

November 22, 2019

VIA EMAIL

The Honorable Lindsey Graham
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C., 20510

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

Re: Opposition to the Nomination of Sarah Pitlyk to the Eastern District of Missouri

Dear Senator:

We write on behalf of 43 gender justice organizations; reproductive health, rights, and justice organizations; and anti-violence and civil rights organizations in unified opposition to the nomination of Sarah Pitlyk to the U.S. District Court for the Eastern District of Missouri. To be qualified for a lifetime position as a federal judge, a nominee must be fair-minded and committed to defending our core constitutional protections, including reproductive freedom. Ms. Pitlyk's extreme record of opposition to reproductive rights demonstrates an inability to fairly and impartially decide matters involving the right to abortion and other constitutional rights. In addition to these concerns, we also note that the American Bar Association Standing Committee on the Federal Judiciary unanimously determined that Pitlyk is "Not Qualified" for the position of federal district judge.¹

Ms. Pitlyk has an extensive anti-abortion record.² She is regularly at the forefront of controversial and extreme claims aimed at undermining and destroying the important long-standing legal protections of *Roe* and its progeny. For example, Ms. Pitlyk used a divorce proceeding to attack the legal basis for *Roe v. Wade*.³ She tried to secure legal rights for frozen fertilized eggs, which is a common strategy used by extreme fringe groups who want to completely ban abortion, and which could criminalize anyone who seeks or performs pregnancy-related care.⁴ In the legal briefs, Pitlyk zealously asserted the "personhood" of the embryos using strongly anti-choice language and arguments including referring to the embryos as "embryonic children" and stating that "human embryos are human beings," "the life of each human being begins at conception."⁵

Ms. Pitlyk has also taken on causes that are clearly meant to challenge the legal right to abortion and to harm abortion providers. For example, she defended a blatantly unconstitutional Iowa law that bans

¹ Letter from the American Bar Association to the Senate Judiciary Committee, re: Nomination of Sarah E. Pitlyk to the United States District Court for the Eastern District of Missouri, Sept. 24, 2019, https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/2019-09-24-re-nomination-of-sarah-pitlyk.pdf?logActivity=true.

² See Questionnaire for Judicial Nominees, Sarah Ms. Pitlyk, <https://www.judiciary.senate.gov/imo/media/doc/Sarah%20Ms.%20Pitlyk%20Senate%20Questionnaire%20-%20PUBLIC.pdf>.

³ *McQueen v. Gadberry*, 507 S.W.3d 127 (Mo. Ct. App. 2016).

⁴ Center for Reproductive Rights, *Rights at Risk: The Truth about Prenatal Personhood* (2012) https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_PersonhoodPapers_BriefingPaper.pdf.

⁵ Appellant's Brief at *11, *McQueen-Gadberry v. Gadberry*, 507 S.W.3d 127 (2016) (No. ED1031318), 2015 WL 9582009.

abortion.⁶ She represents anti-choice activist David Daleiden, who faces criminal charges for using a fake name and business to attend meetings with abortion providers and for releasing heavily doctored and now discredited videos of conversations with abortion providers in 2015.⁷ She submitted an *amicus* brief on behalf of the anti-choice Susan B. Anthony List in support of the Trump-Pence Administration's Title X gag rule, which blocks patients from getting full and accurate information and has forced family planning providers, including Planned Parenthood, out of the Title X program.⁸

In addition, her legal advocacy has consistently perpetuated proven falsehoods to promote her anti-abortion political agenda. For example, as special counsel to the Thomas More Society, Ms. Pitlyk submitted an *amicus* brief in support of unconstitutional reasons-based abortion bans, in which she made false and inflammatory accusations that Planned Parenthood's delivery of abortion services is "infected with racial bias," and that clinics "target[] ethnic minorities."⁹ The brief also spreads misinformation about the prevalence of sex-selective abortion based on racial and xenophobic stereotyping of the Asian American Pacific Islander populations.¹⁰ In the brief, Ms. Pitlyk cites sources affiliated with the anti-choice Susan B. Anthony List, such as the Life Issue Institute and the Charlotte Lozier Institute, as the factual basis for her assertions. This raises serious concerns about her ability to weigh the facts and sources presented by parties in litigation in her decision-making as a judge.

In addition to attacking the right to abortion, she has also used litigation to undermine other reproductive health care. For example, Ms. Pitlyk represented a number of anti-choice activist organizations in an *amicus* brief criticizing assisted reproductive technologies.¹¹ In the brief, she advanced troubling and unsupported arguments about surrogacy and in-vitro fertilization (IVF), such as claiming that "surrogacy has grave effects on society such as diminished respect for motherhood and the unique mother-child bond; exploitation of women; commodification of gestation and of children themselves; and weakening of appropriate social mores against eugenic abortion."¹² She also made disparaging remarks about those who use surrogacy and in vitro fertilization, claiming that "pregnant women who conceive spontaneously" have better outcomes.¹³

⁶ Motion to Dismiss and Memorandum in Support, *Planned Parenthood of Heartland, Inc. v. Reynolds*, No. EQCE08074 (Iowa Dist. Ct., Polk Cty.).

⁷ *Nat'l Abortion Fed'n v. Ctr. for Med. Progress*, 926 F.3d 534 (9th Cir. 2019); *People of the State of California v. Daleiden*, Case Nos. 2502505 & 17006621 (Cal.Sup. Ct.).

⁸ Brief of Amicus Curiae of Susan B. Anthony in Support of Defendants, *State of California v. Azar* (9th Cir. 2019) (No. 3:19-cv-01184-EMC), <https://d5o7lh9v321o6.cloudfront.net/wp-content/uploads/2019/04/State-of-California-v.-Azar-Amicus-Brief.pdf>.

⁹ Brief of the Restoration Project; Pastor Joseph Parker, Pastor of Greater Turner Chapel, A.M.E. Church; Everlasting Light Ministries, Protect Life and Marriage Texas; and The Thomas More Society Amici Curiae in Support of Petitioners at 3, 5, *Box v. Planned Parenthood of Indiana and Kentucky, Inc.*, 587 US _ (2019) (No. 18-483), https://www.supremecourt.gov/DocketPDF/18/18-483/72192/20181115123021558_37089%20pdf%20Mannix.pdf.

¹⁰ *Id.* at 15-17.

¹¹ Motion and Brief of American Association of Pro-Life Obstetricians & Gynecologists, Charlotte Lozier Institute, National Catholic Bioethics Center, National Association of Catholic Nurses- U.S.A. and Catholic Medical Association as Amici Curiae In Support of Petitioner, *M.C. v. C.M.* (U.S. 2017) (No. 17-129), <https://www.thomasmoresociety.org/wp-content/uploads/2017/08/Amicus-Brief-in-M.C.-v.-C.M..pdf>.

¹² *Id.* at 3.

¹³ *Id.* at 4-14.

Ms. Pitlyk submitted an *amicus* brief on behalf of Catholic theologians and ethicists in support of Hobby Lobby, a for-profit company that sued the Obama Administration over the Affordable Care Act (ACA)'s birth control coverage benefit.¹⁴ The brief advances extreme arguments, such as calling the use of contraception "evil," a "seriously wrongful" act, and "a grave moral wrong."¹⁵ And she represented several employers, including a for-profit employer, challenging a St. Louis non-discrimination law that protects individuals from being fired or denied housing based on their reproductive decisions, such as using birth control or IVF or deciding to have an abortion.¹⁶

Her advocacy on behalf of organizations seeking to use their religious beliefs to discriminate on the basis of reproductive health care decisions could extend to other non-discrimination protections. Based on her record, we do not believe she is capable of fairly and impartially deciding matters involving other important legal protections for women, LGBTQ individuals, and all people impacted by discrimination.

Given her record of attempting to challenge long standing precedent, there is every reason to believe she would use her authority as a federal judge to undermine the rule of law, especially when it comes to reproductive rights, rather than respect it. We urge you to oppose the nomination of Sarah Pitlyk to the U.S. District Court for the Eastern District of Missouri.

Sincerely,

National Women's Law Center
NARAL Pro-Choice America
Planned Parenthood Federation of America
A Woman's Choice, Inc.
Abortion Access Front
AbortionClinics.Org, Inc.
Allentown Women's Center
American Atheists
American Society for Emergency Contraception
American Society for Reproductive Medicine
Battle Born Progress
Catholics for Choice
CHOICES. Memphis Center for Reproductive Health
Equal Rights Advocates
Equality California
Equity Forward
Family Reproductive Health
Feminist Majority Foundation
Hope Clinic for Women
In Our Own Voice: National Black Women's Reproductive Justice Agenda

¹⁴ Brief of 67 Catholic Theologians and Ethicists as Amici Curiae in Support of Hobby Lobby Stores, Inc., and Conestoga Wood Specialties Corp., *Sebelius v. Hobby Lobby Stores, Inc.* (U.S. 2014) (Nos. 13-354, 13-356), <http://www.adfmedia.org/files/HobbyLobbyConestogaAmicusCatholicTheologians.pdf>.

¹⁵ *Id.*

¹⁶ *Our Lady's Inn v. City of St. Louis*, 349 F. Supp. 3d 805 (E.D. Mo. 2018), <https://d5o7lh9v321o6.cloudfront.net/wp-content/uploads/2018/10/District-Court-Opinion-10.1.18-St.-Louis.pdf>.

Little Rock Family Planning Services
Midwives for Sexual and Reproductive Health and Abortion
NARAL Pro-Choice North Carolina
National Abortion Federation
National Asian Pacific American Women's Forum
National Center for Transgender Equality
National Council of Jewish Women
National Institute for Reproductive Health
National Latina Institute for Reproductive Health
National Organization for Women
National Partnership for Women & Families
National Women's Health Network
Northland Family Planning Centers
People For the American Way
Physicians for Reproductive Health
Population Connection Action Fund
Reclaim
Sexuality Information and Education Council of the United States (SIECUS)
UltraViolet
URGE: Unite for Reproductive & Gender Equity
Women Help Women/SASS
Women's Law Project
Women's March