



Opposition to the Nomination of
Clarence Thomas to the
United States Supreme Court

Testimony Submitted to the
Senate Judiciary Committee

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by

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I am Anne Bryant, executive director of the American Association of University Women (AAUW). It is a privilege to testify on behalf of AAUW's 135,000 members: women and men who are committed to equity and education for women and girls.

On behalf of our membership, I urge the Judiciary Committee to reject Clarence Thomas' nomination to the United States Supreme Court. In his testimony before this Committee, Judge Thomas has suggested that statements he made and views he expressed prior to 1990 are not necessarily positions he would hold as a Supreme Court Justice. AAUW believes that the Senate has a responsibility to consider the public record of a Supreme Court nominee in assessing a nomination. We believe that Judge Thomas' record as chair of the Equal Employment Opportunity Commission and his tenure as Assistant Secretary for Civil Rights in the Education Department raise grave concerns about his commitment to equal opportunity and provide examples of his failure to enforce federal law.

AAUW opposes Clarence Thomas' nomination for five reasons.

First, we believe that in his positions at the EEOC and the Department of Education, Judge Thomas showed a blatant disregard for the law of the land. As Chair of the EEOC, he allowed more than 13,000 age discrimination complaints to lapse by failing to investigate them within the legal time limit. Congress had to pass the Age Discrimination Claims Assistance Act to assist those

individuals whose complaints of age discrimination had been ignored by the EEOC.

Although Judge Thomas served in the Education Department's Office of Civil Rights for less than a year, a similar pattern of failure to enforce the law was present there. In 1981, the Women's Equity Action League filed suit against the Department charging improper enforcement of Title IX of the Education Amendments of 1972. In 1982, a District Court judge ruled that the Department was both misinterpreting the Title IX regulations and providing inadequate remedies when a Title IX violation was determined.

This pattern of failure to enforce the law casts grave doubts on Judge Thomas' judicial temperament. We are particularly disturbed that he has been unwilling to enforce key federal laws intended to guarantee individual rights in employment and education.

Second, AAUW opposes Judge Thomas' nomination because of his record of vocal opposition to efforts to ensure equal opportunity in the workplace. While heading the EEOC, he undermined the effectiveness and credibility of the agency by publicly expressing his personal opposition to affirmative action programs, even those ordered as remedies following a finding of discrimination.

Judge Thomas was also vocal about his opposition to Title VII class action suits, despite Congress' mandate that his agency

initiate such cases. His negative comments about a class action suit filed by the EEOC against Sears led attorneys to explore calling him as a defense witness. By calling into question the validity of lawsuits involving claims of disparate impact, Judge Thomas contravened both the intent of Congress in passing Title VII and the Supreme Court's ruling in the 1971 Griggs case.

In 1985, the EEOC ruled that federal law does not require equal pay for jobs of comparable value, and the agency stopped investigating complaints involving pay equity claims. This ruling contradicted the Supreme Court's 1981 decision in the Gunther case. Again, Judge Thomas directed EEOC activities based on his own beliefs, rather than abiding by relevant federal law.

Third, AAUW is distressed by Judge Thomas' apparent hostility to the constitutional right to privacy as outlined in Griswold v. Connecticut. In an article published by the Cato Institute in Assessing the Reagan Years, Judge Thomas stated that the unenumerated rights specified in the Ninth Amendment were not intended to be cited by the Supreme Court in overturning laws.

By stating his opposition to the constitutional basis of the fundamental right to privacy, Judge Thomas has given evidence of his willingness to restrict individual liberties, including the right to reproductive choice.

Fourth, Judge Thomas' support of a "natural law" concept is deeply disturbing to AAUW. In speeches and articles, Thomas has

maintained that judges should be guided by a "natural law" philosophy, the belief that the "inalienable rights" cited in the Declaration of Independence are a higher authority than the U.S. Constitution.

Thomas has said he believes in the existence of moral norms derived from "nature's god," and that those norms can be used to critique and even invalidate civil law. Thomas' statements about "natural law" raise serious doubts about his commitment to maintain separation of church and state.

Finally, AAUW believes that the Judiciary Committee should not confirm Clarence Thomas' nomination to the Supreme Court because of the critical need for judicial balance on the most important court in our nation. The recent appointments of Anthony Kennedy, Antonin Scalia, and David Souter solidified a strong conservative shift in the Supreme Court. With the resignation of Justice Thurgood Marshall, the Court swung dangerously out of balance.

Confirmation of Clarence Thomas, a probable sixth conservative vote on the Court, threatens to unleash the sweeping change we have glimpsed in the Rehnquist Court. Replacing Justice Marshall with a judicial conservative like Clarence Thomas will effectively eliminate the Supreme Court as an instrument for ensuring continued progress and protection of individual rights for decades to come.

The American Association of University Women believes that the Senate has a responsibility to ensure an ideologically balanced Supreme Court and must, therefore, defeat the Thomas nomination.

On behalf of AAUW, I thank you for the opportunity to testify.