

STATEMENT OF

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SENATE JUDICIARY COMMITTEE

CONFIRMATION HEARING OF CLARENCE THOMAS

TO U.S. SUPREME COURT

Thank you Mr. Chairman and members of the Committee. The testimony being presented today is in opposition to the nomination of Clarence Thomas to the position of Associate Justice of the United States Supreme Court. At this time in the history of our country's judicial process, all citizens must be very concerned about the nomination of Judge Thomas.

The following testimony is presented on behalf of the National Black Police Association (NBPA), an advocacy organization which represents over 140 chapters of African American police officers nationally. At our recent Annual Conference, of which two-thirds (2/3) of our member chapters were present, the issue of President Bush's nomination of Clarence Thomas as an Associate Justice was discussed. After a careful presentation of the facts and materials surrounding Judge Thomas' record and career as a public official, the National Black Police Association voted to oppose his nomination.

Our purpose here today is to reiterate and reaffirm our opposition to the nomination of Clarence Thomas to the U.S. Supreme Court for the following reasons:

#### AFFIRMATIVE ACTION

Clarence Thomas is opposed to affirmative action and other remedies for racial discrimination. He has repeatedly stated that "any race-conscious remedy" is no good. However, the courts have

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repeatedly provided such relief to minorities and women in order to address racial disparities in areas such as employment, education and housing.

Surely, as African Americans in our nation's police department, the use of affirmative action and other remedies for racial discrimination has provided us with the opportunity to make our communities and neighborhoods safe from crime and violence. Since our beginning in 1972, the number of African American officers has grown from less than 20,000 to over 48,000 today. In spite of Clarence Thomas' leadership as Chairman of the EEOC, there has been a one-hundred (100%) percent increase in the number of African American police officers in the past twenty years.

After Judge Thomas' appointment as head of the EEOC and the implementation of changes in its procedures, we have fewer African Americans and women employed in police departments today than ten (10) years ago. Without affirmative action and other remedies, America would be a very different place. Access to opportunity is a key constitutional right which cannot be compromised.

Bruce Wright, in his book Black Robes, White Justice had the following to say about minority progress. "Many blacks in the criminal justice system and in unrelated professions are bitterly

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amused by the white cry of 'preferential treatment,' 'quotas,' 'affirmative action,' and 'reverse discrimination'. These terms wage intellectual and ideological war-fare against minority progress. Groups have surfaced demanding 'white power', as though the locus of power had ever been with the blacks. The American Revolution stands as precedent for how much white victims of oppression accept before they rebel. It is thus that the oppressed when liberated become the oppressors."

#### CONSTITUTIONAL RIGHTS AND INDIVIDUAL PROTECTION

During his brief period of service on the U.S. Court of Appeals of the District of Columbia, Judge Thomas has repeatedly ruled against the accused in the face of alleged police or prosecutorial excesses. A court with Clarence Thomas serving as an Associate Justice could permit more American citizens to be abused and incarcerated.

To illustrate this point, in March 1991, the U.S. Supreme Court voted 5 to 4 to allow confessions obtained in violation of a defendant's constitutional rights. Chief Justice William H. Rehnquist's opinion states there may be other evidence of guilt that the use of an involuntary confession could be considered "harmless error". The issue of "harmless error" analysis had been

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urged by the Bush Administration. Following on the heels of that decision was another ruling concerning the detaining of suspects.

The Court ruled that suspects arrested, without a warrant, generally may be jailed for as long as 48 hours, before a judge determines the validity of the arrest. By a 5 to 4 margin, the court ruled that "prompt" generally means within 48 hours.

These two rulings have far reaching implications. Some might argue these rulings are indeed needed to address the increasing crime rate, delays in the court system, and overcrowded jails. Nonetheless, can we afford to relinquish our basic constitutional rights in the process? Based on the testimony we have heard from Judge Thomas during these hearings, there is little to indicate any resistance he may have towards continuing the increased power of police and other police agencies. An increase in power which ultimately may lead to a "police state" in our own country.

The precedent set by the Court's recent rulings is frightening. As African American police officers, we totally reject the notion that this behavior is necessary to increase the quality of life and the absence of crime in our community.

Lastly, we disagree with those individuals who argue that

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Clarence Thomas is an important role model for young African Americans. In the past week, we have been inundated with recollections of Judge Thomas' "humble beginnings". I do not wish to refute nor negate the significance of his background nor personal experiences. However, this Committee should not allow itself to become entangled in the "bitter-sweet musings" of his hardships; for the hardships of Clarence Thomas are no greater nor harder than those of the average hardships of numerous African American males his age or older.

President Bush's nomination of Clarence Thomas has created an illusion of a progressive, fair-minded administration. Yet, the irony is that this nomination is an attempt to satisfy a "quota" -- a remedy which Clarence Thomas opposes. It is fair to say that the majority of African Americans are proud to see "one of their own" achieve success. However, tokenism cannot be a factor in selecting the next Supreme Court Justice. The hard questions of Judge Thomas' philosophy and future direction as an Associate Justice has not been adequately addressed by this Committee.

In conclusion, let me end with the following quote by Edwin Markham, "one of the tragedies of life is that once a deed is done, the consequences are beyond our control".