**Statement of Jennifer Cabranes Braceras**

**Visiting Fellow, Independent Women's Forum and Commissioner, U.S. Commission on Civil Rights**

**before the Senate Judiciary Committee in support of the nomination of Judge John G. Roberts to serve as Chief Justice of the United States**

Chairman Specter, Senator Leahy, Members of the Committee:

My name is Jennifer Braceras. I am a resident of Massachusetts and a member of the Massachusetts Bar and the Hispanic National Bar Association. I am a Visiting Fellow with the Independent Women's Forum, and I am privileged to serve, by appointment of the President, as a Commissioner on the United States Commission on Civil Rights.

Since my graduation from Harvard Law School in 1994, I have served as a law clerk to two federal judges, practiced employment law at a major Boston law firm, and taught and conducted research on education law and federal anti-discrimination law.

I am pleased to be here today to support the nomination of Judge John Roberts to be Chief Justice of the United States.

Although I do not know Judge Roberts personally, I am generally familiar with his professional background and public record. His distinguished career and his testimony before this Committee make clear to even the most casual observer that Judge Roberts is eminently well qualified for the post.

Despite his obvious qualifications, however, opponents of Judge Roberts criticize his record on a variety of matters that loosely fall under the umbrella of civil rights. These critics allege that Judge Roberts's confirmation to be Chief Justice will somehow



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be harmful to women or minorities. These charges are, at best, misplaced and, at worst, deliberately misleading attacks that would have been leveled against *anyone* nominated to the High Court by this President. There are at least five reasons why such criticisms should not shake our confidence in Judge Roberts.

**First,** many of the criticisms of Judge Roberts involve positions he advocated as a lawyer in the administrations of Presidents Ronald Reagan and George H.W. Bush. Some of the subjects that have elicited adverse comment by interest groups purporting to represent various segments of American society include: (1) school busing, (2) the theory of comparable worth (which is often mischievously conflated with the very different concept of equal pay for men and women), (3) racial quotas, and (4) the expansion of voting rights legislation to seek equal electoral *results* as opposed to equal *access*. In all of these maters, published reports indicate that the positions taken by John Roberts as a lawyer for the Reagan and Bush administrations are entirely consistent with the views of the American people and fully within the political mainstream.

In any event, the arguments expressed by Judge Roberts as a young man, decades ago, were the policy judgments of an executive branch lawyer on behalf of the administrations for which he worked -- not the views of a neutral umpire asked to rule on the constitutionality of particular legislation. Judge Roberts understands that the role of a judge is fundamentally different from that of an advocate or legal adviser, and he has proven that he can exercise the judicial power with restraint. His view of the judicial function does not contemplate the imposition of his own policy preferences from the bench. This proven commitment to judicial restraint should give Americans of all political viewpoints great comfort.

**Second,** it is clear from the public record that Judge Roberts supports the vigorous enforcement of our Nation's anti-discrimination laws. In his executive branch memos, Judge Roberts repeatedly defended the "bedrock principle of treating people on the basis of merit without regard to race or sex" and argued numerous times for the executive branch to prosecute fully claims of unequal treatment.

**Third,** as an advocate, Judge Roberts has been on both sides of controversial civil rights questions, representing both plaintiffs and defendants. This broad experience should give the American people faith in Judge Roberts's ability to understand all sides of complex issues, his willingness to listen to all arguments, and his ability to judge each case fairly and according to the law.

**Fourth,** Judge Roberts has a strong commitment to equal opportunity and the anti-discrimination principle embodied in the Fourteenth Amendment and codified in the Civil Rights Act of 1964. There can be no doubt that Judge Roberts is committed to the idea that people should be treated as individuals not as members of perceived social or ethnic enclaves with group grievances. He has written that "before the law we do not stand as black or white, Gentile or Jew, Hispanic or Anglo, but only as Americans entitled to equal justice." Certainly, there is nothing "extreme" or "unusual" about this view. To the contrary, it embodies the American ideal. It reflects the aspirations of the Fourteenth, which were given life by the Court in *Brown v. Board of Education* and by the framers of the 1964 Act. And it embodies the credo of Dr. Martin Luther King when he eloquently proclaimed that people should be judged "not by the color of their skin, but by the content of their character."

**Finally,** irresponsible rhetoric that a Court led by Judge Roberts would "turn back the clock" on civil rights misinterprets the role of the Court in our democracy. Our Constitution guarantees certain basic rights, which the courts must, of course, enforce. But it is not for the courts to expand upon constitutional rights or to create new rights out of whole cloth. That is the job of legislatures (both state and federal). The legislative branches, acting within the scope of their constitutional authority, can create additional rights or expand upon the rights guaranteed by the Constitution. If citizens are in any way dissatisfied with the scope or reach of the Constitution or current statutes, it is to their democratically elected representatives that they should turn. The record makes clear that Judge Roberts respects this separation of powers and that he has faith in our democracy and in you, our elected representatives.

On occasion, we have seen the Court reject an expansive reading of civil rights statutes only to have Congress clarify the law and explicitly broaden civil rights protections. And that is as it should be. Congress has an obligation to be clear about the protections it bestows. It is not the role of the Court to expand upon the work of our democratically elected representatives. The Supreme Court, therefore, is not the last word on civil rights – or any other issue for that matter. Each of the three branches of government has a role to play, and Judge Roberts respects and understands these distinct roles.

On other rare occasions, we have seen the Court strike down laws broadly aimed at civil rights on the ground that the statute conflicts with the Constitution. But even in these circumstances it is improper to say that the Court has taken away anyone's rights. Courts can neither create nor take away rights. Rather, their role, as Judge Roberts

clearly understands, is to determine the constitutional authority of government, both state and federal. When government exceeds its constitutional authority or tramples on rights protected by the Constitution, the Court is correct to invalidate that action.

It is judges, like John Roberts, who take seriously the Constitution's restrictions on government power that are the true guardians of our civil rights and civil liberties. Those who are concerned with the rights of the minority surely should prefer a Court that faithfully and properly polices the boundaries of government over a Court that would abdicate the power of judicial review in blind deference to the political branches.

Judge Roberts has demonstrated a strong commitment to the vigorous enforcement of our Nation's civil rights laws and to the bedrock principles of judicial restraint, judicial review, and equal opportunity. I am, therefore, honored to testify in favor of Judge Roberts's nomination. He will be a Justice of whom all Americans will be proud, and I respectfully urge the Senate to confirm him as the next Chief Justice of the United States.

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