TESTIMONY OF THE HISPANIC NATIONAL BAR ASSOCIATION
PRESENTED BY ROBERT RUIZ, NATIONAL PRESIDENT
SEPTEMBER 18, 1990

THANK YOU FOR AFFORDING ME TO THE OPPORTUNITY TO TESTIFY BEFORE YOU TODAY. AT THIS TIME I WOULD ALSO PUBLICLY THANK THE HISPANIC NATIONAL BAR MEMBERS WHO GAVE THEIR TIME TO REVIEW THE MATERIAL AND DRAFT SUGGESTIONS THAT WERE CONSIDERED FOR THIS TESTIMONY.

AS THIS COMMITTEE KNOWS, THIS IS THE SECOND TIME THAT THE HNBA HAS TESTIFIED CONCERNING THE NOMINATION OF A U.S. SUPREME COURT JUSTICE. THE RECORD REFLECTS THAT WE TESTIFIED THAT JUSTICE KENNEDY WAS QUALIFIED TO SERVE AS A JUSTICE OF THE U.S. SUPREME COURT.

I AM HERE TO TESTIFY TO THIS COMMITTEE THAT THE HNBA BOARD OF DIRECTORS, HAS VOTED TO ENDORSE THE NOMINATION OF JUDGE SOUTER AS A JUSTICE OF THE U.S. SUPREME COURT.

AS I HAVE NOTED, "THE HNBA BELIEVES THAT IF CONFIRMED JUDGE SOUTER WILL APPLY THE LAW FAIRLY AND WILL DEMONSTRATE AN

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UNDERSTANDING OF THE IMPACT OF CIVIL RIGHTS RULINGS ON HISPANICS, WOMEN AND OTHER MINORITIES." HOWEVER, THE HNBA'S ENDORSEMENT IS NOT WITHOUT RESERVATIONS. A SUBSTANTIAL NUMBER OF OUR MEMBERSHIP IS CONCERNED THAT JUDGE SOUTER IS NOT FAMILIAR WITH THE FASTEST GROWING POPULATION IN THE UNITED STATES. AS A NEW HAMPSHIRE NATIVE, JUDGE SOUTER, HAS NOT BEEN EXPOSED TO THE ISSUES OF DISCRIMINATION OF HISPANICS IN SCHOOLS, WORK,AND IN HEALTH CARE, OR THE ISSUE OF BILINGUAL EDUCATION. HOWEVER, BECAUSE OF HIS LACK OF KNOWLEDGE, HNBA, DOES NOT PRESUME JUDGE SOUTER IS NOT QUALIFIED TO SERVE AS SUPREME COURT JUSTICE. THERE IS NO DIRECT NEXUS BETWEEN LACK OF EXPOSURE TO THESE ISSUES AND COMPETENCE TO BE A JUDGE OR A JUSTICE. INDEED, IF THAT WERE THE STANDARD VERY FEW PAST AND PRESENT JUSTICES WOULD HAVE QUALIFIED.

IN DISCUSSION PRIOR TO THE VOTE TO ENDORSE JUDGE SOUTER, THE HNBA BOARD EXPRESS CONCERN REGARDING THE JUDGE'S POSITIONS, WHEN HE WAS THE ASSISTANT ATTORNEY GENERAL, REGARDING VOTING RIGHTS ACT OF 1965, IN THE CASE OF <u>UNITED STATES OF AMERICA V. STATE OF NEW HAMPSHIRE.</u> WE ARE AWARE THAT THE CASE WAS ARGUED ON A PROCEDURAL

POINT AND ULTIMATELY THE HNBA LEADERSHIP REACHED THE SAME CONCLUSION THAT JUDGE SOUTER POINTED OUT ON HIS TESTIMONY HERE LAST THURSDAY, THE DISTINCTION BETWEEN A JUSTICE OF THE SUPREME COURT AND AN ADVOCATE FOR THE STATE OF NEW HAMPSHIRE ARE VERY DIFFERENT ROLES. SURELY, WE DO NOT WANT THAT SAME STANDARD HELD FOR A HISPANIC JUSTICE NOMINEE. THAT IS, THE VIEWS OF ATTORNEYS ARE ALWAYS REFLECTIVE OF HIS OTHER CLIENTS' VIEWS.

WE WERE ALSO IMPRESSED WITH JUDGE SOUTER'S REAL LIFE EXPERIENCES AS HE RELATED THEM TO SENATOR METZENBAUM CONCERNING HIS EMPATHY WITH THE STUDENT FORCED TO AGONIZE OVER THE ISSUE OF ABORTION. AS YOU RECALL WHEN HE AS A PROCTOR AT HARVARD LAW SCHOOL, HE COUNSELED AN ANGUISHED STUDENT ABOUT HIS PREGNANT GIRLFRIEND. WE ALSO THINK THAT HIS POINT OF NOT REVEALING NAMES WITH RESPECT FOR THE PRIVACY OF THE PEOPLE INVOLVED SHOWED GOOD JUDGEMENT. THERE ARE QUESTIONS AMONG THE HNBA WHETHER JUDGE SOUTER HAS ENOUGH LIFE EXPERIENCES TO ISSUES OF GREAT CONCERN TO WOMEN IN GENERAL AND HISPANIC WOMEN IN PARTICULAR. THE HNBA BOARD, ON WHICH HISPANIC WOMEN ARE REPRESENTED IN SIGNIFICANT NUMBERS, HAVE CHOSEN

TO GIVE JUDGE SOUTER THE BENEFIT OF THE DOUBT. WE HOPE HE WILL ADMINISTER JUSTICE FAIRLY, REGARDLESS OF HIS LIMITED LIFE EXPERIENCES. THE HNBA HAS CHOSEN TO BE OPTIMISTIC ABOUT THE FUTURE OF JUSTICE AS ADMINISTERED BY THE U.S. SUPREME COURT.

WITH THE ABOVE IN MIND, AS A MATTER OF LAW, THE HNBA KNOWS THAT THE PRESIDENT HAS THE RIGHT TO NOMINATE THE JUSTICE OF THE SUPREME COURT. WE KNOW THAT SELECTION PROCESS IS SUBJECTIVE. WE NOTE THAT JUDGE SOUTER WAS SELECTED OVER MANY QUALIFIED HISPANIC MEN AND WOMEN ATTORNEYS WHOSE CREDENTIALS ARE EQUAL TO AND IN SOME INSTANCES SURPASS THOSE OF JUDGE SOUTER. WE KNOW THAT IN THE HISTORY OF THIS COUNTRY THERE HAS NEVER BEEN ONE PRESIDENT THAT HAS GIVEN THE OPPORTUNITY TO A HISPANIC TO BE PLUCKED OUT OF ANONYMITY TO SERVE ON THE UNITED STATES SUPREME COURT. HOWEVER, AS OFFICERS OF THE COURT, THE HNBA BELIEVES THAT IT IS REASONABLE THAT THE PRESIDENT'S NOMINATION IS COMPETENT AND HAS AND WILL HAVE THE BEST INTEREST OF THE U.S. CONSTITUTION AND THE AMERICAN PEOPLE IN MIND AS A JUSTICE OF THE SUPREME COURT. WE TRUST THAT JUSTICE SOUTER, IF CONFIRMED, WILL BE ABLE TO PROJECT THE EXPERIENCES OF SENATOR

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RUDMAN'S DISCRIMINATION AS A JEW TO HISPANICS AND OTHER DISADVANTAGED PEOPLES IN THIS COUNTRY TODAY.

WHEN JUDGE SOUTER TESTIFIED ON THURSDAY, NOTING THAT "WITH RESPECT TO SOCIETAL PROBLEMS, NONE IS MORE TRAGIC AND DEMANDING THAN...DISCRIMINATION IN MATTERS OF RACE." WE TRUST THAT HE HOLDS THAT SAME SENSE OF URGENCY AS IT RELATES TO ALL CIVIL RIGHTS MATTERS INCLUDING THAT OF NATIONAL ORIGIN IN GENERAL AND HISPANIC PEOPLE IN PARTICULAR. GIVEN THE UNDISPUTED, YET NOT WELL KNOWN, FACT THAT HISPANICS ARE THE ONLY ONES THAT ARE UNDER-REPRESENTED IN THE FEDERAL GOVERNMENT BASED ON NATIONAL ORIGIN, RACE, SEX, AGE, COLOR, RELIGION, OR HANDICAPPED AND GIVEN THE UNDISPUTED FACT THAT THE HISPANIC DROP OUT RATE AT THE HIGH SCHOOL LEVEL IN THIS COUNTRY IS ABOUT 50%.

THE HNBA IS WELL AWARE THAT RELATIVE TO MANY ATTORNEYS AND JURISTS IN THE UNITED STATES, JUDGE SOUTER DOES NOT HAVE A BROAD BASE PROVEN RECORD IN CIVIL RIGHTS ISSUES. HOWEVER, THE HNBA IS A BAR ASSOCIATION, WITH A BASE MUCH BROADER THAT JUST CIVIL RIGHTS, AND IT IS BASED ON THIS BROAD BASED MEMBERSHIP THAT WE VOTED TO

ENDORSE JUDGE SOUTER, GIVEN THE TOTALITY OF HIS DISTINGUISHED CAREER AND HIS OUTSTANDING LEGAL SCHOLARSHIP. EVEN THOUGH THE HNBA IS NOT UNANIMOUS IN THEIR ENDORSEMENT OF JUDGE SOUTER, THE MAJORITY OF THE BOARD DOES SUPPORT HIS ENDORSEMENT.

IN AN EFFORT FOR THE JUSTICE NOMINEE TO BE AFFORDED A BETTER OPPORTUNITY TO BECOME FAMILIAR WITH THE HISPANIC LEGAL COMMUNITY IN PARTICULAR AND THE DIVERSE HISPANIC POPULATION IN GENERAL, WE FORMALLY INVITE HIM ON THE RECORD TO OUR NEXT HISPANIC NATIONAL BAR CONVENTION TO BE HELD IN SAN ANTONIO, TEXAS, NEXT FALL. FOR THE RECORD, JUSTICE SANDRA DAY O'CONNER, ADDRESSED THE HNBA IN 1983, IN WASHINGTON, D.C., AND JUSTICE ANTHONY KENNEDY ADDRESSED THE HNBA IN 1988 IN ALBUQUERQUE. THIS REQUEST SHOULD BE TAKEN EVEN MORE SERIOUSLY BECAUSE, UNLIKE JUSTICE O'CONNER OR JUSTICE KENNEDY, FROM ARIZONA AND CALIFORNIA RESPECTIVELY BOTH WITH SIZABLE HISPANIC POPULATIONS, JUDGE SOUTER DOES NOT HAVE THE EXPERIENCE, BACKGROUND OR HISTORY OF THE HISPANIC COMMUNITY. SUCH LACK OF KNOWLEDGE DOES NOT MAKE HIM UNACCEPTABLE AS A SUPREME COURT NOMINEE; HOWEVER, IN THE MEANTIME WE WOULD RECOMMEND THAT JUDGE SOUTER READ THE CASE OF

HERNANDEZ V. TEXAS AND ITS PROGENY SO HE MAY BETTER UNDERSTAND HOW THE U.S. SUPREME COURT HAS ADDRESSED THE CONCERNS OF HISPANICS IN THIS COUNTRY.

THANK YOU VERY MUCH FOR YOUR TIME AND ATTENTION. WE HOPE THE NEXT TIME THAT WE ARE AFFORDED THE OPPORTUNITY TO TESTIFY THAT WE WILL BE TESTIFYING TO ENDORSE THE FIRST HISPANIC SUPREME COURT NOMINEE OF THE UNITED STATES. GRACIAS. ARE THERE ANY QUESTIONS AT THIS TIME FROM ANY MEMBERS OF THIS COMMITTEE.