The CHAIRMAN. Thank you. Ms. Kiehl.

Ms. KIEHL. Thank you. My name is Kristina Kiehl. And despite my appearance on this panel, I am not a lawyer.

I represent Voters for Choice.

The hearings on the nomination of Robert Bork were a referendum in part on the right to privacy. They generated an unprecedented national discussion of the constitutional boundaries between government power and the private domain of the individual.

In refusing to confirm the nomination of Robert Bork, the Senate was confirming the sense of the American people that freedom from government intrusion in private reproductive decisions is a fundamental human right.

Since the 1973 Supreme Court decision on abortion in *Roe* v. *Wade,* the public is committed to keeping abortion safe and legal. According to polling data analysis, in 1975, 75 percent of the American public supported legal abortion.

More than 10 years later, the percentages are virtually identical, with 76 percent favoring legal abortion.

This is an informed judgment. A majority, 55 percent, know someone who has had an abortion. And 82 percent of Americans say they are not likely to change their minds on this issue.

Thus, there is an important counterpoint to the legal discussion of the right to privacy, and that is the unwavering determination of a majority of Americans that deciding whether or not to bear a child is a private decision.

Let Judge Kennedy be reminded that it is not only a matter of law, but a matter of deeply held personal belief that in certain private decisions government has no place.

If confirmed, Judge Kennedy will be accountable to the Constitution and to the laws. And this hearing will be the last time in his judicial career that Judge Kennedy will be accountable directly to the people and to their elected representatives.

We hope these confirmation hearings will leave Judge Kennedy with a sensitivity to people's lives, an understanding that the right to a private choice about abortion is not a right, if some women can make that decision only with government permission.

In the end, liberty is not in the Constitution, it is not in the laws. Liberty is in the lives of the people, or it is nowhere.

The Court must look not only to the letter of the Constitution, and not only to the letter of the law. The Court must look to the lives of the people to see where liberty is alive.

Judge Kennedy must look at the lives of women. Today, most women can choose whether or not to bear a child, and can make that choice without government interference. We call that the right of privacy.

But women dependent on medicaid, women in prison, women in the Peace Corps, and native American women cannot make that choice. A conscious government policy makes that choice impossible for them. You will look in vein for the right of privacy in their lives.

The Constitution and the courts have said women have the right to decide, without government compulsion, whether to bear a child, but if that woman is dependent on medicaid the Government is not neutral. The Government has thrown its decisive financial clout on

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one side of her so-called privacy decision. Look at her life and you will not see the right to privacy, for the Constitution and the courts have failed her.

Before *Roe* v. *Wade* there were two classes of women: those with the money and the know-how to buy a safe, legal abortion, and those who had to risk potentially deadly back-alley abortions, or bring an unwanted child into this world.

Today, medicaid policy divides American women into two classes: those who can afford an abortion and those who cannot. Where is the right of privacy when that right can only be bought for a price?

We believe that Judge Kennedy does not intend to overturn *Roe* v. *Wade,* but if we allow that right to be nibbled away at the edges, then we will have created many classes of women who, in actuality, have different rights depending on where they live, who they know, and how much money they have.

That is the situation we had before *Roe* v. *Wade,* when abortions were available to women in some States, and to all women who had the money to travel to a place where safe and legal abortions could be obtained.

We are heartened to hear Judge Kennedy affirm the constitutional principle of privacy. We cannot oppose Judge Kennedy because we believe that he is committed to upholding a Constitution that Judge Bork was determined to rewrite.

But we cannot endorse him because we are not confident he is willing to look beyond the theory of the law to assure that liberty, and the right of privacy exists in the lives of all American women.

For my daughters' sakes, I hope Judge Kennedy will prove his conviction that liberty must be protected, not just in the law, but in our lives. Thank you.

[The statement of Kristina Kiehl follows:]