

March 15, 2017

The Honorable Charles Grassley
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
U.S. Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Judge Neil Gorsuch
Associate Justice of the Supreme Court Hearing,
March 20, 2017

Dear Chairman Grassley, Ranking Member Feinstein, and Members of the Senate Committee on the Judiciary,

We write today with grave concerns about the nomination of Judge Neil M. Gorsuch to be an Associate Justice of the Supreme Court of the United States. We are seventy-two of the individual women lawyers who exercised our constitutional right to abortion and who jointly submitted an amicus brief about our abortions in support of the petitioners in *Whole Woman's Health v. Hellerstedt*, a case decided last term in which the Supreme Court affirmed that the Constitution strongly protects the right to abortion. As we explained in our amicus brief, our right to terminate a pregnancy—to exercise personal autonomy in decision-making and bodily integrity—was critical to our ability to participate equally in “the economic and social life of the Nation”¹ as liberty guarantees.

We are very concerned that President Trump has repeatedly committed to nominate justices who would overturn *Roe v. Wade* and undo the crucial constitutional protections on which two generations of women have relied for over four decades.

Any nominee for the Supreme Court must be able to express his or her support and respect for this right, for the precedent set by *Roe*, and for the rule of law. We had the courage to speak publicly about what this right has meant to us personally, despite the stigma associated with abortion, including for us as women lawyers. Judge Gorsuch, in contrast, could try to obscure his views—as others have in the past—in order to avoid this difficult discussion.

We thus urge you to thoroughly question Judge Gorsuch about his understanding and interpretation of abortion jurisprudence, about his commitment to the rule of law and respect for precedent, and about his analysis of substantive due process rights to bodily autonomy. Full-scale questioning of judicial nominees—including questions relating to the nominee’s views on the constitutional right to contraception and abortion—aims to elicit important aspects of their understanding of the Constitution and the role of the courts, which they will carry with them into a lifetime appointment. Before any new justice is confirmed to the Supreme Court, the Senate and the American people have the right to understand their judicial philosophy and views about the right to abortion. It is

¹ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992).

particularly necessary for the Judiciary Committee to probe Judge Gorsuch on this issue, given that the President promised to select a nominee who would vote to overturn *Roe*.

Failure to pursue questions about such a settled, yet contentious, body of law creates uncertainty about whether Judge Gorsuch will protect this critical right and the constitutional values of dignity, autonomy, equality, and bodily integrity it reflects. While Judge Gorsuch has never heard an abortion challenge, his record—in particular on contraception—raises significant concerns about his ability to be open-minded, fair, and guided by the Constitution and rule of law.²

As you know, constitutional protection for abortion rights has been a matter of contentious political debate for decades—despite the fact that the Supreme Court has long held that the decision to end a pregnancy is “central to the liberty protected by the Fourteenth Amendment”³ and that “implicit in the meaning of liberty”⁴ is a woman’s right to “retain the ultimate control over her destiny and her body.”⁵ Further, less than a year ago, the Supreme Court reaffirmed the constitutional protection for the right to abortion and clarified that the standard under which courts must evaluate restrictions on the right is a robust one.⁶ There is simply no justification for Judge Gorsuch to refuse to answer questions on this topic. If he refuses to speak about issues that could come before the Court, he should be asked how he would have decided past cases including *Roe*.

We are united in our strongly held belief that we would not have been able to achieve our personal or professional aspirations, as diverse as they are, were it not for the ability to obtain safe and legal abortions. Meaningful access to reproductive choice has allowed us to become, remain, and thrive as women, as lawyers and as equal members of society. As lawyers who have participated in all aspects of the legal profession, including at private law firms, corporations, multinational governmental organizations, nonprofit organizations, and law schools, we have taken personal and professional risks to publicly disclose our abortion stories to the justices of the Supreme Court, the members of the U.S. Senate, and the American people. We did so because the right to make decisions for ourselves, our health, and our families is *so* critical for millions of women that it was worth the risk.

We ask nothing less of Judge Gorsuch than to be forthcoming on his views about this constitutional right. He cannot refuse—at barest minimum—to discuss his understanding of Supreme Court precedent and *stare decisis* as it relates to abortion jurisprudence before he is granted a lifetime appointment to the highest court in the land. Studied silence on this subject is not acceptable.

We urge you to press Judge Gorsuch on these matters. Judge Gorsuch owes the same openness to the Senate and the American people that we offered willingly.

Sincerely,

Janice Mac Avoy, Partner, Fried, Frank, Harris, Shriver & Jacobson LLP
Emma Claire Alpert, Public Defender, Brooklyn, NY

² Brief of Amici Curiae American Hospital Association, *State of Washington v. Glucksberg*, et al, 1996 WL 656278 (U.S.); see also *Little Sisters of the Poor Home for the Aged, Denver, Colo. v. Burwell*, 794 F.3d 1151 (10th Cir.) (panel opinion), and 799 F.3d 1315 (10th Cir. 2015) (dissent from en banc rehearing joined by Judge Gorsuch); *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013).

³ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992).

⁴ *Id.* at 869.

⁵ *Id.*

⁶ *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), *as revised* (June 27, 2016).

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