

STATEMENT  
OF  
W. JAMES ELLISON<sup>1</sup>  
IN SUPPORT OF THE CONFIRMATION OF CLARENCE THOMAS AS  
A JUSTICE ON THE UNITED STATES SUPREME COURT  
UNITED STATES SENATE JUDICIARY COMMITTEE

September 20, 1991

Mr. Chairman, I would like to thank you for giving me the opportunity to state my reasons for supporting the confirmation of Judge Clarence Thomas as a Justice of the United States Supreme Court

My name is W James Ellison I am a professor of law at the Cumberland School of Law, Sanford University, Birmingham, Alabama. I am Co-Chairman of Alabama Citizens Committee To Confirm Clarence Thomas and of Alabama Attorneys To Confirm Clarence Thomas

As an African-American, I am here also on behalf of the vast majority of African-Americans who support Clarence Thomas, those who picked cotton from sun-up to sun-down, who marched in the civil rights movement when it was a deadly enterprise, who watched our churches and homes bombed and leaders murdered, who attended inferior and underfunded schools, who took the best and the worst that America had

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to offer and still believed in the idea of America: those Americans who still demand the right to compete as equals, and on no other basis, in America's market place of ideas and services.

Much has been said and written about Judge Thomas, his humble background, his political activity as a member of President Ronald Reagan's administration, and his testimony before this Committee. In the hope of not being unduly redundant I would like to limit my regards to a brief statement in support of Judge Thomas' concerns about affirmative action policies which permit and encourage race norming tests, and gender and race based preferences and quotas. As currently engaged in, race norming tests, and gender and race based preferences and quotas have three incontrovertible characteristics

The first of these is that they discriminate against white males in favor of ethnically identifiable minorities, and in favor of white females who have had themselves legislatively declared a disadvantaged class. It seems to me that the same constitutional standards which prohibits discrimination against African-Americans, solely because of the color of their skin, prohibits similar discrimination against white American males. Today, racial and gender discriminatory attitudes and practices cause much pain and suffering. But we can not end discrimination against one class of Americans by discriminating against another class of Americans. Each corporate or individual wrongdoer should be held accountable for their discriminatory conduct under existing traditional civil law remedies. After proving discrimination in a court of law, a plaintiff should be awarded actual damages, attorney fees, and significant punitive damages. Each individual plaintiff would, in essence act as a private attorney general.

Second, race norming tests, and gender and race based preferences and quotas are premised on the proposition that their beneficiaries are intellectually inferior to white males, or are otherwise unqualified to succeed on their own merit. Nothing could be further from the truth. Race norming tests, and gender and race based preference and quota policies are at odds with the original intent of the African-American civil rights movement. For hundreds of years we African-Americans had never asked for or demanded anything that had the effect of making us appear less than the equal of any man or woman. The original civil rights movement never asked for special treatment from the State or the private sector. What we demanded was the right to educate ourselves and our children, to work at jobs commensurate with our skills and talents, to market our ideas, to practice our faiths, to vote, and to live in decent housing without interference from the State. We wanted the right to dream. The thought of entering America's market place and institutions predicated on race norming tests, and gender and race based preferences and quotas were then and are now repugnant concepts, which have no place in a free society. The original intent and goal of the African-American civil rights movement was a demand for *equality of opportunity*. We demanded an even playing field so we could compete as equals. In South Carolina, where I grew up, we were taught from a young age that we had to be twice as smart as our white counterparts in order to get a good job. We never doubted our ability to compete. The ideal that we needed special dispensation on tests, that we needed racial preferences

and quotas because we were intellectually inferior or could not otherwise compete were concepts unknown to our psyches.

Third, policies supporting and promoting race norming tests, and gender and race based preferences and quotas require a perpetual class of victims and a perpetual class of villains. Too many Americans have become dependent on these policies. This in turn has promoted their intellectual decline and their will to take responsibility for their success or failure. These policies have promoted and aggravated the ethnic and gender tensions they were intended to eradicate.

The mentality behind race norming tests, preferences, and quotas have caused too many of our children to believe that the State, society, and even their own families owe them something, simply because they happen to be here. Nothing could be further from the truth. There are no free lunches; someone always pays. The proper role of the State is to provide each citizen with *equality of opportunity* to be educated, to use and market her intellectual skills and talents, and to otherwise stay off the backs of its citizens and commerce. Government programs that go beyond providing *equality of opportunity* have and will continue to fail. These programs are contrary to the idea of America. In the end each of us succeeds as a direct result of a personal and individual decision not to fail. The best our families, our friends, and the State can do for us is to ensure that we be allowed to compete on an even playing field. No one can give us success. We have to work for it. We have to earn it.

Our mothers and fathers did not suffer the many indignities of second class citizenship so we might declare in 1991, to the world and to our children, that we African-Americans need race norming tests, preferences, quotas, and welfare to survive, that we cannot compete because we are intellectually or otherwise inferior to other American groups. Look at our best and our brightest at Spelman College, Florida A & M, Hampton, Fisk, and Tuskegee Universities, and Morehouse College. We African-Americans have genius all around us at colleges and universities all over America. As slaves, we African-Americans sought to educate ourselves when the punishment for doing so was death. We educated ourselves when the States gave us inferior schools and substandard learning materials. We educated ourselves even though we were not allowed to market our ideas and services. We took pride in our achievements. No matter what, we had our self-respect and dignity as a people. We were poor, but we did not steal from each other. We left the doors and windows of our homes unlocked. We suffered State and social oppression, but we kept our faith in God, in ourselves, and in the idea of America. We made America rethink the possibility of living up to its human potential.

We African-Americans survive the most brutal experiences of America's racism -- slavery, reconstruction, and segregation. We survived and prospered. Racism is not our problem. Racism is the problem of the person having a racist point of view. At some point we must bury the psychological wounds of our enslavement and segregation and get on with our lives. Victims of past and present discrimination, should never forget the historical experience and lessons to be learned such suffering and pain. But we who

have survived have no excuse or right to burden our children with the negatives psychological baggage of our past, or to let our children use racism or gender discrimination as excuses for failing a mathematics or science course

A preference or quota which appears to aid a class of persons today may discriminate against them tomorrow. Imagine the reaction in the year 2001 of a person, who has earned her place in society, to the news that her child will not be admitted into a certain school or employed at a certain job because the quota for the child's race, gender, or class has been filled. Orientals and Jews are now complaining that they are denied entrance into and employment at certain schools because of racial and ethnic quotas in favor of white males. We African-Americans will find ourselves making similar complains if a quota mentality continue to dominate America's civil rights movement. Instead of fighting over perceived limit resources and opportunities, we Americans need to stop fighting each other, and get on with the business of producing more than we consume so there will always be an abundance of opportunity for all of us. Entrance into schools and into employment should be earned on the basis of race and gender neutral standards, not granted solely on the basis of person's race or sex.

Civil rights groups should be applauding, instead of criticizing Clarence Thomas for his opposition to race norming tests, and race and gender based preferences and quotas. Thomas should be praised for his efforts to return African-America to the original goals and intent of our civil rights movement.

Clarence Thomas' life and works personify the very best that America has to offer. His hard work, intellectual competence, and independence are what raised him from the cotton fields of a segregated Georgia to a seat on the United States Court of Appeals. Clarence Thomas' life personifies the very essence of America. Clarence Thomas is the true role model for all African-Americans who dream that one day we will be judged by the contents of our character instead of racist myths associated with the color of our skin.

Mr. Chairman, that concludes my prepared remarks, may I submit a written statement of my remarks, including a statement on the confirmation process, into to record of these proceedings.