POSITION STATEMENT
OF THE

NATIONAL BLACK WOMEN'S HEALTH PROJECT
ON THE

NOMINATION OF CLARENCE THOMAS TO THE SUPREME COURT

The National Black Women's Health Project opposes the nomination of Judge Clarence Thomas to the Supreme Court of the United States. We oppose Judge Thomas' nomination based on his record of performance as Assistant Secretary for Civil Rights in the Dept. of Education (1981-1982), as Chairman of the Equal Employment Opportunity Commission (1982-1990); and based on the content of a substantial number of speeches, writings and interviews, which clearly reflect a disrespect for and lack of commitment to the enforcement of constitutional and statutory protections/federal laws protecting civil rights and individual liberties.

Our position justification is based on a review and discussion of Judge Thomas' position in the following five areas:

1. SELF HELP

The National Black Women's Health Project is a self-help, health advocacy organization committed to improving the conditions that affect the health status of Black women. The organization's philosophy is based on the concept and practice of self-help and mutual support through which members obtain vital information on the prevention and treatment of illnesses as well as emotional support and practical assistance.

Our organization's opposition to Judge Clarence Thomas in this area is based on his assertions that self-help approaches should be favored over other government policies to correct the historic injustices which continue to negatively effect the quality of life for Black Americans. It is inappropriate for any government official to suggest that self-help activities can secure basic rights and freedoms in a democratic society. The Constitution of the United States created the government as the vehicle to insure that the protection of the Bill of Rights would be extended to all Americans.

Judge Thomas' reference in his public statements to self-help as the answer to the social ills of Blacks implies that we have not been trying self-help approaches to problem solving. Rather, the achievements of African American people and the history of self-help development in this country are inextricably bound. Black people extensively practice self-help today and have done so

throughout our history. Slaves worked together to buy each other out of slavery; the first Black hospitals were the result of Black people pooling their resources to assure the availability of medical care. The list goes on and on - schools, trade and credit unions, banks, newspapers and other basic services were initiated for Black people, by Black people when no other resources were available to us. Today many new forms of self-help, like the National Black Women's Health Project, are part of this growing tradition. It is not self-help that we are lacking, but commitment to the vigorous enforcement of laws protecting our freedoms that is not in place.

Those of us who promote self-help and practice it daily recognize that such activities cannot secure rights and freedoms. No one can self-help their way to employment, housing, education or health care when basic access is denied based on the discriminatory practices of employers, lenders and service providers. Promoting self-help solutions as the logic to resolve the issues of lack of access and opportunity in a free society, leads to the faulty conclusion that the victims of discrimination are somehow to blame for the outcomes of the practices and policies that have been used against them. For example, it suggests that if people do not enjoy basic opportunities in the work place it is their own fault rather than the discriminatory practices of employers. Political strategies like blaming the victim exacerbate racial tensions and derail efforts for needed structural reforms.

The conditions affecting the health status of Black women in the United States are among the worse of any industrialized nation and, in fact, many nations in the developing world have more favorable outcomes for infant mortality than urban U.S. Blacks. The continuing social and psychologic stress which results from the combined inequities based on race, sex and class dramatically alters the quality of life and enjoyment of basic freedoms for Black Americans. Any person desiring a seat on the highest court in the land, ought, at a minimum, be able to articulate the basic issues of life, liberty and the pursuit of happiness for such a significant population group - especially when it is his own referent group in question.

2. AFFIRMATIVE ACTION

As Chairperson of the Equal Employment Opportunity Commission, Clarence Thomas was openly hostile to the guidelines developed during the 1960s to prohibit employer practices which have a disparate impact on minority workers or applicants, and that, cannot be justified as measures of job performance. These guidelines were a basis for the Supreme Court's unanimous decision in Griggs v. Duke Power Company in 1971, holding that such practices were violations of Title VII when they were not justified by business necessity. These guidelines were also the basis for hundreds of class action suits in the 1970s and 1980s attacking systemic barriers to equal job opportunity. Thomas said he

believed the guidelines encouraged "too much reliance on statistical disparities as evidence of employment discrimination".[1] Although Thomas did not carry through his threat to repeal the guidelines, he did muzzle efforts by the EEOC to enforce them through suits attacking institutionalized practices of discrimination. Systemic charges decreased while he was Chair of the EEOC.[2] Thomas opposed the use of goals and timetables as a part of conciliation agreements and court approved settlements, and demolished the EEOC's unit set up to secure systemic relief including goals and timetables.[3]

Thomas has attacked the two most important Supreme Court decisions approving voluntary affirmative action by private and public employers to overcome past patterns of exclusion or limited representation of minorities and women. He called these decisions an "egregious examples" of misinterpretation of the constitution and legislative intent.[4] Thomas attacked a Supreme Court decision upholding the authority of Congress to assure qualified minority contractors a share of government contracts as remedy for past exclusion, terming the law an improper creation of "schemes of racial preference where none was ever contemplated".[5]

Of grave concern is Thomas' across-the-board and all encompassing attack on affirmative action to remedy systemic discrimination. Unlike some proponents of judicial restraint, he gives no deference to the will of the majority as expressed in Congressional legislation (Fullilove), nor would he permit private employers to act voluntarily to remedy their past practices (Weber). Additionally, he would restrain the authority of the courts to order race conscious remedies even in the most egregious cases of systemic discrimination (Paradise).

While Thomas recognized the absurdity of the once-debated notion that the "American ideal of freedom" included freedom to own slaves, he failed to recognize that powerful activist government intervention was required to address the effects of the bitter history of slavery. Thomas' conservative view is an outgrowth of his attempt to relate nature law to the Constitution and expand the Constitution's original intent. He would have us believe in the absence of government intervention, fairness and equal opportunity would exist. Unfortunately, Thomas is out-of-touch with 20th century discrimination in the United States and should be denied a seat on the Supreme Bench of the Land.

3. AGE DISCRIMINATION

Hundreds of senior African-American women have suffered in silence as the result of Judge Thomas' violations of the "rule of law" in failing to act on over 13,000 Age Discrimination cases while Chairman of the EEOC.

These senior African-American women are our mothers and grandmothers, women who have traditionally held the dirtiest jobs,

worked the longest hours, for the lowest wages, received the least amount of praise and recognition and who have paid a heavy price in order that we might stand here today. These same women represent one of our richest resources, the elders of our communities and our churches. Judge Thomas has demonstrated by his actions, far beyond any works we can say, why he should not be seated on the Supreme Court of the United States.

In America, those who rise to sit in judgement of others have traditionally been noted for their extraordinary ability to provide incisive insight into issues, compassion, caring, wit and must be the possessor of an unshakable system of principles, values and beliefs in which we could all be proud -- a value system which was distinguished by its ability to provide equity and equality to all human beings but especially those most vulnerable and/or unable to protect themselves.

In our view, Judge Thomas fails each of these tests. His speeches, rulings, actions and refusals to act, all portray a lack of incisive insight, a lack of compassion and caring and, perhaps most important, a lack of an unshakable system of principles in which we could all be proud. Instead, it would appear that the ebb and flow of politics is his guiding principle.

As America becomes grayer and grayer, it will become more important, not less so, that our Supreme Court justices have an overall appreciation of the need to protect and defend those who have spent their lifetimes contributing to the welfare of this nation. Sadly, we find no evidence that Judge Thomas has reached that stage in his development and that he can only contribute his own narrow, flawed view of all of America's senior workers regardless of race and gender.

Given these views, we do not believe that it is only senior African-American women who are in danger but anyone who attains the age of 60 and attempts to force an employer to treat them fairly and equitably under the current Age Discrimination laws.

4. REPRODUCTIVE RIGHTS

Clarence Thomas' stated belief in and advocacy of "Natural Law" (which historically has been used to limit the lives and opportunities of women) in crafting and applying law principles and his expressed hostility to the fundamental right to privacy embodied in the Griswold v. Connecticut and Roe v. Wade decisions (which protects and guarantees the right of married couples to use contraceptives and for women to choose abortion) is cause for great concern for all women in general and poor African American women in particular. Historically, African American women have had the least control of their reproductive choices, including if, when, where and by whom we would have children. Before abortion was legalized in this country, the majority of women who died gruesome deaths from illegally performed abortions, or bore more children

than they could adequately care for were women of color. Clearly the right to safe, legal and inexpensive abortions is critical to the health of African American women and their families. Given the extreme nature of Judge Thomas' views, the possibility that if confirmed, he will endorse extreme limitation on women's most fundamentally important right, the right to make her own reproductive choices, is alarming, and his nomination must be vigorously opposed.

5. ACCESS TO HEALTH CARE

We hold valuable the right of individuals to have equal access to the best health care that our society can provide, and that cost not be a determining factor in the quality of services rendered.

A vast majority of African-American women are single heads of families, underemployed, undereducated and challenged with rearing children. The interconnections between education, economics and health are so entwined that in order to break the cycle of poverty the working and non working poor need to receive the best services available.

Health care coverage that is employer based, which is limited at best, and coverage that is subsidized by the government, sets up two classes of care. A lack of access and coverage of preventive services means that it is difficult for poor families to promote healthy lifestyles. This is evident when examining infant mortality statistics of African-Americans, which clarify the medical and social implications of health care. The current approach involves increased technology when increased access to service and improved quality of life are needed.

The current health care crisis is forcing the Nation to look to health care reforms. African-Americans need public servants who will ensure that health care is protected as a right and ensured by nature of birth. We need public servants who will enact legislation that will holistically improve the quality of life for African-Americans. We hold evident that every decision, every law, affects the quality of current life and future generations.

ENDNOTES

1. New York Times, December 3, 1984, p.1

2. Committee on Education and Labor, U.S. House of Representatives, Ninety-Ninth Congress, Second Session, A Report on the Investigation of Civil Rights Enforcement by the Equal Employment Opportunity Commission, Serial N. 99-Q, May 1986.

3. See Interview with Michael Middleton, St. Louis Post-Dispatch, February 26, 189, p.1B.

4. Thomas, "Civil Rights as a Principle Versus Civil Rights as Interest," Assessing the Reagan Years, ed. by Cata Institute, 1988, supra note 2 at 388-99.

5. Ibid, at 396.