

(202) 626-8820

September 12, 2013

RE: In opposition to the nomination of Cornelia Pillard
to the U.S. Court of Appeals District of Columbia Circuit

Dear Senator:

The National Right to Life Committee (NRLC), the federation of state right-to-life organizations, urges you to vote against advancing the nomination of Cornelia T.L. Pillard, a professor at the Georgetown University Law Center, to the U.S. Court of Appeals for the District of Columbia.

Pillard's views regarding constitutional equal protection requirements and how they relate to "reproductive rights" reflect an extreme ideology. These views, translated into activist rulings, would justify judicial invalidation of a broad variety of laws that protect unborn children and that are favored by substantial majorities of Americans, both men and women. Pillard's doctrinaire views on "reproductive rights" make her poorly suited for the role of judicial "umpire" on a federal court of appeals, particularly one second in importance only to the U.S. Supreme Court.

Perhaps the clearest expression of Pillard's legal ideology, and of her goal of making the law's "existing promise of reproductive freedom [abortion] effective for more women," is set forth in her 2007 law review article, "Our Other Reproductive Choices: Equality in Sex Education, Contraceptive Access, and Work-Family Policy," 56 Emory L.J. 941-991 (2007). At the core of Pillard's judicial philosophy is the doctrine that "full and equal reproductive health benefits should be viewed as a requisite of sex equality." [p. 977, with a supporting footnote regarding abortion].

In Pillard's ideological construct, virtually any limitation on abortion is per se an unconstitutional denial of equal protection to women: "Antiabortion laws and other restraints on reproductive freedom not only enforce women's incubation of unwanted pregnancies, but also prescribe a 'vision of the woman's role' as mother and caretaker of children in a way that is at odds with equal protection." [p. 946]. Even the current abortion regime under *Roe* and *Casey* is "inadequate" according to Pillard, because all females ("young and mature, poor and rich, rural and urban") cannot "equally" access abortion. [p. 941]. In support of this position, Pillard cites a law review article, "If Men Could Get Pregnant: An Equal Protection Model for Federal Funding of Abortion Under a National Health Care Plan," which she summarizes as "highlighting limitations imposed on reproductive choice by geographic as well as financial obstacles to abortion." [see FN 1]. Making the legality of abortion "effective" for more women (by eliminating these limitations) "is a critical part of securing it [abortion] in years to come," according to Pillard. [p. 941].

Likewise, during a January 3, 2006 C-SPAN discussion on "Abortion and the Supreme Court," Pillard said, "I think the *Roe v. Wade* right has really never been made fully effective for poor women, women who depend on publicly-funded health care."
(<http://www.c-spanvideo.org/program/Abortionandth>, at 40:13).

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These statements, and others like them, provide a road map for judicial invalidation of limitations on government funding of abortion and parental notification requirements, among other specific abortion-related laws.

Pillard concedes little if any legitimacy to any legally cognizable interest in protecting the life of the unborn child. She wrote: “Casting reproductive rights in terms of equality holds promise to recenter the debate towards the real stakes for women . . . of unwanted pregnancy and away from the deceptive images of fetus-as-autonomous-being that the anti-choice movement has popularized since the advent of amniocentesis” [p. 990] – apparently a reference to the frequent use, by pro-life advocates, of *actual images* of the human child in utero, including images produced by ultrasound. It takes a doctrinaire mind set indeed to regard the “popularizing” of actual images of unborn children produced by the most modern technology as an assault on “equality” and as a form of deception.

Pillard also asserts that the principles of legal equality requires private health insurance plans to cover contraception, under an approach that would just as easily result in forcing private health plans to cover elective abortions. She writes, “Women’s equal freedom of intimate association and liberty to invest in life plans on equal terms with men . . . require that contraception be treated as a routine health benefit and not excluded from public or private health insurance coverage.” [p. 976].

It should come as no surprise that Pillard currently sits on the Law Students for Reproductive Justice’s Academic Advisory Council. [*see* Senate Judiciary Committee Questionnaire].

NRLC urges you to vote against advancing or approving the nomination of Cornelia Pillard as circuit court judge, and reserves the right to score 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 113th Congress.

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

Sincerely,



Douglas Johnson
Legislative Director
National Right to Life Committee



Susan T. Muskett, J.D.
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