# TESTIMONY RE: RUTH BADER GINSBURG

by: Susan Hirschmann, Executive Director
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To the Senate Judiciary Committee
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Ruth Bader Ginsburg's writings show her to be a radical, doctrinaire feminist, far out of the mainstream. She shares the chip-on-the-shoulder, radical feminist view that American women have endured centuries of oppression and mistreatment from men. That's why, in her legal writings, she self-identifies with feminist Sarah Grimke's statement, "All I ask of our brethren is that they take their feet off our necks," and with feminist Simone de Beauvoir's put-down of women as "the second sex." (De Beauvoir's most famous quote is, "Marriage is an obscene bourgeois institution.")

A typical feminist, Ruth Bader Ginsburg wants affirmative action quota hiring for career women but at the same time wants to wipe out the special rights that state laws traditionally gave to wives. In a speech published by the Phi Beta Kappa Key Reporter in 1974, Ginsburg called for affirmative action hiring quotas for career women, using the police as an example in point. She said, "Affirmative action is called for in this situation."

On the other hand, she considered it a setback for "women's rights" when the Supreme Court, in Kahn v. Shevin (1974), upheld a Florida property tax exemption for widows. Ginsburg disdains what she calls "traditional sex roles" and demands strict gender neutrality (except, of course, for quota hiring of career women).

Ginsburg's real claim to her status as the premier feminist lawyer is her success in winning the 1973 Supreme Court case Frontiero v. Richardson, which she unabashedly praised as an "activist" decision. She obviously shares the view of Justice William Brennan's opinion that American men, "in practical effect, put women, not on a pedestal, but in a cage," and that "throughout much of the 19th century the position of women in our

society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes."

Anyone who thinks that American women in the 19th century were treated like slaves, and in the 20th century were kept in a "cage," has a world view that is downright dangerous to have on the U.S. Supreme Court. She's another Brennan, and no conservative should vote to confirm her.

Of course, Ginsburg passed President Clinton's self-proclaimed litmus test for appointment to the Supreme Court — she is "pro-choice." But that's not all; she wants to write taxpayer funding of abortions into the U.S. Constitution, something that 72% of Americans oppose and even the pro-abortion, pro-Roe v. Wade Supreme Court refused to do.

It has been considered settled law since the Supreme Court decisions in a trilogy of cases in 1977 (Beal v. Doe, Maher v. Roe, and Poelker v. Doe) that the Constitution does not compel states to pay for abortions. These cases were followed by the 1980 Supreme Court decision of Harris v. McRae upholding the Hyde Amendment's ban on spending federal taxpayers' money for abortions. The Court ruled that "it simply does not follow that a woman's freedom of choice [to have an abortion] carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices."

Ginsburg has planted herself firmly in opposition to this settled law. In a 1980 book entitled Constitutional Government in America, Judge Ginsburg wrote a chapter endorsing taxpayer funding of abortions as a constitutional right and condemning the high Court's rulings.

"This was the year the women lost," Ginsburg wrote in her analysis of the 1977 cases. "Most unsettling of the losses are the decisions on access by the poor to elective abortions." Criticizing the 6-to-3 majority in the funding cases, Ginsburg asserted that "restrictions on public funding and access to

public hospitals for poor women" were a retreat from Roe v. Wade, as well as a "stunning curtailment" of women's rights.

The phony "concern" expressed by pro-abortion lobbyists like Kate Michelman is just a smokescreen. Ginsburg's article criticizing Roe v. Wade, which has received some attention since her nomination, merely complained that the Court didn't adopt the "women's equality" theory that she had personally developed in the 1970s. Ginsburg's article was not a legal criticism, but a political one: if the Court had been less categorical in its Roe language, she said, it would not have provoked the "well-organized and vocal right-to-life movement." Ginsburg preferred to legalize abortion with arcane and obtuse legal gobbledegook that didn't agitate the grassroots.

Feminists Want to Change Our Laws

Ruth Bader Ginsburg is a longtime advocate of the extremist feminist notion that any differentiation whatsoever on account of gender should be unconstitutional. Her radical views are made clear in a book called Sex Bias in the U.S. Code, which she co-authored in 1977 with another feminist, Brenda Feigen-Fasteau, for which they were paid with federal funds under Contract No. CR3AK010.

Sex Bias in the U.S. Code, published by the U.S. Commission on Civil Rights, was the source of the claim widely made in the 1970s that 800 federal laws "discriminated" on account of sex. The 230-page book was written to identify those laws and to recommend the specific changes demanded by the feminist movement in order to conform to the "equality principle" and promote ratification of the Equal Rights Amendment, for which Ginsburg was a fervent advocate. (The ERA died in 1982.)

Sex Bias in the U.S. Code is a handbook which shows how the feminists want to change our laws, our institutions and our attitudes, and convert America into a "gender-free" society. It clearly shows that the feminists are not trying to redress any

legitimate grievances women might have, but want to change human nature, social mores, and relationships between men and women — and want to do that by changing our laws. Despite the noisy complaints of the feminists about the oppression of women, a combing of federal laws by Ruth Bader Ginsburg, then a Columbia University Law School professor, and her staff under a federal grant of tax dollars, unearthed no federal laws that harm women! The feminists' complaints about "discriminatory laws" are either ridiculous or offensive.

Here are some of the extremist feminist concepts from the Ginsburg book, Sex Bias in the U.S. Code:

. . . in the Military

1. Women must be drafted when men are drafted.

"Supporters of the equal rights principle firmly reject draft or combat exemption for women, as Congress did when it refused to qualify the Equal Rights Amendment by incorporating any military service exemption. The equal rights principle implies that women must be subject to the draft if men are, that military assignments must be made on the basis of individual capacity rather than sex." (p. 218)

"Equal rights and responsibilities for men and women implies that women must be subject to draft registration . . ." (p. 202)

2. Women must be assigned to military combat duty.

"Until the combat exclusion for women is eliminated, women who choose to pursue a career in the military will continue to be held back by restrictions unrelated to their individual abilities. Implementation of the equal rights principle requires a unitary system of appointment, assignment, promotion, discharge, and retirement, a system that cannot be founded on a combat exclusion for women." (p. 26)

3. Affirmative action must be applied for women in the armed services.

"The need for affirmative action and for transition measures is particularly strong in the uniformed services." (p. 218)

. . . in Moral Standards

1. The age of consent for sexual acts must be lowered to 12 years old.

"Eliminate the phrase 'carnal knowledge of any female, not his wife, who has not attained the age of 16 years' and substitute a federal, sex-neutral definition of the offense. . . . A person is guilty of an offense if he engages in a sexual act with another person, . . . [and] the other person is, in fact, less than 12 years old." (p. 102)

2. Bigamists must have special privileges that other felons don't have.

"This section restricts certain rights, including the right to vote or hold office, of bigamists, persons 'cohabiting with more than one woman,' and women cohabiting with a bigamist. Apart from the male/female differentials, the provision is of questionable constitutionality since it appears to encroach impermissibly upon private relationships." (pp. 195-196)

3. Prostitution must be legalized; it is not sufficient to change the law to sex-neutral language.

"Prostitution proscriptions are subject to several constitutional and policy objections. Prostitution, as a consensual act between adults, is arguably within the zone of privacy protected by recent constitutional decisions." (p. 97)

"Retaining prostitution business as a crime in a criminal code is open to debate. Reliable studies indicate that prostitution is not a major factor in the spread of venereal disease, and that prostitution plays a small and declining role in organized crime operations." (p. 99)

"Current provisions dealing with statutory rape, rape, and prostitution are discriminatory on their face. . . . There is a growing national movement recommending unqualified decriminalization [of prostitution] as sound policy, implementing equal rights and individual privacy principles." (pp. 215-216)

4. The Mann Act must be repealed; women should not be protected from "bad" men.

"The Mann Act . . . prohibits the transportation of women and girls for prostitution, debauchery, or any other immoral purpose. The act poses the invasion of privacy issue in an acute form. The Mann Act also is offensive because of the image of women it perpetuates. . . . It was meant to protect from 'the villainous interstate and international traffic in women and girls,' 'those women and girls who, if given a fair chance, would, in all human probability, have been good wives and mothers and useful citizens. . . . The act was meant to protect weak women from bad men." (pp. 98-99)

5. Prisons and reformatories must be sex-integrated.

"If the grand design of such institutions is to prepare inmates for return to the community as persons equipped to benefit from and contribute to civil society, then perpetuation of single-sex institutions should be rejected. . . . 18 U.S.C. §4082, ordering the Attorney General to commit convicted offenders to 'available suitable, and appropriate' institutions, is not sex discriminatory on its face. It should not be applied . . . to permit consideration of a person's gender as a factor making a particular institution appropriate or suitable for that person." (p. 101)

6. In the merchant marine, provisions for passenger accommodations must be sex-neutralized, and women may not have more bathrooms than men.

"46 U.S.C. §152 establishes different regulations for male and female occupancy of double berths, confines male passengers without wives to the 'forepart' of the vessel, and segregates unmarried females in a separate and closed compartment. 46 U.S.C. §153 requires provision of a bathroom for every 100 male passengers for their exclusive use and one for every 50 female passengers for the exclusive use of females and young children." (p. 190)

"46 U.S.C. §152 might be changed to allow double occupancy by two 'consenting adults.' . . . Requirements for separate bathroom facilities stipulated in Section 153 should be retained but equalized so that the ratio of persons to facility is not sex-determined." (p. 192)

. . . in Education

1. Single-sex schools and colleges, and single-sex school and college activities must be sex-integrated.

"The equal rights principle looks toward a world in which men and women function as full and equal partners, with artificial barriers removed and opportunity unaffected by a person's gender. Preparation for such a world requires elimination of sex separation in all public institutions where education and training occur." (p. 101)

2. All-boys' and all-girls' organizations must be sex-integrated because separate-but-equal organizations perpetuate stereotyped sex roles.

"Societies established by Congress to aid and educate young people on their way to adulthood should be geared toward a world in which equal opportunity for men and women is a fundamental principle. The educational purpose would be served best by immediately extending membership to both sexes in a single organization." (pp. 219-220)

3. Fraternities and sororities must be sex-integrated.

"Replace college fraternity and sorority chapters with college 'social societies.'" (p. 169)

4. The Boy Scouts, the Girl Scouts, and other Congressionally-chartered youth organizations, must change their names and their purposes and become sex-integrated.

"Six organizations, which restrict membership to one sex, furnish educational, financial, social and other assistance to their young members. These include the Boy Scouts, the Girl

Scouts, Future Farmers of America . . . , Boys' Clubs of America . . ., Big Brothers of America . . . , and the Naval Sea Cadets Corps. . . . The Boy Scouts and Girl Scouts, while ostensibly providing 'separate but equal' benefits to both sexes, perpetuate stereotyped sex roles to the extent that they carry out congressionally-mandated purposes. 36 U.S.C. §23 defines the purpose of the Boy Scouts as the promotion of '. . . the ability of boys to do things for themselves and others, to train them in scoutcraft, and to teach them patriotism, courage, self-reliance, and kindred virtues. . . .' The purpose of the Girl Scouts, on the other hand, is '. . . to promote the qualities of truth, loyalty, helpfulness, friendliness, courtesy, purity, kindness, obedience, cheerfulness, thriftiness, and kindred virtues among girls, as a preparation for their responsibilities in the home and for service to the community. . . ' (36 U.S.C. §33.)" (pp. 145-146)

"Organizations that bestow material benefits on their members should consider a name change to reflect extension of membership to both sexes . . . [and] should be revised to conform to these changes. Review of the purposes and activities of all these clubs should be undertaken to determine whether they perpetuate sex-role stereotypes." (pp. 147-148)

5. <u>The 4-H Boys and Girls Clubs must be sex-integrated into 4-H Youth Clubs.</u>

"Change in the proper name '4-H Boys and Girls Clubs' should reflect consolidation of the clubs to eliminate sex segregation, e.g., '4-H-Youth Clubs.'" (p. 138)

6. <u>Men and women should be required to salute the flag in the same way.</u>

"Differences [between men and women] in the authorized method of saluting the flag should be eliminated in 36 U.S.C. §177." (p. 148)

. . . in the Family

1. The traditional family concept of husband as breadwinner and wife as homemaker must be eliminated.

"Congress and the President should direct their attention to the concept that pervades the Code: that the adult world is (and should be) divided into two classes — independent men, whose primary responsibility is to win bread for a family, and dependent women, whose primary responsibility is to care for children and household. This concept must be eliminated from the code if it is to reflect the equality principle." (p. 206)

"It is a prime recommendation of this report that all legislation based on the breadwinning, husband-dependent, homemaking-wife pattern be recast using precise functional description in lieu of gross gender classification." (p. 212)

"A scheme built upon the breadwinning husband [and] dependent homemaking wife concept inevitably treats the woman's efforts or aspirations in the economic sector as less important than the man's." (p. 209)

2. The Federal Government must provide comprehensive government child-care.

"The increasingly common two-earner family pattern should impel development of a comprehensive program of government-supported child care." (p. 214)

3. The right to determine the family residence must be taken away from the husband.

"Title 43 provisions on homestead rights of married couples are premised on the assumption that a husband is authorized to determine the family's residence. This 'husband's prerogative' is obsolete." (p. 214)

4. Homestead law must give twice as much benefit to couples who live apart from each other as to a husband and wife who live together.

"Married couples who choose to live together would be able

to enter upon only one tract at a time." (p. 175) "Couples willing to live apart could make entry on two tracts." (p. 176)

5. No-fault divorce must be adopted nationally.

"Consideration should be given to revision of 38 U.S.C. §101(3) to reflect the trend toward no-fault divorce." (p. 159) "Retention of a fault concept in provisions referring to separation . . . is questionable in light of the trend away from fault determinations in the dissolution of marriages." (pp. 214-215)

. . . in Language

1. About 750 of the 800 federal laws that allegedly "discriminate" on account of sex merely involve the use of so-called "sexist" words which the ERAers wanted to censor out of the English language. "The following is a list of specific recommended word changes" which the feminists want censored out of Federal laws (pp. 15-16, 52-53).

| Words To Be Removed | Words To Be Substituted |
|---|---|
| manmade | artificial |
| man, woman | person, human |
| mankind | humanity |
| manpower | human resources |
| husband, wife | spouse |
| mother, father | parent |
| sister, brother | sibling |
| paternity | parentage |
| widow, widower | surviving spouse |
| entryman | enterer |
| serviceman | servicemember |
| midshipman | midshipperson |
| longshoremen | stevedores |
| postmaster | postoffice director |
| plainclothesman | plainclothesperson |
| watchman | watchperson |
| lineman | line installer, line maintainer |
| businessman | businessperson |
| duties of seamanship | nautical or seafaring duties |

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Sex Bias even demands bad grammar to appease the feminists: "All federal statutes, regulations, and rules shall [use] plural constructions to avoid third person singular pronouns." (pp. 52-53)

2. In another piece of silliness, Sex Bias demands that Congress create a female anti-litter symbol to match "Johnny Horizon."

"A further unwarranted male reference . . . regulates use of the 'Johnny Horizon' anti-litter symbol. . . . This sex stereotype of the outdoorsperson and protector of the environment should be supplemented with a female figure promoting the same values. The two figures should be depicted as persons of equal strength of character, displaying equal familiarity and concern with the terrain of our country." (p. 100)

3. On the other hand, Sex Bias shows its hypocrisy by demanding that the "Women's Bureau" in the U.S. Department of Labor be continued. Although the authors admit that this is "inappropriate" (it is obviously sex discriminatory), they simply demand it anyway. "The Women's Bureau is . . . a necessary and proper office for service during a transition period until the equal rights principle is realized." (p. 221)

4. Sex Bias in the U.S. Code makes a fundamental error in stating: "The Constitution, which provides the framework for the American legal system, was drafted using the generic term 'man'." (p. 2) The word "man" does not appear in the U.S. Constitution (except in a no-longer-operative section of the 14th Amendment, which is not in effect now and was not in effect when the Constitution was "drafted"). The U.S. Constitution is a beautiful sex-neutral document. It exclusively uses sex-neutral words such as person, citizen, resident, inhabitant, President, Vice President, Senator, Representative, elector, Ambassador, and minister, so that women enjoy every constitutional right that men enjoy — and always have.

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Sex Bias in the U.S. Code proves that Ruth Bader Ginsburg's "equality principle" would bring about extremist changes in our legal, political, social, and educational structures. The feminists are working hard — with our tax dollars — to bring this

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about by constitutional mandate (through the Equal Rights Amendment) or by legislative changes or by judicial activism. Ruth Bader Ginsburg has been their premier lawyer for two decades.

Finally, who but an embittered feminist could have said what Ruth Bader Ginsburg said when she stood beside President Clinton in the Rose Garden the day of her nomination for the Supreme Court: She wished that her mother had "lived in an age when daughters are cherished as much as sons." Where in the world has Ginsburg been living? In China? In India? Her statement was an insult to all American parents who do, indeed, cherish their daughters as much as their sons.

The CHAIRMAN. We are happy to have your testimony. I might add that I know that some of you did not know whether you wanted to testify until late in the process, and I particularly appreciate you coming across the country from California and from Illinois, and I hope, as this has gone, we have tried to accommodate those who asked to testify, even when it has been a little down the line. Mr. Phillips asked early on.

It is nice to see you again, Kay Coles James. The last time we saw you before this committee, you were a nominee. It is nice to see you again.

## STATEMENT OF KAY COLES JAMES

Ms. JAMES. Thank you, Mr. Chairman. I must admit that I prefer this seat in terms of the one I had before.

The CHAIRMAN. Being a witness, rather than a nominee.

Ms. JAMES. Exactly right.

Thank you, Mr. Chairman. I would also like to thank the rest of the committee for this opportunity to contribute to the deliberative process on Judge Ginsburg.

Judge Ginsburg has presented herself as a moderate and as an advocate of judicial moderation. Yet, many of her remarks reveal a philosophy of judicial activism, most notably with regard to abortion, where she clearly revealed views that I believe are radical and activist, and I will even argue wrong.

Judge Ginsburg rightly claimed the privilege of refusing to answer questions that might commit her on issues likely to come before the Court, and she exercised this privilege on a wide range of issues, refusing, for instance, either to endorse or reject the view that sexual orientation is a suspect classification for equal protection purposes, or the view that the capital punishment violates the eighth amendment, even though it is specifically contemplated by the fifth.

But on abortion, Judge Ginsburg not only declined to exercise the privilege, she reached out, in answering a question from Senator Brown that could have been answered much less broadly, and delivered a ringing statement of her pro-abortion position.

Specifically, she said that the abortion right is, in her words, essential to women's equality and dignity. She said, furthermore, that when government controls that decision for a woman, she is being treated as less than a fully adult human responsible for her own choices.

Let me point out first that there is not a shred of law in that statement. Right or wrong, it is pure policy. This is a very strange comment coming from someone who postures as a believer in judicial moderation.

Though, Senator I don't think that she ever really answered your question on how she can reconcile her advocacy of a broad policy driven construction of the equal protection clause with her more recent advocacy of a restrained judiciary, the answer is not hard to find in her speeches and, in fact, in her articles.

She believes the Supreme Court can and should promote radical change, but it should be done slowly, and the slowness is based not on principle, but on expediency. If the Court moves too fast, the electorate reacts in the opposite direction, and this is precisely her

so-called criticism of *Roe* v. *Wade.* She understands that the electorate in the hands of a liberal, yet cautious judiciary is like a frog in a pot of slowly-heating water. It will never notice the increasing temperature and will get boiled to death, rather than jump out.

But I will leave equal protections of history to one side, because I am not an attorney. What I am is an African-American woman who has put a certain amount of effort into reminding our increasingly self-obsessed society about the right of the most vulnerable category of human beings, the only ones who have been held as a matter of constitutional law to be completely without rights, the human unborn.

Judge Ginsburg believes that laws that command people to respect the rights of the human unborn treat the mother as "less than a fully adult human responsible for her own choices." Mr. Chairman, a similar critique could be leveled at any law whatsoever. All laws direct human conduct in some fashion, and, to that extent, all laws deprive people of absolute autonomy.

Senator Simon is concerned that any Supreme Court nominee he votes for be someone who will increase freedom. But I don't think he means he wants someone who will, say, rule that the 1960 Civil Rights Act is unconstitutional. That act unquestionably limited what some people regard as freedoms, the freedom to decide whom to associate with on the job, the freedom to control the use of one's own property, and so forth. Many employers and restaurant owners argued, in fact, that the act treats them as "less than fully adult humans responsible for their own choices." But it passed, as well it should have, and it continues to command overwhelming support in the electorate, because the limitations it imposed on freedom were necessary to protect the rights of other people whose rights and dignity were being denied, just as the rights and dignity of children in the womb are being denied today.

Judge Ginsburg frames the abortion right with no trace of having confronted the question of whether there might be a party other than the mother with a life-or-death stake in the abortion decision.

One of her formulations of the abortion right is that "women have a right free from unwarranted governmental intrusion whether or not to bear children." That is something I myself could say amen to, were it not for the question of those conceived but not yet born. But asserting a right not to bear a child, regardless of whether or not that child has already come into existence, is like asserting a right to fire a loaded gun, regardless of whether or not there is someone standing in the path of the bullet.

Finally, I would like to say a few words about this notion that the right to take the life of the innocent preborn child as necessary to women's equality and freedom in society. This view, in my belief, is a total capitulation to the old saw about how it is a man's world. Those who adhere to it are, in effect, saying that in order to achieve dignity and standing in the world, women have to have the equivalent of male bodies, but they don't. Women don't need to mutilate their bodies or take the lives of their children in order to be equal to any man. The real feminists are those who say I'm pregnant, I can bear children, and you had better be prepared to deal with it. [Applause.]

The Senate is about to put an advocate of the male assimilation theory of women's rights onto the Supreme Court and to earn plaudits from the feminist establishment for doing so, not to mention plaudits from the media for confirming a moderate.

So it probably won't matter that, for this nominee, moderation is a political tactic, rather than a legal practice. Nor will it matter that the nominee's reasoning on abortion is premised on the notion, to paraphrase the *Dred Scott* decision, that the unborn have no rights that the born are bound to respect. But I think it is a tragedy that we have sunk to the point that this is our idea of a noncontroversial nominee.

Mr. Chairman, I do thank you and the committee for the opportunity to come here and say so today.

The CHAIRMAN. Thank you for a reasoned, dispassionate, well-stated statement. As I said, it is nice to have you back before the committee and it is nice to know that you would rather be a witness than a nominee. I guess it is a different role.

Welcome back, Mr. Phillips. One thing for certain, you are nonpartisan in your criticism. The last time you were here, if I remember—I mean this to establish your bona fides here—you were not reluctant to oppose a Republican nominee, and you are not reluctant to oppose a Democratic nominee.

Mr. PHILLIPS. I am nonpartisan. I am bipartisan.

The CHAIRMAN. That is a better way of saying it. The floor is yours.

## STATEMENT OF HOWARD PHILLIPS

Mr. PHILLIPS. Thank you very much, sir, Senator Hatch, Senator Specter.

When we are told that a unanimous vote is in the offing, the American people have the right to ask, in all seriousness, do all Senators share the same standard of judgment. In 1990, when you accorded me the opportunity to testify in opposition to the nomination of David Souter, I asserted that the overarching moral issue in the political life of the United States in the last third of the 20th century is the question of abortion: Is the unborn child a human person entitled to the protections pledged to each of us by the Founders of the Nation?

The first duty of the law and the civil government established to enforce that law is to prevent the shedding of innocent blood. As Notre Dame law professor Charles Rice has pointed out, this is so, because the common law does not permit a person to kill an innocent nonaggressor, even to save his own life.

I have no reason to believe that Mrs. Ginsburg has personally caused human lives to be extinguished, as was clearly the case with David Souter, when President Bush put his name forward. Nor do I in any other way challenge Mrs. Ginsburg's nomination on grounds of personal character. I do, however, urge that Mrs. Ginsburg's nomination be rejected on grounds that the standard of judgment she would bring on the overriding issue of whether the Constitution protects our God-given right to life is a wrong standard.

Instead of defending the humanity and divinely imparted right to life of preborn children, she would simply be another vote for the

proposition that our unborn children are less than human, and that their lives may be snuffed out, without due process of law and with impunity. As a matter of practice and belief, Mrs. Ginsburg has failed to acknowledge or recognize that the first duty of the law is indeed the defense of innocent human life.

If it is Mrs. Ginsburg's position, and it does seem to be her view, that the extinguishment of innocent unborn human lives without due process of law is not only constitutionally permissible, but that those who engage in the practice of destroying unborn lives should enjoy constitutional protection for doing so, she may have a perspective consistent with that held by members of this committee. But it is not one which is consistent with either the plain language of the Constitution or with the revulsion toward abortion which prevailed at the time when our Constitution was drafted and ratified.

While Ms. Ginsburg has disagreed with the reasoning in *Roe.* v. *Wade,* she has at no time expressed dissatisfaction with the millions of legal abortions which were facilitated by that decision, even though she would have argued that discrimination rather than privacy was the core issue. By Ms. Ginsburg's logic, it is unconstitutional discrimination to deny females the opportunity to extinguish any lives which may result from their sexual conduct. Her argument would seem to be with our creator inasmuch as he did not equally assign the same childbearing function to males. Consistent with her warped perspective, Ms. Ginsburg as a litigator argued that pregnancy should be treated as a disability rather than as a gift from God.

The question of personhood and of the humanity of the preborn child is at the very heart of the abortion issue in law, in morals, and in fact. Justice John Paul Stevens expressed his opinion in the 1986 *Thornburgh* case that there is a fundamental and well-recognized difference between a fetus and a human being. He admitted that indeed if there is not such a difference, the permissibility of terminating the life of a fetus could scarcely be left to the will of the State legislatures.

In the *Roe* v. *Wade* decision, the Supreme Court indicated that if the unborn child is a person, the State could not allow abortion even to save the life of the mother. In fact, the majority opinion deciding *Roe* v. *Wade*—in that opinion, the Supreme Court said that if the personhood of the unborn child is established, the pro-abortion case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the 14th amendment.

Although my reasoning is different, I agree with Justice Stevens when he argues that if the unborn child is recognized as a human person, there is no constitutional basis to justify Federal protection of abortion anywhere in the United States of America. Indeed, on the contrary, if the preborn child is, in fact, a human person created in God's image, premeditated abortion is unconstitutional in every one of the 50 States.

Ms. Ginsburg should be closely questioned by members of the Judiciary Committee concerning whether she believes the unborn child is a human person created in God's image. This is the core issue. If this is not her understanding—and it does not seem to

be—she should be asked to indicate by what logic she reaches a contrary conclusion.

It has been reported concerning Ms. Ginsburg that several of her writings provide a glimpse into her approach to the Constitution. In an article in Law and Inequality, a journal of theory and practice, she wrote that, "a too strict jurisprudence of the Framers' original intent seems to me unworkable." She went on to write that adherence to our 18th century Constitution is dependent on change in society's practices, constitutional amendment, and judicial interpretation.

Furthermore, in the Washington University Law Quarterly she remarked that boldly dynamic interpretation, departing radically from the original understanding of the Constitution, is sometimes necessary. And in a speech this March at New York University, Judge Ginsburg advocated using the Supreme Court to enact social change. Without taking giant strides, the Court, through constitutional adjudication, she said, can reinforce or signal a green light for social change.

It is not surprising that different people might reach different conclusions about the intent of the Framers, but it is quite another thing for a prospective Justice of the Supreme Court to presume to substitute his or her own opinion for the plain meaning of the original document, as lawfully amended.

I hope the members of this committee will probe more deeply into Ms. Ginsburg's present view of the opinions she expressed in these briefs, articles, and speeches. If she is unwilling to repudiate them credibly and entirely, then even aside from her apparent failure to recognize the duty of the State to safeguard innocent humanity, she would seem to have disqualified herself from a position in which she is expected to be a guardian of the Constitution. Otherwise, a vote to confirm Ms. Ginsburg becomes a vote to empower a permanent one-woman constitutional convention which never goes out of session.

Indeed, in view of the position taken by Ms. Ginsburg that it is the duty of Supreme Court Justices to disregard the plain words and intentions of the Constitution, it is particularly important that her personal opinions be even more closely scrutinized.

It is the particular obligation of those who might disagree with Ms. Ginsburg's ideology and policy objectives to either oppose her nomination on the basis of such disagreement or to henceforth cease their personal professions of conviction on those particular issues, whether they relate to abortion, to homosexuality, or to some other issue where Ms. Ginsburg's philosophical predilections are a matter of public record.

I see that my time is up, so I will terminate my testimony there, asking that the balance of it be submitted to the record.

The CHAIRMAN. It will be placed in the record.

[The prepared statement of Mr. Phillips follows:]

***"A vote to confirm Mrs. Ginsburg becomes a vote to empower a permanent one-woman Constitutional Convention which never goes out of session."***

## SUMMARY OF TESTIMONY
## IN OPPOSITION TO CONFIRMATION OF RUTH BADER GINSBURG
## TO BE A JUSTICE OF THE U.S. SUPREME COURT

Excerpts from Testimony of Howard Phillips

When we are told that a unanimous vote is in the offing, the American people have the right to ask in all seriousness: "Do all Senators share the same standard of judgment?"

By Mrs. Ginsburg's logic, it is unconstitutional discrimination to deny females the opportunity to extinguish any lives which may result from their sexual conduct. Her argument would seem to be with our Creator, inasmuch as he did not equally assign the same childbearing function to males. Consistent with her warped perspective, Mrs. Ginsburg, as a litigator, argued that pregnancy should be treated as a disability rather than as a gift from God.

Indeed, in a 1972 brief, Mrs. Ginsburg argued that "exaltation of woman's unique role in bearing children has, in effect, restrained women from developing their individual talents...and has impelled them to accept a dependent, subordinate status in society."

Moreover in 1984, in a speech at the University of North Carolina, Mrs. Ginsburg went so far as to maintain that the government has a legal "duty" to use taxpayer funds to subsidize abortion.

In an article in *Law and Inequality: A Journal of Theory and Practice*, she wrote that 'a too strict jurisprudence of the framers' original intent seems to me unworkable.' She went on to write that adherence to 'our eighteenth century Constitution' is dependent on 'change in society's practices, constitutional amendment, and judicial interpretation.' Furthermore, in the *Washington University Law Quarterly*, she remarked that 'boldly dynamic interpretation departing radically from the original understanding' of the Constitution is sometimes necessary."

It is not surprising that different people might reach different conclusions about the intent of the Framers. But it is quite another thing for a prospective Justice of the Supreme Court to presume to substitute his or her own opinion for the plain meaning of the original document as lawfully amended. If she is unwilling to repudiate it credibly and entirely, then, even aside from her apparent failure to recognize the duty of the state to safeguard innocent humanity, she would seem to have disqualified herself from a position in which she is expected to be a guardian of the Constitution. Otherwise, a vote to confirm Mrs. Ginsburg becomes a vote to empower a permanent one woman Constitutional convention which never goes out of session.

Mrs. Ginsburg's views on virtually every subject which might conceivably be addressed by the Supreme Court are relevant to the consideration of this body.

It is the particular obligation of those who might disagree with Mrs. Ginsburg's ideology and policy objectives to either oppose her nomination on the basis of such disagreement, or to henceforth cease their personal professions of conviction on those particular issues---whether they relate to abortion, to homosexuality, or to some other issue where Mrs. Ginsburg's philosophical predilections are a matter of public record.

Mrs. Ginsburg's nomination should be rejected.