

Senator SIMON [presiding]. Mr. Schulder.

STATEMENT OF DANIEL SCHULDER

Mr. SCHULDER. Thank you, Senator, and in behalf of the National Council of Senior Citizens, and our 5 million members, and 5,000 local clubs and State councils, I thank this committee for this opportunity to comment on the nomination of Judge Clarence Thomas to the Supreme Court.

As an advocacy organization, we support public and private activities and policies which advance the rights and needs of older persons, their families, and their communities. Over the past three decades we have placed ourselves at the side of workers, women, minorities, persons with disabilities, young people, and senior citizens, in their struggle for economic and social justice, and for full and effective civil rights.

Since its enactment in 1967, our organization has supported the Age Discrimination in Employment Act's expansion of rights and protections for working people, and its public policy objective to encourage older persons to continue to work and earn, and to contribute to the economies of their families and their communities.

We believe that Judge Thomas' record as Chairman of the Equal Employment Opportunity Commission marks him as a man whose official actions served to diminish the rights of older workers under the ADEA—the Age Discrimination in Employment Act. We believe that instead of creating a climate in which employers knew that discriminatory actions against older workers would be met with swift and sure sanctions and penalties, he sent signals that told employers that it was permissible to discriminate against older workers in pension, apprenticeship, early retirement and in exit incentive programs.

Under his administration as Chairman of EEOC for 8 years, thousands of older workers lost their rights to sue for relief against discriminatory practices, by allowing charges to lapse, or to be summarily closed without full, or any, investigation in many cases.

Over a period of years, his EEOC policies resulted in bipartisan congressional criticism, leading to numerous congressional interventions to protect the rights of workers, and to ensure that the clear language and intent of ADEA was enforced.

Mr. Chairman, we believe that allegations of Judge Thomas' misconduct in administering ADEA are well documented by committees and organs of this Congress, including the Senate and House Committees on Aging, the House Government Operations Committee, the Senate Committee on Labor and Human Resources, the General Accounting Office, and the frequent actions of the full Congress in changing and reversing policies and practices of the Thomas-led EEOC.

His record as Chairman provides the best material description of his philosophy of law, his responsiveness to the intent of the Congress, his concern for the rights of average persons facing economic hardships, and his adherence to consistent principles of justice and equity.

I should point out that his job—his position—as Chairman of EEOC was his longest public or private job.

Finally, Mr. Chairman, we trust that this committee can acknowledge that the corrosive influence of age discrimination ranks with racism, sexism and religious and ethnic bigotry in its effects on individuals and on the larger society and economy. Both racism and ageism assault the core human dignity of their victims.

That is why we have striven to fight the persistence of age stereotyping that remains a pervasive and virulent aspect of this Nation's labor market and that is why we find Judge Thomas' failures to administer the ADEA fairly so profoundly distressing.

During Judge Thomas' tenure as chair, the EEOC caused thousands of older workers to lose their rights and relief under ADEA by its failure to investigate in a timely fashion charges of job discrimination.

We are not aware of any similar level of nonfeasance involving title VII or the Equal Pay Act. Older workers, as a class, in our view, were at the bottom of the Thomas EEOC priority system.

This committee and other committees of this Congress have already explored this issue at great length. The General Accounting Office in 1988 also offered to this Congress a review of, and a study of the lapsed charges.

I think these documents show that senior members of EEO staff strove to inform Judge Thomas of this problem and he refused to listen, he refused to change the procedures. And this led, of course, to the issuance of a subpoena by the Senate Committee on Aging in 1988 and only then did Judge Thomas begin to come clean with the real story of the 15,000 persons whose charges lapsed under his chairmanship.

There are other issues where we feel that Judge Thomas failed to protect the rights of older persons. He supported rules that allowed employers to stop paying into the pension accounts of workers who exercised their ADEA right to work beyond the age of 65. Such workers lost millions of dollars in pension benefits until the Congress, itself, overruled the EEOC on this matter in 1986.

He failed to prohibit the practices of many employers who demanded that older workers waive their ADEA rights in exchange for early retirement benefits in often coercive circumstances. The Congress was forced to repeatedly overrule the EEOC position and finally prohibited this practice in 1990. And he fails to include apprenticeship programs under the purview of ADEA despite the clear language of the act.

In other cases, such as *Lusardi v. Xerox*, *Cipriano v. Board of Education*, and *Paolillo v. Dresser Industries* we find Judge Thomas consistently overruling his own staff in EEOC and taking positions either not to issue complaints, and in fact, to move on the side of employers in court cases.

In summary, Mr. Chairman, responsible persons cannot properly take an oath to enforce certain laws, and once in office work consistently to undermine those very laws. We believe that Judge Thomas' tenure at EEOC demonstrates a consistent and dangerous bias against the interests of older persons in the work force through unwarranted interpretation of law and precedent.

He repeatedly defied the clear instructions of the Congress and required an unprecedented degree of bipartisan congressional oversight and corrective intervention. We further believe that Judge

Thomas consistently interpreted the ADEA from the vantage point of employers contesting the claims of workers seeking fair treatment rather than from the point of neutrality.

Mr. Chairman, the Supreme Court must remain, in the long-term, the Nation's symbol of fairness and justice. Judge Thomas' placement on that Court will surely not buttress that symbolic position in the hearts and hopes of the American people.

Thank you.

[Additional material and the prepared statement of Mr. Schulder follow:]