



## LAWYERS FOR THE JUDICIARY

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### STATEMENT OF LAWYERS FOR THE JUDICIARY

#### THE RECORD OF JUDGE CLARENCE THOMAS

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#### 1. Civil Rights.

Judge Thomas' record in seven and one-half years as chairman of the Equal Employment Opportunities Commission (EEOC) and his views expressed in numerous speeches and articles demonstrate an extreme hostility to civil rights laws and the remedies to correct discrimination based on race, sex, age and disabilities. His record is replete with his stated position, and action as head of the EEOC, in opposition to affirmative action, minority set-asides, goals and time tables. He has opposed the use of statistical proof as evidence of discrimination. Dr. William F. Gibson, chairman of the National Board of Directors of the NAACP has stated that "it is particularly disturbing that one who has himself so benefitted from affirmative action now denigrates it and would deny these opportunities to other Blacks." Arthur Kropp, president of the People for the American Way Action Fund has stated that their evaluation and review of Judge Thomas' record shows "a man with a singular disrespect for the rule of law, an apparent indifference to fundamental civil liberties, contempt for Congress and the judiciary and a painfully cramped view of government's role in repairing the damage of discrimination." While Judge Thomas was chairman of the EEOC, the commission failed to act on more than 13,000 cases charging violations of the Age Discrimination in Employment Act. Judge Thomas was less than candid in admitting this lapse. When Judge Thomas was nominated for the Court of Appeals for the District of Columbia, fourteen members of Congress who had served on committees with oversight responsibilities for the EEOC wrote to President Bush, asking that Judge Thomas not be nominated to the federal bench. The letter stated that Judge Thomas' "questionable enforcement record" at the EEOC "frustrates the intent and purpose" of the Civil Rights Act of 1964. The letter further referred to Judge Thomas' lack of candor in dealing with the oversight

committees, and concluded that Judge Thomas "has demonstrated an overall disdain for the rule of law." Judge Thomas has criticized many of the leading Supreme Court cases upholding enforcement remedies for violations of civil rights such as Green vs. County Board of Education 391 U.S. 430 (1968) and what he called "a disastrous series of cases [after Green] requiring busing and other policies that were irrelevant to parents' concern for a decent education."

## 2. Civil Liberties.

Based on his writings and speeches it is extremely doubtful that Judge Thomas would recognize a constitutional right of privacy. He has strongly criticized both Griswold vs. Connecticut, 381 U.S. 479 (1965) and Roe vs. Wade, 410 U.S. 113 (1973). He has praised a speech by anti-abortion activist Lewis Lehrman that states not only that Roe vs. Wade was wrongly decided and should be overruled, but that abortion is in fact prohibited by the Constitution and cannot be legally permitted by either Congress or the states. Judge Thomas' position on abortion rights would appear to be more restrictive than that of any present member of the United States Supreme Court (See discussion under "Judicial Philosophy" *infra*).

Judge Thomas has also suggested disagreement with Supreme Court decisions on school prayer. In the Fall 1985 issue of Policy Review, Judge Thomas stated, in response to a question as to whether he favored President Reagan's initiatives on school prayer, that "as for prayer, my mother says that when they took God out of the schools, the schools went to hell. She may be right. Religion is certainly a source of positive values, and we need as many positive values in the Constitution as we can get."

## 3. Judicial Philosophy.

Judge Thomas has on many occasions expressed his belief in natural law as a judicial philosophy. Constitutional law expert, Professor Laurence Tribe of Harvard Law School, has said that Judge Thomas "is the first Supreme Court nominee in 50 years to maintain that natural law should be readily consulted in constitutional interpretation." Commenting on Judge Thomas' belief in natural law as appropriate in constitutional interpretation, Geoffrey Stone, dean of the University of Chicago Law School said "I think, in all candor, he fairly could be labeled strange...not in terms of right or wrong, but in being further outside the mainstream of constitutional interpretation than Bork is." Judge Thomas has praised as a "splendid example of applying natural law" the argument by Lewis Lehrman that abortion violates the "right to life" guaranteed by the law of God in the Declaration of Independence and therefore is not permitted by the Constitution.

Judge Thomas has a record of challenging congressional authority both as chairman of the EEOC and as director of the

Office of Civil Rights (OCR) at the Department of Education. (See discussion under "Civil Rights" *supra*.) He has admitted violating a court order in the Adams vs. Bell litigation while he was director of the OCR. The order directed the Department of Education to speed up enforcement action on complaints of discrimination.

#### 4. Legal Qualifications and Experience.

Judge Thomas has very little experience as a practicing attorney and less than a year and one-half as a Federal Court of Appeals judge. Professor Derrick Bell of Harvard Law School called President Bush's claim that Judge Thomas was "the best person for the job on the merits" laughable. Congressman John Conyers of Michigan, a leader of the Black Caucus, listed five black Federal Court of Appeals judges that he said were more experienced and better qualified. Twenty-four of the 25 members of the Black Caucus have voted to oppose the confirmation of Judge Thomas. With respect to the appointment, former Harvard Law School Dean and former Solicitor General of the United States Erwin Griswold (who has argued more cases before the Supreme Court than any other person) recently said: "this is a time when [President] Bush should have come up with a first-class lawyer, of wide reputation and broad experience, whether white, black, male or female. And that, it seems to me obvious, he did not do."

When Judge Thomas was nominated for the Court of Appeals for the District of Columbia, the American Bar Association Judicial Evaluation Committee gave him its lowest approval rating--"qualified." He did not receive the highest rating of "well qualified." The committee has recently released its report on its evaluation of Judge Thomas as a nominee to sit as an Associate Justice of the United States Supreme Court. A majority of the committee found Judge Thomas "qualified" and two members found him "not qualified." No member of the committee found him to be "well qualified." A New York Times story commented on this lukewarm endorsement by noting that "of the last nine justices confirmed going back to 1969, there were no votes of unqualified." The last two Supreme Court Justices confirmed, Justices Anthony Kennedy and David Souter, received unanimous "well qualified" ratings from the committee. It would seem clear that persons proposed for the Supreme Court should receive the highest rating of "well qualified."

#### 5. Character

While Judge Thomas' rise from poverty is admirable and should give him a perspective and experience which would be an asset on the Supreme Court, it does not make him qualified to be an Associate Justice of the Supreme Court at this time in view of his record on constitutional issues involving civil rights and civil

liberties, his "natural law" judicial philosophy and his meager legal experience as a lawyer and judge.

There are also troubling questions raised by some of his past actions and the Senate Judiciary Committee should question him thoroughly on these. Judge Thomas failed to list one of his most controversial articles in responding to the Department of Justice questionnaire at the time the Senate was considering his nomination to the Court of Appeals. The omitted writing was a chapter titled "Civil Rights as a Principle Versus Civil Rights as an Interest" in Assessing the Reagan Years, a book published by the Cato Institute in 1988. In the article, Judge Thomas strongly criticizes the Supreme Court's decisions approving affirmative action.

Judge Thomas also failed to list in the questionnaire his participation as a member of the 1986 White House Working Group on the Family which issued a report stating, among other things, that Roe vs. Wade and Planned Parenthood vs. Danforth 428 U.S. 52 (1976), holding invalid a Missouri law which provided that a husband's consent was necessary before a woman could obtain an abortion, were wrongly decided. Judge Thomas also failed to list on the questionnaire the fact that he has served since 1981 as a member of the Editorial Advisory Board of the Lincoln Review, a conservative journal offering an African-American perspective on public policy issues. The Lincoln Review has published anti-choice articles opposing Roe vs. Wade during the time Judge Thomas has been on the Editorial Advisory Board.

As noted above ("Civil Rights" supra), Judge Thomas was not candid and cooperative with the congressional oversight committees seeking to ascertain the facts on alleged age discrimination claims that had lapsed while Judge Thomas was chairman of the EEOC. Initially, Judge Thomas claimed there were only 78 cases which had expired. This figure was later revised upward to over 13,000 cases in which the EEOC had permitted the statute of limitations to run.

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