

Mr. CHABOT. Thank you very much. I know 5 minutes can go very quickly, so hopefully we'll be able to probe into some of the points that you might have wanted to get into, but may not have had the time to complete.

Ms. ROY. With respect to the Chair, it's fine.

Mr. CHABOT. Okay. Thank you.

Dr. O'Connor, you're recognized for 5 minutes. Could you turn the mike on there? Could you turn the mike on?

Ms. ROY. Press your "talk" button.

**TESTIMONY OF KAREN O'CONNOR, PROFESSOR,
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Ms. O'CONNOR. I have a problem, I guess. Okay. I don't know what this says about women and mechanical stuff, but hopefully I could start over.

Good afternoon, Chairman Chabot, Representative Nadler, Members of the Subcommittee, and distinguished guests. It is truly an honor for me to be before you testifying today about the significant implications of *Roe v. Wade* and *Doe v. Bolton* for both American women and their families. With new membership on the Supreme Court and several critical legal tests on the horizon, reproductive rights and reproductive freedoms in the United States are truly at a major crossroads.

It's important to remember, however, that abortion regulations and restrictions are not rooted in ancient theory or common law; despite the fact that abortion was common throughout history, no government—be it local, State, or national—attempted to regulate the practice until well into the 19th century. As Justice Blackmun wrote so eloquently in *Roe v. Wade*, "at common law, at the time of the adoption of our Constitution, and throughout the major portion of the 19th century . . . a woman enjoyed a substantially broader right to terminate a pregnancy than she does in most States today." Indeed, in 1812, a Massachusetts court found that an abortion performed before "quickening," defined as the time when a woman begins to feel movement in utero, usually between the 16th and 18th week of pregnancy, was not punishable at law.

The first abortion restrictions that were enacted in the United States came as State statutory creations that marked a shift away from the common law. In 1821, Connecticut became the first State to criminalize abortion after quickening. By 1840, eight other States had enacted statutory abortion restrictions. Other States followed quickly, and by 1910, every State except Kentucky had made abortion a felony.

By the early 1970's, however, following the lead of the American Colleges of Gynecologists and Obstetricians and the American Law Institute, 14 States liberalized their abortion statutes to permit abortion in limited circumstances: when the woman's health was in danger, when the woman herself was the victim of rape or incest, or when there was a likelihood of a fetal abnormality. Still, only four States—Alaska, Hawaii, New York, and Washington—had decriminalized the provision of abortion for any reason during the early stages of pregnancy.

The fact that abortion was illegal in all but a few States prior to *Roe*, however, did not mean that women were not obtaining the

procedure. It is estimated that anywhere between 200,000 and 1.2 million illegal or self-induced abortions were performed during the 1950's and 1960's.

These illegal abortions, sometimes performed by lay people who did not have the proper training, equipment, or methods of anesthesia or sanitation, were extremely dangerous and put women at high risk of incomplete abortions, infections, and deaths. In fact, there were whole hospital wings in some hospitals that were simply devoted to dealing with the women who came into hospitals after procuring an illegal abortion.

However, in 1965, illegal abortion accounted for a reported 17 percent of all deaths due to pregnancy and childbirth. These burdens fell disproportionately on women of color: from 1972 to 1974, the mortality rate due to illegal abortions for non-White women was 12 times that of White women. And none of these numbers include the thousands of women who willingly endured dangerous, invasive hysterectomies or tubal ligations to make certain that they would have—not have to confront the abortion decision later in their future.

In 1973, then, against a background of increasing litigation surrounding contraception and abortion—and the horrifying reality that American mothers, sisters, and daughters were being forced into desperate, life-threatening situations in back-alley abortions—the United States Supreme Court granted certiorari in the companion cases of *Roe v. Wade* and *Doe v. Bolton*. As we all know, in that 1973 7–2 landmark decision, in that Court the Supreme Court upheld a right to privacy, and that right to privacy was broad enough to encompass a woman's decision whether or not to terminate a pregnancy. The Court also recognized that the decision of whether or not to have a child is a unique one to every woman and her own life circumstances and, therefore, must be a personal, individual decision.

In invalidating these laws of Texas and Georgia, the Court effectively overruled abortion laws in all but four States. But it's important to understand that the right to privacy that's so central in *Roe* was not announced for the first time in the *Roe* decision; rather, as has been pointed out by some of the Members, the decision dates back quite a bit before *Roe* and has been a fundamental freedom subject to exacting scrutiny by the Supreme Court.

The right to privacy is so well recognized, both in the reproductive freedom context and outside the reproductive freedom context—in decisions way before *Roe*, dating back as early as, let's say, for example, *Pierce v. Society of Sisters*.

Griswold and *Eisenstadt*, *Roe*'s immediate predecessors, also made it clear that the Constitution contained a broad, fundamental right and encompassed a right to control one's decision not to have a child.

As I see that I am completely running out of time here, if I can simply talk for a few minutes about the fact that many of us are very, very much concerned about the fact that at this point in time, given changes in the United States Supreme Court, perceived changes in public opinion that I hope that Ms. Conway is here that we can actually get into what some of the public opinion polls actually talk about, because in addition to being a lawyer, I am a polit-

ical scientist, and you've got to know polling if you're a political scientist. I think it's extraordinarily important for this Committee to recognize that there are a large number of women in this country very concerned with what is happening today in America over the issue of abortion. And it is one that—public opinion polls can be worded in a variety of different ways. As someone in law school, I was taught that one was to look at the law and legal precedent, and not have the Supreme Court be, as someone once said, “Mr. Dooley following election results.” And if we want to truly look at a Supreme Court, I would hope that this Committee would take into consideration the years of precedent, what might be called even super precedent, and the effect that any changes in the law might have on women, particularly on women's health.

As I sit here before a panel composed completely of males, as a woman who has been a mother and a sister, who myself had a very difficult pregnancy and a very difficult birth, it pains me that you cannot truly understand the decisions that a woman must make in the most intimate of these decisions that ever confront her.

Thank you, and I hope we can talk about more issues later.

[The prepared statement of Ms. O'Connor follows:]