

ities, all of us need equal access to a fair and independent judiciary to assure equal justice under the law.

The stakes are higher than ever. We cannot afford to elevate an individual to such a powerful lifetime position whose record demonstrates such a strong desire to reverse the hard-won civil rights gains that so many of us sacrificed so much to achieve. We have come a great distance. We cannot afford to stand still. We cannot afford to go back. We must go forward to the creation of one America.

My friends, Members of the Senate, I implore you to get in the way.

Thank you, Mr. Chairman.

[The prepared statement of Representative Lewis appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Congressman Lewis for those very passionate remarks.

Our next witness is Commissioner Jennifer Braceras, U.S. Commission for Civil Rights; taught at the Suffolk Law School as a Visiting Fellow at the Independent Women's Forum; in the year 2000, Massachusetts Lawyers Weekly rated her as one of the State's top ten lawyers of the year. Practiced law with the Boston firm of Ropes & Gray.

Thank you for joining us, Commissioner Braceras, and we look forward to your testimony.

STATEMENT OF JENNIFER CABRANES BRACERAS, ESQ., COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS AND VISITING FELLOW AT THE INDEPENDENT WOMEN'S FORUM, BOSTON, MASSACHUSETTS

Ms. BRACERAS. Thank you.

Chairman Specter, Senator Leahy, members of the Committee, my name is Jennifer Braceras. I am a resident of Massachusetts and a member of the Massachusetts Bar and the Hispanic National Bar Association. I am, as you said, a Visiting Fellow with the Independent Women's Forum, and I am privileged to serve by appointment of the President as a Commissioner on the United States Commission on Civil Rights.

I am honored to be here today to support the nomination of Judge John Roberts to be Chief Justice of the United States. Although I do not know Judge Roberts personally, I am generally familiar with his background and record. His distinguished career and his testimony before this Committee make clear to even the most casual observer that Judge Roberts is eminently well qualified for the post.

Despite these obvious qualifications, however, opponents of Judge Roberts criticize his record on a variety of matters that loosely fall under the umbrella of civil rights. These critics allege that Judge Roberts's confirmation to be Chief Justice will somehow be harmful to women and minorities. These charges are at best misplaced, and at worst deliberately misleading attacks that would have been leveled against anyone nominated by this President.

There are at least five reasons why such criticisms are without merit. First, many of the specific criticisms of Judge Roberts's record involve positions he advocated as a lawyer in the adminis-

trations of Presidents Ronald Reagan and George H.W. Bush. Some of the subjects that have elicited criticism by interest groups include school busing, racial quotas, the revision of the Voting Rights legislation to seek equal electoral results as opposed to equal access, and the theory of comparable worth.

Published reports indicate that the positions taken by Judge Roberts in this capacity as a lawyer for the Reagan and Bush administrations are broadly consistent with the views of the American people and fully within the political mainstream. But even if they were not, the arguments expressed by Judge Roberts as a young man decades ago are arguments on behalf of the administrations for which he worked, not the views of a neutral umpire asked to rule on particular legislation.

Judge Roberts's view of the judicial function does not contemplate the imposition of his own policy preferences from the bench. His commitment to judicial restraint should give Americans of all political viewpoints great comfort.

Second, it is clear from the public record that Judge Roberts supports the vigorous enforcement of our Nation's anti-discrimination laws. In his executive branch memos Judge Roberts repeatedly defended the "bedrock principle of treating people on the basis of merit without regard to race or sex." And he argued numerous times for the executive branch to prosecute claims of unequal treatment to the fullest extent of the law.

Third, as an advocate, Judge Roberts has been on both sides of controversial civil rights questions. This broad experience should give the American people faith in Judge Roberts's ability to understand the complexity of controversial issues.

Fourth, it is clear that Judge Roberts has a strong commitment to equal opportunity and to the anti-discrimination principle embodied in the 14th Amendment and codified in the Civil Rights Act of 1964. He has written—and I quote—"Before the law, we do not stand as black or white, Gentile or Jew, Hispanic or Anglo, but only as Americans entitled to equal justice."

Certainly there is nothing extreme or unusual about this field. To the contrary, it embodies the American ideal. It reflects the aspirations of the 14th Amendment which were given life by the Court in *Brown v. Board of Education* and by the framers of the 1964 Act.

Finally, and perhaps most importantly, irresponsible rhetoric that a Court led by Judge Roberts would be hostile to civil rights misinterprets the role of the Court in our democracy. This rhetoric is based on several deeply flawed premises. First, such rhetoric presumes that it is the job of the Court to create new rights in response to evolving circumstances. It is not. Our Constitution guarantees certain basic rights which the courts must, of course, enforce. Legislatures, both State and Federal, may expand upon those rights or create new ones, provided that they act within the scope of their constitutional authority. If citizens are in any way dissatisfied with the scope or reach of current law, it is to their democratically elected representatives, not the courts, that they must turn.

Second, Judge Roberts's critics erroneously presume the Court should interpret all statutory language expansively. That is also not their role. Their role is to apply statutes as written.

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-