Position Statement of the National Association of Social Workers (NASW) Regarding the Confirmation of Judge John G. Roberts to the United States Supreme Court

Introduction

The National Association of Social Workers, Inc. ("NASW"), a nonprofit professional association with over 150,000 members, is the largest membership association of social workers in the world. NASW works to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social policies.

NASW opposes the nomination of Judge John G. Roberts to the United States Supreme Court. Furthermore, NASW joins other prominent organizations in calling for a thorough and deliberative confirmation process where Judge Roberts can demonstrate his commitment to constitutional protections for women's health and reproductive rights and to the significant progress that has been made in civil rights and liberties.

Diversity

NASW "supports the appointment of judges who reflect more accurately the demographic diversity of the United States, particularly in regard to people of color and women."[1] The appointment of Judge Roberts does not serve that goal and the appointment reflects a backward step in achieving diversity among the Justices. According to the Census 2000, 50.9 percent of the population of the United States is female, and women outnumber men

[1] National Association of Social Workers, *Civil Liberties and Justice*, *in* Social Work Speaks: National Association of Social Workers Policy Statements 37, 43 (Paula L. Delo et al. eds., 6th ed. 2003)[hereinafter *Civil Liberties and Justice*].

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by 5.3 million.[2] With the retirement of Justice Sandra Day O'Connor, the percentage of women on the country's highest court will fall to 11 percent, a number far below the national average. In fact, Justice O'Connor, in a statement to the Associated Press on Wednesday, July 20, 2005, acknowledged that she was disappointed "to see the percentage of women on our court drop by fifty percent."[3] This reduction in the representation of women on the United States Supreme Court is especially relevant considering that, according to the American Bar Association, 48 percent of law school students last year were women.[4]

Since Justice O'Connor was nominated to the Supreme Court in 1981, becoming the first woman on the Court, the opportunities for women in the legal profession have changed dramatically. In 1981, approximately 7 percent of federal judges were women, whereas, today, 32.3 percent of federal judges are women. Furthermore, 16 percent of law firm partners, today, are women.[5] The failure of President Bush to nominate a woman to the Supreme Court undermines the significant progress that the legal profession has made in the last quarter century and does not reflect the demographic diversity of the United States.

Choice

The *NASW Code of Ethics*[6] states that "social workers promote clients' socially responsible self-determination."[7] Thus, in its *Policy Statement on Family Planning and Reproductive Choice*,[8] NASW encourages the recognition and protection of an individual's "unimpeded access to family planning and reproductive health services, including abortion

[2] U.S. Census Bureau, *Census 2000 Summary File 1* (2000).
[3] *O'Connor: Roberts is 'First Rate'*, CBS News, July 20, 2005, *available at* http://www.cbsnews.com/stories/2005/07/20/politics/printable710487.shtml.
[4] Adam Liptak, *O'Connor Leap Moved Women Up the Bench*, N.Y. Times, July 5, 2005, at A1.
[5] *Id.*
[6] National Association of Social Workers, *Code of Ethics of the National Association of Social Workers* (1996)[hereinafter *Code of Ethics*].
[7] *Id.* at 5.

services, [as] a fundamental human right that contributes to the advancement of women worldwide."[9] The nomination of Judge Roberts raises serious concerns for women's health and safety. In *Rust v. Sullivan*,[10] Roberts argued in a brief before the Supreme Court that *Roe v. Wade* "was wrongly decided and should be overruled . . . [T]he Court's conclusion in *Roe* that there is a fundamental right to an abortion . . . finds no support in the text, structure, or history of the Constitution."[11] Furthermore, in *Bray v. Alexandria Women's Health Clinic*,[12] Roberts intervened as amicus curiae for the United States, arguing that although only women can become pregnant, the behavior of anti-choice protestors at an abortion clinic did not constitute gender discrimination.[13] Roberts argued that the protestors were not conspiring to deprive women of equal protection. He contended that the protestors interfered with women's access to the abortion clinic "not because of who they are, but because of what they are doing,"[14] despite the admission of the protestors that their purpose was to "'depriv[e]' women of their ability to obtain the clinics' services."[15] Thus, the positions of Roberts, in these cases, raise serious concern for NASW about Judge Roberts's commitment to women's constitutionally based privacy rights.

Civil Rights

The *NASW Code of Ethics*[16] establishes an affirmative obligation for social workers "to prevent and eliminate discrimination, . . . to expand choice and opportunity for all people, . . . [and to] advocate changes in policy and legislation to improve social conditions and to promote

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[8] National Association of Social Workers, *Family Planning and Reproductive Choice*, *in* Social Work Speaks: National Association of Social Workers Policy Statements 124 (Paula L. Delo et al. eds., 6th ed. 2003).
[9] *Id.* at 127 (citing United Nations Commission for Human Rights (1979)).
[10] 500 U.S. 173 (1991).
[11] Brief for the Respondent at 13, Rust v. Sullivan, 500 U.S. 173 (1991)(Nos. 89-1391, 89-1392).
[12] 506 U.S. 263 (1993).
[13] Transcript of Oral Reargument of John Roberts, Jr., dated Oct. 6, 1992, Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993)(No. 90-985).
[14] *Id.* at 12.
[15] *Bray*, 506 U.S. at 346 (O'Connor, J. dissenting)(citing Nat'l Org. for Women v. Operation Rescue, 726 F.Supp. 1483, 1488 (Va. 1989)).
[16] *Code of Ethics*, *supra* note 6.

social justice."[17] As such, NASW opposes any executive order, legislation, or judicial decision that diminishes the gains in civil liberties and social justice obtained by the civil rights movements of the 1950s and 1960s. In its *Policy Statement on Civil Liberties and Justice*,[18] NASW (1) encourages the protection of the rights of criminal defendants,[19] (2) supports "the *full* implementation of existing civil rights legislation and its application,"[20] and (3) supports the preservation of the constitutional right to privacy.[21] The nomination of Judge Roberts raises concerns for NASW about his commitment to the advances made in civil liberties in the past half-century.

A number of arguments posited by Roberts, in various cases, "have undermined the preservation of individual liberties and set back long-standing societal efforts to broaden the application of social justice principles."[22] First, in *Denton v. Hernandez*, Roberts argued, as *amicus curiae* for the United States, that the Supreme Court should limit the rights of prisoners or criminal defendants.[23] Furthermore, Roberts authored the government's Supreme Court brief in *Burns v. United States*,[24] arguing that, absent an express requirement, a court may depart upward from the sentencing range established by the Sentencing Guidelines without first notifying the parties that it intends to depart.[25] Second, in two separate cases, Roberts co-authored *amicus* briefs for the United States, arguing for court supervision to be lifted in school desegregation cases. In *Board of Education of Oklahoma Public School v. Dowell*,[26] Roberts argued that despite the elimination of busing in elementary schools, thereby returning a number

[17] *Id.* at 5.
[18] *Civil Liberties and Justice*, *supra* note 1.
[19] *Id.* at 42.
[20] *Id.* at 44.
[21] *Id.*
[22] *Id.* at 37.
[23] 504 U.S. 25 (1992).
[24] 501 U.S. 129 (1991).
[25] *Id.* at 131.

of schools to one-race status, Oklahoma City schools could not be subjected to a desegregation decree after being declared "unitary."[27] Likewise, in *Freeman v. Pitts*,[28] Roberts argued, as *amicus curiae*, that a school system whose racial makeup had changed due to demographic shifts in residential patterns unrelated to prior discrimination could not be required to eliminate the racial imbalance in its schools.[29] Third, Roberts's positions in *Rust* and *Bray*,[30] raise serious concerns over his commitment to the constitutional right to privacy.

Although Judge Roberts has stated that he has no recollection of ever being a member of the Federalist Society, he is listed on the Federalist Society Lawyers' Division Leadership Directory for 1997-1998 as a member of the steering committee of that organization's Washington chapter.[31] While Roberts may join that association as it is his right, we question why he would then try to distance himself from the conservative group, whose members and leaders include Supreme Court Justices Antonin Scalia and Clarence Thomas. His denial of membership may suggest a character issue that should be explored at hearings while confirming Roberts's general legal views in areas such as civil rights and the right to choose. NASW calls for a thorough confirmation process that includes questions concerning Roberts's commitment to the Constitutional right to privacy and civil rights legislation.

Conclusion

In conclusion, because of NASW's support for the appointment of judges who more accurately reflect the demographic diversity of the United States, as well as NASW's concern for Judge Roberts's commitment to the Constitutional right of privacy and the significant advances

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[26] 498 U.S. 237 (1990).
[27] *Id.* at 251-52.
[28] 503 U.S. 467 (1992).
[29] *Id.*; *see also* Alliance for Justice, *Report of the Alliance for Justice: Opposition to the Confirmation of John G. Roberts to the U.S. Court of Appeals for the D.C. Circuit, at* http://www.independentjudiciary.com/resources/docs/John_Roberts_Report.pdf.
[30] *See supra* text accompanying notes 9-15.

made in civil rights and liberties over the past half-century, NASW is opposed to the nomination of Judge John G. Roberts to the Supreme Court of the United States. NASW calls for a thorough and deliberative confirmation process where Judge Roberts can demonstrate his commitment to the aforementioned issues.

[31] Charles Lane, *Roberts Listed in Federalist Society '97-98 Directory*, Wash. Post, July 35, 2005, at AO1.