



September 24, 2019

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OPPOSE THE CONFIRMATION OF SARAH PITLYK TO THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, I write in strong opposition to the confirmation of Sarah Pitlyk to the U.S. District Court for the Eastern District of Missouri.

Ms. Pitlyk is an ideological extremist who has dedicated much of her legal career to attempting to restrict reproductive freedom and access to women's health care. She displayed a troubling penchant for judicial activism in an op-ed she wrote last year in which she argued that Brett Kavanaugh, for whom she worked as a law clerk, would be a reliable vote against abortion rights and the Affordable Care Act. Ms. Pitlyk has a clear ideological bias that would render her incapable of serving as a fair and neutral arbiter. The Senate must reject her nomination to a lifetime position in the federal judiciary.

Efforts to Restrict Reproductive Freedom: Ms. Pitlyk has dedicated her career to restricting reproductive rights and health care access. She works at an anti-abortion organization called the Thomas More Society, and previously worked at a law firm dedicated to attacking reproductive freedom. On her Senate questionnaire, where judicial nominees are required to list their ten most significant cases, the top eight cases listed by Ms. Pitlyk all involved efforts to restrict reproductive rights.

For example, Ms. Pitlyk defended one of the most extreme, anti-abortion laws in U.S. history. The law, passed last year in Iowa, would have prohibited all abortions after embryonic cardiac activity was detected, usually around six weeks and well before viability. This is a stage in pregnancy before many people even know they are pregnant. The law was struck down as unconstitutional earlier this year.¹

In a Supreme Court amicus brief she filed last year in *Box v. Planned Parenthood*, Ms. Pitlyk made the radical argument that abortion and birth control are rooted in eugenics – the theory that the genetic quality of a population should be improved by excluding certain genetic groups judged to be inferior. Ms. Pitlyk declared: “The eugenic origins of the birth-control movement – the progenitor of the abortion rights movement – are well-established” and “Given its strategic location of abortion clinics near minority neighborhoods and its blatant

¹ <https://www.cnn.com/2019/01/23/us/iowa-fetal-heartbeat-abortion-unconstitutional/index.html>.

marketing of abortion to the minority community, the abortion industry’s claims to bear no responsibility for the staggering numbers of minority abortions beggars belief.”² Such extreme and offensive views were embraced by Justice Clarence Thomas in a lone dissent in this case, which generated substantial media coverage including a *Washington Post* article entitled “Clarence Thomas tried to link abortion to eugenics. Seven historians told The Post he’s wrong.”³

In the case *Burwell v. Hobby Lobby Stores, Inc.*, Ms. Pitlyk wrote an amicus brief in support of Hobby Lobby attacking the Affordable Care Act (“ACA”) requirement that contraception be provided to employees as part of their basic health care coverage. She asserted that the requirement “requires employers to cooperate in the destruction of human life” and constituted a “grave evil” and “moral wrong of the highest gravity.”⁴ Although five Supreme Court justices ruled that the ACA contraceptive requirement violated the Religious Freedom Restoration Act, the dissent noted that Hobby Lobby’s argument was akin to arguments made by discriminatory businesses decades ago who unsuccessfully sought to exclude African Americans on the basis of businessowners’ religious beliefs.⁵

In another case, *M.C. v. C.M.*, Ms. Pitlyk attacked the commonplace practice of surrogacy, most typically used by parents who are unable to have children of their own. Ms. Pitlyk asserted that “the practice of 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.”⁶ These are extreme statements.

And in *McQueen-Gadberry v. Gadberry*, in which Ms. Pitlyk represented a woman who sought to gain rights to frozen embryos over the objection of her ex-husband with whom the embryos were created through in vitro fertilization, Ms. Pitlyk referred to the frozen embryos as “embryonic children” and “human beings.”⁷ She asserted that her client’s existing children would “have to navigate the murky psychological waters of knowing that they had similarly-situated siblings who died at the hand of their father.”⁸ These are troubling and provocative views.

Ms. Pitlyk has also defended anti-abortion activist David Daleiden in multiple cases. Mr. Daleiden received national notoriety when he used secretly-taped and discredited videos to spread deceptive information about Planned Parenthood.⁹ Criminal charges were brought against Mr. Daleiden, yet Ms. Pitlyk proudly highlights her defense of him on her website, noting she was “part of a team defending

² https://www.supremecourt.gov/DocketPDF/18/18-483/72192/20181115123021558_37089%20pdf%20Mannix.pdf.

³ <https://www.washingtonpost.com/history/2019/05/31/clarence-thomas-tried-link-abortion-eugenics-seven-historians-told-post-hes-wrong/>.

⁴ https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v3/13-354-13-356_hl-cws_amcu_67-cte.authcheckdam.pdf.

⁵ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 770 (2014) (Ginsburg, J., dissenting).

⁶ <https://www.thomasmoresociety.org/wp-content/uploads/2017/08/Amicus-Brief-in-M.C.-v.-C.M..pdf>.

⁷ <http://embryodefense.org/wp-content/uploads/2016/06/McQueen-Brief.pdf-1.pdf>.

⁸ *Id.*

⁹ <https://www.nytimes.com/2015/08/28/us/abortion-planned-parenthood-videos.html>.

undercover journalists against civil lawsuits and criminal charges resulting from an investigation of illegal fetal tissue trafficking.”¹⁰

During the Kavanaugh confirmation battle last year, Ms. Pitlyk served as one of then-Judge Kavanaugh’s most prominent defenders. In dozens of media appearances and speeches, she sought to assure right-wing audiences that, if confirmed to the Supreme Court, then-Judge Kavanaugh would be a reliable vote on the issue of abortion and that he will “never waver in the face of pressure from any quarters.”¹¹

In an op-ed entitled “Judge Brett Kavanaugh’s Impeccable Record of Constitutional Conservatism” in the *National Review*, Ms. Pitlyk argued that Justice Kavanaugh would consistently vote against reproductive freedom. She wrote: “As social conservatives know from bitter experience, a judicial record is the best – really, the only – accurate predictor of a prospective justice’s philosophy on the issues that matter most to us. On the vital issues of protecting religious liberty and enforcing restrictions on abortion, no court-of-appeals judge in the nation has a stronger, more consistent record than Judge Brett Kavanaugh.”¹² Ms. Pitlyk praised him for his anti-abortion dissent in *Garza v. Hargan*, writing: “When the full D.C. Circuit later vacated that decision and ordered the government to facilitate abortion immediately, Judge Kavanaugh dissented, stating that the majority had ‘badly erred’ in adopting a ‘radical extension of the Supreme Court’s abortion jurisprudence.’ He again endorsed the Trump administration’s position that it did not have to facilitate an immediate abortion on demand.”¹³

In a January 2019 speech, Ms. Pitlyk said that Justice Kavanaugh was “precisely the sort of justice who will recognize the gross defects in the Supreme Court’s thoroughly activist abortion jurisprudence, and given the opportunity, will remedy them.”¹⁴ Ms. Pitlyk would bring a zealous anti-abortion agenda to the federal judiciary and would be utterly incapable of ruling on any case involving reproductive freedom.

Hostility to Health Care Access: Ms. Pitlyk also wrote last year that then-Judge Kavanaugh would be a reliable vote against the Affordable Care Act. She wrote: “Speaking of Obamacare, I know how disappointed social conservatives were by the Supreme Court’s unprincipled decision to uphold the law. Judge Kavanaugh *dissented* from a court-of-appeals decision upholding Obamacare. He called the individual mandate ‘unprecedented on the federal level in American history’ and said that upholding it would ‘usher in a significant expansion of congressional authority with no obvious principled limit.’”¹⁵ In making such statements, Ms. Pitlyk made clear that she wholeheartedly agrees with Justice Kavanaugh’s views.

¹⁰ <https://www.thomasmoresociety.org/sarah-pitlyk/>.

¹¹ <https://www.nationalreview.com/2018/07/judge-brett-kavanaughs-impeccable-record-of-constitutional-conservatism/>.

¹² *Id.*

¹³ *Id.*

¹⁴ <https://afj.org/wp-content/uploads/2019/09/Pitlyk-Thomas-More-Society-1.17.19.pdf>.

¹⁵ *Id.*

Opposed to Equal Opportunity Programs: Ms. Pitlyk wrote an amicus brief on behalf of the right-wing American Civil Rights Union opposing equal opportunity affirmative action programs in Michigan. In her brief, Ms. Pitlyk argued that racial considerations in education, employment, and contracting programs “entrench racial prejudices.”¹⁶ She condescendingly asserted that “state-imposed racial classifications pose a basic affront to the dignity of the persons classified” and that “[m]embers of preferred groups suffer from the unjust stigma that they are inherently incapable of competing on an even footing.”¹⁷ Ms. Pitlyk’s effort in this case to undermine racial justice and equality is deeply troubling.

Ideological Affiliations: Ms. Pitlyk has been a member of the far-right Federalist Society since 2006. A recent news article explained: “Because membership in the Federalist Society has long been seen as a demonstration of ideological bona fides and a subscription to a package of ideas, prospective federal judges can use the group’s events to signal their fealty to the movement’s legal policy goals. Indeed, there is evidence that judges who are Federalist Society members are significantly more conservative on the bench than unaffiliated nominees.”¹⁸ This out-of-the-mainstream organization represents a sliver of America’s legal profession – just four percent – yet more than 80 percent of President Trump’s circuit court nominees and nearly half of his district court nominees are Federalist Society members. Ms. Pitlyk has also been a member of several anti-abortion organizations, including St. Louis Lawyers for Life and Yale Law Students for Life, which she founded.¹⁹

Lack of Experience: Ms. Pitlyk graduated from law school just 11 years ago. The American Bar Association (“ABA”) has not yet completed its rating of Ms. Pitlyk – and the scheduling of her hearing without this rating reflects continued abuse of the confirmation process by Senate Judiciary Committee Chair Lindsey Graham. The ABA may deem her unqualified – their website states: “The [ABA evaluation] Committee believes that a nominee to the federal bench ordinarily should have at least twelve years’ experience in the practice of law.”²⁰ Ms. Pitlyk fails this basic test. In addition, based on information provided in her Senate questionnaire,²¹ she does not appear to have had a single trial during her career, another indicator of her lack of experience and qualification to be a U.S. District Judge.

Disturbing Lack of Diversity: President Trump’s lack of commitment to diversity on the federal judiciary is deeply disturbing. President Trump has appointed the least diverse group of nominees in decades.²² Of his 54 appellate nominations, none are African American. Only one is Latino. And only 11 are women. His district court nominees are similarly nondiverse. Our nation’s great diversity should be reflected in its government institutions, especially the federal judiciary, which serves as the ultimate guardian of our rights and liberties. At a time when the legal profession has more women and attorneys of color than ever before, President Trump’s record on judicial diversity is truly appalling.

¹⁶ <https://www.theacru.org/wp-content/uploads/Schuette-v-BAMN-ACRU-Amicus.pdf>.

¹⁷ *Id.*

¹⁸ <https://www.politico.com/magazine/story/2019/08/31/federalist-society-advocacy-group-227991>.

¹⁹ <https://studentsforlife.org/2019/08/15/trump-nominates-former-students-for-life-leader-to-federal-judgeship/>.

²⁰ <https://www.americanbar.org/content/dam/aba/unecategorized/GAO/Backgrounder.authcheckdam.pdf>.

²¹ <https://www.judiciary.senate.gov/imo/media/doc/Sarah%20Pitlyk%20Senate%20Questionnaire%20-%20PUBLIC.pdf>.

²² <https://www.usatoday.com/story/news/politics/2018/02/13/trumps-87-picks-federal-judges-92-white-just-one-black-and-one-hispanic-nominee/333088002/>.

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For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Sarah Pitlyk to the U.S. District Court for the Eastern District of Missouri. Thank you for your consideration of our views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel, at (202) 466-3311.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanita Gupta". The signature is fluid and cursive, with a long horizontal stroke at the end.

Vanita Gupta
President & CEO