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July 23, 1993

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Re: Nomination of Judge Ruth Bader Ginsburg

Dear Mr. Chairman:

The National Asian Pacific American Bar Association (NAPABA) supports the nomination of the Honorable Ruth Bader Ginsburg to the Supreme Court of the United States, and recommends that the Senate Judiciary Committee confirm her appointment.

NAPABA is a national, non-profit, non-partisan professional organization whose membership includes approximately three dozen local Asian Pacific American bar associations and over 3,000 Asian Pacific American attorneys, law professors, judges, and other legal professionals throughout the United States. NAPABA not only serves the professional needs of its members, but also provides leadership as an advocate for the legal needs and interests of the Asian Pacific American community. NAPABA has been privileged to testify before this Committee in the past, and is pleased to offer its views concerning the nomination of Judge Ruth Bader Ginsburg.

As a preliminary matter, NAPABA notes that Judge Ginsburg has an impressive record as an attorney, law professor and judge. She has earned the highest possible rating of the American Bar Association, having been found unanimously by the ABA panel to be "well qualified" to serve on the highest court in the nation. Moreover, she has been a forceful and committed advocate for the rights of women.

The Honorable Joseph R. Biden, Jr.
 July 23, 1993
 Page 2

It is particularly important to NAPABA that Judge Ginsburg's overall record also suggests that she is sensitive to issues that significantly affect minority communities. For example, her opinion for the court in Spann v. Colonial Village, Inc., 899 F.2d 24 (D.C. Cir. 1990), indicates that she understands the importance under the civil rights laws of ensuring meaningful access to the courts to combat discrimination. In Spann, the court upheld the use of "testers" by fair housing organizations seeking to challenge discriminatory housing practices.

Judge Ginsburg has also demonstrated support for actions designed to remedy the adverse consequences of discrimination. In O'Donnell Construction Co. v. District of Columbia, 963 F.2d 420 (D.C. Cir. 1992), in which the court struck down the D.C. minority set-aside program, Judge Ginsburg concurred in the decision as mandated by City of Richmond v. Croson, 488 U.S. 469 (1989), but emphasized that Croson did not hold minority preference programs to be unconstitutional *per se* or to be limited to redress of state sponsored discrimination. 963 F.2d at 429. She pointed out that "remedy for past wrong is not the exclusive basis upon which racial classification may be justified." *Id.* (citing Croson, 488 U.S. at 511 (Stevens, J., concurring)).

Furthermore, Judge Ginsburg has shown an understanding of the concerns and experiences of Asian Pacific Americans in at least two cases before her. In Hohri v. United States, 782 F.2d 227 (D.C. Cir. 1986), vacated and remanded, 482 U.S. 64 (1987), Judge Ginsburg joined in a panel decision which allowed Japanese American victims of the disgraceful World War II internment camps to bring an action under the Takings Clause of the Constitution, challenging the confiscation of their property. The panel decision found that the statute of limitations had been tolled by reason of the government's misrepresentations to the Supreme Court in the Hirabayashi and Korematsu cases. The court later denied a rehearing of the decision *en banc*, in which Judge Bork, dissenting at length, criticized the panel opinion as one in which "compassion displaces law." 793 F.2d 313 (Bork, J., dissenting). Judge Ginsburg and Judge J. Skelly Wright, in a joint statement, responded to each legal point raised and noted that the panel opinion dealt "particularly and precisely with the special facts of an extraordinary episode of injustice."

In Jacobs v. Barr, 959 F.2d 313 (D.C. Cir. 1992), Judge Ginsburg joined in a panel decision rejecting a challenge brought against the Civil Liberties Act of 1988 by

The Honorable Joseph R. Biden, Jr.
July 23, 1993
Page 3

a German American who had been interned with his father during World War II. The Act was passed to compensate Japanese Americans who had been victims of the government's decision during World War II to send them to internment camps solely because of their race, and to apologize for the "grave injustice" they had suffered. The plaintiff argued that the Act violated the Equal Protection Clause because it did not compensate German Americans who had been interned. The court noted, however, that Congress considered "extensive evidence" that Japanese Americans were interned solely for reasons of racial prejudice, while German Americans (who received individual hearings) were not. *Id.* at 321.

In summary, NAPABA believes that Judge Ginsburg is well qualified to serve on the Supreme Court of the United States not only with respect to her technical skills and judicial temperament, but also with respect to her sensitivity to the concerns of racial and ethnic minorities. NAPABA recommends that the Committee confirm her appointment.

Sincerely yours,



William C. Hou
President

cc: Members of the Senate Judiciary Committee

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