WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
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(202) 463-2940 FAX (202) 463-2953

August 15, 2005

Members
United States Senate
Washington, DC 20515

RE: STRONG CONCERNS OVER JOHN ROBERTS' NOMINATION TO THE U.S. SUPREME COURT

Dear Senator;

On behalf of the National Association for the Advancement of Colored People (NAACP), our nation's oldest, largest and most widely-recognized grassroots civil rights organization, I am writing to urge you to vigorously investigate crucial and disturbing concerns that have arisen during our investigation into the past works of Judge John Roberts regarding his beliefs towards basic civil rights issues including racial and gender discrimination, education equity, voting rights and affirmative action. If these concerns are not resolved completely and to our satisfaction, his nomination must be opposed.

Specifically, the NAACP is concerned about the following incidents in Judge Roberts' career that have come to light since Judge Roberts' nomination was announced:

- In the area of **Remedies in School Desegregation Cases:** As Assistant White House Counsel, Roberts argued with Assistant Attorney General Ted Olson about whether Congress could enact a law prohibiting federal courts from using busing to remedy school segregation. Olson believed Congress could not outlaw busing because the Supreme Court had held that busing was constitutionally required in some settings. Roberts admitted to spending several months in his work at the Justice Department "disputing Ted Olson's approach to these issues." Roberts concluded that it was within Congress's authority to prohibit federal courts from ordering busing for the purpose on racial intergration.

- In the area of **Court-Stripping**: Roberts strongly supported stripping the Supreme Court of its authority over classes of cases such as busing, school prayer and abortion. Justice Department documents at the time identified Robert Bork as viewing such restrictions as "probably unconstitutional."

- In the area of **Race Discrimination in Employment:** As Special Assistant in the Justice Department, Roberts lectured the staunchly conservative Assistant Attorney General for Civil Rights, William Bradford Reynolds, for too broadly interpreting fair employment laws regarding proof of discrimination and remedies for discrimination. In commenting on two employment discrimination cases against public employers in Georgia, Roberts wrote that settlement language

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proposed by the Civil Rights Division did not "accurately reflect the requirements of Title VII or even what can reasonably be demanded of the defendants in a consent decree."

- In the area of **Gender Discrimination in Education:** Roberts again disagreed with Civil Rights Chief William Bradford Reynolds when Reynolds sought to intervene in a lawsuit challenging disparities in vocational training programs for male and female prisoners. Roberts argued against intervention, on the grounds that equalizing the treatment would cost too much, intervention was inconsistent with efforts to promote judicial restraint, and private plaintiffs were already bringing suit. The Civil Rights Division ended up intervening and winning the case.

- IN THE AREA OF **EDUCATION FOR UNDOCUMENTED IMMIGRANT CHILDREN**: ROBERTS CRITICIZED SOLICITOR GENERAL REX LEE FOR FAILING TO SUPPORT A TEXAS STATUTE ALLOWING SCHOOL DISTRICTS TO DENY ENROLLMENT TO CHILDREN NOT LEGALLY ADMITTED TO THE UNITED STATES. HE BELIEVED A SOLICITOR GENERAL'S BRIEF "SUPPORTING THE STATE OF TEXAS AND THE VALUES OF JUDICIAL RESTRAINT" COULD HAVE ALTERED THE OUTCOME IN *PLYLER V. DOE*.

- In the area of **Enforcement of Statutory Rights:** Roberts disagreed with his Justice Department colleagues' broad interpretation of a Supreme Court decision defining the scope of a civil rights law that enables federal statutory rights to be enforced. Roberts believed his colleagues' discussion of legislation to change this civil rights law assumed that *Maine v. Thiboutot* extended coverage of the law to "all statutory rights." Roberts noted that two Supreme Court cases (decided while he clerked for Justice William Rehnquist) "call [that interpretation] into question." He discussed ways "to undo the damage created by *Thiboutot*." He proposed recognizing the limits suggested by the other cases and recommended that legislative changes to the civil rights law be cast as "efforts to 'clarify' rather than 'overturn' that decision."

- In the area of **Affirmative Action:** As Special Assistant, Roberts worked to bring the Labor Department "into line with our views" promoting "color blindness in employment decisions." He found Labor's policy to be at odds with the Justice Department because it required "employers who contract with the government to engage in race and sex conscious affirmative action as a condition of doing business with the government." Roberts wrote: "Under our view of the law it is not enough to say that blacks and women have been historically discriminated against as groups and are therefore entitled to special preferences."

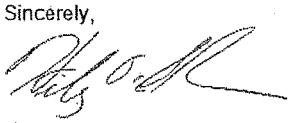
- In the area of **Voting Rights:** As Special Assistant, Roberts was a principal architect of the opposition to an "effects" test under the Voting Rights Act. However, the House of Representatives had voted for the effects test, by an overwhelming margin of 389 to 24, even before Roberts embarked on the campaign. The Senate, by 85-8, then approved a compromise bill essentially preserving the effects test. Even Strom Thurmond supported the bill.

- In the area of a **Ban on Discrimination by Federally-Funded Institutions**: While at the Justice Department, Roberts fought to restrict application of federal laws banning institutions that receive federal funds from discriminating. Roberts sought to narrow the law such that only specific programs receiving federal funds – instead of the entire institution – had to comply with civil rights laws. Congress later disagreed with Roberts by voting for broad application of the discrimination provisions. The Senate vote was 73 to 24; the House vote was 292 to 133.

As I said earlier, these issues are of a major concern to the membership of the NAACP and as such we urge you to review them as thoroughly as possible. In the event that any of the subjects are not completely resolved to our satisfaction, we will have to oppose the nomination and we will urge you to do the same.

Thank you in advance for your attention to the concerns of the NAACP. Should you have any questions or comments, I hope that you will not hesitate to contact me at (202) 463-2940.

Sincerely,



Hilary O. Shelton
Director

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August 31, 2005

NAACP Opposes Nomination of Judge Roberts to Supreme Court

Senate should demand direct and complete responses from Roberts

Washington, DC – The National Association for the Advancement of Colored People (NAACP) today announced its opposition to the nomination of Judge John Roberts to a seat on the U.S. Supreme Court.

Bruce S. Gordon, President & CEO, NAACP, said that after a thorough review of the records made available on Roberts, "the NAACP believes Roberts would work to undo the hard earned progress in the area of equal opportunity in the workplace and the marketplace."

Speaking at a press conference in the U.S. Capitol, Gordon said: "I am here today representing our 2200 membership units operating in every state in the nation and I'm speaking on behalf of the thousands of card carrying members in opposition to the nomination of Roberts to the Supreme Court."

Gordon was joined at the press conference by representatives of four other civil rights groups that oppose Roberts; Marcia Greenberger, Co-President, National Women's Law Center; Theodore M. Shaw, Director-Counsel and President, NAACP Legal Defense and Educational Fund (LDF); Ann Marie Tallman, President, Mexican American Legal Defense Fund (MALDEF) and Debra Ness, President, National Partnership for Women & Families.

"We have concluded that nominee Roberts' position on civil rights, voting rights and equal employment are opposite those of the NAACP," said Gordon. "While it comes as no surprise that the nominee's views are different than ours, it is the seemingly extreme nature of those views, the degree of difference, that make his candidacy unacceptable. Roberts has demonstrated a commitment to reversing the historic civil rights gains of the past 40 years."

Roberts criticized the U.S. Civil Rights Commission statement on affirmative action for giving "no

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recognition of the obvious reason for failure: the program required the recruiting of inadequately prepared candidates."

Gordon, who retired in 2003 as President, Retail Markets Group for Verizon, said: "As a person whose career in corporate America began during the early days of affirmative action, I take obvious exception to that statement. Neither I nor countless others like me considered ourselves as `inadequately prepared.' Affirmative action was not the reason for my success, it was the reason I got the chance to succeed."
Roberts argued against affirmative action while in the Office of the Solicitor General and in private practice. In two cases, Adarand Constructors v. Minetta, he argued that equal opportunity programs were not supported by evidence of past discrimination. In Metro Broadcasting v. FCC, he argued that the FCC's policies promoting minority ownership of radio and television stations denied equal protection.

Gordon said civil rights activists "put their lives at risk to deliver the right to vote to all Americans and the result was the Voting Rights Act of 1965." After a Supreme Court decision in The City of Mobile v. Bolden potentially weakened the Act, Congress voted to extend it. Gordon said: "Judge Roberts opposed the congressional action, and with the Voting Rights Act up for reauthorization in 2007, "there is little reason to believe that as a Supreme Court Justice he would defend the right of all people to vote if the Supreme Court is called upon to weigh in."

During five years with the Reagan Administration," Gordon said Roberts argued in support of misguided and harmful positions, often placing himself to the political right of staunch conservatives such as Assistant Attorney General for Civil Rights William Bradford Reynolds, Assistant Attorney General Ted Olson, Solicitor General Rex Lee and even one-time Supreme Court nominee Robert Bork."

Gordon said the Senate "must question the nominee and demand direct and complete responses. Today's announcement is an attempt to assure a confirmation process that serves the best interest of all Americans."

The NAACP has recommended that the White House confer with organizations and individuals that represent a broader and more diverse vision of the American People and nominate someone who has the judicial temperament and established commitment to protect the rights of all Americans regardless of race, gender, national origin, religion or sexual orientation.

Founded in 1909, the NAACP is the nation's oldest

and largest civil rights organization. Its half-million adult and youth members throughout the United States and the world are the premier advocates for civil rights in their communities, conducting voter mobilization and monitoring equal opportunity in the public and private sectors.

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August 31, 2005

NAACP Legal Defense Fund Opposes Roberts Nomination

Report Details Role in Weakening Voting, Other Civil Rights

(Washington, DC) Today, the NAACP Legal Defense and Educational Fund, Inc. (LDF) formally announced opposition to John G. Roberts, Jr.'s nomination to the U. S. Supreme Court. At a press conference in Washington, D.C., LDF released a report detailing what it called Roberts' "consistent and active advocacy" for weakening federal enforcement of voting rights, affirmative action, school desegregation, fair housing, and other civil rights protections.

With the announcement of Justice Sandra Day O'Connor's retirement, LDF Director-Counsel and President Theodore M. Shaw called upon President Bush to nominate a successor who "is not ideologically rigid and predictable, but who is fair and open-minded, and committed to protecting the advances in civil rights that we as a nation have achieved."

Two months later, following LDF's analysis of thousands of documents from the National Archives and the Ronald Reagan Presidential Library, Shaw expressed regret that Roberts appears not to meet this standard.

LDF's research has revealed that Roberts has a strong and consistent record of advocating regressive positions on matters of civil rights, sometimes to the extreme. Roberts played a key role at the Justice Department at a time of severe retrenchment on civil rights. While many of his available records are from his early legal career, his views in opposition to civil rights laws were strongly held over a long period, and we have no evidence that he has changed his views.

Shaw said that if the known views of Roberts were enshrined in Supreme Court decisions:

- Federal courts would have been stripped of jurisdiction to order remedies in cases that employed student transportation in school desegregation cases. The Supreme Court's 1971 decision, Swann v. Charlotte-Mecklenburg Board of Education, sanctioning the use of busing as a remedy would have been overruled and school desegregation would have been virtually impossible.

- Federal Court habeas corpus review of state court criminal convictions would have been abolished. This would have meant that claims of racial discrimination in jury selection, such as that upheld by the Supreme Court in Miller-El v. Cockrell, would not have been heard. In fact, regardless of the merits, federal courts would never be able to review the constitutionality of a state court decision in a criminal conviction, including a sentence of death.

- The Voting Rights Act's application to electoral schemes that have the effect of diluting minority voting strength would have been barred, even in the face of racially polarized voting. In other words,

jurisdictions could maintain at-large schemes that prevent minority representation.

- The Fair Housing Act's long established "effects test," which bans practices and procedures that have the effect of discriminating in the sale or rental of housing, would have been eliminated.

- The rule that prohibits colleges, universities and other institutions that receive federal funding from discriminating on the basis of race, national origin, gender, or handicap would have been narrowed to apply only to the departments or units that receive the aid.

The report maintains that over the course of the nominee's career, Roberts has advanced positions that would significantly hamper the ability of individuals to enforce federal statutory rights. "This is an important component of John Roberts' overall record on civil rights, as the ability to ensure protections afforded by federal laws relating to Medicaid, public housing and other social safeguards is of paramount concern to low-income communities," the report warns.

Contrary to claims by some Roberts' supporters, the report found no indication in his subsequent private practice that Roberts' strong critiques of race-conscious affirmative action programs have changed since his days in the Reagan Justice Department. It also found no evidence that he has repudiated his earlier views supporting a narrow construction of federal civil rights laws.

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