

## MEMORANDUM

TO: Interested Parties  
RE: The Personal Liberty Standard  
DATE: July 5, 2018

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**Bottom Line:** With people’s constitutional rights on the line, it is no longer acceptable for the a nominee for the highest court in the land to sidestep questions about our fundamental rights and health care. The Senate must only confirm a justice who meets the Personal Liberty Standard by affirmatively declaring that they believe the Constitution protects individual liberty and the right of all people to make personal decisions about their bodies and personal relationships -- including the right to use contraception, to have an abortion, and the freedom to marry whom they choose.

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Today, progressive groups introduced the Personal Liberty Standard, calling on the Senate to only confirm a justice who affirmatively declares that they believe the Constitution protects individual liberty and the right of all people to make personal decisions about their bodies and personal relationships. It is not enough to have a nominee talk about “respecting precedent” when talking about *Roe v. Wade*, or provide other vague non-answers.

In the past, nominees to the Supreme Court who have made vague statements about “respecting precedent”, “stare decisis,” and “settled law” in reference to *Roe v. Wade* have turned around and voted to overturn, disregard, or limit precedent in cases involving these fundamental rights.

With fundamental rights like the right to legal abortion, supported by the vast majority of Americans, hanging in the balance we need a new standard that requires explicit support. This principle exists in a long line of cases over the last 50 years, from *Griswold v. Connecticut* to *Roe v. Wade* to *Lawrence v. Texas*. If a nominee doesn’t agree with the underlying thinking underpinning those cases, then they will not protect a woman’s right to choose.

This thinking is cemented in the Court’s precedent and it should be no problem for a nominee to pass this test. For example:

- As Justices O’Connor, Souter, and Kennedy held in *Planned Parenthood v. Casey*, a nominee should affirm that: “Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. . . . These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the

heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life.”

- As Justice Kennedy explained in rejecting an originalist view in *Lawrence v. Texas* (2015): “Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”
- And Justice Ruth Bader Ginsburg explained in her confirmation hearing: “There is a constitutional right to privacy composed of at least two distinguishable parts. One is the privacy expressed most vividly in the fourth amendment . . . . The other is the notion of personal autonomy. The Government shall not make my decisions for me. I shall make, as an individual, uncontrolled by my government, basic decisions that affect my life's course. Yes, I think that what has been placed under the label privacy is a constitutional right that has those two elements, the right to be let alone and the right to make basic decisions about one's life's course.”

**Bottom Line:** With people's constitutional rights on the line, it is no longer acceptable for the a nominee for the highest court in the land to sidestep questions about our fundamental rights and health care. **The Senate must only confirm a justice who affirmatively declares that they believe the Constitution protects individual liberty and the right of all people to make personal decisions about their bodies and personal relationships -- including the right to use contraception, to have an abortion, and to have the freedom to marry who they choose.**