NARAL
Pro-Choice America Foundation

Considering the Next Supreme Court Justice: A Summary of the State of Choice

Testimony Presented by

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On Behalf of
NARAL Pro-Choice Arizona
NARAL Pro-Choice California
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U.S. Senate
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On behalf of NARAL Pro-Choice America's one million members and activists, and all Americans who hold dear the values of freedom and privacy, I am honored to submit this testimony to the committee. You have before you the nomination of Sonia Sotomayor to the position of associate justice of the U.S. Supreme Court. The nomination of a Supreme Court justice is a notable opportunity to examine the state of one of our most deeply valued rights: the right to privacy. Your constitutional role in evaluating the qualifications and merits of this nominee is profoundly significant, as the Supreme Court is the final arbiter of our Constitution. The decisions the Supreme Court issues have a lasting impact on the lives of all Americans; therefore, each of us has a stake in this confirmation process.

The Supreme Court and the Right to Privacy

The Supreme Court has been pivotal in articulating and guaranteeing Americans' right to privacy. In the 20th century, it played a crucial role in recognizing certain sanctified spheres of individual autonomy, liberty, and privacy that Americans cherish.

During the half century leading up to the critical *Roe v. Wade* opinion, 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] Citing these concerns for autonomy and privacy, the court struck down laws which had severely curtailed the role of parents in education, mandated sterilization, and prohibited marriages between people of different races.[2]

Of particular interest, *Griswold v. Connecticut*,[3] decided in 1965, and *Eisenstadt v. Baird*,[4] decided in 1972, recognized important aspects of the right to privacy. In these cases, the Supreme Court held that state laws that criminalized or hindered the use of contraception violated this central right. 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."[5] Following these cases, in 1973, the court held in *Roe v. Wade* that the right to privacy encompasses the right to choose whether to end a pregnancy.[6]

Bioethicist and legal scholar R. Alta Charo articulates *Roe*'s importance as follows:

> *Roe v. Wade* represents the culmination of decades of constitutional law on the need to restrain over-zealous governmental intrusions on personal decisions concerning our families, our bodies, and our lives. In turn, it has formed the basis for yet more decades of constitutional law on the importance of maintaining a zone of personal liberty and privacy, in which individuals may flourish. In a century that will bring ever greater temptations and technological capabilities for governmental surveillance and control of its citizens, maintaining the integrity of this zone of personal liberty and privacy is more important than ever.[7]

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The right to privacy recognized in this series of cases is an area of law concerning our most intimate experiences. The particular understanding articulated in *Roe* that privacy includes the right to choose may be the most elemental application of the law.

Three Decades of *Roe*: A Better Life for Women

This right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. [8]

U.S. Supreme Court Justice Blackmun
Roe v. Wade

When *Roe v. Wade* was decided in January 1973, abortion except to save a woman's life was banned in nearly two-thirds of states.[9] Laws in most of the remaining states contained only a few additional exceptions.[10] In its landmark 7-2 decision, the Supreme Court established the right to choose and recognized that because the decision whether to have a child is unique to every woman and her particular situation, it must be a personal decision.

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 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.

Most women welcome pregnancy, childbirth, and the responsibilities of raising a child at some period in their lives. However, few events can more dramatically constrain a woman's opportunities than an unplanned pregnancy. Because childbirth and pregnancy substantially affect a woman's educational prospects, employment opportunities, and self-determination, restrictive abortion laws narrowly circumscribed women's role in society and hindered women from charting their paths through life in the most basic of ways.[11] In the 36 years since *Roe*, the variety and level of women's achievements have reached unprecedented heights. The Supreme Court observed that "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."[12]

The Reality of *Roe* Today

Toward the end of his term on the court, Justice Blackmun wrote of the freedom to choose: "For today, the women of this Nation still retain the liberty to control their destinies. But the signs are evident and very ominous, and a chill wind blows." [13]

Twenty years later that wind is blowing at gale force.

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Justice Blackmun warned of a threat that he would come to see realized even in his years on the bench. In 1992, the court rendered one of its most important decisions on abortion rights since *Roe*. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the court reaffirmed *Roe*, while at the same time sharply restricting its protections. The *Casey* court abandoned the strict scrutiny standard of review and adopted a less protective standard that allows states to impose restrictions as long as they do not "unduly burden" a woman's right to choose. Under this new standard, the court approved state restrictions that it had previously found to violate the right to privacy and effectively invited states to impose barriers on women's access to abortion.[14] Indeed, under *Casey*'s looser standard, courts have allowed a multitude of state restrictions to be imposed upon reproductive freedom and choice.[15] *Casey* opened the floodgates to a relentless, purposeful effort on the part of anti-choice forces to erode and burden the right to choose—rendering it unavailable for many and more difficult and dangerous for others.

Even though *Roe* was not overturned in *Casey*, unfortunately reproductive choice is not a reality for many women in the United States today. At the state level, anti-choice legislators are steadily passing laws that could lay the groundwork for a Supreme Court case to challenge and possibly reverse *Roe v. Wade*. Between 1995 and 2008, states enacted 528 anti-choice legislative measures—including 16 in 2008. 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,[16] and 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.[17]

Following is a brief summary of some of the ways in which, today, a woman's right to choose is in fact unrealized.

Low-Income Women

As *Roe* established a constitutional right to choose, it follows that all women should have access to reproductive-health care regardless of their economic status. However, restrictions on public funding make abortion services an unavailable choice for many women. Numerous state and federal laws restrict abortion care with only very narrow exceptions. Banning public funding for services limits reproductive-health options for those who rely on the government for their health care — recipients of Medicaid, Medicare, the State Children's Health Insurance Program, Indian Health Service clients, and clients of the District of Columbia's public health-care programs — putting women's health in danger and inserting politicians into the doctor-patient relationship.

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Low-income women often have difficulty raising the money to pay for abortion care and, according to one study, on average need twice as much time to raise the necessary funds than do middle- or upper-income women.[18] These burdens disproportionately affect women of color, who are more likely than white women to be poor, to lack health insurance, and to rely on government health-care programs or plans.[19] In today's challenging economic climate, this can mean having to decide between accessing much-needed health care or paying rent and utilities. The ever-increasing demand placed on charities that provide funds for abortion care demonstrates this unmet need. The inability to exercise the constitutional right to choose can severely jeopardize women's health. When a low-income woman faces a medical complication during her pregnancy that does not qualify for one of the narrow exceptions to restrictions on public funding, her struggle to secure adequate private funding can result in dangerous health complications.

Young Women

Mandatory parental consent and notice laws burden young women's freedom to choose. Parental-consent and notice laws endanger young women's health by forcing some women—even some from healthy, loving families—to turn to illegal or self-induced abortion, to delay the procedure and increase the medical risk, or to bear a child against their will. Ideally, a teen facing a crisis will seek the advice and counsel of those who care for her most and know her best. In fact, even in the absence of laws mandating parental involvement, many young women do turn to their parents when they are considering abortion.[20] Unfortunately, some young women cannot involve their parents because physical violence or emotional abuse is present in their homes, because their pregnancies are the result of incest, or because they fear parental anger and disappointment. Mandatory parental-involvement (consent and notice) laws do not solve the problem of inadequate family communication; in some cases, they exacerbate a potentially dangerous situation.

In challenges to two different parental-involvement laws, the Supreme Court has stated that such laws must have some sort of bypass procedure in order to be constitutional.[21] Most states that require parental consent or notice provide—at least as a matter of law—a judicial bypass through which a young woman can seek a court order allowing an abortion without parental involvement. Despite the existence of these laws, they are very challenging to navigate. Some young women cannot maneuver the legal procedures required; others do not go or delay going because they fear that they will be recognized by people at the courthouse. Ultimately, judicial-bypass mechanisms are often an inadequate alternative for young women, especially when courts are either not equipped or resistant to granting these bypasses.

Women in Rural Areas

Mandatory-delay laws and provider shortages have a particularly limiting affect on the ability of women in rural areas to choose safe, legal abortion. State-imposed mandatory-delay provisions prohibit women from receiving abortion care until they are subjected to a state-

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mandated lecture and/or materials followed by a delay of usually at least 24 hours before they can receive services. This creates additional burdens for these women who have to travel for many hours to reach a health-care provider and for women who do not have the resources to take extra time off work or pay for child care. These laws impede earlier, and therefore safer, abortion care, thereby endangering women's health.

The precipitous decline in the number of abortion providers combined with mandatory-delay laws has a practical effect of rendering meaningless the constitutional right to choose for women in rural areas. Today, 87 percent of all U.S. counties have no identified abortion provider.[22] The American Medical Association's Council on Scientific Affairs concluded that "mandatory waiting periods, parental or spousal consent and notification statutes, a reduction in the number and geographic availability of abortion providers, and a reduction in the number of [trained] physicians"[23] delay abortion care and endanger women's health.

Violence Against Providers

A campaign of violence, vandalism, and intimidation, endangering providers and patients, has curtailed the availability of abortion services and has made it increasingly difficult for women to exercise their right to choose. Picketers have chained themselves to clinic entrances and blocked patients from entering in an effort to intimidate and discourage those seeking abortion care. More violent measures have claimed the lives of those involved in providing care for women; since 1993, eight clinic workers – including four doctors, two clinic employees, a clinic escort, and a security guard – have been murdered in the United States.[24] Seventeen attempted murders have also occurred since 1991.[25] Opponents of choice have directed more than 5,800 reported acts of violence against abortion providers since 1977, including bombings, arsons, death threats, kidnappings, and assaults, as well as more than 143,000 reported acts of disruption, including bomb threats and harassing calls.[26] Just a few weeks ago, Dr. George Tiller, a dedicated physician who provided abortion care for women for two decades, was shot and killed by an anti-choice extremist while attending church in Wichita, Kansas.

Because of the mounting threats to providers, clinics in many areas are increasingly forced to rely on "circuit riders" – doctors willing to fly and drive hundreds of miles to serve women who live in areas where local doctors no longer feel safe providing these services. Clinic directors can have a difficult time hiring and retaining office staff because of the daily threats and harassment from anti-choice activists. Although federal and state clinic-protection laws have alleviated some forms of violence against reproductive-health centers, the threats, intimidation, and violence against clinic providers and staff continue. These actions hinder access to abortion services and threaten the lives of those dedicated to ensuring a woman's right to choose.

The Reversal of *Roe* Poses a Threat to Women

Not only do women currently face barriers to accessing their right to choose, but *Roe v. Wade*'s constitutional protections are themselves in jeopardy. For three-and-a-half decades, the anti-

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choice movement has been on a mission for the elusive fifth justice to overturn *Roe*. It has sustained a concerted, well-funded, and politically potent effort with the ultimate goal of ending legal abortion in all, or nearly all, circumstances. The threat to *Roe* itself is very real.

If *Roe v. Wade* is overturned, tens of millions of women would face the possibility of losing their right to choose altogether. Without this federal protection in place, many state bans on abortion would go into effect immediately, and anti-choice state legislatures and governors in other states could pass new laws eliminating access to abortion. In 2008 alone, legislators in 12 states considered 22 near-total bans on abortion care, and 15 states have not repealed their existing bans, some of which could become enforceable if *Roe* falls.[27] All told, according to our analysis, 23 states are poised to make abortion illegal if *Roe v. Wade* falls.[28]

According to one estimate made before 1973, "more than five thousand women may have died [per year] as a direct result [of criminal abortions]. Many deaths from illegal abortion may go unlabeled as such because of careless or casual autopsies and the lack of experience and ability of autopsy surgeons."[29] An estimated 1.2 million women each year resorted to illegal abortion,[30] despite the hazards of frightening trips to dangerous locations, unlicensed practitioners, unsanitary conditions, and risk of severe infection or death.[31] Since abortion was legalized in 1973, the safety of the procedure has increased dramatically. The number of deaths per 100,000 legal abortion procedures declined from 4.1 to 0.6 between 1973 and 1997.[32] *The New England Journal of Medicine* has reported that "[s]erious complications and death from abortion-related infection are almost entirely avoidable. Unfortunately, the prevention of death from abortion remains more a political than a medical problem."[33]

In addition to the impact the reversal of *Roe* would have on medical safety and health of women, it also would have considerable ramifications for the other private decisions protected by *Roe*'s recognition of the right to bodily autonomy.

As Professor Charo explains:

> *Roe v. Wade* is at the core of American jurisprudence, and its multiple strands of reasoning concerning marital privacy, medical privacy, bodily autonomy, psychological liberty and gender equality are all connected to myriad other cases concerning the rights of parents to rear their children, the right to marry, the right use contraception, the right to have children, and the right to refuse unwanted medical treatment. Overturning *Roe* would unravel far more than the right to terminate a pregnancy, and many Americans who have never felt they had a personal stake in the abortion debate would suddenly find their own interests threatened, whether it was the elderly seeking to control their medical treatment, the infertile seeking to use IVF to have a child, the woman seeking to make a decision about genetic testing, the couple heeding public health messages to use a condom to reduce the risk of contracting AIDS or other sexually

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> transmitted diseases, or the unmarried man who, with his partner, is trying to avoid becoming a father before he is ready to support a family.[34]

The right to choose encompass the right to control the path of our lives, and weakening this protection would open the door for government intrusion into not only reproductive decisions but virtually all matters of personal life.

Choice Hangs in the Balance

We have seen that the retirement of a Supreme Court justice can have dramatic impact on the constitutional protection of a woman's right to choose. The most recent cases dealing with reproductive rights have been decided by the narrowest of margins, hinging on just one vote. While choice once enjoyed a comfortable majority on the court, it now hangs precariously in the balance.

In June 2000 in *Stenberg v. Carhart*, the Supreme Court issued a ruling that emphatically maintained the centrality of women's health and struck down Nebraska's ban on abortion care as early as the 12th week in pregnancy.[35] With the retirement of Justice O'Connor and the passing of Chief Justice Rehnquist in 2006 President Bush appointed Chief Justice Roberts and Justice Alito, shifting the court's balance further to the right. Both had anti-choice records, giving pro-choice Americans reason to worry that these new additions to the court would vote to limit *Roe* further, or even overturn it.

These fears were confirmed by the 2007 outcome of the Federal Abortion Ban cases of *Gonzales v. Planned Parenthood Federation of America* and *Gonzales v. Carhart*[36] that illustrated the anti-choice, anti-woman direction in which the Roberts court is moving. In a stunning retreat from more than three decades of precedent, the U.S. Supreme Court under Chief Justice Roberts upheld the first-ever federal ban on an abortion procedure. This decision represents a monumental departure from prior cases, and with it, the court effectively eliminated one of *Roe v. Wade*'s core protections: that a woman's health must always be paramount. Perhaps most ominously, President Bush's appointees to the court cast the critical votes to uphold the ban, likely signaling a seismic shift in the court's future rulings. The Roberts court thus not only upheld a dangerous and invasive federal law, it gave the green light to anti-choice politicians to enact new restrictions to test the shrinking contours of the right to privacy.

As *Roe* enters its fourth decade, though its protections remain a bulwark of freedom for American women, our rights have been eroded and are in grave peril; the full vision of reproductive freedom remains elusive for too many women.

The Senate's Responsibility

The American people deserve a Supreme Court composed of independent and fair-minded justices who will respect and preserve our fundamental rights, including the right to privacy

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and a woman's right to choose. The U.S. Supreme Court's ultimate responsibility is to fulfill the American promise of equal justice under law.[37] The Senate has the rare opportunity to reaffirm, through its "advice and consent" responsibility, the enduring values of freedom and individual autonomy upon which our country was founded.

The Senate's role in the Supreme Court confirmation process has a profound influence on everyday people's lives. *Roe*, a case decided by nine Supreme Court justices confirmed by the Senate, enshrined the right to choose in our nation's jurisprudence. With the confirmation of two anti-choice justices, Chief Justice John Roberts and Justice Samuel Alito, the 2007 *Carhart* decision took away a core tenet of *Roe*, that a state's interest in regulating abortion never trumps a woman's health.

The balance on the nation's highest court is shifting, and the recent changes in the court's composition underscore why it is critical for the U.S. Senate to examine nominees for their commitment to upholding American liberties. By every measure, the American people overwhelmingly support upholding *Roe*, which stands as a milestone to women's freedom and equality. On behalf of NARAL Pro-Choice America and millions of Americans who value freedom and privacy, I urge the Senate to consider this history as it begins to undertake one of its most serious responsibilities: confirming the next justice of the Supreme Court of the United States.

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[1] *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), at 927 (Blackmun, J., concurring and dissenting).

[2] *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Loving v. Virginia*, 388 U.S. 1 (1967).

[3] *Griswold v. Connecticut*, 381 U.S. 479 (1965).

[4] *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

[5] *Eisenstadt*, 405 U.S. at 453.

[6] *Roe v. Wade*, 410 U.S. 113 (1973), at 153.

[7] *The Consequences of Roe v. Wade and Doe v. Bolton: Hearing Before the Senate Comm. on the Judiciary, Subcommittee on the Constitution, Civil Rights and Property Rights*, 109th Cong. (2005) (testimony of R. Alta Charo).

[8] *Roe v. Wade*, 410 U.S. 113 (1973), at 153.

[9] *Roe*, 410 U.S. at 118-119 n.2.

[10] *See, e.g.*, DEL. CODE ANN., tit. 24, §§ 1790-1793.

[11] *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), at 928 (Blackmun, J., concurring and dissenting).

[12] *Casey*, 505 U.S. at 856.

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[13] *Webster v. Reproductive Health Services*, 492 U.S. 490, 560 (1989) (Blackmun, J. dissenting).

[14] *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), at 881-87.

[15] Between 1995 and 2006, states enacted 512 anti-choice legislative measures—including 45 in 2006 alone. *See generally* NARAL PRO-CHOICE AMERICA & NARAL PRO-CHOICE AMERICA FOUNDATION, *Who Decides? The Status of Women's Reproductive Rights in the United States* (16th ed. 2007), *available at* http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/.

[16] Lawrence B. Finer & Stanley K. Henshaw, *Abortion Incidence and Services in the United States in 2000*, 35 PERSP. ON SEXUAL & REPROD. HEALTH 10 (2003).

[17] 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).

[18] Patricia Donovan, *The Politics of Blame: Family Planning, Abortion and the Poor*, THE GUTTMACHER INSTITUTE 36 (1995).

[19] NARAL PRO-CHOICE AMERICA & NARAL PRO-CHOICE AMERICA FOUNDATION, *The Reproductive Rights and Health of Women of Color* (2000), at 22.

[20] Stanley K. Henshaw and Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAM. PLAN. PERSP. 196, 199 (1992).

[21] *Hodgson v. Minnesota*, 497 U.S. 417, 420 (1990) (requiring a bypass procedure for a two-parent notification statute); *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 510 (1990) (requiring bypass procedures for parental consent statutes).

[22] Lawrence B. Finer & Stanley K. Henshaw, *Abortion Incidence and Services in the United States in 2000*, 35 PERSP. ON SEXUAL & REPROD. HEALTH 10 (2003) (noting that 34 percent of women age 15-44 were living in a county with no abortion provider in 2000).

[23] American Medical Association, *Induced Termination of Pregnancy Before and After Roe v Wade: Trends in the Mortality and Morbidity of Women*, 268 JAMA 3238 (1992).

[24] NAF's statistics include incidents from both the United States and Canada. The National Abortion Federation (NAF) derives most of its statistics from its members, most of whom are in the United States. NAF, *NAF Violence and Disruption Statistics: Incidents of Violence & Disruption Against Abortion Providers in the U.S. & Canada* (Jun. 30, 2008); NAF, *Chronological History of Shootings and Murder*.

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[25] NAF, *NAF Violence and Disruption Statistics: Incidents of Violence & Disruption Against Abortion Providers in the U.S. & Canada* (Jun. 30, 2008).

[26] NAF, *NAF Violence and Disruption Statistics: Incidents of Violence & Disruption Against Abortion Providers in the U.S. & Canada* (Jun. 30, 2008).

[27] *See generally* NARAL PRO-CHOICE AMERICA & NARAL PRO-CHOICE AMERICA FOUNDATION, *Who Decides? The Status of Women's Reproductive Rights in the United States* (18th ed. 2009), *available at* http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/.

[28] Donna Crane, "Debate Primer: Be Ready to DeBunk Palin's Answers on Roe," *RH Reality Check, available at*, http://www.rhrealitycheck.org/blog/2008/10/02/debate-primer-be-ready-debunk-palins-answers-roe-0 (last visited Jul. 10, 2009).

[29] Zad Leavey & Jerome M. Krummer, *Criminal Abortion: Human Hardship Unyielding Laws*, 35 S. CAL. L. REV. 123, 124 (1962). "It has been estimated that as many as 5,000 American women die each year as a direct result of criminal abortion. The figure of 5,000 may be a minimum estimate." Richard Schwarz, SEPTIC ABORTION 7 (1968); "One recent study at the University of California's School of Public Health estimated 5,000 to 10,000 abortion deaths annually." Lawrence Lader, ABORTION 3 (1966); "[M]ore than five thousand women may have died as a direct result [of criminal abortion in the United States in 1962]." Zad Leavy & Jerome M. Kummer, *Criminal Abortion: Human Hardship and Unyielding Laws*, 35 S. Cal. L. Rev. 123, 124 (1962); "Taussig and others have concluded that the abortion death rate during the late 1920s was about 1.2% and amounted to over 8,000 deaths per year." Russell S. Fisher, *Criminal Abortion, in* Harold Rosen, THERAPEUTIC ABORTION, MEDICAL PSYCHIATRIC, LEGAL, ANTHROPOLOGICAL, AND RELIGIOUS CONSIDERATIONS 8 (1954).

[30] Willard Cates, Jr. et al, *Comment: The Public Health Impact of Legal Abortion: 30 Years Later*, 35 PERSP. ON SEXUAL & REPROD. HEALTH 25 (2003); Willard Cates Jr., *Legal Abortion: The Public Health Record*, 215 SCIENCE 1586 (1982); Richard Schwarz, SEPTIC ABORTION 7 (1968).

[31] Walter Dellinger & Gene B. Sperling, *Abortion and the Supreme Court: The Retreat from* Roe v. Wade, 138 U. PA. L. REV. 83, 117 (Nov. 1989).

[32] Laurie D. Elam-Evans et al., Centers for Disease Control and Prevention, *Abortion Surveillance – United States, 1999*, 51 MORBIDITY & MORTALITY WEEKLY REP., at 28, tbl. 19 (2002).

[33] Phillip G. Stubblefield & David A. Grimes, *Septic Abortion*, 331 NEW ENG. J. MED. 313 (1994).

[34] *The Consequences of Roe v. Wade and Doe v. Bolton: Hearing Before the Senate Comm. on the Judiciary, Subcommittee on the Constitution, Civil Rights and Property Rights*, 109th Cong. (2005) (testimony of R. Alta Charo).

[35] *Stenberg v. Carhart*, 530 U.S. 914 (2000).

[36] Gonzales v. Carhart and Gonzales v. Planned Parenthood Federation of America, 127 S. Ct. 1610 (2007).

[37] U.S. Supreme Court, *The Court and Constitutional Interpretation, available at* http://supremecourtus.gov/about/constitutional.pdf (last visited Jul. 9, 2009).

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