

legislature or the Congress establishes in a fair and predictable manner. The United States Supreme Court must set the example. The need for this fundamental fairness and predictability is why the NAM decided that the time had come to take positions on judicial nominations.

After reviewing Judge John Roberts's record, we are convinced he is eminently qualified to lead the Court. Judge Roberts has the intellect and the experience needed to understand and address complicated transactions and difficult legal problems. At the same time, he is committed to applying the law rather than applying his own personal views. This philosophy is essential if we are to remain a Nation guided by the rule of law.

Finally, John Roberts understands the importance of clarity when deciding cases and the practical consequence of decisions for business. I might add that, really, none of the current members of the Court come from a recent private-sector kind of background. Judge Roberts does. He brings that. Accordingly, if confirmed, Justice Roberts will add an important voice to the Court's deliberations because of his strong experience of how litigation affects major commercial transactions. This background will assist the Court in identifying cases that present business issues of national importance for its review and also in understanding the practical ramifications of rules set out through its decisions.

As I close, let me make it clear that the NAM also didn't seek to determine if Judge Roberts will reach or is likely to reach a particular outcome favorable to business. The principal difficulty with an outcome-based approach is that the outcomes a Justice should reach ought depend on what the duly enacted law is. In many areas, different companies and businesses will disagree on what the pro-business result actually is.

Therefore, the National Association of Manufacturers is not looking for Justices biased in favor of or against business or whose decisions reflect or are likely to reflect a pro-business outlook, but rather, for a Justice who will properly and impartially apply the law. We are convinced Judge Roberts is such a Justice, and I respectfully urge this Committee to set in a timely manner his nomination before the full Senate.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Engler appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Governor Engler.

Our final witness is Ms. Karen Pearl, interim president of Planned Parenthood Federation of America. For 10 years prior to becoming the interim president, she was the president and CEO of Planned Parenthood of Nassau County. She has been a preschool teacher, working with children with disabilities, and has a master's degree in counseling from New York University.

Thank you for coming in today, Ms. Pearl. The floor is yours.

**STATEMENT OF KAREN PEARL, INTERIM PRESIDENT,
PLANNED PARENTHOOD FEDERATION OF AMERICA, NEW
YORK, NEW YORK**

Ms. PEARL. Mr. Chairman and distinguished members of the Committee, I am Karen Pearl, interim president of Planned Par-

enthod Federation of America. I am honored to be here today to express the concerns and hopes of our patients and America's pro-choice majority.

I come before you not as an individual, but as a representative of millions. Through Planned Parenthood's 850 health centers, we provide health services to nearly 5 million women, men, and young people every year. One in four American women will visit a Planned Parenthood center in her lifetime. These women represent Americans from every walk of life and from every part of the country.

What is at stake in these hearings is nothing less than women's lives and women's health. Americans deserve a Supreme Court that will protect, not take away, our basic freedoms.

The record of John Roberts reveals a nominee who, as Chief Justice, is not likely to uphold constitutional protections for the right to choose abortion. And while we have fought hard for that right and will fight just as hard to protect it, Planned Parenthood does everything in our power to reduce the need for abortion. Yet there are forces at work in this Nation who seek to restrict comprehensive sex education, contraception, and emergency contraception—the very things that would decrease the number of abortions in this country.

In his response to questions from some of the members of this Committee, Judge Roberts has refused to state that he accepts and will protect a woman's constitutional right to choose, a right that has been part of the fabric of our society for nearly two generations. We ask that you oppose his nomination to the lifetime position of Chief Justice of the United States Supreme Court.

Five years ago, in *Stenberg v. Carhart*, four of the nine Justices made it clear that they support either overturning *Roe v. Wade* or significantly gutting it. To do so would seriously threaten constitutional protections against government regulations that threaten women's health and safety. To do so would send us back to a pre-*Roe* era where women did not have an equal place at life's table and when making child-bearing decisions was a perilous enterprise.

The American people deserve a Chief Justice who will uphold *Roe*, and yet Judge Roberts co-authored a brief, filed on behalf of the Government in *Rust v. Sullivan*, that stated *Roe* was wrongly decided and should be overruled. It is hard for me to understand, Senators, how a decision that for the past three decades has helped women participate equally in society could have been wrongly decided. It is hard for me to understand why a decision that allowed women to realize their dreams should be overruled.

We at Planned Parenthood are faced with the prospect of violence and intimidation every day of our lives. On my first day on the job at Planned Parenthood, a sign was posted on the front door that threatened, "Anyone who enters will be killed." And as I volunteered as a clinic escort, violent protesters hit us with their signs. In the *Bray* case, Judge Roberts is one of the authors of a brief arguing in support of the legal position of violent clinical protesters. Nowhere in the brief did the Government disavow the actions or the tactics of the violent demonstrators, not even in a footnote.

When women's health centers in Wichita, Kansas were being blockaded in 1991, a district court issued an injunction against the protesters to protect women who were attempting to enter the centers. Judge Roberts was involved in a highly unusual intervention that sought to lift the injunction, even though the injunction was preventing violence and safeguarding women.

This week, Judge Roberts repeatedly refused to answer whether he will protect the basic rights and freedoms of all Americans. Senator Specter himself pointed out that *Roe* has been reaffirmed by the Supreme Court multiple times. Notably, Judge Roberts has acknowledged that there is a right to contraception. He is comfortable making these statements, but he steadfastly refuses to acknowledge the same about the right to abortion.

As a legal matter, we believe that the right to choose abortion is as settled a fundamental right as the right to contraception. No one should be confirmed to a lifetime position with the power to take away the right to choose, who does not accept that proposition. When Judge Roberts answers questions about *Griswold* and *Eisenstadt* but refuses, when it comes to *Roe* and *Casey*, Judge Roberts is drawing lines of convenience, not rules of law.

No matter how remarkable the person or impressive the resume, a nominee for Chief Justice ought to be able to tell the American people whether the Constitution allows States to ban abortion. Judge Roberts has refused to do so, even when pressed by you.

We still do not know whether a Roberts's Court would preside over the creation of two Americas, one where women with means can obtain abortions even if they are not legal, and one where women without resources cannot.

When our patients' safety is at stake, when the ability of families—

Chairman SPECTER. Ms. Pearl, would you summarize at this point, please?

Ms. PEARL. I will. Private decisions about their lives is at stake, when women's status in our society is at stake, accepting anything less than clarity would simply be irresponsible.

You all know that Justice Harry Blackman wrote the majority opinion in the *Roe v. Wade* decision. In the decades following that decision, as more Justices on the Court ruled to overturn *Roe*, Blackman wrote, "A chill wind blows." His words echo hauntingly today.

Senators, I urge you to not confirm Judge John Roberts as Chief Justice, and I thank you so much for the honor and privilege of addressing you today.

[The prepared statement of Ms. Pearl appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Ms. Pearl.

Just a few questions. The hour is growing late. Ms. Pearl, the hearing has dealt extensively with the concerns that you have addressed, a woman's right to choose, and it boiled down really to Judge Roberts's statement that he felt he could not speak to that issue as a matter of judicial independence in a context where there are cases on the docket which raise the issue, unlike *Griswold* which has been pretty well established as a right to privacy, something I asked him about, and others did.

Do you think that—I know you would like to have an answer. People who want to overrule *Roe* would also like to have an answer. But do you think there is any basis for Judge Roberts’s statement that he simply cannot prejudge the matter before it comes before him as a matter of independence, judicial independence, and that he cannot sell his vote one way or another?

There are people on this panel on both sides of the issue. I think we are divided among the 18, 9 to 9. Does he not have a point that he cannot prejudge the case?

Ms. PEARL. Senator, thank you. I do not think that that is correct. We are not asking him to prejudge any case. We have not presented him with any facts of any particular case.

Chairman SPECTER. But you are asking him to say he would sustain *Roe v. Wade*, a woman’s right to choose.

Ms. PEARL. We are asking him whether the precedent that has been established, and as you said, reaffirmed 38 times, is settled law of this land, established rights. Women have counted on that right for almost two generations, for 32 years. It is hard to believe that that is not something that ought to be considered settled law. It was the *Roe* decision that was only 1 year after the *Eisenstadt* decision, so the timeframe should not matter, and it has been looked at so many more times. This is, you know, the decision—the question of whether and when to become a parent is such a fundamental right that it is hard to believe that it is even open for any kind of question. And if Judge Roberts was willing to talk about the right to privacy as it relates to contraception, he ought to have been able to talk about it as it relates to abortion.

Reproductive rights are simply not to be negotiated.

Chairman SPECTER. Professor Reich, going back to your JD from Yale, what is your evaluation of the issue of judicial independence and not soliciting votes on this Committee or in the Senate by a promise one way or the other on *Roe v. Wade* when the issue is on the docket for the Supreme Court in the next term?

Mr. REICH. I think it is entirely dependent, Mr. Chairman, on how settled the case is. That is, if you have something that is a super, super, super-duper precedent, as you repeatedly talk about it, then it would seem to me entirely appropriate for a candidate, a nominee to say, “I would follow a super-duper precedent just like *Wickard v. Filburn*.”

On the other hand, if it is up in the air, if it really is up in the air, if there are a lot of 5–4 decisions, it is likely to come before him, he does not want to reveal his cards right now because it would be inappropriate, then it is a different story.

In this case it seems to me that *Roe v. Wade* is the law of the land. It has been there for many years. Why cannot a nominee simply say clearly, “I support *Roe v. Wade* as the law of the land?”

Chairman SPECTER. Unlike the right to privacy or contraceptives for marriage or for single people, there is a great debate—I do not have to describe it for you—a great debate in this country about the subject. If the definition, if it is up in the air or settled, I do not think, as you heard me say, that we could ask him about his decision. But on the factors which Ms. Pearl articulates, he testified he would give them great weight.