STATEMENT SUBMITTED FOR THE RECORD BY NANCY KEENAN, PRESIDENT, NARAL PRO-CHOICE AMERICA

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Oversight Hearing on "The Scope and Myths of *Roe v. Wade*"

Testimony Presented by

Nancy Keenan
President
NARAL Pro-Choice America

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Representative Chabot and members of the subcommittee: I thank you for the opportunity to submit this testimony for the record.

More than 30 years after it was decided, *Roe v. Wade* remains a pillar of constitutional law in the United States, one that supports the health and well-being of women and their families, and upon which numerous other critical rights depend. The Supreme Court's acknowledgement of a zone of privacy that began well before its decision in *Roe* recognizes a fundamental American principle: Certain decisions are so personal and so life-altering that they must be made by individuals and their families, not by politicians. You have convened this hearing to discuss the "myths" of *Roe v Wade*. The first myth I would like to debunk is that which claims *Roe v. Wade* was created out of whole cloth, a radical expansion of constitutional rights. This is simply false. During the half century leading up to *Roe*, the Supreme Court decided a series of significant cases in which it recognized a constitutional right to privacy that protects important and deeply personal decisions concerning bodily integrity, identity, and destiny from undue government interference.[1] The Court grounded principles as fundamental to the American formulation of liberty as the right to decide how to education one's children, the right to marry, and the right to be free from forced sterilization by the government in the constitutional right to privacy.[1]

The Supreme Court first defined important contours of the right to privacy as they encompass reproductive rights in *Griswold v. Connecticut*,[1] in 1965, and in *Eisenstadt v. Baird*, in 1972.[1] In these cases, the Supreme Court held that state laws that criminalized or hindered the use of contraception violated the right to privacy. These cases recognized the right of the individual to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.[1] Following these cases, the Court held in *Roe* that the right to privacy encompasses the right to choose whether to end a pregnancy.[1]

The Court has reaffirmed *Roe's* central holding on multiple occasions throughout the past 33 years,[1] noting in 1992 that "[t]he soundness of this . . . analysis is apparent from a consideration of the alternative."[1] Without a privacy right that encompasses the right to choose, the Constitution would permit the state to override not only a woman's decision to terminate her pregnancy but also her choice to carry the pregnancy to term.[1] For example, many of the same lawmakers and activists who oppose *Roe v. Wade* also lament the Chinese government's coercive population practices. Of course, NARAL Pro-Choice America strongly opposes a government policy that interferes with its citizens' right to reproductive privacy – as evidence clearly shows China does. But it is a sad and bitter irony that the anti-choice movement refuses to acknowledge the ethical similarity between a government that forces women to terminate pregnancies against their will and a government policy that forces women to bear children against their will.

Despite its solid constitutional footing and the fact that numerous courts – including

those dominated by judges appointed by anti-choice presidents – have upheld *Roe*'s core principles, the right to obtain a safe and legal abortion remains under political, legal, and literal attack at every turn.

Instead of focusing on how the two sides in this polarizing debate can find common ground and work to prevent unintended pregnancies by ensuring young people receive honest, realistic sex education and that everyone has access to contraception, anti-choice forces stridently work to ensure abortion is as difficult and costly to obtain as possible.

Far from concentrating on women's health, they focus instead on vilifying abortion and abortion providers, championing risky, unproven, and medically inaccurate "abstinence-only" programs, and erecting barriers to contraception.

And among the most disingenuous of their efforts is yet another myth anti-choice forces promote about *Roe v. Wade:* that *legal* abortion is harmful to women's health. In fact, the decriminalization of abortion in the United States in 1973 has led to tremendous gains in protecting women's health.

The Institute of Medicine of the National Academy of Sciences declared in its first major study of abortion in 1975 that "legislation and practices that permit women to obtain abortions in proper medical surroundings will lead to fewer deaths and a lower rate of medical complications than [will] restrictive legislation and practices."[1] And in fact, the legalization of abortion care in the United States led to the near elimination of deaths from the procedure.[2] Between 1973 and 1997, the mortality rate associated with legal abortion declined from 4.1 to 0.6[3], and the American Medical Association's Council on Scientific Affairs credits the great improvement in abortion's safety to the change in its legal status.[4] Today, legal abortion entails half the risk of death involved in a tonsillectomy and one-hundredth the risk of death involved in an appendectomy.[5] The risk of death from abortion is lower than that from a shot of penicillin.[6]

In the years since *Roe* was decided, tens if not hundreds of thousands of American women's lives have been saved by access to legal abortion. Nonetheless, *Roe v. Wade* and the availability of legal abortion, as well as the progress women have achieved based on reproductive freedom, are under attack.

Abortion bans, mandatory waiting periods, biased-counseling requirements, restrictions on young women's access, medically unnecessary regulations on doctors, and limited funding for low-income women have unfortunately achieved their intended result: it is more difficult for women to obtain safe, legal abortion care today than it was in 1973, just after the *Roe* decision was handed down. Aggravating the problem, the number of doctors providing abortion care is steadily decreasing, to the point that now only 13 percent of U.S. counties have an abortion provider;[7] anti-choice forces have created an atmosphere of intense intimidation and violence that deters physicians from entering

the field and has caused others to stop providing abortion services.[8]

Ironically, many of those now raising alarms about the supposed dangers of abortion are the very persons whose public-policy suggestions would make exercising reproductive rights more hazardous. In pushing for bans on safe and medically appropriate abortion services as early as 12 weeks in pregnancy, anti-choice forces refuse to include provisions to protect a woman's health. They aim to restrict access to mifepristone (RU 486), a safe early option for nonsurgical abortion. They deny funding for a low-income woman's abortion services even when continuing the pregnancy would endanger her health. With these restrictions in place, women's reproductive health is seriously threatened.

It is impossible to capture, even in pages of testimony, how monumental a positive impact *Roe* has had on women's personal lives and the legal doctrine of the right to privacy. *Roe v. Wade* has saved the lives of tens if not thousands of thousands of women, and has improved the quality of life for countless others. In addition to its other positive effects, *Roe* empowered women to take responsibility for their reproductive health and overall well-being; in other words, it embodies the fundamental American values of freedom and personal responsibility.

Legally, *Roe* is the cornerstone of the structure that includes virtually all the personal privacy rights that Americans hold dear. Perhaps time would be better spent considering the personal and legal implications of a United States without *Roe v. Wade* – since it seems that such a country is the one that President Bush and anti-choice leaders here in Congress are trying to create. In fact, we do not need to speculate. We know what havoc was wreaked on women before *Roe*, and we know that we can never go back. We know that if the fundamental principles underlying *Roe* are abolished, not only is a woman's right to choose eviscerated, but so are so many other freedoms, including the right to use birth control, and to be free from government intrusion into the most personal of private activity.

We can and should agree to disagree about the morality of abortion, recognizing that everyone has abiding and legitimate beliefs about pregnancy and the decisions surrounding whether and when to become a parent. But we should also agree, as the majority of Americans do, that decisions of this most personal nature are best made by women and their loved ones, not politicians. *Roe v. Wade* protects women and their families from allowing politicians to force personal decisions upon them – a protection whose political and legal implications are immeasurable.

[1] Rachel Benson Gold, ABORTION AND WOMEN'S HEALTH: A TURNING POINT FOR AMERICA? 9 (1991).

[2] Phillip G. Stubblefield & David A. Grimes, *Septic Abortion*, NEW ENG. J. MED. 310 (1994).

[3] Laurie D. Elam-Evans et al., Centers for Disease Control & Prevention, *Abortion Surveillance – United States, 1999*, 51 MORBIDITY AND MORTALITY WEEKLY REPORT SS-09, 28, tbl. 19 (2002).

[4] American Medical Association, *Induced Termination of Pregnancy Before and After Roe v Wade: Trends in the Mortality and Morbidity of Women*, 268 JAMA 3232 (1992).

[5] Warren M. Hern, ABORTION PRACTICE 23-24 (1984), *citing* JE Wennberg et al., *The Need for Assessing the Outcome of Common Medical Practices*, 1 ANN. REV. PUB. HEALTH 291 (1980).

[6] Nancy Felipe Russo, *Unwanted Childbearing, Abortion, and Women's Mental Health: Research Findings, Policy Implications*, ROCKY MOUNTAIN PSYCH. 9 (1992).

[7] Lawrence B. Finer & Stanley K. Henshaw, *Abortion Incidence and Services in the United States in 2000*, 35 PERSP. ON SEXUAL & REPROD. HEALTH 6, 11 (2003).

[8] For example, in October 1999, abortion provider Stephen M. Dixon closed down his District of Columbia ob/gyn practice, indicating that threats and harassment by anti-abortion activists had taken their toll. These activists mailed threats to Dixon's home, placed his photograph on a "wanted poster," and listed him on a "Baby Butchers" web site, along with 32 other D.C. physicians and hundreds more across the country. (In February 1999, a federal jury ordered the creators of the poster and web site to pay more than $107 million to Planned Parenthood of Columbia/Willamette, the Portland Feminist Women's Health Center, and doctors because of the threats contained in these and other materials.) Dixon said he had already stopped providing abortion care due to the stress caused by anti-abortion terrorism. In a letter to his patients, Dixon wrote, "Sadly, the ongoing threat to my life and my concern for the safety of my loved ones has exacted a heavy toll on me, making it necessary that I discontinue practicing OB-GYN." Avram Goldstein, *Doctor Quits, Cites Antiabortion Threats*, WASH. POST, Nov. 4, 1999, at B1; *Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Activists*, 41 F. Supp. 2d 1130 (D. Or. 1999), *aff'd. in part, vacated and remanded in part*, 290 F.3d 1058 (9th Cir. 2002), *petition for cert. denied*, 123 S. Ct. 2637 (June 27, 2003).