March 15, 2017

The Honorable Charles Grassley
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

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

Re: Nomination of Judge Neil Gorsuch
Associate Justice of the Supreme Court Hearing,
March 20, 2017

Dear Chairman Grassley, Ranking Member Feinstein, and Members of the Senate Committee on the Judiciary,

We write today with grave concerns about the nomination of Judge Neil M. Gorsuch to be an Associate Justice of the Supreme Court of the United States. We are seventy-two of the individual women lawyers who exercised our constitutional right to abortion and who jointly submitted an amicus brief about our abortions in support of the petitioners in Whole Woman’s Health v. Hellerstedt, a case decided last term in which the Supreme Court affirmed that the Constitution strongly protects the right to abortion. As we explained in our amicus brief, our right to terminate a pregnancy—to exercise personal autonomy in decision-making and bodily integrity—was critical to our ability to participate equally in “the economic and social life of the Nation”¹ as liberty guarantees.

We are very concerned that President Trump has repeatedly committed to nominate justices who would overturn Roe v. Wade and undo the crucial constitutional protections on which two generations of women have relied for over four decades.

Any nominee for the Supreme Court must be able to express his or her support and respect for this right, for the precedent set by Roe, and for the rule of law. We had the courage to speak publicly about what this right has meant to us personally, despite the stigma associated with abortion, including for us as women lawyers. Judge Gorsuch, in contrast, could try to obscure his views—as others have in the past—in order to avoid this difficult discussion.

We thus urge you to thoroughly question Judge Gorsuch about his understanding and interpretation of abortion jurisprudence, about his commitment to the rule of law and respect for precedent, and about his analysis of substantive due process rights to bodily autonomy. Full-scale questioning of judicial nominees—including questions relating to the nominee’s views on the constitutional right to contraception and abortion—aims to elicit important aspects of their understanding of the Constitution and the role of the courts, which they will carry with them into a lifetime appointment. Before any new justice is confirmed to the Supreme Court, the Senate and the American people have the right to understand their judicial philosophy and views about the right to abortion.

particularly necessary for the Judiciary Committee to probe Judge Gorsuch on this issue, given that the President promised to select a nominee who would vote to overturn Roe.

Failure to pursue questions about such a settled, yet contentious, body of law creates uncertainty about whether Judge Gorsuch will protect this critical right and the constitutional values of dignity, autonomy, equality, and bodily integrity it reflects. While Judge Gorsuch has never heard an abortion challenge, his record—in particular on contraception—raises significant concerns about his ability to be open-minded, fair, and guided by the Constitution and rule of law.²

As you know, constitutional protection for abortion rights has been a matter of contentious political debate for decades—despite the fact that the Supreme Court has long held that the decision to end a pregnancy is “central to the liberty protected by the Fourteenth Amendment”³ and that “implicit in the meaning of liberty”⁴ is a woman’s right to “retain the ultimate control over her destiny and her body.”⁵ Further, less than a year ago, the Supreme Court reaffirmed the constitutional protection for the right to abortion and clarified that the standard under which courts must evaluate restrictions on the right is a robust one.⁶ There is simply no justification for Judge Gorsuch to refuse to answer questions on this topic. If he refuses to speak about issues that could come before the Court, he should be asked how he would have decided past cases including Roe.

We are united in our strongly held belief that we would not have been able to achieve our personal or professional aspirations, as diverse as they are, were it not for the ability to obtain safe and legal abortions. Meaningful access to reproductive choice has allowed us to become, remain, and thrive as women, as lawyers and as equal members of society. As lawyers who have participated in all aspects of the legal profession, including at private law firms, corporations, multinational governmental organizations, nonprofit organizations, and law schools, we have taken personal and professional risks to publicly disclose our abortion stories to the justices of the Supreme Court, the members of the U.S. Senate, and the American people. We did so because the right to make decisions for ourselves, our health, and our families is so critical for millions of women that it was worth the risk.

We ask nothing less of Judge Gorsuch than to be forthcoming on his views about this constitutional right. He cannot refuse—at barest minimum—to discuss his understanding of Supreme Court precedent and stare decisis as it relates to abortion jurisprudence before he is granted a lifetime appointment to the highest court in the land. Studied silence on this subject is not acceptable.

We urge you to press Judge Gorsuch on these matters. Judge Gorsuch owes the same openness to the Senate and the American people that we offered willingly.

Sincerely,

Janice Mac Avoy, Partner, Fried, Frank, Harris, Shriver & Jacobson LLP
Emma Claire Alpert, Public Defender, Brooklyn, NY

---

² Brief of Amici Curiae American Hospital Association, State of Washington v. Glucksberg, et al., 1996 WL 656278 (U.S.); see also Little Sisters of the Poor Home for the Aged, Denver, Colo. v. Burwell, 794 F.3d 1151 (10th Cir.) (panel opinion), and 799 F.3d 1315 (10th Cir. 2015) (dissent from en banc rehearing joined by Judge Gorsuch); Hobby Lobby Stores, Inc. v. Sebelius, 723 F.3d 1114 (10th Cir. 2013).
⁴ Id. at 869.
⁵ Id.
⁶ Whole Woman’s Health v. Hellerstedt, 136 S. Ct. 2292 (2016), as revised (June 27, 2016).
Judy Appel, Trustee Berkeley Unified School District and Executive Director of the California School-Based Health Alliance
Natasha Lycia Ora Bannan, President, National Lawyers Guild
Patricia Bauman, President, Bauman Foundation
Kathyrn Boulton, Staff Attorney, Center for HIV Law and Policy
Rhonda Brownstein, Legal Director, Southern Poverty Law Center
Heather Busby, Executive Director, NARAL Pro-Choice Texas
Emily Camin, Litigation Committee, National Lawyers Guild, Massachusetts Chapter
Cynthia Carr, Deputy General Counsel, Yale University
Monica A. Ciolfi, Director of Policy and Advocacy, Fedcap Rehabilitation Services, Inc.
Lorraine A. Clasquin, Co-founder and President, The KLE Foundation, Austin, Texas
Brenda H. Collier, CollierLaw, Austin, Texas
Andrea M. Diaz, Staff Attorney, Immigrant Defenders Law Center
Farah Diaz-Tello, Senior Counsel, SIA Legal Team
Victoria L. Eastus, Visiting Professor of Law, New York Law School
Jenny Egan, Assistant Public Defender, Maryland Office of the Public Defender
Tiffany M. Femiano, Staff Attorney, Civil Action Practice, the Bronx Defenders
Elise C. Funke, J.D. Candidate, Columbia University School of Law
Katusha Galitzine, Office of Diversity and Pluralism, Michigan State University
DeNora M. Getachew, Executive Director, Generation Citizen NYC
Emily Jane Goodman, Justice, New York State Supreme Court (ret)
Hayley Gorenberg, Deputy Legal Director, Lambda Legal Defense and Education Fund
Sharlyn Grace, National Lawyers Guild of Chicago
Julie Hamos, President, Hamos Consulting; Illinois House of Representatives (1999-2010)
Alicia Handy, Attorney
Lori Jo Hansel, Lawyer, Austin, Texas
Susan Katz Hoffman, Shareholder, Littler Mendelson, P.C.
Sarah Marie Honig, Assistant Public Defender, Cuyahoga County Public Defender
Priscilla Huang, Consultant
Deena R. Hurwitz, Visiting Professor of Law and Director, International Human Rights Law Clinic, American University of Washington College of Law
Andrea L. Irwin, Executive Director, Mabel Wadsworth Center
Stephanie L. Johnson, Partner, Hunter & Johnson, PLLC
Terry Horwitz Kass, Pro-Choice Activist
Eileen B. Hershenson, Board member, Women Lawyers En Garde!
Margaret Klaw, Partner, Berner Klaw and Watson LLP
Karen Kramer, Legal Consultant, Change Lab Solutions
Dorchen A. Leidholdt, Director, Center for Battered Women's Legal Services, Sanctuary for Families
Judith Liben, Attorney
Amy Judd Lieberman, J.D. Candidate, Class of 2017, University of California, Irvine
Star Lightner, Senior Counsel, Miller Starr Regalia
Virginia S. Longmuir, Executive Vice President, Business and Legal Affairs, RatPac Entertainment
Julie Lowenberg, Retired from Private Practice, Dallas, Texas
Nancy Marcus, Senior Law and Policy Advisor, Lambda Legal Defense and Education Fund
Chris Ann Maxwell, Independent Consultant and Entertainment Lawyer, previously Senior Vice-President, Legal Affairs at 20th Century Fox, Fox Searchlight Pictures
Michele Coleman Mayes, Vice President, General Counsel & Secretary, the New York Public Library
Amelia J. Meier, Public Interest Attorney
Three Merians, The Law Offices of Three Merians, P.C.
Carlin Meyer, Professor Emeritus, New York Law School
Amy E. Millard, Partner, Clayman and Rosenberg LLP
Kathleen S. Morris, Associate Professor of Law, Golden Gate University School of Law
Shirim Nothenberg, Senior Appellate Attorney, Lawyers for Children
Jennifer L. Nye, Lecturer in Law and Social Justice, History Department / Honors College, University of Massachusetts
Amy Oppenheimer, Law Offices of Amy Oppenheimer, Retired Administrative Law Judge, State of California
Susan Orlansky, Of Counsel to Reeves Amodio LLC
Laura Paley, New York State Court Attorney
Erin Panichkul, J.D. received from Thomas Jefferson School of Law
Claudia Polsky, Assistant Clinical Professor of Law & Director, Environmental Law Clinic, UC Berkeley Law
Gowri Ramachandran, Professor of Law, Southwestern Law School
Carmen Maria Rey, Deputy Director, Immigration Intervention Project, Sanctuary for Families
Deborah Rimmler, Senior Vice President and General Counsel, Nexant, Inc.
Karen Robson, Partner, Pryor Cashman LLP
Jamie Rebecca Rowen, Assistant Professor of Legal Studies and Political Science, University of Massachusetts Amherst
Laure Ruth, Legal Director, the Women’s Law Center of Maryland
Janie Schulman, Co-Chair, Employment and Labor Group, Morrison & Foerster LLP
Bianca Victoria Scott, Human Rights Attorney, New York City
Courtney Smith, Board of Directors, Planned Parenthood of New York City
Molly Stark, Assistant General Counsel, Rainforest Alliance, Inc.
Robin G. Steinberg, Executive Director, The Bronx Defenders
Nomi Maya Stolzenberg, Professor of Law, USC Gould School of Law
Alison Tanner, J.D. Candidate, Georgetown University Law Center; National Board Member If/When/How
Brenda Wright, Vice President, Policy & Legal Strategies, Demos