September 15, 2005

The Honorable Arlen Specter
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510-3802

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510-4502

Dear Chairman Specter and Ranking Member Leahy,

We write on behalf of the Union for Reform Judaism, whose 900 congregations encompass 1.5 million Reform Jews throughout North America, the largest segment of American Jewry. With the Senate Judiciary Committee hearings on John Roberts' nomination as Chief Justice underway, we write to express our strong concerns regarding Judge Roberts' nomination.

The Executive Committee of our national board met on September 12th. The Committee reaffirmed our approach, namely that we should not take a formal position on the nomination until we listen to everything that comes out in the hearings. At the same time, the Committee voted unanimously to send a letter to the Senate conveying our deep concerns about this nomination, which we hope will be addressed by the hearings.

We have been, of course, watching the hearings with great interest. We have been impressed by Judge Roberts' erudition, articulateness, and personal manner. It is not Judge Roberts' character or qualifications that trigger our concern, but rather the direction he, as Chief Justice of the Supreme Court, may take jurisprudence in this country.

On almost every issue of importance to the Reform Jewish Movement, Judge Roberts has indicated, often in very strong terms, that he holds views in stark contrast to our own core values. While Judge Roberts was charged with advancing the Administrations' policies as a member of the Reagan and George H.W. Bush Administrations, it is reasonable to assume that Judge Roberts' personal beliefs were well-attuned to the Administrations for which he worked; otherwise he would not have chosen to act on their behalf. Further, in many of his notations and memos he clearly expressed his own views, sometimes disagreeing with the Administrations' policy, and almost every time represented an even more conservative perspective. It is for precisely this reason that our Movement calls for release of the currently withheld documentation demonstrating Judge Roberts' more mature work.

Among Judge Roberts' writings that cause us concerns are:

- His reference in a 1981 internal memo to the Attorney General to the "so-called right of privacy;"
- His written arguments as Principal Deputy Solicitor General (in *Rust v. Sullivan*) when he wrote, "we continue to believe that *Roe* was wrongly decided and should be overruled;"

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- His opposition (in *Lee v. Weisman*) to the "*Lemon* test," which the Court uses to analyze Establishment Clause cases. The effect of moving away from the "*Lemon* test" would be to transform church-state jurisprudence and allow a significant lowering of the wall protecting religion from government;
- His 1981 memo to the Attorney General stating that the Department of Labor and the Office of Federal Contract Compliance Programs were promoting "offensive preferences" based on race and gender, demonstrating his opposition to affirmative action;
- His work in both the Reagan (in *Plyler v. Doe* and *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*) and first Bush Administrations (in *Board of Education of Oklahoma City v. Dowell* and *Freeman v. Pitts*) arguing for a restrictive interpretation of a wide variety of civil rights laws;
- His opinion as a DC Circuit Court Judge (in *Lujan v. National Wildlife Federation*) that restricted access to federal courts through a crabbed reading of Section 1983 standing; and
- His opinion as a DC Circuit Court Judge (in *Rancho Viejo, LLC v. Norton*) that was based on a narrow reading of the Commerce Clause that could undermine Congress' power to enact legislation designed to regulate the environment, protect workers' health and safety, and protect civil liberties and civil rights.

All of these speak to core values and fundamental rights that have been at the heart of the Reform Jewish Movement's social justice work for decades.

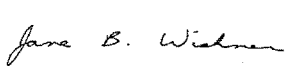
When President Bush first nominated Judge Roberts to fill Justice O'Connor's seat, the Reform Jewish Movement created an "Ask Judge Roberts" website to allow Reform Jews and others the opportunity to raise questions they believe Judge Roberts should answer during his confirmation hearings. The questions, a selection of which were sent to you earlier this month, reflect the broad issues of concern to our Movement, including civil rights and liberties, reproductive rights, the separation of church and state, environmental protection, and *stare decisis*. Information about Judge Roberts' record has become available through news reports and through questioning during his hearings, but the questions raised by our Movement have not been answered in any direct way.

How can the American people and Senators make an informed decision about his suitability to be Chief Justice of our nation's highest court if Judge Roberts does not answer these and other questions about his views on basic rights and freedoms? It would be difficult to imagine any potential employer considering a job applicant's silence on critical issues as a positive attribute. How then can you accept Judge Roberts' silence on these issues, or suggest, as some have, that such silence eases the way toward Judge Roberts' confirmation?

With respect we submit that the burden is now on you, the members of the Senate Judiciary Committee, to encourage Judge Roberts to be forthcoming and to answer questions about the important issues that will come before the Court.

Sincerely,

Robert Heller
Chairperson
Union for Reform Judaism Board of Trustees



Jane Wishner
Chairperson
Commission on Social Action of Reform Judaism

CC: Senate Judiciary Committee Members