

Chairman SPECTER. Commissioner Braceras, could you summarize the balance of your statement, please?

Ms. BRACERAS. Sure.

Chairman SPECTER. Your full statement will be made a part of the record, as will all statements.

Ms. BRACERAS. The Supreme Court is neither the first nor the last word on civil rights, or any other issue, for that matter. Each of the three branches of Government has a role to play, and Judge Roberts respects and understands these distinct roles.

In conclusion, I submit that Judge Roberts's critics have it wrong. Judge Roberts's commitments to the vigorous enforcement of our Nation's civil rights laws and to the bedrock principles of judicial restraint, judicial review, and equal opportunity will make him a Justice of whom all Americans can be proud. And I urge you to confirm him as the next Chief Justice of the United States.

[The prepared statement of Ms. Braceras appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Commissioner Braceras.

Senator Leahy has asked for recognition before we complete the panel. Senator Leahy?

Senator LEAHY. Thank you, Mr. Chairman.

A classmate of mine from law school, John Dean, was supposed to testify, but when we changed the schedule this week he was unable to join us. I just want to make sure his testimony is put in the record at the appropriate place.

Chairman SPECTER. Without objection, it will be made part of the record.

Our next witness is Mr. Wade Henderson, who is the Director of the Leadership Conference, a longstanding leader on civil rights. Before his current position, he was Washington Bureau Director of the NAACP, serves as the Rauh Professor of Public Interest Law at the Clarke School of Law, a graduate of Howard University and the Rutgers University School of Law. I know you talked to David Brog about a postponement of the hearing, and then events overtook us, and postponement did take place. Thank you for joining us today, Mr. Henderson, and the floor is yours.

**STATEMENT OF WADE HENDERSON, EXECUTIVE DIRECTOR,
LEADERSHIP CONFERENCE ON CIVIL RIGHTS, WASHINGTON, D.C.**

Mr. HENDERSON. Well, good afternoon, Mr. Chairman, and members of the Committee, and thank you, Mr. Chairman, for your courtesies in giving us an additional week because of the aftermath of Hurricane Katrina.

Again, my name is Wade Henderson, and I am the Executive Director of the Leadership Conference on Civil Rights. The Leadership Conference is the Nation's premier civil and human rights coalition and has coordinated the national legislative campaigns on behalf of every major civil rights law since 1957. The Leadership Conference's 190 member organizations represent persons of color, women, children, organized labor, individuals with disabilities, older Americans, major religious groups, gays and lesbians, and civil liberties and human rights groups. It is a privilege to rep-

resent the civil rights community in addressing the Committee today.

Based on reasons I will highlight here today, discussed at greater length in my written testimony, and after a careful review of John Roberts's available record, including his testimony before this Committee, the Leadership Conference is compelled to oppose his confirmation to the position of Chief Justice of the United States.

In the last several days of testimony, Judge Roberts has failed to distance himself from the anti-civil rights positions he has advocated. We have heard nothing demonstrating his commitment to ensuring that the Federal Government will continue to play a strong role in protecting civil and human rights of all Americans. To the contrary, all evidence indicates that Judge Roberts would use his undeniably impressive legal skills to bring us back to a country that most of us wouldn't recognize, where States' rights trump civil rights, where the Federal courts or Congress can see discrimination but are powerless to remedy it. This is not the America in which most Americans want to live.

As we have seen over the past 2 weeks in the wake of Hurricane Katrina, when the Federal Government's role is diminished, the least among us suffer most. Our Nation fought a Civil War over the meaning of equality in our Constitution and the role of the Federal Government in ensuring that equality, and then engaged in a great debate about the power of the Federal Government to enforce the 13th, 14th, and 15th Amendments. Reconstruction failed, and African-Americans were returned to a position of near servitude because those who advocated for weak Federal power won.

It wasn't until decades later when the Court outlawed State-sponsored segregation in *Brown v. Board of Education*, followed by the enactment of a series of civil rights statutes by Congress in the 1960's that are now the bedrock of our national commitment to equality of opportunity, that the Federal Government stepped in as a champion of equal justice under law.

However, in recent years, we have seen the rise of a political movement that is an eerie parallel to the post-Reconstruction period. Today, there are those who in the name of judicial restraint advocate for a Federal retreat in the area of civil rights. While our Constitution speaks of fundamental rights, some oppose the Federal courts or Congress using the Constitution to protect individuals against violations of those rights. John Roberts has written that Federal courts should not be empowered to invalidate "widely accepted State practices," even if such practices prevent African-Americans and others from having equal opportunity in voting. If his view had prevailed, our country's voting rights revolution would never have happened.

Would Judge Roberts have approved of poll taxes or literacy tests because those were "widely accepted practices"? Despite the strong recommendation from a very conservative member of the Reagan administration's civil rights team, John Roberts advised against intervention in a sex discrimination case against the Kentucky prison system, contending that discriminatory treatment of men and women in the prison's vocational program was "reasonable in light of tight prison budgets."

Would Judge Roberts then apply the same argument to equal educational opportunities for women generally? Could States in the name of saving money refuse to provide equal health services to men and women? In John Roberts's view, Congress could exclude all school desegregation cases from the jurisdiction of the Federal courts. This is, in effect, a pre-*Brown* vision that fits squarely into the objective of preventing the Federal courts from fulfilling the promise of the 14th Amendment.

As many commentators have made clear, John Roberts is a gifted and intelligent lawyer and advocate, but that is not the test for determining whether he is fit to lead the highest Court in the land. Rather, the test is whether John Roberts has demonstrated he has committed to the fundamental principles on which our country was founded and whether his vision of America matches the expectations of mainstream Americans. John Roberts has failed this test. Therefore, the Leadership Conference on Civil Rights has no choice but to oppose his confirmation. America can and should do better.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Henderson appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Mr. Henderson.

Our next witness is Commissioner Peter Kirsanow of the U.S. Commission on Civil Rights, had been labor counsel for the City of Cleveland; he is the Chair of the Board of Directors of the Center for New Black Leadership, on the Advisory Board of the National Center for Public Policy Research, a graduate of Cornell, a law degree from Cleveland State with honors.

Thank you for coming in today, Commissioner, and we look forward to your testimony.

STATEMENT OF PETER KIRSANOW, PARTNER, BENESCH, FRIEDLANDER, COPLAY & ARONOFF, AND COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS, CLEVELAND, OHIO

Mr. KIRSANOW. Thank you, Mr. Chairman, Senator Leahy, members of the Committee. I am Peter Kirsanow, a member of the U.S. Commission on Civil Rights and a partner in the Cleveland, Ohio, law firm of Benesch, Friedlander, Coplay & Aronoff, in the labor and employment practice. I am here in my personal capacity.

The U.S. Commission on Civil Rights was established in 1957 to, among other things, act as a national clearing house for information related to denials of equal protection and discrimination, and in furtherance of that function, my assistant and I reviewed the opinions of Judge Roberts while on the D.C. Circuit related to civil rights and also his Supreme Court advocacy related to civil rights, particularly with respect to prevailing civil rights norms, jurisprudential norms, with particular attention to the 1964 Civil Rights Act and the 14th Amendment.

Our examination reveals that Judge Roberts's approach to civil rights is consistent with mainstream textual interpretation of the relevant constitutional and statutory authority and governing precedent. His opinions evince appreciable degrees of judicial restraint, modesty, and discipline and, in short, Judge Roberts's approach to civil rights is exemplary. It is legally sound, intellectually