American Federation of Labor and Congress of Industrial Organizations

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September 2, 2005

The Honorable Arlen Specter, Chairman
Senate Committee on the Judiciary
United State Senate
Washington, D.C. 20510

The Honorable Patrick Leahy, Ranking Minority Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Specter and Ranking Minority Member Leahy:

I am writing to express the grave concerns of the AFL CIO regarding the nomination of Judge John G. Roberts to be an Associate Justice of the United States Supreme Court. What has been revealed about Judge Roberts' judicial philosophy and his commitment to the cause of equal rights for all Americans is extremely troubling. I therefore urge members of the Judiciary Committee to engage in vigorous and extensive questioning of Judge Roberts so that the Senate and the American public can determine whether Judge Roberts will be a Supreme Court Justice in whom we can safely entrust our most fundamental rights and liberties.

As a litigator, Judge Roberts chiefly argued on behalf of clients opposed to the rights and interests of working families, but it is difficult to separate a practicing litigator's views from the interests of their clients, and his limited tenure on the federal bench does not provide the Senate with much insight into his beliefs about the law. Much of what we know of his views on vital issues comes from recently released Reagan administration documents.

In these memos, then Special Assistant to the Attorney General Roberts argued that Congress has broad power to strip federal courts of jurisdiction over key issues, and urged the Reagan administration to oppose legislation to strengthen the Voting Rights Act and Fair Housing Act. He criticized the Supreme Court decision that prohibited states from eliminating public education for the children of undocumented immigrants and argued that prohibitions against discrimination by educational institutions should apply only to those programs that receive federal funds. Roberts also argued that the 14th Amendment guarantee of equal protection under the law should not be enforced if the defendant would have to incur significant costs to do so.

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Roberts ignored Supreme Court precedents regarding the need for heightened Constitutional scrutiny of state-sponsored gender discrimination. His views on precedent are further called into question by a memo in which he acknowledges that certain Justice Department views on Title VII of the 1964 Civil Rights Act had been rejected by the Supreme Court, but then suggests that the decision need not be accepted as guiding principle.

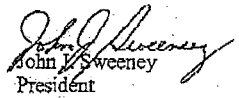
The AFL-CIO urges the Committee to conduct a full and complete airing of Judge Roberts' views on fundamental issues of Constitutional law as they pertain to workers' rights and civil rights. There have been times in our nation's history when as a result of a tortured reading of both the 14th Amendment and the Commerce Clause, the Supreme Court denied African Americans and women the protections of the 14th Amendment and stripped the federal government of its ability to protect workers through laws establishing the minimum wage and barring child labor. While this period of judicial activism is now a part of our past, we must be certain that Judge Roberts is not interested in resurrecting it. His public defense of a narrowly decided Supreme Court decision denying state employees the right to recover unpaid overtime compensation under the federal Fair Labor Standards Act also heightens concern about his views on federalism.

The AFL-CIO is troubled by what the memos reveal about his view of the extent to which the Fourteenth Amendment and the Due Process clause of the Constitution protect all of us against discrimination by federal, state and local government. We are further concerned by the positions he has expressed regarding Congressional authority to limit the jurisdiction of the federal courts, and to the limits of Congressional power under the Commerce Clause.

The Supreme Court is a uniquely historical institution—one charged with interpreting 18th century documents in the 21st century. Judge Roberts must be asked how he understands the history of our country's struggle against the profound injustices that once affected nearly every aspect of our national life. His early writings suggest a brutal indifference to the very meaning of American legal history for those most in need of the law's protection. If unmodified by subsequent experience, that mentality would render him unfit to serve on the highest court of the land.

Judge Roberts' approach to fundamental principles of Constitutional law is of critical importance to America's working families. On behalf of the AFL-CIO, I strongly urge the Senate to engage in a deliberate, methodical and complete inquiry into Justice Roberts' thinking on issues of workers' rights and civil rights as part of a larger inquiry into his legal philosophy.

Sincerely,



John J. Sweeney
President

cc: Members of Senate Committee on the Judiciary