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STATEMENT IN SUPPORT OF THE CONFIRMATION OF THE HONORABLE JOHN G. ROBERTS, JR. AS CHIEF JUSTICE OF THE U.S. SUPREME COURT
COMMITTEE ON THE JUDICIARY
of the U.S. SENATE

September 12, 2005

If it can be said that justices of the United States Supreme Court are born and not made, then it must be said of the Honorable Judge John G. Roberts, Jr. Rarely is a person as qualified for the position to which he has been nominated, as is Judge Roberts.

Judge Roberts possesses the intellect, temperament, integrity, impartiality, legal knowledge and judgment necessary to serve on the Court. Additionally, his leadership, kindness, humility and conciliatory manner make him exceptionally qualified to serve as Chief Justice. Throughout his legal career, he has demonstrated a thorough knowledge of and respect for the U.S. Constitution and the role of a judge.

For the third time, the American Bar Association has given Judge Roberts a unanimous well-qualified rating. His brilliance as a writer and oral advocate before the Court is well deserved and widely acclaimed. His legal resumé is the envy of any lawyer.

Judge Roberts' experience in the executive and judicial branches of our government, as Clerk to then Associate Justice William H. Rehnquist, as Associate White House Counsel to President Ronald Reagan, in the Department of Justice as Principal Deputy Solicitor General, as

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Judge on the D.C. Circuit Court, and in private practice, is the exception rather than the norm when compared to most Supreme Court nominees.

While in private practice, Judge Roberts was undoubtedly the first choice of most appellate litigants with the financial resources to afford his services. Even so, Judge Roberts lent his skills and service to those who could not afford them. Judge Roberts argued *pro bono* before the D.C. Court of Appeals in the case of *Barry v. Little* on behalf of a class of the neediest welfare recipients, challenging a termination of benefits under the District's Public Assistance Act of 1982.

Judge Roberts' advocacy before the Supreme Court both as a private litigator and as Deputy Solicitor General covers a broad range of legal issues, including admiralty, antitrust, arbitration, environmental law, free speech/religion, health care law, Indian law, bankruptcy, tax, regulation of financial institutions, administrative law, labor law, federal jurisdiction and procedure, interstate commerce, civil rights, and criminal law.

When nominated to the D.C. Circuit Court, 152 fellow members of the D.C. Bar wrote to this Committee in support of Judge Roberts as "one of the very best and most highly respected appellate lawyers in the nation, with a deserved reputation as a brilliant writer and oral advocate." This Committee by a vote of 16-3, favorably reported out his nomination and the Senate confirmed him by unanimous consent for the D.C. Circuit.

Judge Roberts' decisions on the U.S. Court of Appeals for the D.C. Circuit illustrate that his rulings are based on the application of existing laws and specific facts of the cases before him, rather than writing new laws or creating new policies based on personal opinion. Judge

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Roberts has authored about 40 opinions thus far on the D.C. Circuit but only three have included a dissenting opinion. While participating in numerous panels, he has dissented in only two cases. This speaks well of a judge who practices restraint and is clearly within the mainstream of judicial thought.

Concerned Women for America has one litmus test for Judge Roberts as the nominee: What is his judicial philosophy with respect to Constitutional interpretation? Does he exemplify judicial restraint and reject judicial activism? As the late Sen. Sam Ervin (D-North Carolina) said, "A judicial activist is a judge who interprets the Constitution to mean what it would have said if he instead of the Founding Fathers had written it."

We firmly believe that Judge Roberts' statements and opinions demonstrate his unequivocal belief in and deference to the text of the Constitution and the intent of the Founders. As the nation's largest public policy women's organization, we believe that Judge Roberts' expressed positions on gender equity, comparable worth and other so-called women's issues are entirely consistent with the Constitution's equal protection guarantees.

Typically, leftist special interest groups have expressed unwarranted criticism and opposition to Judge Roberts' nomination. It is important to remember that very similar attacks were directed at past Supreme Court nominees who are now heroes of their critics:

- Lewis Powell was accused of demonstrating "continued hostility to the law" and waging a "continual war on the Constitution." Senate witnesses warned that his confirmation would mean, "justice for women will be ignored."

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- John Paul Stevens was charged with "blatant insensitivity to discrimination against women."
- Anthony Kennedy was scrutinized for his "history of *pro bono* work for the Catholic Church" and declared "a deeply disturbing candidate" for the United States Supreme Court. "Deeply disturbing."
- David Souter was described as "almost Neanderthal," "biased," and "inflammatory." His civil rights record was called "particularly troubling" and "raised troubling questions about the depth of his commitment to the role of the Supreme Court and Congress in protecting individual rights and liberties under the Constitution." At this Committee's hearings, witnesses cried, "I tremble for this country if you confirm David Souter," warning that "women's lives are at stake" and even predicting that "women will die."

Judge Roberts has also received praise from those on the left of the political spectrum, including Leon Panetta, former chief of staff to President Bill Clinton and Harvard law professor and liberal legal scholar Lawrence Tribe. Justice Sandra Day O'Connor responded to Roberts' nomination to replace her on the Court by calling him "first-rate." She added that he is "well-qualified" and "confirmable."

Judge Roberts is the quintessential fulfillment of what President Bush promised the American people he would seek in a Supreme Court Justice. They expect this Committee to provide a fair hearing and the full Senate to engage in a full and fair debate with a timely vote so that a full Supreme Court can convene for its Fall term with its Chief Justice at the helm.

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The confirmation process of a judicial nominee should not devolve into a partisan political contest that loses sight of the Constitutional importance. Judge Roberts should not be asked for advance commitments to rule certain ways in unresolved cases or cases that may come before him in the future. As President Lincoln said: "We cannot ask a man what he will do (on the court), and if we should, and he should answer us, we should despise him for it."

Neither should Judge Roberts be asked to commit an unqualified adherence to *stare decisis* as if it is on par with the text of the Constitution. As Justice O'Connor expressed in her majority opinion in *Aderand Constructors v. Pena*, 515 U.S. 200, 231 (1995), *stare decisis* is not a hard and fast rule:

"'*[S]tare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience.'"

As Alexander Hamilton wrote in the *Federalist Papers* 76, "The person ultimately appointed must be the object of [the President's] preference," and the Senate should refuse to confirm a nominee only for "special and strong reasons," such as "unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity," or "possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure." Hamilton states that the Senate's involvement is meant to "have a powerful, though, in general, a *silent* operation."

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If Judge Roberts is not confirmable, as Justice O'Connor opined, one is left with the question, who then is? Judge Roberts deserves the unequivocal support of every Member of the Committee. There is no legitimate reason to do otherwise.

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