

Constitution does include the right to privacy, but even if it does include a right to privacy, am I accurate in saying that you do not believe that that right to privacy would include the right to have an abortion?

Ms. ALVARE. Absolutely, I agree with that. The right of privacy cannot include the right to terminate a third party's life, and the way that *Griswold v. Connecticut* linked it to the good of the community, seems to me that that had a proper foundation.

Mr. CHABOT. Thank you very much.

Before we go on with the questioning, our fourth witness has arrived. I know they had weather problems up in New York, so we are very glad you were able to make it.

We have already given you an introduction and sang your praises, so, we'll just cut right to the chase here, and you're recognized for 5 minutes.

TESTIMONY OF KELLYANNE CONWAY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, the polling company™, inc.

Ms. CONWAY. Thank you very much, Mr. Chairman, and thank you, Members of the Committee, for having me here today. And I would like to acknowledge my co-panelists and thank them for their participation.

I would also like to enter my entire testimony into the record if I may.

Briefly, the methodology and phraseology of any type of public opinion polling should be taken with the utmost care, but in the case of abortion, which many would admit melds together matters of religion, morality, science, medicine, law, gender, politics, it is that much more critical that polling not be governed by quick and easy sound bites, pro-life or pro-choice even. It seems intuitive that the best way to find out if someone is pro-life or pro-choice on the matter of abortion, would be indeed to ask them the question, "Are you pro-life or pro-choice on abortion?" And that question is asked routinely.

Gallup asked the question just last month, and came up with 53 percent, quote, "pro-choice," 42 percent, quote, "pro-life," leading us to believe that only 5 percent of the country feels that it either depends, or they're not sure, or they don't have an opinion on that. It's a very rare instance where only 5 percent of Americans have not rendered an opinion on almost any matter.

What is flawed about a question as simple as "Are you pro-choice or pro-life," is that it does not take into account that the underlying matter seems to be very non-static and dynamic to many individuals. And the better polling questions on the matter of abortion, and in more specific legal context, *Roe v. Wade*, exists when they are taken from the wisdom of qualitative information.

To wit, if you listen to people long enough in focus groups, you recognize that there are gradations of viewpoints depending on what they know about the circumstances leading to the pregnancy, what they know about why said woman would want to seek an abortion. Is it that her, as Professor O'Connor puts the dramatic example of, her life is in jeopardy? Is it one of those rare occasions as to why the million plus abortions occur in this country per year? Or is it more what the Alan Guttmacher Institute has said is the

primary reason for having an abortion, that women believe it would interfere with their professional path, they feel financially unable to have the abortion—excuse me—to have the child, and that they would just prefer that it not inconvenience them? Is it those circumstances?

And there is, because people will say they now are aware due to the advent of sonograms and the sonograms being introduced into the public consciousness very broadly, that many people say, it depends what you're talking about in terms of natural stages of fetal development. Most Americans are aware that different things take place over the course of a normal 9-month or even 8-month pregnancy, and because different things are taking place, their opinions on that matter are much more dynamic than they would be static. And proper polling questions must necessarily reflect that dynamism.

Here are some good examples of polling questions. CNN/USA Today/Gallup asked the question: Do you think abortion should be legal only under any circumstances—only under certain circumstances or illegal in all circumstances? Of course, they never even gave you the opportunity to say illegal in all circumstances—excuse me—legal in all circumstances. But people still went ahead and volunteered that response.

This is a good polling question because it at least honors that there are gradations of viewpoints, depending on the stage in the pregnancy and the circumstances of why the woman is choosing to have an abortion. Is it one of those rare exceptions that we constantly hear about and are made to believe that govern the majority of abortions, or is it, as the Alan Guttmacher Institute—no friend of the right-wing conspiracy, I assure you—is it one of the three reasons that they have enumerated as to why most women are seeking abortions?

Also questions that ask: Do you support or oppose a woman's right to choose, are very incomplete and somewhat biased, because a woman's right to choose what, to choose to order pizza or Chinese tonight, to choose to wear red or blue, to choose to take the highways or the back roads? A woman's right to choose what? Choice is a core governing value in the United States of America, and I will submit that one of the most successful public relations coups in modern history has been the co-opting, the hijacking of this core American value, choice, into the abortion rights movement.

That is because the abortion rights movement does not want us to focus on abortion. It is an ugly procedure. Its result is drastic, dramatic and final. The word "choice" somehow excuses people from really focusing on the procedure and the result of that procedure. It also, in large degree, has excused people from really understanding *Roe v. Wade*. Curiously, in our scouring of the waterfront of available public opinion on the matter, we found very few, if any, questions actually asking America what they believe *Roe* provides. If you listen to people long enough, you know it's very confusing. That's not surprising, it's very confusing. It's a 33-year-old precedent. Many people in our country have been born into the precedent now. We don't do anything in this country really the same that we did in 1973. And so it makes sense that people would be confused about the precedent.

But when you—again, when you ask “control over the body in conference with her doctor,” the presumption to the poll response is that abortions are medically necessary, or that the State does not have some interest in protecting the life of the unborn.

This Congress has acted when it has seen appropriate to recognize the rights of unborn. You passed something called the Laci and Connor Law, recognizing that Laci—Scott Peterson was convicted of his wife’s murder, and that resulted in the death of their unborn child. And we even named the child. We refer to it by name even though it was never born, it was 8 months into the womb. So it’s been very convenient when we have decided that what’s going on there is not uterine matter, is not a, quote, “choice,” but in fact is a living, breathing being, or is about to be born as such, and does have a name and the State has acted to protect it.

The hypothetical reasons put forth in *Roe* as to why a woman would need to have an abortion, “distress, maternity or additional offspring”—I’m quoting from *Roe*—“may force upon the woman a distressful life and future. Psychological harm may be imminent. The distress for all concerned associated with the unwanted child,” as it referred to it in *Roe*, “and there is the problem of bringing a child into a family already unable psychologically and otherwise to care for it. The continuing stigma of unwed motherhood may be involved.”

All of these reasons that *Roe* laid out for having abortions be medically necessary, when asked in individual polling questions, are soundly rejected. In fact, in CNN’s own polling they asked people at what point abortion should be legal, and in fact, an astonishing—I want to, if I may, just pull that—an astonishing 61 percent, according to that poll, say it should be illegal when the woman or family cannot afford to raise the child, not legal, illegal, 61 percent, according to a media poll. And the same poll found that 68 percent of adults think that abortion should be illegal, illegal, quote, “in the second 3 months of pregnancy.” And that number rises to an eye-popping 84 percent, according to the CNN/USA Today/Gallup poll, in the, quote, “last 3 months of a pregnancy,” drawing upon *Roe*’s actual wording.

So to ask political, are you pro-life or pro-choice is really—it would be better if the question weren’t asked at all, if we didn’t pretend that that was the way. I think the best way to ask the question is to give at least six different options for people. And we have done this in my own firm, and we have done it in conjunction with Lake Research Partners, that is run by Celinda Lake, who has been a pollster for Planned Parenthood, and EMILY’s List, and is an excellent, excellent pollster and strategist, and my co-author in a new book called “What Women Really Want,” where we delve into women as culture. Chapter 10, just one chapter of the book is about politics. Much of it is about culture.

But in that very book, for the research for that book, Celinda Lake and I ran a poll question that asked six different positions on abortion. And we asked people: Do you believe—which statement comes closest to your own position on the issue of abortion? This is in my testimony on page 4, and I’ll read you the results: 16 percent said abortion should be prohibited under all circumstances; 15 percent, abortion should be legal but only to save the life of the

mother; 24 percent, abortion should be legal, but only to save the life of the mother or in cases of rape or incest; 12 percent, abortion should be legal for any reason, but not after the first 3 months of pregnancy; 7 percent, abortion should be legal for any reason, but not past the first 6 months of a pregnancy. And finally, abortion should be allowed at any time for any reason during a woman's pregnancy.

When you add together 16 percent prohibited under all circumstances—

Mr. CHABOT. What was the percentage of the last one?

Ms. CONWAY. Yes, 9 percent say abortion should be allowed at any time for any reason during a woman's pregnancy, essentially the partial birth abortion.

Mr. CHABOT. That's more or less the existing law now.

Ms. CONWAY. That is the law now.

Mr. NADLER. Wait a minute. That abortion should be legal at any time?

Mr. CHABOT. Yeah.

Mr. NADLER. That's not the existing law.

Ms. CONWAY. Well, *Roe* left open the door for that.

Mr. NADLER. No. The existing law, basically, as I understand it, is abortion is legal for any States. States can't regulate it in the first 3 months. States have certain regulatory authority in the next 3 months, and the final 3 months they can be prohibited except to save the life or health of the mother. The States can prohibit abortion in the last 3 months if they want to, or the Federal Government could, for that matter, except when the life or health of the mother is at risk.

You didn't ask there about the health of the mother, did you?

Ms. CONWAY. Yes, we did.

Mr. NADLER. I didn't hear that.

Ms. CONWAY. To save the life of the mother—

Mr. NADLER. Life. No, no, health, how about health?

Ms. CONWAY. No. I suppose that—

Mr. NADLER. You didn't ask that, okay. Thank you.

Ms. CONWAY. No.

Mr. CHABOT. I forgot prior to this to mention the 5-minute rule to you and the other three who are here.

Ms. CONWAY. Sorry, Congressman.

Mr. CHABOT. That's okay. Are you finished?

Ms. CONWAY. I will certainly entertain the questions, certainly. But in conclusion, I would like to say to the Committee and to you, Mr. Chairman, that many times polling suffers not biased wording so much as useless wording. It asks people to respond to feel-good phraseology without giving them an opportunity to reveal their underlying ideology, or, I think most importantly, their underlying ignorance. Pollsters don't know how to take "I don't know" or "I'm not sure" for an answer, but that is a very rich response. And polling comes at a time when it is informing legislative action and it is coloring our national discourse on critical issues such as *Roe v.*—such as abortion and critical legal precedents such as *Roe v. Wade*, because people don't want to sound uninformed.

But if they want to say "I don't know" or "I'm not sure," it depends on what stage of the pregnancy you're talking about, or it

depends if it's someone who just doesn't want to interrupt her career track, or feels that she just can't deal with a child right now, quote, unquote. People should be offered those hypothetical situations in the polling questions to provide us a more clear, more real examination of the way they feel. If people's opinions on a matter as controversial, but also as sacred to many people across the ideological spectrum, as life and abortion is as dynamic as we know it to be, then to the polling questions that deign to ask the public's opinion about those matters, ought to be sufficiently dynamic and responsive.

Thank you very much, Mr. Chairman.

[The prepared statement of Ms. Conway follows:]