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Contact:
Kate Kendell, Executive Director 415.595.2233 kendell@nclrights.org

NCLR, THE TASK FORCE, HRC AND PFLAG ANNOUNCE OPPOSITION TO ROBERTS NOMINATION

(Washington, August 25, 2005) The National Center for Lesbian Rights, Human Rights Campaign, National Gay and Lesbian Task Force, and Parents, Families and Friends of Lesbians and Gays put out a united statement today to announce opposition to the nomination of John G. Roberts to the Supreme Court.

"Judge Roberts has such a narrow view of what the courts can and should do, it's a wonder he wants the job at all," said Joe Solmonese, president of the Human Rights Campaign. "Ultimately, this is about an individual's right to privacy. From women's rights to religious freedom to civil rights, there is powerful evidence that Judge Roberts would rule against equality."

"For his entire adult life, John Roberts has been a disciple of and promoted a political and legal ideology that is antithetical to an America that embraces all, including lesbian, gay, bisexual and transgender people," said Matt Foreman, executive director of the National Gay and Lesbian Task Force. "He has denigrated the nature and scope of the constitutional rights to privacy, equal protection and due process as well as federal government's role in confronting injustice. I have no doubt he's an accomplished lawyer and an affable dinner companion, but that doesn't make him any less a mortal danger to equal rights for gay people, reproductive freedom and affirmation action."

"There is nothing in Roberts' history as a lawyer, policymaker or judge to indicate that he would be anything other than hostile to the claims of those seeking to preserve affirmative action, reproductive freedom and fundamental rights, or for those seeking to ensure that the emerging protections expressed in Romer v. Evans and Lawrence v. Texas become truly meaningful in the lives of lesbian, gay, bisexual and transgender Americans," said Kate Kendell, executive director of the National Center for Lesbian Rights.

"The stakes for gay, lesbian, bisexual and transgender Americans are too high," said Jody Huckaby, executive director of Parents, Families and Friends of Lesbians and Gays. "We cannot sit back and allow a man with a demonstrated record of hostility towards privacy and minority rights to make decisions on our nation's highest court that will affect this nation for generations to come. After a thorough review of the selective documents released by the White House, PFLAG is convinced that nominee John Roberts should not be trusted to protect the fundamental rights and freedoms of all Americans."

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Joint Statement of Human Rights Campaign, National Gay and Lesbian Task Force, National Center for Lesbian Rights, and Parents Families and Friends of Lesbians and Gays in Opposition to Nomination of John G. Roberts, Jr. to the United States Supreme Court

As organizations working to advance civil rights for lesbian, gay, bisexual and transgender ("LGBT") people, we work in varied spheres - in Congress, in the courts, before our state legislatures, and within our families. In the realm of civil rights, we know of no more significant event than the appointment of a Supreme Court justice. Together, because of our shared commitment to LGBT rights, we announce our opposition to the nomination of John G. Roberts, Jr. to the Supreme Court of the United States.

History has shown us that the Supreme Court is a bulwark of protection for minorities from the tyranny of sometimes misguided majorities. That was true in 2003 when the court ruled that mere disapproval was not a rational reason to brand us as criminals, just as it was true in 1968 when the court struck down bans on interracial marriage - although 72% of Americans disagreed. Since President Bush nominated John Roberts on July 19, disturbing evidence has emerged about the kind of justice that he would be. His writings as a lawyer, his rulings as a judge, and his statements as a policymaker all lead us to the unfortunate conclusion that Judge Roberts would not vote to protect our civil rights from those who are, at this moment, fighting so hard to take them away. Instead, his record indicates that Judge Roberts would vote to roll back the constitutional protections upon which our community - and all Americans - rely.

The impediments to the Senate's thorough review of Roberts' record. We are particularly troubled that the Senate has had no access to relevant documents relating to Judge Roberts' service as principal deputy solicitor general from 1989 to 1993. These documents include Roberts' writings about cases involving voting rights, choice, the separation of church and state, and many other subjects of critical importance. The Senate's constitutional duty of "advice and consent" depends upon full disclosure of the nominee's record - something that the American people deserve, especially in light of the troubling record revealed thus far. The administration's claim that these documents are shielded by attorney-client privilege is without basis. The American people, not the White House, were Roberts' true client when he was in the Solicitor General's office.

Although our groups, the Senate, and the American people have been denied full access to Roberts' record, the evidence before us is sufficient to lead to the following conclusions:

Roberts and fundamental rights. Just two years ago, the court finally recognized that the constitutional guarantee of liberty protects our community and our relationships. The basis for the landmark case of Lawrence v. Texas was the idea that the Constitution draws a line beyond which the government cannot go. Roberts' writings clearly

indicate that he does not agree with the cases and constitutional foundations of Lawrence. He has criticized the court for what he claims is an intrusion into areas belonging to legislatures and dismissed what he calls the "so-called right to privacy." His record indicates that Roberts would not vote to safeguard our liberties, but instead join Justices Scalia and Thomas in upholding limitations on our freedoms.

Roberts and equal protection. Roberts has taken a similarly narrow view of the Equal Protection Clause, which provided the basis for its decision in Romer v. Evans. As a Reagan administration lawyer, Roberts wrote that by reading the Equal Protection Clause to cover classifications other than race, the court had imposed "values which do not have their source in that document." We are concerned that his narrow view would likely have led Roberts, had he been on the court when Romer v. Evans was decided, to conclude that Colorado's discriminatory law was constitutional.

A note on Roberts and *Romer v. Evans*. We are mindful that Judge Roberts provided a few hours of pro bono help to the attorneys in Romer v. Evans - a landmark case for our community. Some have said that this work - which consisted mostly of playing the role of a conservative justice - demonstrates that Roberts is not personally anti-gay. This theory is not relevant to the important issue for our community: how Roberts would vote as a Supreme Court justice. Roberts has repeatedly written that the court should not stand up for civil rights, but rather allow legislatures to enact such laws as they wish - even those that deny the rights that Americans understand to be fundamental.

Roberts and "court stripping." Our concern that Judge Roberts would not enforce constitutional protections is reinforced by his writings on "court stripping" statutes. Last year, the House of Representatives passed the so-called Marriage Protection Act, which would have prevented the courts from even hearing challenges to the federal Defense of Marriage Act ("DOMA"). Roberts' writings indicate that he believes such statutes are constitutional, a view that undermines the court's constitutional function as it has been understood for over 200 years. Should such a measure pass the Congress, Roberts would likely vote to uphold it and effectively block our community at the courthouse door.

Roberts and sound science. In spite of the clear consensus among social science, psychiatric, psychological and medical associations in favor of LGBT equality, courts are frequently presented with unfounded assertions that there is conflicting evidence. The way that a judge regards research findings before the Court can affect a case's outcome. In short, it can mean the difference between Goodridge, in which the Massachusetts court ruled that there was no rational basis for excluding same-sex couples from marriage, and Lofton, in which the Eleventh Circuit upheld Florida's anti-gay adoption law even though every credible social science and child advocacy group opposed it.

We were troubled to learn that Roberts, as a Reagan administration attorney, seemed to disregard mainstream scientific evidence about how HIV is transmitted. In September 1985, Roberts cautioned President

Reagan against stating that the AIDS virus could not be spread through casual contact among schoolchildren, claiming that this conclusion was in dispute. In fact, August 1985 Centers for Disease Control guidelines clearly stated that "Casual person-to-person contact, as among schoolchildren, appears to pose no risk."

Our community needs to know whether, as a justice, Roberts would look to the sound and tested science about our community. This is an issue that we believe the Senate should examine thoroughly.

Roberts and Congress's power to protect our community. Because the LGBT community is particularly vulnerable to hate violence and discrimination, Congress's authority to prevent these problems is of vital importance to us. Roberts' record shows that he holds a very limited view of Congress's authority, and would likely vote with the court's most conservative justices in cases challenging civil rights statutes, workplace protections and hate crimes legislation.

Roberts as a replacement for Justice Sandra Day O'Connor. Justice O'Connor, who announced her retirement on July 1, 2005, has often been a critical swing vote in favor of equality. In Romer v. Evans, she joined a 6-3 majority to strike down an anti-gay law. In Lawrence v. Texas, she wrote a concurring opinion that Texas' sodomy law violated the Equal Protection Clause. In Planned Parenthood v. Casey, she voted to uphold Roe v. Wade - four justices dissented in that case. In two closely divided cases about public displays of the 10 commandments handed down June 27, she voted to protect the separation of church and state. On all of these areas critical to our civil rights, Judge Roberts has stated that he holds the opposite position. His elevation to the court would be a shift away from equality.

We, and all Americans, deserve better. Our process for arriving at this opposition has been rigorous. Throughout our careful review of Roberts' record, we have been focused on one goal: learning whether his lifetime appointment to the nation's highest court would be in the interest of this community. The evidence indicates that it would not.

As LGBT Americans, we deserve no less than a justice who will uphold our freedoms and protect our rights. By announcing our opposition today, we do not conclude our work but rather commence a new stage in our efforts, engaging the community we represent in this important issue. The confirmation hearings are still ahead, and it is crucial that the Senate Judiciary Committee make clear that our lives, our liberty, and our equality are on the line.

We acknowledge that our task is not an easy one. But we know that it is the right thing to do.

NCLR is a national legal resource center with a primary commitment to advancing the rights and safety of lesbian, gay, bisexual, and transgender people and their families through a program of litigation, public policy advocacy, and public education. We can be reached through our website at www.nclrights.org.

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NCLR Headquarters
870 Market St.
Suite 370
San Francisco, CA
94102
Phone: 415.392.6257
Fax: 415.392.8442
Email:
info@nclrights.org

Florida Regional Office
3150 Fifth Ave.
North, Suite 325
St. Petersburg, FL 33713
Phone: 727.490.4260
Fax: 727.490.4806
Email:
Powell@nclrights.org

Washington, D.C.
Regional Office
1325 Massachusetts
Ave., NW, Suite 600
Washington, DC 20005
Phone: 202.737.0012
Email:
Minter@nclrights.org