TESTIMONY OF CONGRESSMAN TED WEISS
PRESIDENT OF AMERICANS FOR DEMOCRATIC ACTION
ON THE NOMINATION OF WILLIAM REHNQUIST FOR CHIEF JUSTICE
JULY 30, 1986

Mr. Chairman, members of the Committee, I appreciate this opportunity to testify on the nomination of Justice William Rehnquist for Chief Justice of the Supreme Court. I speak today both as a member of Congress from the 17th district of New York, and as President of Americans for Democratic Action.

The ADA believes that the role of Chief Justice should be filled by a person who, whether liberal or conservative, has demonstrated a broad concern for protecting the constitutional rights of all citizens, including minority groups and those who hold minority opinions; and someone whose views on judicial matters are not divisive or ideologically extreme.

Although ADA has sometimes had reservations about Supreme Court nominees, rarely have we opposed one. In fact, the only nominations we opposed, other than William Rehnquist's in 1971, were those of Clement Haynsworth and G. Harrold Carswell, both of which were rejected by the Senate.

But we have found Justice Rehnquist so hostile to the rights of minority groups, so unconcerned about the abridgement of constitutional liberties protected under the Bill of Rights, and so polarizing and excessive in his doctrine, that we are compelled to oppose his elevation to the nation's most important unelected office.

The ADA came before this Committee in 1971 to express its concern about then-Assistant Attorney General Rehnquist's long standing antagonism towards the rights of black Americans to public

accomodations, freedom of expression, education and voting. Today, after reviewing his 14 year record as an associate justice, we find our most troubling doubts about Justice Rehnquist have been confirmed. If anything, his antipathy towards civil liberties and minority groups has found dangerous new outlets.

Let me emphasize that we do not oppose Justice Rehnquist as a conservative: we have not opposed nominees who believe that in judicial matters, it is best to move conservatively and with special deference to precedent. Rather, we oppose Justice Rehnquist because his strident views are so extreme that they have left the Court's conservative voting bloc far behind.

His 47 lone dissents during his tenure on the Court illustrate the radical differences between his views and the views of his eight colleagues. For example, Justice Rehnquist was the sole dissenter in the Bob Jones University case, arguing that even though the university abided by an explicit code of racial discrimination, it should still qualify as a charitable organization, and hence receive federal tax benefits. Justice Rehnquist was impervious to the reasoning of his eight colleagues that status as a federally-recognized charitable organization was inconsistent with racial discrimination.

Another example of his adversarial views about minority groups is found in his dissent from the Court's decision to deny certiorari in Ratchford v. Gay Lib. By deciding not to hear the case, the Supreme Court let stand a lower court ruling that the University of Missouri could not deny an organization of gay men official

recognition and access to campus facilities, on the basis of their homosexuality.

Justice Rehnquist's dissent was shocking for its vicious characterization of gay lifestyles and its casual dismissal of the First Amendment rights of the plaintiffs. After first depicting gay people as "akin to...those suffering from measles," Justice Rehnquist went on to argue that the group of gay students is not entitled to their First Amendment rights to peacefully assemble and hold public meetings, because he thought this might eventually lead to instances of sodomy, which was proscribed by Missouri state law.

In these and many other cases, Justice Rehnquist established himself on the fringe of jurisprudence, resolutely opposed to those seeking equal protection under the law. In Duren v. Missouri, he was the lone dissenter from a decision that a state may not automatically exempt women from jury duty, since it results in unfair trials for women; in Frontiero v. Richardson, he was the only dissenter from the Court's ruling that unreasonable discrimination on the basis of sex, in this instance for spousal benefits, is a violation of the Constitution; in Cruz v. Beto, he issued the sole dissent from the Court's conclusion that a state may not deny a prisoner reasonable opportunities to pursue his faith; in Richmond Newspapers v. Virginia, he was the lone dissenter from a decision that the press and the public have a right of access to criminal trials; and in Hathorn v. Lovorn, he issued the sole dissent from the Court's ruling that state courts are bound to enforce the Voting Rights Act.

These are but a few of many cases in which Justice Rehnquist displayed a belligerence towards civil liberties and equal protection that we feel must disqualify him for the position of Chief Justice.

I would like to make two final points about Justice Rehnquist. First, a close reading of his record on the Court shows that he is not a judicial conservative, as he likes to portray himself. He is rather, a judicial activist with an extreme right-wing agenda. He shows little inclination to move conservatively when an ideological issue is at stake. In fact, he seems ready to reverse much of the progress our nation has made over the last 25 years in the areas of equal protection, voting rights, and civil liberties.

Second, Justice Rehnquist is often said to apply a "majoritarian" analysis to his decisions, deferring whenever possible to the judgement of legislative bodies on contentious constitutional issues. I find this deference towards "elected bodies" distressing and anomalous, in part, because of Justice Rehnquist's 30 year record of hostility to voting rights.

But the more important objection is that this approach ignores the fundamental reason we have a Constitution, a Bill of Rights and a Supreme Court in the first place: to protect the rights of the minority from the excesses of a majority or of the government. A system of "justice" that defers to what is politically popular, rather than constitutionally justified, betrays both the Bill of Rights and the separation of powers.

As an organization dedicated to equal rights for all, the ADA is

alarmed about the implications of having as Chief Justice a man who believes that the Bill of Rights does not extend to groups that are unpopular, or have no political clout.

Mr. Chairman, Americans for Democratic Action has scrutinized Justice Rehnquist's record on issues of equal protection, civil liberties, and voting rights. We believe his positions will further divide this country between the privileged and the poor, between black and Hispanic and white, between men and women, between homosexual and heterosexual, between the majority and the minorities. We feel that the role of Chief Justice must be filled by someone who will bring the country together, not polarize and embitter it. We believe it would be a calamitous mistake -- a mistake that time would not soon forgive -- to confirm as Chief Justice a man whose fundamental views are so inimical to the Bill of Rights.

For these reasons, Mr. Chairman, the ADA urges the Senate to reject Justice Rehnquist's nomination for the position of Chief Justice of the Supreme Court.