October 28, 2019

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Graham, Ranking Member Feinstein, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way opposes the nomination of Sarah Pitlyk to be a federal judge in the Eastern District of Missouri. She has rightly been deemed unqualified by the American Bar Association. Moreover, her record of opposing reproductive rights attests to her strong belief that, as a legal matter, the Constitution does not protect the right to abortion.

The ABA Standing Committee on the Federal Judiciary unanimously concluded that Pitlyk lacks the professional qualifications for a district court judge. This evaluation was based on the report of not one but two reviewers who carefully researched her legal background. The chair of the committee made it clear that this was not a close call:

> Ms. Pitlyk's experience to date has a very substantial gap, namely the absence of any trial or even real litigation experience. Ms. Pitlyk has never tried a case as lead or co-counsel, whether civil or criminal. She has never examined a witness. Though Ms. Pitlyk has argued one case in a court of appeals, she has not taken a deposition. She has not argued any motion in a state or federal trial court. She has never picked a jury. She has never participated at any stage of a criminal matter.[i]

Where Pitlyk does have experience is in zealously opposing abortion rights. She has chosen to take on legal cases that give her a chance to undermine the foundations of *Roe v. Wade* and its progeny. For instance, she represented a woman in divorce proceedings who was seeking control over the couple's frozen embryos, which her husband wanted to dispose of. Asserting that the embryos were "human beings, not property," Pitlyk stated that no law allows "the biological father or anyone else the right to direct the death of his children – embryonic, gestational, or otherwise."[ii] In a response to written Questions For the Record (QFRs), she again eliminated the legal distinction long recognized by the Supreme Court between an embryo and a child, writing that the law does not "permit the emotions or wishes of the father or of anyone else to trump a mother's interest in the welfare of her child."[iii]

She has chosen to ally herself with the most disreputable type of anti-choice advocacy, representing David Daleiden, author of the infamous and discredited videos smearing Planned Parenthood. One of the most important roles of a federal district court is to be a disinterested factfinder, compiling a factual record for appellate courts to rely upon. Her advocacy for Daleiden undermines any confidence a litigant might have in her in this regard, especially since she used her Senate testimony as a venue to defend the videos.[iv]

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In her QFRs, she also regularly described abortion providers as the "abortion industry," an inaccurate and inflammatory propaganda term.[v] If her record of advocacy were not enough to signal fealty to anti-choice ideology, her use of the anti-choice movement's language in defending her qualifications to be a judge makes clear that her rulings as a judge would be based on that worldview, rather than the facts. An impartial judge does not use terms like "abortion industry."

And she made clear that this was her view of the law in response to questions from Sens. Hirono and Booker, who asked her to explain what she had meant in a speech criticizing the Supreme Court's line of abortion rights cases. She replied:

> The family of concerns that I described as "activism" boil down to the concern that the Court's abortion jurisprudence goes beyond the judiciary's appropriate role of interpreting the law and instead engages in the legislative function of setting social policy."[vi]

But determining whether the Constitution protects the right to abortion *is* interpreting the Constitution. A jurist can consider *Roe* and its progeny as inappropriate "social policy" only if she believes as a matter of constitutional interpretation that abortion is not a constitutional right. Pitlyk has used the confirmation process to make her position clear to every senator: As a matter of law, she believes courts that rule in favor of abortion rights are acting illegitimately. No senator should be deceived into thinking otherwise.

This is not the only instance of a lack of candor regarding her belief that the Constitution does not protect the right to abortion. Regarding an amicus brief she had filed defending an unconstitutional reasons-based abortion ban in *Box v. Planned Parenthood of Indiana*, Sen. Leahy noted that she had "conclude[d] that 'the abortion industry is hurting those women [of color].'" She responded:

> The brief did not "conclude" that the abortion industry was causing harm to minority communities; it pointed out that the available data *suggested* that increased access to abortion services was harming rather than helping.

This is disingenuous, to say the least. She did use the word "suggest" as she stated, but as part of an amicus brief that all but accused Planned Parenthood of engaging in eugenics and genocide. Pitlyk cited sources with inflammatory names like blackgenocide.org, "Birth Control or Race Control? Sanger and the Negro Project," "Racial Targeting and Population Control," and "Does Induced Abortion … Violate the Nuremberg Code?" That backdrop is essential to understanding exactly what Pitlyk meant when she wrote statements like "[b]abies of minority mothers are aborted at a far higher rate than their white counterparts--a disturbing trend that the abortion industry intentionally and unabashedly perpetuates."[vii] An anti-choice zealot who traffics in such a defamatory and bizarre conspiracy theory has no place on the federal bench, even more so when she plays word games with senators asking her about it.

She also sought to hide her views from a direct question by Sen. Whitehouse, who tried to determine whether she conflates contraception with abortion. When he asked her how she would

classify birth control pills, IUDs, and emergency contraceptives, she refused to give a meaningful answer:

> Not being a doctor or pharmacist, I would not presume to try to answer this question … But again, on my understanding of the terms, any technology that prevents pregnancy is a "contraceptive" and any that ends pregnancy is an "abortifacient."[viii]

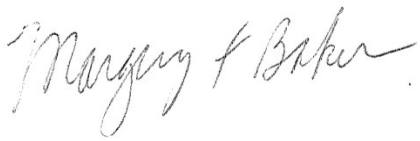
She also played word games when asked about her assertion that Brett Kavanaugh, who she had once clerked for, "is precisely the sort of justice who will recognize the defects in the Supreme Court's activist abortion jurisprudence." Pitlyk gave a response that could at best be considered misleading:

> I have never assured any audience that Justice Kavanaugh would adopt any particular posture toward the Court's abortion jurisprudence or anything else. In every context, I have been very clear that we can count on only one thing from Justice Kavanaugh—that he will make decisions based solely on the law without regard for political outcomes, and that he will respect the constraints on his role as a member of the judiciary.[ix]

This response ignores how language actually functions in the real world, specifically coded language. Her framing and terminology are those of the anti-choice movement, and no reasonable person could possibly interpret her words to be anything but an assurance that she expects and hopes Kavanaugh will rule against abortion rights. Committee members should not degrade themselves or the Senate by accepting such a response.

Sarah Pitlyk was nominated not because she is qualified to be a federal district judge, but because she would be an advocate against abortion rights on the federal bench. The Senate should reject her nomination.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program

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[i] Letter from William C. Hubbard to Chairman Lindsey Graham and Ranking Member Dianne Feinstein, September 24, 2019, https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/2019-09-24-re-nomination-of-sarah-pitlyk.pdf?logActivity=true.

[ii] Appellant's Opening Brief, *McQueen v. Gadberry*, 2015 MO App. Ct. Briefs LEXIS 2127, https://advance.lexis.com/api/permalink/7285fa8e-1ba4-43c6-b24c-6672f3819f13/?context=1000516.

[iii] Questions for the Record (QFRs), Sarah Elizabeth Pitlyk, https://www.judiciary.senate.gov/download/pitlyk-responses-to-questions-for-the-record, p. 2.

[iv] E.g., QFRs, p. 6.

[v] E.g., QFRs, p. 43.

[vi] QFRs, p. 107, 127.

[vii] 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 as Amici Curiae In Support Of Petitioners, Box v. Planned Parenthood of Indiana, 2018 U.S. S. Ct. Briefs LEXIS 4202, 4209, https://advance.lexis.com/document?crid=b7e5e725-3203-4287-a193-c41862cd6090&pddocfullpath=%2Fshared%2Fdocument%2Fbriefs-pleadings-motions%2Furn%3AcontentItem%3A5TSR-CN80-0038-P15S-00000-00&pdcontentcomponentid=6318&pdmfid=1000516&pdisurlapi=true.

[viii] QFRs, p. 70.

[ix] QFRs, p. 106.