in all its forms? Are we a species above and beyond and apart and created in God's image or are we not? And this society will say yes to a vast majority. And the second question you ask then is: That human life, now that we have determined that it's a sacred human life, at what instant does that life begin? Not some vague period of time in a trimester, but at what instant does that life begin? Because you must err on the side of life. And the only instant that exists in the process of human development is the instant of conception. And I would submit when you understand those two things, when you believe in the sanctity of human life, then you understand there is only one instant, and that is the instant of conception that life begins. Then you've resolved the moral question, and we should be able to resolve this constitutional question by simply reading the text of the Constitu-

tion and not creating some special right called privacy out of the emanations and the penumbras.

Thank you, Mr. Chairman. I'll yield back.

Mr. CHABOT. Thank you. The gentleman's time has expired.

I would just note, in following up on what the gentleman just indicated, that relative to the Partial Birth Abortion Ban Act, which is being taken up by the Supreme Court now and will be argued sometime in the near future, the gentleman mentioned that the Congress made the determination that partial-birth abortion is never medically necessary, and that's true, and I just would note that that was based upon not just something that we came up with out of thin air. It was based upon people that were in those very seats right there who testified before this Committee at numerous hearings which took place over the years, and these were medical doctors, people that were eminently qualified to testify, and the Congress based that decision upon their testimony. And there were folks, obviously, on both sides.

At this point I would just note that, without objection, all Members will have 5 legislative days to submit additional materials for the hearing record.

The gentleman from Virginia has joined us, so would the gentleman like to make an opening statement?

Mr. SCOTT. Sure.

Mr. CHABOT. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I just wanted to make a couple of comments—first, on the last, on what's true or what's not true. It's true that we did have some testimony that the procedure that you referred to is never medically necessary. We also had testimony from organizations representing the majority of the OB/GYNs in the Nation who testified just the opposite, that it, in fact, can be necessary to protect the health of the mother. And you can't change the facts by declaring a fact. I mean, the record before us clearly indicates that there is significant, if not overwhelming, medical evidence that it is needed to protect the health and life of the mother.

In terms of directing the Supreme Court, we have a separation of powers. We can't direct the Supreme Court by findings. We can direct the Supreme Court with a constitutional amendment that the Court doesn't have anything to do with. You pass it here and ratify it by the States. But the way we—that's the way we directed the court, but you just can't direct them by having some declaration in the finding sections of a statute.

Mr. Chairman, I have been intrigued by the title of this hearing, the "Scope and Myths of *Roe v. Wade*." I would hope that whatever myths there may be will be dispelled. I don't know if that's going to be the case or not, but we'd just hope that—as it's been suggested, the Supreme Court will have another opportunity to just reverse *Roe v. Wade*, not tinker around with it, just reverse it. One State has recently passed legislation that will clearly give them the opportunity to do that, which will transfer the question from the judicial branch to the political branch, where 50 States will come up with 50 different ideas on the subject. That would turn the clock before the 1970's. Some people, I'd assume, would like that. Others