Testimony of
Karen Pearl, Interim President
Planned Parenthood Federation of America

before the

Senate Judiciary Committee

on

the Nomination of John G. Roberts
to be Chief Justice of the United States Supreme Court

September 15, 2005

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Mr. Chairman and distinguished Members of the Committee,

I am Karen Pearl, Interim President of Planned Parenthood Federation of America. I am honored to have been invited to testify at these historic hearings.

Planned Parenthood is America's oldest, largest, and most trusted provider of family planning services and education, and reproductive health care. Every year, our 121 affiliates serve five million women, men, and adolescents in over 850 health centers in communities across the nation, providing the information and services people need to stay healthy, plan their families, and make responsible choices about sex and reproduction.

I speak to you today on behalf of the millions of Americans who rely on us now, and on behalf of those who will come to our health centers in the future, seeking honest, medically-accurate information, family planning and contraception, and other reproductive health care including abortion services.

I also speak to you as someone who spent a decade serving clients as president and CEO of a Planned Parenthood affiliate. Many of those who came through the doors of our health centers seeking care were uninsured or underinsured, young or poor. In fact, nationally seventy-four percent of Planned Parenthood clients have incomes at or below 150 percent of the federal poverty level. For many, Planned Parenthood is their only health care provider.

Our clients rely on us to provide confidential, quality care. They trust us to be there for them.

We take that trust seriously. Planned Parenthood was founded on the principle that every person has fundamental human and civil rights to equality, privacy, and dignity. We consider it our most profound responsibility to ensure that all Americans, regardless of their circumstances, have access to the full range of reproductive health care options. We believe it is the right of all Americans to make personal health care decisions free from government intrusion.

The right to use contraception, to get access to the health care we need, and to make our own childbearing decisions form the very fabric of American life – underlying freedoms so basic that many of us take them for granted. Judge Roberts's views on these matters have the very real potential to shape these freedoms for Americans for decades to come, affecting the life of every American, but the lives of women most of all – in particular women who because of poverty, youth, or circumstance are most vulnerable.

This is why we have been so careful and deliberate in our consideration of Judge John Roberts's nomination to serve as Chief Justice of our nation's highest court. The Chief Justice of the Supreme Court holds the highest legal position in our country. If confirmed to become the Chief Justice, John Roberts would be able to influence the direction of the Court and the opinions it renders. We cannot entrust this crucial position to someone

who has demonstrated hostility in the past to women's rights, in particular to the right to reproductive freedom and the right to choose.

Over the past months, we have reviewed thoroughly and thoughtfully those parts of his record that have been made publicly available. As more documents from his work on behalf of the Reagan and George H. Bush administrations were released, and as the evidence of Judge Roberts's hostility to our most cherished freedoms mounted, we grew more and more alarmed.

We discovered that as a government lawyer, in administrations openly hostile to the right to choose, Roberts repeatedly derided and dismissed Americans' settled constitutional right to choose, the fundamental principle articulated in *Roe v. Wade.*

In spite of this history, before deciding to oppose his nomination to the Supreme Court, we wanted to give Judge Roberts an opportunity to speak for himself during these hearings and clarify whether the American people could be confident that he would be a Chief Justice who would protect, not take away, our fundamental freedoms.

Rather than affirming these fundamental rights, however, during these hearings Judge Roberts has consistently evaded the Senators' questions on many of these crucial issues. He steadfastly refused to answer questions relating to whether the right to privacy includes the right to choose and to whether *Roe v. Wade* should be overruled. This leaves us no choice but to conclude that Judge Roberts, if he were to become Chief Justice Roberts, would not uphold this settled constitutional right

We oppose Judge Roberts's nomination to become the next Chief Justice of the United States because of his past record and because of his failure, during these hearings, to affirm that he will protect our constitutional right to privacy as it has been interpreted by the Supreme Court, including a woman's fundamental right to choose abortion. We would oppose any nominee to serve as Chief Justice of the Supreme Court – but particularly a nominee with Judge Roberts' record – who cannot or will not assure the American people that he or she will protect, not take away, our settled constitutional freedoms.

Reproductive liberty in this country has been slowly eroded since the landmark decision of *Roe v. Wade*. More than thirty-three years ago, seven Justices – a clear majority of the Court – ruled the Constitutional right to privacy protects a woman's right to choose abortion. Since that time, the makeup of the court has shifted significantly.

In 1992, when the Court decided *Planned Parenthood v. Casey* only two Justices supported reaffirming *Roe* in its entirety. Three more justices voted to affirm the essential holding of *Roe*, that the Constitution prohibits an outright ban on abortion. Thus the core guarantees of *Roe* survived by a vote of just 5–4.

Five years ago, the Supreme Court passed down its most recent abortion-related ruling in *Stenberg v. Carhart*. Once again, four of the nine justices made it clear that they

supported either overturning *Roe v. Wade* or significantly gutting its promise that the constitution protects women's health and lives against government regulations that threaten them. Justice Kennedy, who in *Casey* sided with the plurality in reaffirming the essential holding of *Roe*, voted against the constitutional protection for women's health in *Stenberg v. Carhart.*

If the Court continues in this perilous direction, we could soon face situations where doctors are prevented from providing emergency care to their patients until they can find a judge to allow it. We may face situations where a woman incurs liver, kidney, or brain damage, or loses her future fertility, because restrictive laws forbid the abortion that could have saved her health.

If confirmed to become Chief Justice, we believe Judge Roberts will lead the Court further in the direction of allowing politicians to be the arbiters of intimate choices and basic medical decisions, rather than women in consultation with their loved ones and doctors. Judge Roberts has failed to demonstrate a commitment to the constitutional protections upon which women have relied for more than a generation.

Prior to these hearings, Planned Parenthood urged the Senate Judiciary Committee to seek Roberts's records from his work on the *Rust, Bray* and *Casey* cases so that the American people could see for themselves what Judge Roberts's role was in these cases. Despite the efforts of some members of this Committee, and our repeated calls for the Administration to make documents that would shed light on Roberts's role in the Solicitor General's office available to the Committee and to the public, the Administration refused. The Senate should not be asked to reach this enormous decision which will have an impact on the direction of the courts and the nation without information about Judge Roberts's views on fundamental constitutional rights. Particularly because the public has been denied access to these critical documents, the burden was upon Judge Roberts to be fully forthcoming with the Committee. He has repeatedly failed to meet this burden.

Although many documents from Judge Roberts's records were withheld, many of the documents which were produced revealed that Judge Roberts had consistently advocated positions that challenged the legitimacy of a woman's right to choose, and construed civil rights law narrowly at the expense of women's health and safety. He has also demonstrated a restrictive view of the role of the federal courts that poses a substantial risk for women who rely on the courts to protect them from laws that could cause them harm. Thus, what we do know of Judge Roberts's judicial philosophy from this record raises grave concerns about his support of a woman's right to choose abortion and of constitutional protections for women's health and safety.

Roberts's views on *Roe v. Wade*

A number of documents Judge Roberts authored while serving as an attorney for the government called into question his support for the fundamental principles articulated in *Roe v. Wade.*

While serving in the Solicitor General's office in 1990, Judge Roberts co-authored a brief filed on behalf of the government in the case of *Rust v. Sullivan* that stated "*Roe v. Wade* was wrongly decided and should be overruled." The brief further states that the right articulated in *Roe* "find[s] no support in the text, structure, or history of the Constitution." The Solicitor General's office, and John Roberts, included these arguments in its brief despite the fact that the case did not involve a challenge to *Roe* or the right to choose, but rather concerned federal regulations that prohibited family planning programs which received federal aid from providing abortion-related counseling.

Years earlier, in 1981, in a lengthy memorandum Roberts drafted while serving in the office of the Attorney General on proposals to divest the Supreme Court of appellate jurisdiction, Roberts wrote *Roe v. Wade* "is broadly perceived to be . . . unprincipled jurisprudence."

Judge Roberts failed to assuage our fears that the views reflected in these documents are his own. He refused to assure us that he does not believe that *Roe* should be narrowed or overruled altogether. He steadfastly refused to say whether he believed, under principles of *stare decisis*, the question of whether *Roe* should be overruled had been settled by *Planned Parenthood v. Casey,* where the Court extensively discussed this question and reaffirmed the central holding of *Roe*. When asked by Senator Biden whether he agreed with the statement of Justice Ginsburg during her 1993 confirmation hearings that a state law banning abortion would be unconstitutional, he refused to respond. Yet, when pressed by Senator Sessions about whether he would commit to remain open to evaluating whether *Roe* should be overruled he responded, unequivocally, "Absolutely, Senator." We are left with no alternative but to surmise that he shares the view, articulated in his past writings, that *Roe* should be overruled.

Roberts's involvement in clinic violence cases

Roberts's involvement in a number of cases involving violence against reproductive health centers, health care providers, and patients is also deeply troubling.

We at Planned Parenthood are faced with violence and intimidation directed at our employees and patients everyday. In fact, on the first day that I started as an affiliate CEO at Planned Parenthood of Nassau County in January 1995, I was greeted by a sign on the front door that read: "This is a murder zone. Anyone who enters will be killed." Later, while still serving as the CEO of my local Planned Parenthood, I volunteered as a clinic escort, working to ensure the safety of the patients who needed our services. One day, the protesters were edgy because we were enforcing the law and not letting them trespass on our private property. In retaliation, they stormed onto the parking lot, screaming at me and my fellow escort, and eventually hitting us with their signs. The only thing that stopped them from further violence was the police.

Such actions are unacceptable. No one should have to endure intimidation or violence to gain access to family planning, contraception or any reproductive health service.

Unfortunately, my stories are not unique. Planned Parenthood health centers throughout the nation continue to face intimidation to this day.

For this reason, Judge Roberts's involvement in the case of *Bray v. Alexandria Women's Health Center* raises deep concerns. Judge Roberts was one of the authors of an *amicus* brief filed on behalf of the United States arguing in support of the legal position of violent anti-clinic demonstrators and urging a narrow reading of a civil rights law. Nowhere in the brief did the government disavow the actions or tactics of the violent demonstrators – not even in a footnote.

Perhaps even more disturbing than the brief in *Bray* is that as Deputy Solicitor General, Roberts was involved in the decision to intervene in a district court proceeding during the blockades of women's health centers in Wichita, Kansas in the summer of 1991. For two months, thousands of protestors descended upon three Wichita women's health centers and terrorized women, health center staff, and healthcare workers. To keep the peace and protect women who were attempting to enter these women's health centers, the district court issued an injunction against the protestors and brought in federal marshals. In a highly unusual intervention, the Department of Justice sought to have this injunction lifted, even though the legal issue at stake was already pending before the Supreme Court.

Not only is it extremely rare for the Department of Justice to intervene in the district court, it is even more rare to ask the court to do what was asked here – lift an injunction that was stopping violence that was paralyzing a city while a legal issue was on appeal. The Justice Department's request was far more aggressive than was necessary to accomplish their stated goal of resolving a disputed legal question. The decision by the Solicitor General's office to weigh in on the Wichita case and urge that the injunction be lifted would have meant, had this argument prevailed, that the federal marshals would have been removed from this violent, volatile situation, putting patients and health care providers at enormous risk of physical harm.

Roberts's actions in these cases show a willingness to take a narrow, rigid, ideological approach to the law, even at the peril of women. They raise grave concerns and real questions about Roberts's attitude towards women's health and right to choose.

Finally, Roberts's writings reveal his extremely cramped view of the role federal courts, including the Supreme Court, should play in protecting the basic freedoms and rights of Americans. This view of the role of the courts could lead Judge Roberts, particularly in the leadership role of Chief Justice, to restrict access to federal courts to remedy violations of constitutional rights.

Conclusion

On June 27, the last day of the prior Term, I stood on the steps of the Supreme Court alongside Planned Parenthood staff and supporters from Washington, DC to emphasize the crucial role of the Court in all our lives.

Joining with us was Sarah Weddington, the brave attorney who changed the course of history by arguing and winning *Roe v. Wade*, making it possible for women to have a truly equal place at life's table.

Standing with her, I felt the enormous responsibility that all of who us cherish reproductive freedom share to uphold her legacy. Before *Roe* affirmed the right of every woman to control her own fertility and determine her own reproductive destiny, women were not truly equal in society. More than 30 years later, the progress that *Roe* set in motion – and the freedoms it guaranteed – have become a part of the very fabric of American life. For many Americans, it is as difficult to imagine what life was like before *Roe* as it is to imagine life before *Brown v. Board of Education* outlawed segregated education. The promise of true equality that *Roe* represents for every American woman is essential to our lives – whether or not we ever face the choice to have an abortion.

Right now, we stand at a crossroads. Will we continue to live in an America where reproductive freedoms are defended, where privacy is protected, and where women are respected as equals under the law? Or will we see an America where barriers keep women from getting the health care they need, where the government intrudes upon personal reproductive choices, and where restrictive laws prevent doctors from fulfilling their ethical obligation to preserve the health and safety of women?

Planned Parenthood Federation of America opposes the confirmation of Judge John Roberts to serve as Chief Justice of the United States Supreme Court. We urge you to do the same. The vote you cast to confirm or oppose Judge Roberts's nomination to the position of Chief Justice of the Supreme Court will be among the most important votes you cast as Senators. It is your duty to ensure that every Justice that serves on the Court, and in particular the Chief Justice, promises to uphold and defend the constitutional rights and freedoms we treasure.