



March 31, 2017

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Dear Senator:

On behalf of the National Right to Life Committee (NRLC), the federation of state right-to-life organizations, we write to urge your full support to achieve the confirmation of Judge Neil Gorsuch as an associate justice of the United States Supreme Court – including support for the procedural steps necessary to accomplish this, as discussed below.

Legal abortion on demand was imposed on the United States by seven Supreme Court justices in *Roe v. Wade*. That 1973 ruling lacked any real basis in the text of the Constitution; the policy that it imposed was completely at odds with the intent of the lawmakers who crafted and ratified the Fourteenth Amendment. The ruling was aptly branded “an exercise of raw judicial power” by dissenting Justice Byron White. Yet, when *Roe* was challenged in the 1992 case of *Planned Parenthood v. Casey*, a 5-4 court affirmed the core holdings of *Roe* on grounds that can be fairly summarized as, “Because we said so – that’s why.”

A very recent manifestation of the Supreme Court as Super-Legislature is found in *Whole Women’s Health v. Hellerstedt*, handed down June 27, 2016. A 5-3 majority found that modest health-based regulations on abortion providers -- adopted by Texas in the wake of multiple criminal convictions of the notorious Pennsylvania abortionist Kermit Gosnell – would diminish untrammelled access to abortion for some women and therefore violated the judge-made right to abortion. As Justice Thomas said in his cogent dissent, “The State’s burden [in regulating abortion] has been ratcheted to a level that has not applied for a quarter century. . . the majority’s undue-burden balancing approach risks ruling out even minor, previously valid infringements on access to abortion. . . .As the Court applies whatever standard it likes to any given case, nothing but empty words separates our constitutional decisions from judicial fiat.”

To our knowledge, Neil Gorsuch has not commented on the constitutional soundness of any of these Supreme Court rulings, nor has he personally ruled as a judge in any case directly implicating the putative “right to abortion.” So then, why are organizations that advocate for unrestricted abortion, and the political arms of the abortion industry, with one voice demanding that senators employ the filibuster to block Judge Gorsuch’s confirmation? We believe it is because Judge Gorsuch has applied a belief that the Constitution does not confer on judges the authority to impose by decree the public policies that they consider enlightened or fashionable, nor authority to remove such issues from the normal democratic political processes (except when enforcing authentic constitutional prohibitions).

Abortion advocates for a half-century have sought public acceptance of an ideological doctrine that, stripped of its euphemistic trappings, allows no meaningful legal protection for unborn humans at any point prior to birth (or even, in the abortion context, immediately after a live birth). Although they have found considerable support among certain elites (e.g., the

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entertainment industry and the mainstream news media) and in some locales, the majority of Americans continue to reject this callous dehumanizing of the unborn child. As a result, abortion advocates find that they must frequently avail themselves of policy-committed judges, in order to nullify the actions taken by democratically elected policy makers. In order to perpetrate this long-running anti-democratic exercise, they seek to exclude from the Supreme Court those jurists who will not commit to preserve and protect their policy agenda.

Based on the evidence available, it appears that Judge Gorsuch is the type of nominee that the abortion advocates fear most – one who will take seriously his oath to defend the Constitution, even when this produces results that may outrage certain elites. They fear that Judge Gorsuch will fail to find in the Constitution any provision that denies a self-governing people the right to fashion laws that recognize the humanity of unborn members of the human family. We agree with that assessment, because there is no such provision to find.

**Therefore, National Right to Life intends to include in our scorecard of key right-to-life roll calls of the 115<sup>th</sup> Congress, the roll call (or roll calls) that we determine most fairly reflects the commitment of senators regarding the pending matter. This intention encompasses reserving the right to score the anticipated roll call on cloture, a possible roll call to create a symmetrical cloture precedent applicable to all nominations, and/or the roll call on the confirmation of the nominee.**

**We will not assert that a positive vote on one or all of these questions should be read to necessarily convey agreement by a senator so voting with our position on *Roe*, *Casey*, or *Hellerstedt*. But in our view, it can be fairly stated that a *negative* vote on *any* of these three questions is indeed a vote to perpetrate the type of jurisprudence that these rulings represent. Beyond inclusion in our scorecard, the overriding importance of these roll calls – particularly those deemed procedural – will be clearly conveyed to our members, supporters, and affiliates nationwide.**

Thank you for your consideration of our perspective regarding this matter of gravest import.

Respectfully,



Carol Tobias  
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Executive Director

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