Office of

CONGRESSMAN JOHN CONYERS, JR.

First District, Michigan

FOR RELEASE
1:00 PM, SEPTEMBER 19, 1991

FOR MORE INFORMATION CONTACT:
Bob Weiner
(202) 225-5051

STATEMENT OF THE HONORABLE JOHN CONYERS, JR.

SENIOR MEMBER, CONGRESSIONAL BLACK CAUCUS

ON THE NOMINATION OF JUDGE CLARENCE THOMAS

AS ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT

The Congressional Black Caucus was established twenty-one years ago to protect and advance the interests of African Americans here in Congress. We have been democratically chosen to represent the views of African Americans themselves. As Members of the House we are highly sensitive to the views of our constituents, who get unusually frequent opportunities to inform us of their opinions.

Our members include the chairs of five full committees and the chairs of thirteen subcommittees. We have exercised close oversight over the implementation of civil rights laws. I am sorry to report that our assessment of Judge Thomas's stewardship of key agencies administering these laws, is that Judge Thomas has flunked the test.

The record is clear, while at EEOC Judge Thomas was a lawless administrator, failing to enforce civil rights laws, and substituting his own vision of civil rights enforcement. This has been documented in his extraordinary 56 appearances before Congress. Most of these appearances were controversial and much of the record expressed exasperation of the members of House Committees with his administration of the law, as documented by several GAO reports on his stewardship.

THE CASE OF THE TWO CLARENCES': AN ISSUE OF CREDIBILITY

Let me get straight to the point. The members of this committee are confronted with a dilemma. Clarence Thomas is an enigma. Is he the pugnacious conservative who did not hesitate to espouse his hostility to traditional civil rights remedies, his support for natural law, opposition to abortion and his contempt for Congress? Or is he really the moderate trying to get confirmed to the Supreme Court, who is retreating from virtually every controversial statement he ever made? It is an important issue of credibility.

Clarence Thomas testified that "I cannot remember personally engaging" in any discussion about Roe v. Wade and "I do not have a personal opinion on the outcome in Roe v. Wade." However, in 1987 in the Chicago Defender, Judge Thomas stated that there was "tremendous overlap of the conservative Republican agenda and Black beliefs on abortion". In the 1989 Harvard Journal of Law and Public Policy in a critique of so-called judicial activism, Clarence Thomas wrote that "the current case provoking the most protest from conservatives is Roe v. Wade." Is it credible to believe then that Clarence Thomas never discussed Roe v. Wade?

MORE

Concerning the Griggs decision, Thomas declared:
"We have permitted sociological and demographic realities to be manipulated to the point of surreality by convenient legal theories such as adverse impact."

These are not the comments of a reasoned jurist who happens to have a different point of view on affirmative action. They are the comments of a man whose imprudent remarks could destroy the delicate fabric of racial tolerance we have carefully developed in the country.

ATTACK ON THE VOTING RIGHTS ACT

Clarence Thomas has demonstrated a hostility to the one law which is most responsible for most members of the Congressional Black Caucus, the Voting Rights Act.

Judge Thomas in a fundamental misunderstanding of the law attacked the Voting Rights Act in a speech at the Tocqueville Forum in April 18, 1988, saying:
"Many of the Court's decisions in the area of voting rights have presupposed that blacks, whites, Hispanics, and other ethnic groups will inevitably vote in blocs."

This is simply untrue. As members of this committee know our intent was that the burden is on the plaintiff to demonstrate racial bloc voting does occur, as several cases, most notably Thornburg v. Gingles, have affirmed.

He has also criticized the effects test in the Voting Rights Act as unacceptable. This test has formed the cornerstone of the Voting Rights Act, and is largely responsible for the increase in the number of black elected officials around the country.

FAILURE TO ENFORCE THE LAW AT EEOC

This committee is aware that while Clarence Thomas was chairman of the EEOC over 13,000 age discrimination cases were not investigated within the two year statute of limitations period. As a result, older workers lost their right to pursue their claims in court. I would like to briefly talk about one important episode on this issue since it was investigated by one of the subcommittees of the House Government Operations Committee which I chair.

The head of the St. Louis EEOC office, Lynn Bruner, commented publicly in 1988 that EEOC's failure to investigate age discrimination cases was wide spread, thus allowing these cases to lapse in every EEOC district office.

Ms. Bruner was asked to testify on this issue before the Senate Special Committee on Aging. The night before her testimony, she received a negative performance rating, the first one in her career, and was specifically criticized for making comments to the press which "present Chairman Thomas in a negative light."

Despite this evaluation, Ms. Bruner testified on June 23, 1988 that she had repeatedly alerted EEOC headquarters to the urgent problem of age discrimination charges not being investigated, however, EEOC under Clarence Thomas failed to act. Four days after this testimony, Ms. Bruner was visited by Polly Meade, the Director of Performance Services from EEOC headquarters in Washington, who reported directly to Judge Thomas. According to Ms. Bruner, Ms. Meade spoke disparagingly of her Senate testimony, stated that she was in trouble and intimated that Ms. Bruner would not be in her job much longer.

It was not until two months later, when Judge Thomas was about to be nominated for the Court of Appeals for the District of Columbia, that he phoned one of my subcommittees indicating that he had changed his mind and would withdraw the negative evaluation.

On the issue of South Africa, he told this committee, "I was not aware, again, of the representation of South Africa itself by Jay Parker." However, Newsday has reported that at an EEOC staff meeting in 1986, Clarence Thomas entered the meeting with a newspaper article outlining Parker's relationship with South Africa, and discussed for 45 minutes the representation of South Africa by Parker, according to former Thomas aides. In 1987, according to Foreign Agents Registration Act records, Thomas attended a dinner for the South African ambassador arranged by Jay Parker, apparently to lobby the South African ambassador.

I am not here to suggest that Clarence Thomas was personally involved in representing South Africa. However, it is beyond belief that he was unaware that his close friend and mentor Jay Parker was representing South Africa. What did he think he was doing dining with the South African ambassador? Just shooting the breeze? These are important issues of credibility.

None of us knows which Clarence Thomas we will get on the Supreme Court. But the stakes are too high for the committee to roll the dice when the lives of all racial minorities in this country hangs in the balance. If, as his view suggest, he continues to oppose class action law suits, affirmative action, Roe v. Wade, and the Voting Rights Act, nothing can be done once he is on the Court for life. Now is the only time to act.

Stonewalling Members of the Senate Judiciary Committee

Clarence Thomas's selective stonewalling of this Committee threatens to undermine the integrity of the confirmation process. Clarence Thomas says it would be inappropriate for him to discuss a range of issues, including abortion because these issues may come before the Court one day.

On the other hand, he has freely offered that he has no philosophical objections to school prayer and the death penalty. He cannot have it both ways.

If Judge Thomas is permitted to decide for himself which issues he will address and which issues he will not, then the confirmation process becomes merely window dressing for the politically popular views of the present administration. In addition, every other nominee from this day forward will do exactly the same thing.

ATTACK ON EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Judge Thomas refuses to recognize that civil rights is now a systemic problem that requires systemic solutions like affirmative action. Yet, the most disturbing aspect of Judge Thomas's opposition to affirmative action is that he has challenged the Constitutional authority and the integrity of the Congress to even consider affirmative action and other solutions to remedying the widespread discrimination that continues to exist in this country.

In the Fullilove decision, upholding Congress's effort to provide a remedy for the longstanding exclusion of minorities from opportunities to become government contractors, Thomas said:

> "Not that there is a great deal of principle in Congress itself. What can one expect of a Congress that would pass the ethnic set-aside law the Court upheld in Fullilove v. Klutznick."

Regarding affirmative action generally, Thomas stated:

> "It is just as insane for blacks to expect relief from the Federal government for years of discrimination as it is to expect a mugger to nurse his victims back to health. Ultimately, the burden of being mugged falls on you."

> The Senate Special Committee on Aging Report found that: "The EEOC misled the Congress and the public on the extent to which ADEA charges had been permitted to exceed the statute of limitations."

Senator Pryor, the current Chairman of the Committee, made it clear that the misrepresentations were those of Clarence Thomas, by stating, "I was dismayed to learn about several erroneous statements made by Chairman Thomas...Those statements are certainly misleading..."

Judge Thomas's actions at EEOC illustrate his lack of commitment to First Amendment, to protecting whistleblowers, to protecting victims of age discrimination, and enforcing our equal opportunity laws. The conclusion that we are compelled to reach is that Judge Thomas has failed to carry out the constitutional obligation of members of the Executive Branch to "take care that the laws are faithfully executed" and that he exhibited a pervasive disrespect for Congress and the legislative process.

Finally, let me say that Clarence Thomas's past record and his stated views are threats to the best interests of African Americans. We do not oppose Judge Thomas for any other reason than his record. I opposed Judges Haynsworth, Carswell, Bork, and Kennedy -- not because of their race, but because they espoused a judicial philosophy which if implemented would reverse civil rights progress we have made in this country over the last three decades.

Similarly, you should not support a nominee merely because they are black. The issue is not race but merit. On the merits, Thomas should be rejected.

JC-102-001-009

G:THOMAS.PR

The CHAIRMAN. Thank you very much.
Congressman Stokes.

STATEMENT OF HON. LOUIS STOKES

Mr. STOKES. Mr. Chairman and members of the committee, I also deem it a pleasure and an honor to appear before you this afternoon.

Our appearance here today, while born in necessity, is also born in pain. When Judge Thomas shared with you the touching experience of his boyhood in Pin Point, GA, he evoked in each of us the memory of similar boyhoods in our own families.

While we were not born in Pin Point, we share with him the like and similar circumstances of ill-housing, poverty, mothers who were maids, and grandparents without whom we or our mothers could not have made it.

Not just Judge Thomas and members of the Congressional Black Caucus have shared this common experience. A majority of black Americans who have achieved in this society have shared both the poverty, segregation and the racial indignities which emotionally overcame Judge Thomas when he testified.

The difference between Judge Thomas and most black Americans who have achieved, in spite of poverty, adversity, and racism, is that most of them have not forgotten from whence they have come. Whenever possible, they have used their educations and positions of achievement to help eliminate from our society these barriers to equal opportunity, liberty, and justice. It is almost unheard of to see them utilize their educations and positions to impede the progress of those less fortunate than they.

When Justice Thurgood Marshall retired, Chairman Biden was quoted as saying, and I quote,

> The Supreme Court has lost a historic Justice, a hero for all time. I hope the President will nominate a replacement who is worthy of this great man's place in the Court and in our hearts.

As African-Americans, we not only wanted to see another worthy person replace him; we wanted to see another qualified black American replace him. Justice Thurgood Marshall is a legend in America. As the NAACP's top lawyer, he traveled the length and breadth of this Nation, winning hundreds of civil rights victories in one courtroom after another.

He was America's greatest constitutional lawyer, having won 29 of 32 cases he argued in the U.S. Supreme Court. Each case he won whittled away at some barrier to equality and justice confronting African-Americans. As NAACP lawyer, solicitor general, judge of the court of appeals, and Supreme Court Justice, Thurgood Marshall became a giant in American law.

I said to you earlier that our appearance here, while born in necessity, is also born in pain. We are pained because as much as we would like to see the diversity that another black American would bring to the Court, Judge Thomas is not the man.

Our opposition to Judge Thomas does not derive from his being in a different political party. Indeed, we expect the President to nominate a person from his own party. In fact, a well-respected Republican, Gary Franks, is a member of the Congressional Black Caucus.