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September 1, 2005

Honorable Senator Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Honorable Senator Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Specter and Senator Leahy:

On behalf of the undersigned disability, aging, civil rights and social justice organizations, we write to you regarding the nomination of John G. Roberts to be an Associate Justice of the U.S. Supreme Court. As the nomination and confirmation process now begins to unfold, we strongly urge you to consider the extraordinary impact that Judge Roberts, if confirmed, will have on the lives, liberties, and constitutional rights of the tens of millions of Americans with physical, mental, cognitive, and developmental disabilities.

We applaud Senator Leahy's determination to obtain the release of withheld documents that would shed further light on Judge Roberts record. Each day, as new documents are uncovered, we get a clearer picture of Judge Roberts views many of which lie outside of the mainstream. For example, Reagan Administration documents demonstrate Roberts role in attempting to undermine the Equal Employment Opportunity Commission (EEOC) and the Washington Post reported on August 30th, that Roberts uncritically passed along demands that the administration repeal a requirement of government contractors to hire the handicapped.

We also applaud Senator Specter's letter of August 23rd to Mr. Roberts seeking his opinions on the "judicial activism" demonstrated by the Rehnquist Court, especially in regard to the narrowing of the Americans with Disabilities Act (ADA) and the failure to respect the intent of Congress in crafting this historic and bipartisan law.

Sen. Specter clearly outlined many of the concerns of the disability community in objecting to the Court's "judicial activism in functioning as a super-legislature" and the disregard exhibited by a pattern of declaring "acts of Congress unconstitutional notwithstanding the enormous evidentiary support for Congress' public policy determinations."

Mr. Roberts does, in fact, have a very different view of "judicial activism." In Board of Education v. Rowley, 458 U.S. 176 (1982), an 8-year-old student who was deaf sought to have a sign language interpreter provided to assist her in school. The trial court ruled that federal law required the state to provide an interpreter for her. The appeals court affirmed. Roberts, while at the Justice Department, wrote a memo to the Attorney General criticizing these decisions. Roberts stated that the lower courts, in an exercise of

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judicial activism, used the vague statutory language to overrule the board and substitute their own judgment of appropriate educational policy.

Mr. Roberts' views in this regard are further demonstrated by his serving on the Legal Advisory Council of the National Legal Center For The Public Interest. This extreme organization has promoted the very "judicial activism" Sen. Specter has decried and has attacked ADA civil rights protections in numerous forums including its publication of a document belittling Congress' authority and entitled "Civil Rights and the Disabled: The Legislative Twilight Zone."

Sadly, Mr. Roberts' record reveals that he would not only continue this trend of "judicial activism" but would further it, risking our remaining protections spared only by Justice Sandra Day O'Connor siding with the majority in 5-4 decisions including historic cases such as Tennessee v. Lane, 541 U.S. 509 (2004).

Our concerns are illustrated by Mr. Roberts' 2000 television interview, in which he declared that the Rehnquist Court was not "conservative" enough. Roberts, of course, later convinced the Rehnquist Court to eliminate ADA protections for millions of Americans with disabilities especially those with epilepsy, diabetes, mental illness and work-related injuries.

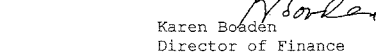
In Toyota Motor Manufacturing v. Williams, 534 U.S. 184 (2002), Roberts successfully argued to the Supreme Court that a woman who had developed severe bilateral carpal tunnel syndrome and tendonitis from working on the assembly line at an auto manufacturing plant could not prevail in a suit against her employer for failing to accommodate her disability. Roberts argued that she was not a person with a disability because she was not sufficiently limited in major life activities outside of her job. Roberts brief greatly distorted the extent of the woman"s limitations. As a result of Roberts distortions, the Rehnquist Court held that the test for coverage under the ADA is a narrow one that must be strictly applied, and it articulated a more stringent test than the test set forth by Congress in the law itself.

Indeed, Judge Roberts has a long history of advocating for the weakening of legal protections for children and adults with disabilities under the ADA, Section 504 of the Rehabilitation Act, Child Welfare Act, and education law, as well as the legal underpinnings of such laws including Congress commerce power. Attached, please find an overview compiled by the Bazelon Center for Mental Health Law entitled John Roberts Problematic Record on Disability Rights.
http://bazelon.org/issues/disabilityrights/judicialnominees/roberts.htm

We share Sen. Specter's concerns that, in the Rehnquist Court, we are witnessing judicial activism to roll back federal protections including the ADA with the use of "manufactured rationales used by the Supreme Court to exercise the role of super legislature and make public policy decisions which is the core Congressional role under the Constitution." Based on his record, we are concerned that the ADA, a bipartisan law that seldom attracts public attention similar to the hot-button issues often debated in the context of Supreme Court confirmation hearings, might be further weakened should Judge John Roberts be confirmed.

We call on the Senate Judiciary Committee to allow testimony from representatives of the disability community and to fully examine Judge Roberts record and views in regard to the Americans with Disabilities Act (ADA) and disability rights protections generally.

Sincerely,



Karen Boaden
Director of Finance