

PUBLIC STATEMENT OF THE
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
ON THE NOMINATION OF JUDGE CLARENCE THOMAS
TO THE
SUPREME COURT OF THE UNITED STATES

AUGUST 13, 1991

Like many Americans, we at the NAACP Legal Defense & Educational Fund are deeply concerned about the nomination of Judge Clarence Thomas to the United States Supreme Court. After carefully reviewing his record, we are convinced that his addition to the Court would be inimical to the interests of African Americans, other minorities, women and America itself.

We are compelled to oppose Judge Thomas' confirmation because it would further threaten civil rights and constitutional guarantees that are now under siege -- rights that the NAACP Legal Defense Fund has fought to secure for more than fifty years. Since 1940, when now retired Justice Thurgood Marshall became our first Director-Counsel, we have advocated the use of the federal courts as one of the most effective means for protecting the rights of African Americans. Based on our successes and the successes of others, African Americans have for decades relied on the process of translating constitutional principles into legal rights, and legal rights into concrete realities.

Because this proud legacy is jeopardized by the nomination of Judge Thomas to replace Justice Marshall, it is necessary that we speak out against it.

In his recent writings and speeches about the Constitution and the Court, Judge Thomas demonstrates intemperate disdain for affirmative efforts by the government to assist those who have been victimized because of their group status. This disdain, if translated into Supreme Court decisions, would seriously undermine what Justice Marshall, this organization and many others have

achieved in opening the doors of equal opportunity to millions of African Americans.

Judge Thomas' views of the Constitution and the proper role of government are captured in a 1987 speech he gave at the Cato Institute. There, he described as a significant error the once-debated notion that the "American ideal of freedom" included the freedom to own slaves. Yet, astonishingly, this error was not as egregious to him as the belief that a "powerful activist government" was required to address the effects of this bitter history.¹ In discussing what he called the aftermath of the "New Deal" and "Great Society," Thomas spoke of federal activism in the area of civil rights as if it were another deplorable example of centralized government.²

This simplistic view virtually obscures any serious analysis of the problem or the solution. Indeed, it ignores American

¹ Speech by Clarence Thomas to the CATO Institute, April 23, 1987:

"From the founding through the Civil War, America struggled with this theoretical and practical question: Did the American ideal of freedom include the freedom to hold other human beings in bondage? If you say that freedom means primarily leaving other people alone, what else is implied? What happens if others are not left alone?"

"As significant as this error is, it is not as egregious as the opposite assumption: that freedom requires a powerful, activist government at every turn in our lives. This notion has its roots in the beginning of this century, in the progressive era. However, its manifestations occur most clearly in the New Deal and the Great Society, in whose aftermath we find ourselves today. The passage of major civil rights legislation coincided with a revolutionary burst in the growth and scope of government. You know the sorry tale at least as well as I do."

² Ibid.

history. In passing constitutional amendments and civil rights statutes after the Civil War, Congress explicitly recognized the necessity for federal legislation and other governmental efforts to aid individuals and groups who had suffered from past discriminatory practices. Based on this premise, the civil rights movement has sought the assistance of the federal government to remove the shackles and vestiges of slavery; to apply the promise of the Declaration of Independence and the Constitution to African Americans; and to enforce the laws of the United States when the rights of African Americans were at issue.

These steps were necessary not to address some ill-defined or trivial "problem involved with race," but rather to combat systemic, persistent discrimination by the majority against a minority that has been historically and consistently aggrieved. What African Americans have always needed is to be treated fairly and equitably by society.

The tragedy of Judge Thomas' position is that it is premised on the erroneous, misleading idea that generations of civil rights advocates have encouraged African Americans to believe that affirmative action, or collective remedies, can somehow completely replace individual achievement. Civil rights leaders have never advanced this view or minimized the importance of individual achievement.

Yet Judge Thomas claims that vigorous steps by government to address systemic discrimination erode the ability of African Americans to work for their own self-advancement. He ignores the

plain fact that such affirmative policies open up opportunities for self-advancement that otherwise would not be available. Judge Thomas' interpretation of the Constitution and human nature echoes the view frequently stated by previous and present administrations that affirmative action is the problem; that government intervention to remedy racial discrimination and the problems of the poor demeans and stigmatizes African Americans rather than helps them. This view of the world would have us believe that in the absence of affirmative action and other governmental intervention, racial fairness and equal opportunity would exist.³ Unfortunately, 20th century America is not yet such a place.

Our experience demonstrates that strong governmental intervention, including remedial programs and affirmative action, is essential to removing not only the burdens of the racist past, but also the pervasive discrimination that exists today in employment, education, housing and other arenas. Yet Judge Thomas emphatically opposes such intervention, which is required if individual achievement is to flourish, and equal justice is to be attained.

There are many, no less committed to the struggle for civil rights than we, who share our concern about Judge Thomas's record, but who feel nonetheless that given his background and upbringing

³ This perspective forms the philosophical backdrop to Judge Thomas' criticisms of Supreme Court decisions and legislation that approve affirmative action and other race-conscious remedies for past and present discrimination. For a more comprehensive analysis of Judge Thomas' positions, see, Analysis of the Views of Judge Clarence Thomas by the NAACP Legal Defense and Educational Fund, Inc.

Judge Thomas may still bring a different perspective to this homogenous, conservative Court -- a perspective which may bloom into progressive and humane thought with the independence and responsibility that the Court offers. Others have expressed the view that opposing Judge Thomas will only pave the way for another, more conservative nomination, and that the Senate is not likely to stop two consecutive nominations.

We recognize that these concerns are real. We sympathize with the hope that Judge Thomas's record is not a true indication of his beliefs. However, we firmly believe that Judge Thomas was nominated precisely because of that record. Judge Thomas has given every indication that the views he has recently articulated represent his true philosophy on key civil rights issues, and that he is in tune with the most conservative voices on the current Court.⁴ On the other hand, if these views do not reflect his true philosophy, then Americans should be concerned and shocked that a person could achieve high office by expressing premises in which he does not believe in order to appeal to those with the authority to appoint him.

In the final analysis, however, the only answer to these concerns is to apply the same standards we offer here to all Supreme Court nominations.

⁴ For an analysis of the sharp transformation in Judge Thomas' writings and speeches from 1986 to the present, see, *Analysis of the Views of Judge Clarence Thomas by the NAACP Legal Defense & Educational Fund, Inc.* This transformation is marked by a flurry of denunciations of both the Supreme Court and its civil rights decisions.

Americans should see this nomination for what it clearly is: the most recent step in a cynical attempt to make the Supreme Court the captive of the extreme right wing of American politics. The hallmark of this effort has been the undoing of the Warren and Burger Courts' reading of fundamental fairness into constitutional doctrine, which has stood for nearly two generations.

Since 1980, we have seen a systematic, unrelenting campaign to nominate Justices to the United States Supreme Court who would adversely alter the ability of the federal judiciary to play a role in enforcing constitutional guarantees and protecting the civil rights of African Americans. Traditional methods for determining professional qualifications for Supreme Court appointments have been cast aside in favor of selection criteria whose principal purpose is to further a right-wing political agenda -- an agenda that includes the end of effective civil rights enforcement.

Although this campaign has largely succeeded, the doors of the Supreme Court have not yet been closed completely to victims of past and present discrimination. However, this nomination threatens to burden minorities, the poor and all Americans for decades to come with an entrenched majority of Justices who have an activist agenda that endangers our civil rights and civil liberties.

Given the increasingly politicized nature of Supreme Court nominations, the question we now face is whether the Senate should exercise the full measure of its constitutional power to ensure that the Court is not comprised of implacable foes of vital

protections for the disadvantaged and the dispossessed. We therefore hope that the Senate will reject this nomination, and any subsequent judicial nomination that poses a similar danger to the rights that this organization and its allies have defended for half a century. Unless the Senate is prepared to sustain such an effort, there is little likelihood that the poor, the powerless, and people of color will be able to turn to the highest court in the land for the protection they deserve and require.