

November 11, 2019

The Honorable Charles Grassley  
Chairman Senate Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Dianne Feinstein  
Ranking Member Senate Committee on the Judiciary  
331 Hart Senate Office Building  
Washington, D.C. 20510

**RE: Asian American & Pacific Islander Groups Oppose Confirmation of Sarah Pitlyk**

Dear Chairman Grassley, Ranking Member Feinstein, and Members of the Senate Committee on the Judiciary:

We, the Asian Pacific American Labor Alliance, National Asian Pacific American Women's Forum, and Southeast Asia Resource Action Center, write to express our strong opposition to the confirmation of Sarah Pitlyk to the U.S. District Court for the Eastern District of Missouri. We are all organizations committed to protecting the rights and lifting up the voices of Asian American and Pacific Islanders (AAPI) and our communities.

Given our organizations' longstanding commitment to civil rights, workers' rights, gender equity and immigrant justice, we are deeply troubled by Ms. Pitlyk's nomination. Her record shows racist and xenophobic beliefs towards AAPI communities, as well as support for policies that harm our communities. The role of a judge is to be a fair and impartial arbiter of the law, one that is open-minded and willing to hear all sides of a case. Ms. Pitlyk's record demonstrates a hostility towards civil, human and constitutional rights -- rights that continue to be critical to addressing discrimination and injustices faced by AAPI communities and other communities of color. Based on her record, we believe that Ms. Pitlyk has not demonstrated that she will be able to hear and adjudicate cases fairly and impartially, and therefore lacks the qualifications necessary to be a judge.

*Supporting Sex-Selective Abortion Bans*

One of the most concerning aspects of Ms. Pitlyk's legal work has been her reliance on racist and harmful stereotypes about AAPI women in arguing for abortion bans that undermine abortion access. Last year, she co-authored an amicus brief in *Box v. Planned Parenthood of Indiana and Kentucky*, in which she argued in favor of sex-selective abortion bans, which prohibit abortion providers from performing abortions if the reason for the abortion is the sex of the fetus.<sup>1</sup>

---

<sup>1</sup> Brief of the Restoration Project; Pastor Joseph Parker, Pastor of Greater Turner Chapel A.M.E. Church; Everlasting Light Ministries; Protect Life and Marriage in Texas; and the Thomas Moore Society as Amici Curiae, *Box v. Planned Parenthood of Indiana and Kentucky*, 139 S.Ct. 1780 (2019).

In support of sex-selective abortion bans, Ms. Pitlyk’s brief argued that Asian American and Pacific Islanders (AAPI) have a preference for sons and thus have a widespread practice of obtaining abortions based on the sex of the fetus.<sup>2</sup> The brief ignored a 2014 University of Chicago study that found that AAPIs actually give birth to more girls than white women do.<sup>3</sup> Instead, the brief relied on false, racist, and xenophobic stereotypes that AAPI immigrants are bringing “backward” values of son preference with them. This stereotype about AAPIs is not only ugly—it is dangerous. These bans could lead to AAPI patients being subject to racial profiling and even being denied care. Contrary to the brief’s arguments, these bans do not promote gender equality; they promote racist stereotypes about AAPI women and are part of a larger campaign to limit abortion access.

Ms. Pitlyk’s brief also advances racist and false narratives about Black women and Latinas to support race-selective abortion bans. These bans, which prohibit abortion providers from performing abortions if the reason for the abortion is the race of the fetus, are based on the absurd premise that women of color, particularly Black women and Latinas, are choosing to have abortions on the basis of the race of the fetus. These bans perpetuate the racist and oppressive notion that women of color can not be trusted to make their own reproductive decisions.

Ms. Pitlyk’s brief argued that abortion providers like Planned Parenthood “target” communities of color, particularly Black communities, and points to higher rates of abortion among women of color for support.<sup>4</sup> However, these arguments have been shown to be false<sup>5</sup> and disregard the numerous studies that have shown that women of color have higher rates of abortion due to higher rates of unintended pregnancies, which are caused by pervasive and persistent health disparities between women of color and white women. Rather than prevent race discrimination or address racism in health care, race-selective abortion bans perpetuate racist, harmful narratives and are simply another means for anti-abortion legislators to chip away at reproductive rights at the expense of communities of color.

### *Supporting Barriers to Reproductive Health Care Access*

As an attorney at the Thomas More Society, an anti-abortion organization, Ms. Pitlyk has also advocated strongly for the 2019 Title X rule,<sup>6</sup> often referred to as the Domestic Gag Rule, which revokes federal family planning grants through Title X for medical providers who also provide or refer for abortion care.<sup>7</sup> This illegal and unethical regulation has forced providers out of the fifty-

---

<sup>2</sup> *Id.* at 27.

<sup>3</sup> *Replacing Myths with Facts: Sex Selective Abortion Laws in the United States*, University of Chicago (2014), <https://static1.squarespace.com/static/5ad64e52ec4eb7f94e7bd82d/t/5d2ca0d5cd54a90001b97595/1563205847373/replacing-myths-with-facts.pdf>.

<sup>4</sup> Brief of the Restoration Project, *supra*. at 16.

<sup>5</sup> Guttmacher, *Claim that Most Abortion Clinics are Located in Black or Hispanic Neighborhoods is False*, (2014), <https://www.guttmacher.org/article/2014/06/claim-most-abortion-clinics-are-located-black-or-hispanic-neighborhoods-false>.

<sup>6</sup> Thomas Moore Society, *Federal Judges Stomp on Law Protecting Taxpayers from Forced Abortion Funding*, <https://www.thomasmoresociety.org/federal-judges-stomp-on-law-protecting-taxpayers-from-forced-abortion-funding/>.

<sup>7</sup> Department of Health and Human Services, Office of Population Affairs, *Statutes and Regulations: Title X Notice of Final Rule*, (March 4, 2019), <https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/statutes-and-regulations/index.html>.

year-old family planning program and prevents individuals seeking care from accessing comprehensive and evidence-based information about their health care options.<sup>8</sup> Due to the affordable cost and availability of services of Title X-funded health centers to communities with low incomes, these centers disproportionately serve women of color.<sup>9</sup>

Title X is a particularly important program for Asian Americans, who have lower rates of private insurance coverage and higher rates of being uninsured than white Americans. Those rates are even higher for a number of Asian ethnic groups. For example, while 26.3% of Asians overall are enrolled in public health insurance plans, 41.3% of Hmong people and 32.9% of Vietnamese people are enrolled in public plans. The same is true for those who are uninsured. While 6.6% of Asians overall are uninsured, 13.1% of Thai people and 8.1% of Vietnamese people are uninsured.<sup>10</sup> Overall, this rule has caused medical providers to limit their services and stop providing life-saving health care services on a sliding scale, making care even more inaccessible to AAPI communities.

Ms. Pitlyk has also advocated against birth control access, authoring an amicus brief in support of the employers in *Hobby Lobby v. Sebelius*, a Supreme Court case which allowed private employers with religious objections to deny coverage of contraception to their employees.<sup>11</sup> The brief helped ensure greater barriers to birth control access and ignored the health care needs of workers. This was particularly harmful for AAPI women and other women of color workers with lower incomes who would not be able to afford the out-of-pocket costs of birth control without insurance coverage by their employers.

### *Opposition to Access to Health Care*

In addition to opposing reproductive healthcare access, Ms. Pitlyk has also opposed broader health insurance coverage under the Patient Protection and Affordable Care Act (ACA). In an article Ms. Pitlyk wrote to support then Supreme Court judicial nominee Brett Kavanaugh, she states that the Supreme Court's decision in upholding the ACA was a "disastrous ruling" and an "unprincipled decision."<sup>12</sup>

Ms. Pitlyk's opposition to the ACA is concerning to AAPI communities. Many AAPIs have been able to gain access to health care coverage under the ACA. Since the enactment of the ACA, the rate of uninsured people in the Asian community has decreased 9% and 7% among Native Hawaiians and other Pacific Islanders, respectively.<sup>13</sup> The ACA has vastly increased insurance coverage and access to crucial preventive, life-saving services for AAPI women, especially low-

---

<sup>8</sup> *Id.*

<sup>9</sup> Department of Health and Human Services, *Title X Family Planning Annual Report*, (2018), <https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2018-national-summary.pdf>.

<sup>10</sup> U.S. Department of Health and Human Services Office of Minority Health, *Profile: Asian Americans*, (2019), <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=63>.

<sup>11</sup> Brief of 65 Catholic Theologians and Ethicists as Amici Curiae, *Sebelius v. Hobby Lobby*, 571 U.S. 1067 (2013).

<sup>12</sup> Sarah E. Pitlyk, *Judge Brett Kavanaugh's Impeccable Record of Constitutional Conservatism*, (2018), <https://www.nationalreview.com/2018/07/judge-brett-kavanaughs-impeccable-record-of-constitutional-conservatism/>.

<sup>13</sup> Samantha Artiga, Kendal Orgera & Anthony Damico, *Changes in Healthcare Coverage by Race and Ethnicity since Implementation of the ACA, 2013-2017*, Kaiser Family Foundation, (2019), <https://www.kff.org/disparities-policy/issue-brief/changes-in-health-coverage-by-race-and-ethnicity-since-implementation-of-the-aca-2013-2017/>.

income women. Without access to health insurance coverage, many AAPIs would either have to forgo vital health care that they need at great risk to their health, or pay for medical care out-of-pocket, which can lead to crippling medical debt.

### *Opposition to Educational Equity and Affirmative Action*

In addition to undermining access to health care, Ms. Pitlyk has advocated against affirmative action programs that benefit AAPIs. In 2013, Ms. Pitlyk co-authored an amicus brief arguing in favor of ending affirmative action programs in public education and employment in Michigan. The brief argued that affirmative action programs “unjustly impose the costs of remedying past discrimination on individuals who have no personal responsibility for prior wrongs.”<sup>14</sup> It also stated that such programs “entrench racial prejudices, rather than alleviate them.”<sup>15</sup>

Contrary to the arguments in Ms. Pitlyk’s brief, affirmative action programs are important in improving access for communities of color, including AAPI communities, that face systemic barriers to accessing higher education and employment opportunities. Studies show that affirmative action programs in both education and employment work to the benefit of many AAPIs, including Southeast Asians, Native Hawaiians, Pacific Islanders, and AAPIs with low incomes.<sup>16</sup> AAPI students and workers deserve equal opportunities in the pursuit of their goals. Affirmative action is critical to addressing inequities in education for AAPI communities and all communities of color. Attacks on these programs directly harm AAPI communities.

### *Undermining Workers’ Rights*

Ms. Pitlyk’s legal work has also undermined the rights of workers. As discussed above, her amicus brief in the *Hobby Lobby* case argued in support of employers seeking to deny health insurance coverage of critical health care services to women workers on the basis of the employers’ personal beliefs. In addition, Ms. Pitlyk represented the plaintiffs in a lawsuit challenging a St. Louis ordinance that barred discrimination in housing and employment based on an individual’s pregnancy or reproductive health decisions, including the use of contraception and the decision to have an abortion.<sup>17</sup>

Legal protections for workers, including laws and policies that ensure fair working conditions and workplaces free of discrimination, are vital to achieving economic justice for AAPIs. Ms. Pitlyk’s record in representing employers against the interests of workers raises serious doubts as to her ability to be a fair and impartial judge on issues concerning the rights of workers.

\*\*\*

---

<sup>14</sup> Brief of the American Civil Rights Union and the American Civil Rights Institute as Amici Curiae, *Schuette v. Coalition to Defend Affirmative Action*, 568 U.S. 1249 (2013).

<sup>15</sup> *Id.*

<sup>16</sup> *Not Your Wedge*, Asian Americans Advancing Justice, <https://www.advancingjustice-la.org/what-we-do/policy-and-research/educational-opportunity-and-empowerment/affirmative-action/not-your-wedge>.

<sup>17</sup> Plaintiff’s Motion for Summary Judgment, *Our Lady’s Inn v. City of St. Louis* in the United States District Court for the Eastern District of Missouri, No. 4:17-cv-01543-AGF.

For AAPIs, threats to racial justice, immigrant rights, reproductive rights and health, and workers' rights are direct threats to our communities, our ability to access healthcare, to have agency over our bodies and lives, and to live free from discrimination. For the foregoing reasons, we urge you to strongly oppose Sarah Pitlyk's nomination to the U.S. District Court for the Eastern District of Missouri.

Sincerely,

National Asian Pacific American Women's Forum

Asian Pacific American Labor Alliance

Southeast Asia Resource Action Center