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BACKGROUND, JUDICIAL OPINIONS, AND STATEMENTS ON  
NATURAL LAW," A REPORT PREPARED FOR THE WASHINGTON  
LEGAL FOUNDATION, DATED SEPTEMBER 10, 1991

STATEMENT BEFORE THE SENATE JUDICIARY COMMITTEE  
HEARINGS ON THE NOMINATION OF JUDGE CLARENCE THOMAS TO THE  
UNITED STATES SUPREME COURT

September 20, 1991

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Mr. Chairman and Members of the Committee,

It is an honor and a pleasure to appear before you on behalf of myself and four other members of the D.C. Bar, Tom Christina, Deborah Garza, Michael Socarras, and Jim Tennes. At the request of the Washington Legal Foundation, the five of us prepared a report analyzing the professional background, judicial opinions, and published statements on natural law of Judge Clarence Thomas. Our report was completed before the commencement of this Committee's current hearings and was published on September 10th. The report concludes that Judge Thomas is eminently qualified to serve on the Supreme Court. Mr. Chairman, on behalf of the Washington Legal Foundation, I ask that our report be included in its entirety in the record.

The report is based on our analysis of publicly available material concerning Judge Thomas's personal and professional background and on the judicial opinions that Judge Thomas has written as a judge on the Court of Appeals for the District of Columbia Circuit. In addition, because of the public interest in Judge Thomas's views on natural law and

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because his opinions as a judge are utterly silent on the issue, we examined his published speeches and articles that discuss natural law.

After reviewing these materials as well as some of the recently published criticisms of Judge Thomas, we reached three general conclusions. First, we concluded that "[e]specially in light of his age, Judge Thomas's professional qualifications and achievements are by any measure impressive." We were impressed not only by Judge Thomas's well-chronicled success in overcoming poverty and prejudice but also by the extraordinary breadth of his professional experience, which includes service in state government, in every branch of the federal government, and in the legal department of a major corporation.

Second, we concluded that, although it is not extensive, Judge Thomas's record as a member of the Court of Appeals for the D.C. Circuit reflects the qualities of an outstanding jurist, including judicial temperment, intelligence, and clarity of expression. As the report states, "Judge Thomas's opinions reveal a refined ability to resolve complex issues." At the same time, "his opinions place him squarely in the mainstream of American law, both in the substance of his views and in his approach to legal analysis." We also found that Judge Thomas's opinions exhibit highly principled decision-making -- in particular, the exercise of judicial restraint and deference to the political

branches of government. His opinion in the Otis Elevator case<sup>1/</sup> is a good example of his conscientious efforts to give effect to the will of Congress without regard to his own personal views.

Third, we concluded that the speeches and articles that Clarence Thomas wrote before becoming a judge "do not support the alarmist views of his critics" that he would use natural law to trump the Constitution and constitutionally enacted statutes. Before Judge Thomas had uttered a word in these hearings, we independently concluded that read fairly his "natural law arguments are instances of political, rather than legal, reasoning. . . . [R]ather than espousing a natural law defense of judicial activism, Clarence Thomas's writings invoke natural law as a means to persuade and inspire his fellow citizens to political action."

We also noted that in those same writings Judge Thomas makes "repeated and unequivocal statements supporting judicial restraint." In particular, the report points out that Clarence Thomas's writings clearly reject libertarian arguments that the Supreme Court should return to the Lochner era and strike down all laws that infringe property rights. As Clarence Thomas stated, and I quote, "[o]ne does not

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<sup>1/</sup>Otis Elevator Co. v. Secretary of Labor, 921 F.2d 1285 (D.C. Cir. 1990).

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strengthen self-government and the rule of law by having the non-democratic branch of the government make policy."<sup>2/</sup>

At the end of the report, we summarized our overall assessment of Judge Thomas's record as follows:

Based on our study of Judge Thomas's academic and professional record, his speeches and articles, and especially his opinions as a Circuit Judge, it is clear to us that Judge Thomas has all the qualities of intellect, character and experience required for the office to which he has been named. We therefore believe that Clarence Thomas is eminently qualified to serve as an Associate Justice of the Supreme Court.

After almost two weeks of hearings, we remain equally convinced that Judge Thomas is well qualified to become Associate Justice Thomas.

Thank you, Mr. Chairman. I would be happy to answer any questions that you or the other members of the Committee may have.

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<sup>2/</sup>Speech by Clarence Thomas before the Pacific Research Institute, August 10, 1987, at p. 16.