



## TESTIMONY OF

PAT TAYLOR  
 NATIONAL PRESIDENT  
 BUSINESS AND PROFESSIONAL WOMEN/USA

The National Federation of Business  
 and Professional Women's Clubs, Inc.  
 of the United States of America

2012 Massachusetts Avenue, N.W.  
 Washington, D.C. 20006  
 (202) 293-1100

before the  
 SENATE JUDICIARY COMMITTEE  
 ON THE NOMINATION OF CLARENCE THOMAS TO THE SUPREME COURT

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Mr. Chairman and Members of the Committee, thank you for the opportunity to testify on the nomination of Clarence Thomas to the Supreme Court. As the president of Business and Professional Women/USA, I speak on behalf of working women across the nation who strongly believe that Clarence Thomas should not be confirmed to the Supreme Court.

BPW/USA was founded in 1919 to improve the status of women in the workforce and continues today to be the world's preeminent organization for working women. BPW/USA is a diverse bi-partisan organization of men and women of all racial, ethnic, and religious backgrounds who are brought together by their common interest in promoting economic self-sufficiency, equity, and full participation for working women. Comprised of 100,000 members in 3,000 clubs nationwide, BPW/USA is represented in every Congressional district in the United States.

The United States has reached a juncture where many of the advances realized by working women over the past several decades are threatened. There is a real danger of these advances being diluted or eliminated completely by laws that make it difficult, worthless, or even impossible to prove discrimination. BPW believes America needs a Supreme Court Justice who understands the necessity for and the appropriate role of the law in addressing the broad issues of discrimination and injustice. Simply speaking, Clarence Thomas is not a worthy heir to Thurgood Marshall's legacy.

Clarence Thomas undoubtedly knows great personal struggle, and I join Americans across the country in recognizing Judge Thomas for his ability to overcome the tremendous obstacles he has faced. I agree that his personal story is truly compelling and moving. Unfortunately, his story of a successful rise from an impoverished childhood is still all too rare.

Today, however, we must determine whether Clarence Thomas is qualified to sit on the Supreme Court. And although his background may give him unique insight, we must look beyond this to determine what his personal experiences have taught him, and whether he is qualified to serve on the Supreme Court.

As business professionals, we view the nomination process as being similar to the hiring practices of a private corporation. Clarence Thomas is applying for an important and powerful job, and the Senate is the interviewing team. The selection of a Justice is much more significant, however, because unlike elected officials and other workers across the nation, the person who is selected to sit on the Supreme Court will be there for a lifetime. Once confirmed, no one has the authority to fire a Justice--not the President, not Congress, and not the American people. I encourage you to carefully scrutinize Clarence Thomas' record, for this may be the last job application he may ever fill out.

You have heard from many distinguished witnesses, as well as Judge Thomas himself, who have discussed many issues with you. Unfortunately, however, numerous questions remain and new questions come to light as a result of these hearings. Judge Thomas has made a calculated effort to avoid questions, give non-answers, and deny his past record. As elected officials, you are held accountable for your record, and BPW asks that you hold Judge Thomas accountable for his.

While we do not expect Judge Thomas to prejudge the cases he may hear if confirmed to the Supreme Court, his legal interpretation of the Constitution is not only a valid question--but it is a critical part of the nomination process. The framers of our Constitution conferred upon the U.S. Senate and the President equal roles in the selection of Justices to sit on the U.S. Supreme Court. It is simply one of the checks and balances established to balance the power among the branches of government. The Senate is no more obligated to defer to the President on judicial appointments than the President is obligated to defer to the Congress on legislation. We all know that the President has repeatedly exercised his right to veto legislation passed by Congress.

Furthermore, BPW is concerned about the ease with which Judge Thomas cast away his previous writings, endorsements, speeches, and comments during the confirmation hearings. He dismisses many of his controversial views as the musings of a "part-time political theorist." On other occasions, Judge Thomas discards his comments as insincere, claiming that they were made simply to win the trust of his audience. With this in mind, I must question the honesty of his testimony before the Judiciary Committee.

Having traditionally supported and sought to protect individual rights and freedoms for all people--and particularly for women--BPW members unanimously passed a resolution to oppose the confirmation of Judge Clarence Thomas to the Supreme Court. BPW's opposition to the confirmation of Clarence Thomas is based on four concerns: his limited qualifications; his views on the right to privacy; his contempt for Congress and existing laws; and his opposition to equal opportunity.

## QUALIFICATIONS

Like many of you, I was taught that the Justices of the Supreme Court were some of the nation's "best and brightest." They were people who exhibited a thorough understanding of the legal system, our laws, and our Constitution, and their extensive knowledge of the judicial system was to be admired and respected. Unfortunately, I do not believe Clarence Thomas has this comprehensive experience...and his peers agree. As you know, the American Bar Association has given Judge Thomas the lowest "qualified" rating it has--the lowest rating of any Supreme Court nominee in the history of the ABA rating system. This "qualified" rating is similar to the rating that Judge Thomas received when he was first nominated to the federal bench in 1990. However, since being on the court, Judge Thomas' ABA rating has actually declined, with two ABA board members now calling him "unqualified" to sit on the Supreme Court.

Judge Thomas has limited experience with Constitutional law and limited experience in the judiciary, having served on the U.S. Court of Appeals for the District of Columbia Circuit for less than eighteen months.. At this critical stage in the development of law and policy, we need a Supreme Court Justice with significantly more experience.

## RIGHT TO PRIVACY

BPM is also concerned about Judge Thomas's views on the Constitutional right to privacy. Although Thomas has refused to clearly state his position on basic individual rights and reproductive freedom while testifying before the Judiciary Committee, his previous record paints a clear picture. He has been critical of the constitutional right to privacy as it is stated in the Griswold decision, which provided the foundation for Roe v. Wade.

Throughout his work, Thomas has advocated a consideration of "natural" or "higher" law in interpreting the Constitution. He praised Lewis Lehrman's article "on the Declaration of Independence and the right to life" as "a splendid example of applying Natural Law." While this provides considerable information on his predisposition toward a woman's right to choose, it also invokes a theory, Natural Law, which has long been used to prevent the advancement of women on the basis of their "natural" roles as mother and care-taker.

Clearly, Judge Thomas' beliefs show evidence of a willingness to restrict individual liberties, including a woman's right to make her own reproductive choices. BPM members believe that a woman can only be in control of her economic life in so far as she is in control of her reproductive life.

## CONTEMPT FOR CONGRESS AND EXISTING LAWS

As an appointed official, Thomas demonstrated his disregard for the laws that he was charged with implementing. Specifically, Thomas failed to provide full and fair interpretation and enforcement of existing civil rights laws throughout his career.

When Thomas headed the Education Department's Office of Civil Rights (OCR), a federal judge found that OCR was both misinterpreting and inadequately enforcing Title IX, the statute that prohibits gender discrimination in federally-funded education programs and institutions.

Thomas served as the head of the Equal Employment Opportunity Commission (EEOC) from 1982 to 1989. Despite Congress' mandate that the EEOC initiate class-action suits in employment discrimination cases, Thomas openly opposed such suits and defied the Congressional mandate, allowing his personal beliefs to interfere with his duty to uphold the law. Also as head of EEOC, Thomas permitted the backlog of cases to double from 31,000 to 81,686 and the delay in processing discrimination charges to slow dramatically from five and a half months to nine months. In fact, Thomas failed to process more than 13,000 age discrimination claims before their statute of limitations ran out, requiring Congressional intervention in order to ensure the victims their right to prove discrimination and seek retribution.

I find it unconscionable that our nation is considering appointing a person to the Supreme Court who has such a blatant disrespect for the law, legislative intent, and the legislative branch of our government as a whole.

## OPPOSITION TO EQUAL OPPORTUNITY

BPW actively promotes full participation, equity and economic self-sufficiency for all. Although Judge Thomas claims to support these issues, as we say in the Midwest, "his talk isn't his walk."

Despite the personal benefits Thomas derived from affirmative action in his own admission to Holy Cross and Yale Law School, Thomas puts his faith solely in personal self-reliance. In embracing the idea of "pulling oneself up by the bootstraps," Thomas seems to overlook some of the things that distinguished him from other disadvantaged people in enabling him to be self-reliant. Certainly the loving, motivating and hard-working example set by his grandparents, the \$300 dollars given to him anonymously which enabled him to take a reading course, and his above-average intelligence contributed to his success.

In fact, Clarence Thomas has been an adamant critic of efforts to ensure equal opportunity in the workplace. Not only

did Thomas oppose most affirmative action plans as the head of the EEOC, but he continued to oppose these plans even after findings of discrimination. Thomas characterized a 1987 Supreme Court ruling upholding an affirmative action program that promoted female workers as "just social engineering" and stated that he did not "think the ends justify the means." Under Thomas leadership in 1985, the EEOC ruled that federal law does not require equal pay for jobs of comparable value--a finding that contradicts the Supreme Court's 1981 Gunther decision, and a finding which is an affront to the working women of America. Apparently, equality in the workplace is not something Thomas sees as vital.

Although significant strides have been made toward equality in the workplace, discrimination against women and minorities remains. Only one month ago, the U.S. Department of Labor released a study that clearly documents a "glass ceiling" which prohibits women and minorities from entering into top management positions in companies. The study found this ceiling to be pervasive throughout corporate America, and at lower levels than previously believed.

BPW continues efforts to work with corporations to develop initiatives designed to enable women to break through the glass ceiling, to encourage adoption of model programs developed by leading edge companies, and to work with corporate America to change employee attitudes toward women and minorities. These efforts are not always successful, however, and legal remedies must remain an option for women faced with discrimination--particularly in cases where the discrimination is deliberate and intentional.

We seek level playing grounds, not special treatment. And we firmly believe that corporations with more women at the top of their management structure will improve their bottom line. If 98 out of 100 U.S. Senators were women, if 98 out of 100 Directors of Fortune 500 companies were women, if 98 out of every 100 CEOs in America were women, I don't think the men in this country would feel as though they were full participants.

The judicial system, and in particular the Supreme Court, is often given the task of sorting out the complexities of these and other difficult problems and questions. The handling of these societal problems is our nation's blueprint for the future. We must continue on the path to a better society which permits equal opportunity for all. BPW/USA believes that the confirmation of Clarence Thomas would turn back the clock on important progress already made toward this goal.

BPW/USA strongly urges the Senate to oppose the nomination of Clarence Thomas to the Supreme Court. Again, thank you for the opportunity for to share our views with you.