



STATEMENT ON THE NOMINATION OF CAROLYN B. KUHL

The National Partnership for Women & Families opposes the nomination of Carolyn B. Kuhl for a seat on the U.S. Court of Appeals for the Ninth Circuit. Based on our review of her record, we believe that Judge Kuhl has failed to demonstrate the even-handed approach to the law deserving of a lifetime appointment to the federal bench. Rather, her record reveals a long history of opposition to important civil rights protections, privacy rights, and reproductive rights. We believe that her elevation to a higher court would send a troubling signal about the Senate's commitment to ensuring a fair and balanced judiciary that is faithful to upholding both the letter and spirit of the law. We urge you to reject her nomination.

Judge Kuhl Has a Troubling Record that Reveals Staunch Opposition to Essential Constitutional Protections and Civil Rights Principles

What is clear from Judge Kuhl's record is that she has displayed hostility towards fundamental rights and constitutional protections, and that her views are far outside the American mainstream. Not only has she disregarded important legal protections, she also has sought to limit the ability of plaintiffs to vindicate their rights.

Here are a few troubling examples from Kuhl's record demonstrating how she has undermined important privacy rights, women's rights, reproductive rights, and civil rights principles.

Privacy Rights

- In *Sanchez-Scott v. Alza Pharmaceuticals* (1999), a breast cancer patient went to see her oncologist. During the visit, the doctor brought a strange man with him into the examining room. The patient was told only that the man was someone there to observe the doctor's work. The man was present during the patient's breast examination, and he and the doctor talked and laughed throughout, making the patient extremely uncomfortable. The patient later found out that the man was a salesman for a pharmaceutical company. Upon learning that he was a drug salesman, the patient began to cry from shame and anger. Judge Kuhl rejected the patient's claim for invasion of privacy; she did not agree that the intrusion was highly offensive or that the patient had a reasonable expectation of privacy. On appeal, the California Court of Appeals unanimously reversed Kuhl's decision.

Gender Discrimination

- In 1993 while in private practice, Kuhl authored a brief in *Virginia Military Institute v. U.S.* on behalf of three women's colleges, in support of VMI. In doing so, she sided with VMI's exclusionary policies, which, if retained, would have continued to deny opportunities to female applicants seeking equal educational benefits from VMI.
- As Deputy Solicitor General, Kuhl took a very conservative view of sexual harassment in the 1986 landmark case *Meritor Savings Bank v. Vinson*. Kuhl signed onto an *amicus curiae* brief to the Supreme Court which argued that because the district court found in the case that any sexual relationship between the female employee and her supervisor was a voluntary one on her part, she could not be the victim of sexual harassment. The Supreme Court, led by Justice Rehnquist, ultimately rejected her position, holding that the correct inquiry on the issue of sexual harassment was whether sexual advances were unwelcome, not whether the employee's participation in them was allegedly voluntary.

Reproductive Rights

- In the 1985 case *Thornburgh v. American College of Obstetricians and Gynecologists*, Deputy Assistant Attorney General Kuhl urged a complete reversal of *Roe v. Wade*, even though the facts of the case did not reach that issue. The brief argued that "[t]he textual, historical and doctrinal basis of [*Roe v. Wade*] is so far flawed . . . that this Court should overrule it and return the law to the condition in which it was before that case was decided."
- In *Thornburgh*, Kuhl also called upon the Supreme Court to uphold Pennsylvania statutes that contained burdensome requirements for abortion providers, including reporting personal information about women obtaining abortions and requiring the presence of a second physician at abortions performed after viability is possible, even when there is a medical emergency. The Supreme Court found these provisions of Pennsylvania's statute to be unconstitutional.
- In *Planned Parenthood v. Heckler, Secretary of Health and Human Services* (1983), Kuhl, as Deputy Assistant Attorney General, disregarded the importance of patient confidentiality and argued for the reinstatement of regulations requiring reproductive health care clinics receiving Title X family planning funds to notify the parents of minors seeking contraception. The D.C. Circuit rejected Kuhl's arguments and prohibited the enforcement of these regulations, finding them fundamentally inconsistent with Congress' intent and purpose in enacting Title X.
- As an attorney in private practice in 1990, Kuhl filed an *amicus curiae* brief in *Rust v. Sullivan* on behalf of the American Academy of Medical Ethics, an organization that opposes abortion except to save the woman's life. In the brief, Kuhl argued in support of