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September 16, 1991

The Honorable Joseph R. Biden, Jr.  
United States Senate  
221 Russell Senate Building  
Washington, DC 20510

Dear Senator Biden:

I urge you to vote against the confirmation of Judge Clarence Thomas to become an Associate Justice of the United States Supreme Court. There is no compelling reason why Judge Thomas should have a seat on the nation's highest court. He has not achieved distinction either as a lawyer or as a judge. I am certain that you will join me in saying that the United States Supreme Court deserves the very best justices that the nation can provide.

The President has done a disservice to the nation by claiming that Judge Thomas is the "best man" for the post. This claim cannot be substantiated on any grounds. The President insists that we should be color-blind in matters of race; yet this appointment has all the earmarks of being race-based. If this is so, and there is every indication that it is, then the President could still have maintained the highest professional standards by appointing any one of a number of truly distinguished, highly qualified African American federal judges or attorneys, several of whom are Republicans. Under the circumstances, the President satisfied those who wanted him to assign a seat or fill a "quota" for African Americans on the high court, but his action did not conform to the affirmative action standards envisioned in the Civil Rights Act of 1964, which does not compromise on quality. After all, programs of affirmative action, seriously and effectively enforced, would preclude reaching as far down as the President did in this case for, clearly, more qualified candidates were passed over.

I sincerely hope that you have had an opportunity to examine the record of Judge Thomas when he was Assistant Secretary for Civil Rights in the Department of Education and Chairman of the Equal Employment Opportunity Commission. In both positions his conduct raised serious doubts about his fitness even for those positions, to say nothing of his fitness for a place on the United States Supreme Court. He neglected

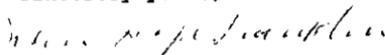
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the mandated duties of his position as Assistant Secretary to the point of possibly being held in contempt of court, as the judge in one case threatened. As Chairman of the E.E.O.C. he simply declined to process thousands of complaints where the aggrieved individuals claimed they had suffered discrimination based on age, sex, or race. If Judge Thomas truly believes in relief for individuals rather than for classes or groups, this was his opportunity to provide it. He did not. It has been suggested that Judge Thomas is an ideal role model for young African Americans. I would hope that young African Americans would not be invited to emulate a role model who breaks the law with impunity in refusing to carry out the duties of his office.

You may count me among those citizens who recognize that under the Constitution the Senate has a co-equal responsibility with the President in the appointment and confirmation process. I sincerely hope that you will exercise that responsibility not only in scrutinizing the candidate with the utmost care but also in saying to the President that you decline to confirm on grounds that are much more substantial and defensible than the vague and indefensible grounds on which he made the nomination. Best wishes to you.

Sincerely yours,



John Hope Franklin  
James B. Duke Prof. of History Emeritus  
Professor of Legal History,  
Duke University Law School