

Thanks, Kathleen.

Ms. SULLIVAN. Thank you, Senator Biden.

The CHAIRMAN. How did Gerhard escape and you get caught?

Senator FEINSTEIN. Mr. Chairman, if I may, I would just like to welcome Professor Sullivan and Dr. Casper, as well. They hail from my alma mater in my State, and I am a big fan of yours. I have heard you many times. I never had occasion to see you in person, and it was most interesting for me to listen to your comments.

If I may, I would just like to make one comment in response, because, surprisingly enough, I agree with much of what Senator Specter just said about the law and the streets very often, not understanding each other, and dropped in between in a huge chasm is protection of the public, and somewhere between the two we have got to find the balance.

But I just want to say I am delighted to welcome you here, and it was a great treat for me to listen to you.

Ms. SULLIVAN. Thank you very much, Senator Feinstein.

Thank you, Mr. Chairman, for the privilege of appearing before you today and working with the committee.

The CHAIRMAN. Thank you.

I want the record to note, Senator Feinstein, that President Casper pointed out on the record that he appreciated you wearing Stanford colors today.

Our next distinguished panel is a panel composed of three individuals representing groups wishing to testify in opposition. First, we have Paige Comstock Cunningham. Ms. Cunningham is president of Americans United for Life in Chicago. Also on this panel is Michael Farris. Mr. Farris is president and founder of the Home School Legal Defense Association and is here on its behalf today. The Home School Legal Defense Association, together with the National Center for Home Education, is a nationwide group in support of home schooling.

I said three. It is panel three, with two people. I apologize. I welcome you both. We welcome you both. Ms. Cunningham, would you begin, please?

**PANEL CONSISTING OF PAIGE COMSTOCK CUNNINGHAM, PRESIDENT, AMERICANS UNITED FOR LIFE, CHICAGO, IL; AND MICHAEL P. FARRIS, PRESIDENT, HOME SCHOOL LEGAL DEFENSE ASSOCIATION, PURCELLVILLE, VA**

#### **STATEMENT OF PAIGE COMSTOCK CUNNINGHAM**

Ms. CUNNINGHAM. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to testify before you again today, as I was here just a year ago in another confirmation hearing.

My name is Paige Cunningham. I am an attorney and also president of Americans United for Life, which is the oldest national legal organization in this country representing the pro-life movement. We are the only national legal organization devoted exclusively to writing, passing and defending laws, laws of a particular nature, those that shield mothers and their innocent children from abortion. But AUL also works to change the law, to protect the

sick, the elderly and the disabled from euthanasia and assisted suicide.

We are here today perhaps to introduce a somewhat discordant note in these harmonious and cordial proceedings for one reason, and that reason is because we are haunted by the image, the image of millions of women and children who have been injured or destroyed by abortion.

We have fought for them in the courts for 21 years, and it may be another 20 years before we succeed, just as it was for abolition, for women's suffrage, and for the civil rights movements. But one thing is clear: We will never give up.

Judge Breyer may have ample professional and legal credentials to sit on the Supreme Court, but we are concerned about one flaw that is fatal, and that flaw is the process by which he was selected and its impact on the courts, on the law, and on the real people of this Nation.

President Clinton has made it clear that he would appoint to the Supreme Court only a supporter of *Roe v. Wade*. A nominee for the Supreme Court must now pass a test, a pro-abortion test. No other administration has pushed its political agenda as feverishly as the current one. Judge Breyer's nomination to the Supreme Court clearly implies that he has passed this political test. It should be obvious that an abortion litmus test is an insult to the integrity of the highest court in this land. But what is far more disturbing is the abortion doctrine itself that Judge Breyer will be expected to support.

In 1973, the Supreme Court ruled in *Roe v. Wade* that a mother may end the life of a child in her womb for any reason and at any time. The Court's decision in *Roe* openly defied a social, moral and legal tradition condemning abortion that dates back at least 800 years. *Roe* has been condemned as unprincipled, both by members of the Court and by constitutional scholars, including those who favor a pro-abortion public policy.

Unlike *Brown v. Board of Education*, the once controversial school desegregation case which is now universally accepted, *Roe v. Wade* has never been settled in our society. In fact, by overriding the democratic process, the Court created the very division it now claims to have healed. That division illustrates what Judge Breyer warned of earlier this week, that judges can become isolated in the court room from the real people in the streets. What he said is true, that the decisions he has made, the decisions that he will help to make on the Supreme Court will have an effect upon the lives of many, many Americans.

Well, AUL is confronted daily with many, many American women which the abortion law of this land has touched. They are career women, teenagers, students, mothers, rich and poor. And as we work with and represent them, AUL is increasingly convinced that women would be better off without this abortion policy.

*Roe* has done nothing to advance women's legal, social or economic rights. The real progress in these areas has come, as you well know, through Congress and State legislatures. They have passed dozens of laws mandating equal pay for equal work and banning sex discrimination in public and private employment, in the sale and rental of housing, in education and many other areas.

Not one of these laws depends upon *Roe* or upon a right to abortion.

When the law places a mother's rights above those of her very own child, what happens? She is the one who is left with the sole responsibility for any child she chooses to bear. We see it most clearly in the workplace. You can't imagine how many women are told in very subtle ways, because you will not find it in an employee handbook, that if you want to make partner here, don't start a family, if you want to stay on the police force, don't get pregnant.

If abortion were not so readily available and promoted, there would be healthy pressure on employers to accommodate women who have children and want or need to continue working. Instead, employers and men get off the hook, because they can say that if a woman has the right to choose abortion, she chooses not to exercise this right, then she is on her own.

The costs to women's bodies and lives cannot even begin to be measured here today. Many women are abandoned by the baby's father as soon as the crisis pregnancy and the abortion are over. More than 70 percent of relationships fall about after the abortion. Thousands of women now bear the scars of a perforated uterus or the loss of fertility, and many still continue to die from abortions. We can't even give you these figures, because the abortion industry is the most unregulated industry in this country. Accurate data is simply not available.

Judge Breyer has said that the law must work for people. But our 21-year-old abortion law has worked against women. The tragedy of abortion is a gaping national wound, a wound whose ugliness is covered up by polite tolerance and rhetoric about a woman's right to choose and keeping government out of private decisions.

But the devastation of *Roe* is not limited to those millions of children who will never be born or to the mothers and families who will never cuddle their babies and hear them laugh or pick them up when they cry, because *Roe* has seeped into other areas of our law with an abortion distortion lens that clouds our laws and Constitution. We should pay attention to the warning signs.

Just 2 weeks ago, the Supreme Court jeopardized the first amendment for so-called abortion rights. It upheld certain restrictions on peaceful nonviolent protests at abortion clinics. I wonder if these protests would have been protected, if anything other than abortion or opposition to abortion had been the issue.

And in May of this year, a Federal district court in the State of Washington made an unprecedented decision to strike down a 140-year-old law that prevented assisted suicide. And how did she do so? She based her opinion on *Roe's* stepchild, *Planned Parenthood v. Casey*.

Unless this committee was presented with convincing evidence to the contrary, we must assume that Judge Breyer has passed President Clinton's abortion litmus test. But the Senate is not obliged to rubber stamp this nomination. It is time to stop and seriously question the support for an abortion law that is ripping away at our constitutional freedoms, the right to life and liberty and the pursuit of happiness, and now the freedom of speech.

Judge Breyer said before you that he thinks it is absolutely intolerable that one real child is killed every hour through violence.

Now, you may not have seen the assault on them, you could not have heard their cries. But in the short time I have spoken to you, over 15 children have felt the violent pain of abortion.

Because we believe this onslaught must end, we must respectfully and regretfully oppose this nomination.

Thank you.

[The prepared statement of Ms. Cunningham follows:]

PREPARED STATEMENT OF PAIGE COMSTOCK CUNNINGHAM

Mr. Chairman, Members of the Judiciary Committee, thank you for this opportunity to testify concerning the nomination of Judge Stephen Breyer to the United States Supreme Court.

My name is Paige Cunningham. I am an attorney and the president of Americans United for Life, the legal arm of the pro-life movement. Americans United for Life (AUL) is the only national legal organization dedicated exclusively to writing, passing and defending laws—laws that shield innocent children and their mothers from abortion. AUL also works to change law and public policy to protect the sick, the elderly, and the disabled from euthanasia and assisted suicide.

We are here today because we are haunted by the image of millions of women and their children who have been injured and destroyed by abortion. We have fought on their behalf in the courts for twenty-one years, and it may be another twenty years—just as it was for the abolition, women's suffrage, and the civil rights movements—before we succeed. But one thing is clear. We will not give up the fight for women and their little ones in the judicial arena.

Although Judge Breyer clearly has the credentials to sit on the Supreme Court, we are concerned about one flaw which we believe to be fatal. That flaw is the process by which he was selected and its impact on the courts, the law, and American society.

President Clinton made it clear that he would appoint to the Supreme Court only a supporter of *Roe v. Wade*<sup>1</sup>. A nominee for the Supreme Court must now pass a test—an abortion litmus test, a test which other presidents were wrongfully accused of applying. His position as a nominee implies that Judge Breyer has passed this test. Members of this Committee and other Senators warned several years ago that we should not require a judicial nominee to commit himself to a particular position on an issue that may come before him as a judge. As Abraham Lincoln said, "[W]e cannot ask a nominee how he would vote, and if he told us, we would despise him."

It should be obvious that an abortion litmus test is an insult to the integrity of the Highest Court in the land. But what is far more disturbing is the abortion doctrine that Judge Breyer will be expected to support. In 1973, the Supreme Court ruled in *Roe v. Wade* that a mother may end the life of the child in her womb for any reason, throughout all nine months of her pregnancy. And it did so with no constitutional basis. The Court's decision in *Roe* openly defied a social and legal tradition condemning abortion that dates back at least to the beginnings of the common law in England, almost eight hundred years ago.

*Roe* has been condemned as unprincipled both by Members of the Court and by constitutional scholars, including those who favor abortion as a matter of legislative policy. Unlike *Brown v. Board of Education*,<sup>2</sup> the once-controversial school desegregation case which is now universally accepted, *Roe v. Wade* has never been settled in our society. In fact, by overriding the democratic process, the Court created the very division it now claims to have healed.

Women would be better off without this abortion policy. *Roe* has done nothing to advance women's legal, social or economic rights. The real progress has come through Congress and state legislatures. They have passed dozens of laws mandating equal pay for equal work and banning sex discrimination in public and private employment, sale and rental of housing, education and other areas. Not one of these laws depends on *Roe* or on a right to abortion.

Even more troubling is the Court's current belief that abortion is necessary for women's equality. This is profoundly anti-woman. The Court seemed to suggest two years ago in *Planned Parenthood of Southeastern Pennsylvania v. Casey*<sup>3</sup> that we women can be made "equal" to men only if we are given the right to destroy our own children through abortion. But it is offensive and sexist to imply that we must

<sup>1</sup> 410 U.S. 113 (1973).

<sup>2</sup> 347 U.S. 483 (1954).

<sup>3</sup> 112 S. Ct. 2791 (1992).