September 1, 2005

Senate Judiciary Committee
Dirksen Building, Room 224
Washington, D.C.
Fax: 202-224-9102

Dear Senators:

We write to you on behalf of the American Association of People with Disabilities (AAPD), National Council on Independent Living, and the Bazelon Center for Mental Health Law to urge you to give close and careful scrutiny to the views of Supreme Court nominee John Roberts concerning the rights of persons with disabilities.

Several weeks ago, we celebrated the 15th Anniversary of the bipartisan adoption of the Americans with Disabilities Act (ADA). Despite the great strides that people with disabilities have made due to the ADA, our rights hang in the balance. The Supreme Court has narrowly upheld key protections for persons with disabilities in cases such as *Olmstead v. L.C.* and *Tennessee v. Lane*. It has also, however, repeatedly second-guessed the judgment of Congress with respect to the scope of coverage of the ADA and has taken a restrictive view of Congress's power to enact parts of the ADA. Many federal courts have also relied on recent Supreme Court precedent to adopt restrictive interpretations of the ADA and other antidiscrimination laws protecting people with disabilities, and to conclude that Congress did not intend to provide enforceable rights for people with disabilities under federal fair housing laws and regulations and the Medicaid statute.

It is long past time for the rights of persons with disabilities to be treated as issues of high importance in the context of Supreme Court nominees. While we recognize that it is inappropriate to ask how a judge would rule on a specific case, Judge Roberts' statements, arguments, and rulings raise certain concerns about his commitment to protect the civil rights of persons with disabilities. Given the closely divided nature of key Supreme Court rulings in cases involving the Americans with Disabilities

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Act, we feel that it is vital to learn whether Judge Roberts shares the commitment of leaders such as President George H.W. Bush, Bob Dole and Richard Thornburgh to the rights of people with disabilities.

We have enclosed a series of questions that may be posed to Judge Roberts to help assess whether he would fairly uphold the needed protections that Congress provided for people with disabilities. These questions address many of the issues of concern to people with disabilities that may be considered at some point by the Supreme Court.

Please feel free to contact Andrew Imparato (202-457-0046 ex 29 or imparatoa@aol.com) with any questions you may have. Thank you for your attention to our concerns.

Very truly yours,

Andrew Imparato

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Questions for Judge John Roberts
Submitted by American Association of People with Disabilities (AAPD), National Council on Independent Living (NCIL) and the Judge David L. Bazelon Center for Mental Health Law (Bazelon)

Congressional Power

We think it is important to discern what Judge Roberts believes concerning the sources of Congress's power to pass important disability rights laws, including the power to legislate under Section 5 of the Fourteenth Amendment, the Commerce Clause, and the Spending Clause. We are particularly concerned about Judge Roberts' view of these sources of Congress's power given the restrictive interpretation of the Commerce Clause in his dissent from denial of rehearing en banc in *Rancho Viejo LLC v. Norton*, and his arguments about Spending Clause legislation in *Gonzaga v. Doe*.

Does Judge Roberts believe that Congress acted within its authority in passing such laws as the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act?

Private Enforcement of Statutory Rights

We would like to understand Judge Roberts' position on individuals' ability to go to court to enforce their statutory rights. Because of his advocacy in *Gonzaga v. Doe*, many courts have held that Medicaid recipients cannot privately enforce their rights under the Medicaid statute - for example, their right to obtain medically necessary services covered by the state's Medicaid program. Does Judge Roberts agree with these decisions?

Does Judge Roberts agree with decisions concluding that abused and neglected children have no right to go to court to enforce their rights under the Adoption Assistance and Child Welfare Act?

Scope of the Americans with Disabilities Act

We are concerned about the cramped view of the ADA that Judge Roberts took when he represented the defendant in *Toyota Motor Manufacturing of Kentucky v. Williams*. He argued to the Supreme Court that only the "truly disabled" had legitimate needs for protection under the ADA. Whom does Judge Roberts believe the "truly disabled" encompasses?

Does Judge Roberts believe that the ADA must be interpreted narrowly or broadly in terms of whom it protects?

Judge Roberts stated in the Toyota case that the ADA and workers' compensation laws "coexist uneasily." Why does he feel that these two schemes are incompatible?

The Supreme Court's decision in *Olmstead v. L.C.* is a landmark decision concerning the rights of individuals with disabilities. The Court held that unnecessary institutionalization of individuals with disabilities is a form of discrimination prohibited by the ADA. We think it is important to explore Judge Roberts' views on the ADA's integration mandate. For example, does he believe that the *Olmstead* decision requires states to have a plan to move individuals with disabilities who are unnecessarily institutionalized into more integrated settings? What does Judge Roberts think is a reasonable pace for moving individuals with disabilities into more integrated settings?

Fair Housing

In a 1983 memorandum concerning legislation that would have made the Fair Housing Act applicable to people with disabilities, Judge Roberts urged the Administration to "go slowly on housing legislation." Why? Additionally, Judge Roberts expressed concern about the government intrusion in this area. Does Judge Roberts believe that housing discrimination is an appropriate area for Congress to legislate about?