Would Judge Roberts then apply the same argument to equal educational opportunities for women generally? Could States in the name of saving money refuse to provide equal health services to men and women? In John Roberts's view, Congress could exclude all school desegregation cases from the jurisdiction of the Federal courts. This is, in effect, a pre-*Brown* vision that fits squarely into the objective of preventing the Federal courts from fulfilling the promise of the 14th Amendment.

As many commentators have made clear, John Roberts is a gifted and intelligent lawyer and advocate, but that is not the test for determining whether he is fit to lead the highest Court in the land. Rather, the test is whether John Roberts has demonstrated he has committed to the fundamental principles on which our country was founded and whether his vision of America matches the expectations of mainstream Americans. John Roberts has failed this test. Therefore, the Leadership Conference on Civil Rights has no choice but to oppose his confirmation. America can and should do better.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Henderson appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Mr. Henderson.

Our next witness is Commissioner Peter Kirsanow of the U.S. Commission on Civil Rights, had been labor counsel for the City of Cleveland; he is the Chair of the Board of Directors of the Center for New Black Leadership, on the Advisory Board of the National Center for Public Policy Research, a graduate of Cornell, a law degree from Cleveland State with honors.

Thank you for coming in today, Commissioner, and we look forward to your testimony.

STATEMENT OF PETER KIRSANOW, PARTNER, BENESCH, FRIEDLANDER, COPLAY & ARONOFF, AND COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS, CLEVELAND, OHIO

Mr. KIRSANOW. Thank you, Mr. Chairman, Senator Leahy, members of the Committee. I am Peter Kirsanow, a member of the U.S. Commission on Civil Rights and a partner in the Cleveland, Ohio, law firm of Benesch, Friedlander, Coplay & Aronoff, in the labor and employment practice. I am here in my personal capacity.

The U.S. Commission on Civil Rights was established in 1957 to, among other things, act as a national clearing house for information related to denials of equal protection and discrimination, and in furtherance of that function, my assistant and I reviewed the opinions of Judge Roberts while on the D.C. Circuit related to civil rights and also his Supreme Court advocacy related to civil rights, particularly with respect to prevailing civil rights norms, jurisprudential norms, with particular attention to the 1964 Civil Rights Act and the 14th Amendment.

Our examination reveals that Judge Roberts's approach to civil rights is consistent with mainstream textual interpretation of the relevant constitutional and statutory authority and governing precedent. His opinions evince appreciable degrees of judicial restraint, modesty, and discipline and, in short, Judge Roberts's approach to civil rights is exemplary. It is legally sound, intellectually

honest, and with a deep appreciation for the historical bases for civil rights laws.

Our examination also reveals that several aspects of Judge Roberts's civil rights record have been mischaracterized and sometimes the criticisms have been sorely misplaced, for example, conflating his counsel and advocacy on the part of clients with his own personal policy preferences. Just three brief examples.

First, some have contended that during the 1982 reauthorization of the Voting Rights Act, Judge Roberts had adopted an anti-civil rights approach to the interpretation of the Act. But the record definitively shows that Judge Roberts had consistently counseled in favor of reauthorization of the entire Act as is, and he expressed the administration's concern that a substantive redefinition of Section 2 could risk introducing confusion and uncertainty into what had already been considered one of the Nation's most successful pieces of civil rights legislation. Judge Roberts continued to advocate on behalf of his client for vigorous enforcement of Section 2 even after adoption of the effects test.

Second, some have claimed that Judge Roberts's position on affirmative action is regressive. Most of these criticisms relate to his questioning of a 1981 U.S. Commission on Civil Rights report pertaining to affirmative action. A detailed examination of that report shows that not only was Judge Roberts's criticism correct but imperative. The Commission's report was inconsistent with the status of the law in 1981, when issued, and fails to comport with the post-*Adarand Construction* v. *Pena*, *Grutter* v. *Bollinger* affirmative action norms of today. Judge Roberts had properly advised against unlawful racial quotas and set-asides untethered to a proof of discrimination. He supported the—and we heard it earlier—"bedrock principle of treating people on the basis of merit without regard to race or sex."

A third contention unsupported by examination is that Judge Roberts's arguments before the Supreme Court in civil rights matters were somehow extreme or out of the mainstream. Probabilities would dictate that if Judge Roberts had somehow slipped past the Supreme Court's gatekeepers and got to make extremist arguments before the Court, the Court would have dismissed virtually 100 percent of those arguments or, at a bare minimum, far more than 50 percent, which is the fate of most arguments before the Court. Again, a review of the record shows that Judge Roberts's arguments with respect to civil rights were agreed to by the Supreme Court 71 percent of the time—hardly indicative of positions outside of prevailing civil rights norms. And these Justices who agreed with him included those who might colloquially be described as conservative, such as Justice Rehnquist, who agreed with him 75 percent of the time, or Justices Scalia and Thomas, each of whom agreed with him 71 percent of the time. But they also include Justices colloquially described as liberal, such as Justice Ginsburg, who agreed with him 60 percent of the time; Justice Souter, 59 percent of the time; Justice Stevens, 59 percent of the time; and even Justice Thurgood Marshall, the premier civil rights litigator, probably forever, agreed with his advocacy position 67 percent of the time, almost as much as Justices Scalia and Thomas, and more than Justice O'Connor.

Mr. Chairman, it is respectfully submitted that Judge Roberts's 25-year record with respect to matters pertaining to civil rights demonstrates an unwavering commitment to equal protection and a comprehensive understanding of our civil rights laws that would make him an outstanding addition to the Supreme Court, particularly in the capacity of Chief Justice.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Kirsanow appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Commissioner.

Our next witness and final witness on this panel is Judge Nathaniel Jones, who served as Executive Director of the Fair Employment Practice Commission, was an Assistant U.S. Attorney for the Northern District of Ohio, directed NAACP litigation as general counsel for 10 years, a graduate of Youngstown State University, both Bachelor's and law degrees and served on the Court of Appeals for the Sixth Circuit and is now retired.

Judge Jones, thank you for coming in today and we look forward to your testimony.

STATEMENT OF NATHANIEL JONES, RETIRED JUDGE, U.S. CIRCUIT COURT OF APPEALS TO THE SIXTH CIRCUIT, OF COUNSEL, BLANK ROME LLP, CINCINNATI, OHIO

Judge JONES. Thank you, Mr. Chairman and Senator Leahy and esteemed members of the Committee. I am honored to have this opportunity to appear as a witness today to, I hope, assist you to more effectively evaluate the fitness of John G. Roberts to be confirmed as Chief Justice of the United States by providing a historical perspective.

Mr. Chairman, I ask that my full statement be entered into the record.

Chairman SPECTER. Without objection, Judge Jones, it will be a part of the record.

Judge JONES. Thank you. My acceptance of your invitation to offer testimony was prompted by my conscience and is driven by a profound obligation to introduce into the record a historical perspective, and in doing so, I join with my colleague, John Lewis, whose life is a personification of courage and I wish to add to his description of the struggle for civil remedies and civil rights remedies.

You are confronted here, I suggest, with a serious constitutional and moral responsibility. You are considering under the Constitution's Advice and Consent Clause the fitness of a Supreme Court nominee who has in the past argued against the use of Federal power to eradicate the vestiges of slavery and the badges of servitude. This record triggers serious questions and a vigorous inquiry into the whys.

So much of the nominee's advocacy as a Government lawyer and counselor was in the direction of against the implementation of civil rights remedies. There has been a lack of balance.

While I appear in my own right, more importantly, I am invoking the voices of distinguished legal giants whose voices have been stilled by time: Dean Charles Hamilton Houston, Justice Thurgood Marshall, Judge William H. Hastie, Clarence Mitchell, James A.