

(202) 626-8820

March 27, 2009

RE: In opposition to the nomination of
Dawn Johnsen as Assistant Attorney General

Dear Senator:

The National Right to Life Committee (NRLC), the federation of right-to-life organizations in all 50 states, urges you to vote against advancing the nomination of President Obama's nominee to the position of assistant attorney general for the Office of Legal Counsel (AAG-OLC), Dawn Johnsen.

The AAG-OLC has been called "the Attorney General's lawyer." The Justice Department's website explains, "the Assistant Attorney General in charge of the Office of Legal Counsel provides authoritative legal advice to the President and all the Executive Branch agencies. The Office drafts legal opinions of the Attorney General and also provides its own written opinions and oral advice in response to requests from the Counsel to the President, the various agencies of the Executive Branch, and offices within the Department. Such requests typically deal with legal issues of particular complexity and importance or about which two or more agencies are in disagreement. The Office also is responsible for providing legal advice to the Executive Branch on all constitutional questions and reviewing pending legislation for constitutionality. All executive orders and proclamations proposed to be issued by the President are reviewed by the Office of Legal Counsel for form and legality, as are various other matters that require the President's formal approval. In addition to serving as, in effect, outside counsel for the other agencies of the Executive Branch, the Office of Legal Counsel also functions as general counsel for the Department itself."

In short, the person who serves as AAG-OLC will play an influential role both in construing existing laws and in evaluating the constitutional and legal implications of various legislative and administrative proposals. Dawn Johnsen's career as a pro-abortion activist and ideologue suggests that she would use this office as a platform to impose highly ideological constructions on existing statutes, and seek to advance novel constitutional doctrines on matters dealing with abortion and other right-to-life concerns, among others.

Johnsen has a long history as a pro-abortion strategist, propagandist, and litigator, including about five years (1988-1993) as legal director for the organization then known as the National Abortion Rights Action League (NARAL), as well as work on behalf of the ACLU and Abortion Rights Mobilization. Throughout her career, Johnsen has expressed her opposition to all limitations on abortion in vivid terms, and she has often criticized courts for being, in her view, insufficiently expansive in their application of pro-abortion legal doctrines.

For example, in her January 2008 essay "A Progressive Agenda for Women's Reproductive

Health and Liberty on *Roe v. Wade*'s Thirty-Fifth Anniversary" (American Constitution Society), Johnsen condemned as "wrongly decided" the U.S. Supreme Court rulings "that upheld the exclusion of abortion from health care the government provided the poor [the Hyde Amendment] . . . [and] parental notice and consent requirements, and recently, *Gonzales v. Carhart*," this last being the 2007 ruling that upheld the Partial-Birth Abortion Ban Act – a law that was supported by about 70 percent of the public and about two-thirds of the Congress. Regarding *Carhart*, Johnsen seemed particularly offended by the Court majority's observation that "[r]espect for human life finds an ultimate expression in the bond of love the mother has for her child."

In an earlier Supreme Court case, *Webster v. Reproductive Health Services*, Johnsen (then the NARAL legal director) was the lead author on a brief that argued that statutes that limit access to abortion are "disturbingly suggestive of involuntary servitude, prohibited by the Thirteenth Amendment, in that forced pregnancy requires a woman to provide continuous physical service to the fetus . . ." Limits on abortion thus constitute "reducing pregnant women to no more than fetal containers," according to Johnsen's brief.

Johnsen has even written critically of then-Senator Hillary Clinton for a speech in which the senator, while opposing legal limits on abortion, also expressed the hope that the day would come when legal access to abortion "does not ever have to be exercised or only in very rare circumstances" – a statement that violated Johnsen's doctrine that "progressives must not portray all abortions as tragedies. . ." In her 2008 American Constitution Society essay, Johnsen complained even about government funding for crisis pregnancy centers.

Since her nomination, Johnsen has made a few feeble and quite unconvincing attempts to distance herself from some of her past actions and statements, vaguely shifting credit to collaborators, pleading lapses of memory, and so forth. We believe that any objective examination of Johnsen's record will confirm that the statements quoted in this letter – which barely scratch the surface – reflect her deep-seated and highly ideological mind set on the issues in question.

NRLC urges you to vote against advancing or approving the nomination of Dawn Johnsen as assistant attorney general, and intends to include any appropriate roll call(s) on the nomination – including any dispositive roll call on cloture – in our scorecard of key right-to-life roll calls of the 111th Congress.

Thank you for your consideration of NRLC's position on this important nomination

Sincerely,



Douglas Johnson
Legislative Director
National Right to Life Committee
202-626-8820