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JUDICIAL NOMINEES OF PRESIDENT GEORGE W. BUSH

Judicial Nominees of President George W. Bush

April 12, 2002

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Judicial Nominees of President George W. Bush

President Bush has outlined a clear philosophy that he has followed in selecting our nation's federal judges.

- ▽ **The President seeks men and women of experience who meet the highest standards of legal training, temperament, and judgment.**
- ▽ **The President seeks nominees who respect the powers given them by the Constitution and will interpret the law, not make the law.**
- ▽ **The President seeks nominees who have reputations as lawyers of skill, discernment, and high character.**

A Disturbing Trend in Partisanship

President Bush has nominated 98 highly qualified individuals who meet those criteria, but there has been a troubling delay in the Senate. All have been rated either "well-qualified" or "qualified" by the American Bar Association, which has been called the "Gold Standard" by Democrats.

The Senate's delay is causing a vacancy crisis, and most troubling, nearly 20% of federal appeals courts are vacant. Many of these vacancies have been classified as "judicial emergencies." These vacancies endanger justice in the federal courts as the Chief Justice of the U.S. Supreme Court, William Rehnquist has said himself.

The confirmation process has continued to grow more contentious, and Americans are growing tired of the partisanship that has marked this process. These men and women have stepped forward to serve their country, and they deserve to be treated with respect.

President Bush's first 11 nominations were made on May 9, 2001. The 11 individuals put forward now almost a year ago are exemplary of the President's philosophy – highly qualified, mindful of their Constitutional duties, and widely respected. Yet, only three of these 11 have received hearings. The remaining eight should be granted hearings as soon as possible.

Case Studies in Delay:

Chairman Leahy indicated on January 25, that he would grant hearings to Miguel Estrada, Justice Priscilla Owen and Michael McConnell this year. Almost three months have passed since his statement, and no hearings are scheduled.

John Roberts has been nominated to serve on the D.C. Circuit with Miguel Estrada. The D.C. Circuit Court is often considered one of the most important courts in the country, second only to the U.S. Supreme Court. That court is 1/3 vacant and needs both Roberts and Estrada confirmed.

Brooks Smith has already received a hearing and has diligently answered the questions of the Judiciary Committee. His nomination should be moved to the Senate floor, and he should be confirmed without further delay.

All of the President's nominees deserve to be heard in a prompt manner, but some have already waited too long.

The Crisis in America's Courts

April 12, 2002

☐ America is facing a Judicial vacancy crisis

- ☐ The Chief Justice of the Supreme Court, William Rehnquist, recently wrote that America's present judicial vacancy crisis is "alarming."
- ☐ There are currently 96 vacancies in the federal courts. In the past, when there were between 50 and 80 open judicial seats, Senator Leahy referred to the situation as a "vacancy crisis".
- ☐ The most egregious example is the 6th judicial circuit, Michigan, Ohio, Kentucky, and Tennessee, where 8 of the 16 seats are open. (Bush has made nominations to fill 7 of the 8 vacant seats)

☐ President Bush has acted decisively and nominated 98 individuals to serve as federal judges

- ☐ Despite President Bush's commitment to filling the vacancies in the federal courts, there are more vacant seats today than there were on January 20, 2001, when President Bush took office.
- ☐ President Bush has nominated more judges and nominated them faster than any President in history, almost 100 in his first year in office.
- ☐ President Bush has out-nominated the past four Presidents. At the same point in their administrations, President Clinton had nominated only 74 judges, former President Bush had nominated 46, and President Reagan had nominated 59 judges.

☐ President Bush's nominees are highly qualified and highly respected

- ☐ The President has nominated strong jurists who respect and follow the law.
- ☐ Of the nominees awaiting Senate action, the nominees who have been given a rating by the American Bar Association have all received "qualified" or "well qualified" ratings by the American Bar Association. The ABA rating has been called the **Gold Standard** by Democrats like Senator Leahy.
- ☐ The White House has worked with both Republicans and Democrats to identify qualified and experienced individuals to serve on the bench.

☐ The Senate has failed to do its part

- ☐ The Senate has confirmed only 42 of the President's 98 nominees, for a confirmation rate of less than 43%. At this point in the Clinton administration, 57% of his nominees had been confirmed.
- ☐ Most concerning, only 7 of the President's 29 nominees to the circuit courts, the courts of last resort in most cases, have been confirmed.
- ☐ President Bush nominated his first slate of judges at the White House almost a year ago on May 9, 2001. Of those 11 circuit court nominees, only three have been confirmed or even received hearings today.

☐ Nominees deserve to be treated fairly and should be considered quickly

- ☐ President Bush has said that it is time to rise above the bitterness of the past and provide fair hearings and prompt votes to all nominees, no matter who controls the Senate and who controls the White House.
- ☐ In the end, it is only the American people who suffer. By failing to confirm justice, the Democrats in the Senate are standing in the way of the pursuit of justice.
- ☐ **The American people deserve better.**

April 12, 2002

11 Months and Counting...

On May 9, 2001, President Bush nominated his first 11 judges to serve on America's circuit courts. As he did so, he urged Senators of both parties to rise above the bitterness of the past and provide fair hearings and prompt votes to every judicial nominee - no matter who is in the White House and which party controls the Senate.

- ☐ Nearly a year has passed and only three of the first 11 have had even a hearing. Two of those three were judges previously nominated by President Clinton.
- ☐ The eight nominees who have languished before the Judiciary Committee are individuals of extraordinary experience, intellect, and character:
 - ☐ John Roberts, nominee to the D.C. Circuit, is one of the nation's leading appellate lawyers having argued 36 cases before the U.S. Supreme Court and served as Deputy Solicitor General.
 - ☐ Miguel Estrada, nominee to the D.C. Circuit, has argued 15 cases before the U.S. Supreme Court and has worked as a federal prosecutor, Assistant U.S. Solicitor General, and Supreme Court law clerk. Estrada came to America as a teenager who spoke virtually no English, and if confirmed would be the first Hispanic to serve on the D.C. Circuit.
 - ☐ Justice Priscilla Owen, nominee to the 5th circuit, has served on the Texas Supreme Court since 1994. In her successful reelection bid in 2000, every major newspaper in Texas endorsed her.
 - ☐ Michael McConnell, nominee to the 10th circuit, is one of the nation's leading constitutional scholars and lawyers. His reputation for fairness and integrity has generated support from hundreds of Democrat law professors across the country.
 - ☐ Jeffrey Sutton, nominee to the 6th circuit, is another of America's leading appellate attorneys. He graduated first in his class from Ohio State law school and has gone on to argue over 20 cases before the U.S. Supreme Court and state supreme courts and serve as the Solicitor of the State of Ohio.
 - ☐ Justice Deborah Cook, nominee to the 6th circuit, has served as a Justice on the Ohio Supreme Court since 1994. Before becoming a judge, she was the first woman partner at Akron's oldest law firm.
 - ☐ Judge Dennis Shedd, nominee to the 4th circuit, was unanimously confirmed to be a federal district judge in 1990. He is strongly supported by his home state Senators, Democrat Fritz Hollings and Republican Strom Thurmond, and served in the past as Chief Counsel to the Senate Judiciary Committee.
 - ☐ Judge Terrence Boyle, nominee to the 4th circuit, was unanimously confirmed to be a federal district judge in 1984. The former chairman of the state Democratic Party supports Judge Boyle's nomination, stating that he gives everyone "a fair trial."

On January 25, 2002, Judiciary Committee Patrick Leahy indicated that Justice Priscilla Owen, Michael McConnell and Miguel Estrada would receive hearings this year. Each has waited nearly a year for a hearing and more than two months since his statement.

- ☐ President Bush has gone on to nominate 98 individuals to serve as federal judges, both in the district and circuit courts – more nominations at this point than any past President.

On May 9, 2001, President Bush paraphrased our nation's fourth President, James Madison, by saying the courts exist to exercise not the will of men, but the judgment of law. President Bush went on to say, "My judicial nominees will know the difference."

- ☐ President Bush has appointed individuals who clearly understand that the role of a judge is to interpret the law, not to legislate from the bench.

- ☐ The American people and a majority of the Senate agree with President Bush's vision of the proper role of the judiciary. But a handful of Democrat Senators would prefer judges who share their liberal activist views and use the power of the bench to make law that they have been unsuccessful in passing in Congress like weakening private property rights and putting the rights of criminals over those of victims.
- ☐ These Democrats are using procedural maneuvers to prevent the will of the entire Senate from being heard. They know a majority of the Senate agrees with President Bush's philosophy and that the full Senate would promptly confirm his judicial nominees.

On May 9, 2001, President Bush said, "There are today over a hundred vacancies on the federal courts, causing backlogs, frustration and delay of justice."

- ☐ Chief Justice Rehnquist recently stated that the present judicial vacancy crisis is "alarming," and "on behalf of the judiciary" implored the Senate to grant prompt hearings and up or down votes to judicial nominees.
- ☐ Because of the actions of a handful of Democrats to prevent the confirmation of President Bush's nominees, there are more vacancies in the federal courts today than there were when President Bush took office.
- ☐ Ultimately, Justice delayed is Justice denied.

On May 9, 2001, President Bush asked for a return of civility and dignity to the confirmation process.

- ☐ Many have said that the judicial confirmation process is broken. The first step towards fixing the process is treating nominees with respect and granting them fair hearings and prompt votes.

In President Bush's Words:

A President has few greater responsibilities than that of nominating men and women to the courts of the United States.

The American people expect judges of the highest caliber, and my nominees will meet that test. A judge, by the most basic measure, has an obligation shared by the President and members of the Congress. All of us are constitutional officers, sworn to serve within the limits of our Constitution and laws. When we observe those limits, we exercise our rightful powers. When we exceed those limits, we abuse our powers.

There are today, over a hundred vacancies on the federal courts, causing backlogs, frustration and delay of justice. I urge Senators of both parties to rise about the bitterness of the past, to provide a fair hearing and prompt vote to every nominee. That should be the case no matter who lives in this house, no matter who controls the Senate. I ask for the return of civility and dignity to the confirmation process.

- May 9, 2001

I think the country is tired of people playing politics all the time in Washington. And I believe that they're holding [Charles Pickering's] nomination up for political purposes. It's not fair, and it's not right.

- March 6, 2002

Under our Constitution, the President has the right and responsibility to nominate qualified judges, and the Legislative Branch has the responsibility to vote on them in a fair and timely manner. This process determines the quality of justice in America, and it demands that both the President and Senate act with care and integrity, with wisdom and deep respect for the Constitution.

By failing to allow full Senate votes on judicial nominees, a few Senators are standing in the way of justice. This is wrong and the American people deserve better.

- March 13, 2002

There is no more fundamental issue than to making sure we have a judiciary of people who do not interpret the law from the bench: people who interpret the law and not try to make the law. -

- March 27, 2002

I want people on the bench who don't try to use their position to legislate from the bench. We want people to interpret the law, not try to make the law and write the law. And I sent such a man up from Mississippi the other day – a good, honest, honorable man, who has been approved unanimously by the United States Senate earlier – and yet, did not get a vote on the floor of the United States Senate.

- March 28, 2002

Nationwide Opposition to the Partisan Games of the Past

- “It appears the confirmation process is becoming more lengthy and unpleasant every year. Last year, the committee confirmed only 28 of President George W. Bush’s judicial nominations, fewer than the 35 judges confirmed in 2000, President Clinton’s final year in office. The committee usually slows its work to a crawl during election years – only 17 judges were confirmed in 1996, for example. However, there doesn’t seem to be any excuse for allowing judicial vacancies to increase from 66 just before the 2000 election to 94 as of Jan. 1 of this year during Bush’s first year in office. What reason other than politics can account for the delays when some of Bush’s nominations have been waiting almost a year for a hearing.”
- **Rapid City Journal, March 21, 2002**
- “Right now, legitimate fears can be raised that Leahy and his Democratic colleagues are so beholden to liberal special interests as to render them incapable of a fair and impartial evaluation of judicial candidates.”
- **Burlington Free Press, March 18, 2002**
- “Wherever possible, the new Senate majority will no doubt try to apply its own ideological litmus test to the administration’s candidates.”

“But the American people are in no mood for partisan games. The ability to process warrants and subpoenas aside, the judiciary is an important symbol of national unity. Like the armed forces, in times of national emergency, it should be at full strength.”
- **Boston Globe, October 27, 2001**
- “The holdup on a number of the president’s judicial nominations has real world consequences for real people, including the nominees, the courts they would serve on, and people who come before the courts.”

“Rather than these puerile tactics, the Senate owes a duty to the President and the nation to give his nominees a timely and full hearing.”
- **The Detroit News, March 25, 2002**
- “The federal judiciary in particular is badly understaffed. In fact, according to the Justice Department, there are more vacancies in the federal judiciary now than when President Bush took office. Sooner or later, those shortages will impair the quality of justice for all Americans.”
- **Milwaukee Journal Sentinel, March 15, 2002**
- “While they battle, about 10% of federal judgeships are vacant, 17% on the appeals court – vacancies that slow the delivery of justice. This may sound arcane, but in recent terms, the Supreme Court has reviewed fewer than 100 cases a year, giving the 13 federal appeals courts the final say in more than 99% of federal disputes on issues ranging from the environment to abortion, from criminal law to civil rights.”
- **USA Today, March 15, 2002**
- “Advise and consent doesn’t mean attack and delay. But that’s what the Senate confirmation of federal judges has become with Charles Pickering as the latest human sacrifice.”
- **St. Louis Post-Dispatch, March 7, 2002**

- “But the judicial confirmation process has become less of a forum for careful consideration of a candidate's qualifications and more of a battleground for settling partisan scores.”
- **Memphis Commercial Appeal, March 16, 2002**

- “Unfortunately, the Democrats have signaled that the battle in the Senate, which of course is divided 50-50 between the two parties, will not be about diversity of gender or race or even political persuasion. The battle will be about raw power --- who has it, and perhaps, who is willing to wield it.” “The election is over. George W. Bush won and is president. As such he is entitled to nominate federal judges. The Senate offers advice and consent. No senator should have veto power. No party has veto power. The Constitution doesn't call for it, and Bush shouldn't allow it.”
- **The Atlanta Journal-Constitution, May 10, 2001**

- “Despite the Democrats' contention that they have approved 40 Bush nominees for the federal courts, there are still more than 50 languishing, most without a hearing date and many of them appellate court nominees. The Senate Judiciary Committee is now the established battleground over the Bush presidency and it is a particularly nasty place for a political fight.”
- **Austin American Statesman, March 18, 2002**

- “The Democrats appear to be making good on threats to refuse any conservative nominee a place on the federal bench - no matter how well qualified (Pickering was rated well qualified by the liberal American Bar Association).”
- **Tampa Tribune, March 4, 2002**

- “This was the left's trial run. Liberals wanted to notify President Bush, in no uncertain terms, that the only nominations they'll confirm are either mushy moderates, closeted leftists or judicial ciphers who have no "paper trail" (or fixed philosophy, for that matter) and can be counted on to rubber-stamp the rulings of the activists already on the bench. No constitutionalists need apply.”
- **Las Vegas Review Journal, March 17, 2002**

- “But just as presidents have an obligation not to nominate the incompetent or unqualified to the federal bench, presidents deserve broad authority in making their choices for such judicial posts. And the Senate has a responsibility to give those choices every possible consideration and, barring some glaring defect, confirm them quickly. Yet the backstabbing and stalling on judicial confirmations has escalated to the point of obstructing justice. It needs to stop.”
- **The Wichita Eagle, March 23, 2002**

- Every chief executive deserves to have his judicial nominees considered in a timely manner.
- **Dallas Morning News, April 4, 2002**

- Ultimately, the real victim is the public, Americans who only want responsible actions from the best officials, any of whom are unfairly denied the opportunity to serve because of picayune differences with partisans and ideologues whose own motives range from self service to getting even for the denial of one of their own candidates for office. What is worse, it slows the business of government dramatically, leaving important jobs and vacancies unfilled in both the administrative and judicial branches.
- **Dan K. Thomasson, Scripps Howard News Service, March 18, 2002**

JUDICIAL CONFIRMATIONS: The Myths v. The Facts

Myth: The Judiciary Committee is confirming President Bush's judicial nominees at a faster pace than Republicans ever did with President Clinton's nominees.

Facts:

- ☐ As of April 1 of his second year in office, President Bush has had 42 of 98 nominees confirmed – a 43% confirmation rate. At this same point, President Clinton had 45 of 77 nominees confirmed – a 58% confirmation rate.
- ☐ President Clinton had 377 judges confirmed during his Presidency while the opposition party controlled the Senate for six of his eight years in office. This confirmation rate is second only to the 382 judges confirmed during the Reagan administration, when the President's own party controlled the Senate.
- ☐ The Senate has failed to keep up with the rate of attrition in the federal judiciary. There are 96 vacancies today – 27 more than at the end of the 106th Congress. The highest vacancy total in the first two years of Republican control of the Senate under President Clinton was 63.

Myth: The Democrats have blocked or delayed many of President Bush's nominees to closely examine the nominee because there is a need to ensure that the federal courts are ideologically balanced and not dominated by conservative activists.

Facts:

- ☐ The Constitution gives the President the right to nominate whom he chooses, and voters elect the president with this knowledge. It is a gross distortion of the Senate's constitutional "advise and consent" function to impose a unilateral mandate on whom the President should nominate.
- ☐ The Senate emphasized the need to restore "balance" on the 5th Circuit in their rejection of Charles Pickering. But Democrats have not argued for restoring balance to the following circuits:
- ☐ The 6th Circuit has 6 Democrat appointees and 2 Republican appointees. This court has 8 vacant seats, an astonishing 50% vacancy rate, yet none of President Bush's 7 nominees to the 6th Circuit has received a hearing.
- ☐ The 9th Circuit has 17 Democrat appointees, and only 7 Republican appointees. The President's two nominees to the 9th Circuit, Carolyn Kuhl and Richard Clifton, are still awaiting hearings.
- ☐ The 10th Circuit has 5 Democrat appointees, and only 3 Republican appointees. President Bush has nominated Michael McConnell and Timothy Tymkovich to the 10th Circuit, but have been denied hearings.
- ☐ The 2nd Circuit has 10 Democrat appointees, and only 3 Republican appointees.

Myth: The Judiciary Committee has confirmed more judges in nine months than were confirmed in several years of President Clinton's term – 1996, 1997, 1999, and 2000.

Facts:

- ❑ **The Democrats wildly misrepresent the statistics:**
- ❑ Other than 1996, when President Clinton only nominated 21 judges, every single year cited by the Democrats yielded more judicial confirmations than the 28 confirmations in President Bush's first year.
- ❑ In 1996, President Clinton had 21 nominees confirmed – every nomination he put forth. 1996 was an election year, when the confirmation process traditionally slows.
- ❑ In 1998 there were 63 confirmations, including 13 Circuit Court confirmations - twice as many Circuit Court confirmations than there have been since President Bush's took office.
- ❑ In 2000, an election year, there were 8 Circuit Court judges confirmed - more than have been confirmed since the Democrats took control of the Senate.

Myth: Republicans denied nominees even a chance to make a case for their confirmation: 53 of President Clinton's nominees were either voted down by the full Senate, or were not given a hearing or a vote before the end of President Clinton's term in office.

Facts:

- ❑ President Bush has said time and again that it is time for a return of civility to the judicial confirmation process. Nominees deserve fair hearings and prompt votes no matter which party controls the Senate and who occupies the White House.
- ❑ The Democrats have done nothing to move beyond the bitterness of the past. Judiciary Committee Democrats voted along party lines to deny Charles Pickering a vote by the full Senate where it likely would have been confirmed. This kind of unfair treatment of a nominee *never* occurred during the entire Clinton presidency.
- ❑ Despite Democrat claims, 26 nominees were not acted on for various reasons. Of the 53 cited by Democrats, nine were nominated too late for Congress to act; 17 lacked home state support; and one was voted down on the Senate floor.

Myth: The Judiciary Committee has moved quickly on all of the nominees with bipartisan support.

Facts:

- ❑ There are 14 Circuit Court nominees who have not had a hearing who have a "Qualified" or a "Well-Qualified" rating from the ABA which Chairman Leahy has called the "Gold Standard," and have the support of their home-state senators (including two D.C. Circuit nominees who have no home-state senators). Seven of the 14 were nominated by President Bush on May 9, 2001.

John Roberts

John Roberts, nominee to the D.C. Circuit, is widely regarded as one of our nation's leading Supreme Court advocates and appellate lawyers. Roberts has an extensive legal background representing clients from across the political spectrum and arguing on both "sides" of many issues. His nomination has been before the Senate since May 9, 2001. He deserves a hearing from the Judiciary Committee and a prompt confirmation.

- ☐ **In October 2000, *The American Lawyer* stated, "Roberts is viewed by many as the best Supreme Court advocate in private law practice."**
 - ☐ Roberts has argued 36 cases before the U.S. Supreme Court and over 20 cases in U.S. Appeals Courts around the country.
 - ☐ Roberts' prominence within the legal community was recently recognized when 20 State Attorneys General retained Roberts to represent them before the D.C. Circuit Court in the Microsoft litigation
 - ☐ The American Bar Association has rated Roberts "well qualified." **Democrats have called the ABA rating the "Gold Standard."**
- ☐ **Roberts has a broad legal background. He has represented parties and interests all along the political spectrum.**
 - ☐ Represented the State of Hawaii in the U.S. Supreme Court in defense of a state program benefiting Native Hawaiians
 - ☐ Represented the Tahoe Regional Planning Agency in defense of regulations designed to protect Lake Tahoe from the adverse impact of uncontrolled development, against the claim that the regulations effect an unconstitutional "taking" of private property
- ☐ **Roberts has argued both "sides" of many constitutional and statutory issues.**
 - ☐ In criminal cases, he has represented the interests of the government and criminal defendants.
 - ☐ He has advanced arguments on behalf of civil rights claimants, and has defended the government against such claims.
 - ☐ He has argued in favor of preemption and against preemption of state law.
 - ☐ In bankruptcy cases he has argued in favor of creditors and of debtors.
- ☐ **Roberts has a long and distinguished career in public service.**
 - ☐ Principal Deputy Solicitor General of the United States from 1989 to 1993
 - ☐ Associate Counsel to President Reagan from 1982 to 1986
 - ☐ Special Assistant to Attorney General William French Smith from 1981 to 1982
 - ☐ Law clerk to Supreme Court Justice William Rehnquist
 - ☐ Law clerk to Judge Henry Friendly on the U.S. Court of Appeals for the Second Circuit.
- ☐ **John Roberts deserves a hearing.** President George H. W. Bush nominated John Roberts to the D.C. Circuit Court in 1992. He was never given a hearing in 1992, so in effect, Roberts has been waiting for a hearing for over 10 years.
- ☐ **John Roberts has been nominated to serve on a court that has four vacancies.**
 - ☐ In July 2001, when there were only three vacancies, the Chief of Judge of the D.C. Circuit wrote to Chairman Leahy that the court "certainly requires the services of [two more] active judges, and could arguably benefit from the services of [a third]."
 - ☐ "Sen. Joe Biden, D-Del.said in March 1997 that 'the D.C. Circuit needs 12 judges to handle its complex caseload.'" – The Daily Oklahoman 11/29/01

Who Is John Roberts?

- John Roberts is one of President Bush's nominees to serve as a judge on the Court of Appeals for the District of Columbia. He was one President Bush's original 11 nominees, submitted to the Senate on May 9, 2001.
- Mr. Roberts is the head of Hogan & Hartson's Appellate Practice Group in Washington, D.C.
- Mr. Roberts graduated from Harvard College, summa cum laude, in 1976, and received his law degree, magna cum laude, in 1979 from the Harvard Law School, where he was managing editor of the Harvard Law Review.
- After graduate, Mr. Roberts clerked for Judge Henry J. Friendly of the United States Court of Appeals for the Second Circuit, and the following year for then-Associate Justice William H. Rehnquist.
- Following his clerkship, Mr. Roberts served as Special Assistant to United States Attorney General William French Smith. In 1982 President Reagan appointed Mr. Roberts to the White House Staff as Associate Counsel, a position in which he served until joining Hogan & Hartson in 1986.
- Mr. Roberts left Hogan & Hartson in 1989 to accept appointment as Principal Deputy Solicitor General of the United States, a position in which he served until returning to the firm in 1993.
- Mr. Roberts has presented oral arguments before the Supreme Court in 36 cases.

What They Are Saying About John Roberts:

- ∇ "One example is D.C. Circuit nominee John Roberts, a respected appellate lawyer who -- along with attorney Miguel Estrada -- was named to the court in the president's first batch of nominees. Mr. Roberts was originally nominated by the elder President Bush, only to see his nomination languish and finally die after Bill Clinton's election. Now he is waiting again -- and for no good reason." - *Editorial, "Give Them Hearings," Washington Post, November 30, 2001*
- ∇ "'John Roberts is possibly the foremost appellate lawyer of his generation.' " - *Broward Daily Business Review, June 5, 2001 (quoting Lawrence Robbins, a veteran of the Solicitor General's Office)*
- ∇ "Richard Lazarus, the director of the Supreme Court Institute at Georgetown University Law Center, supports Roberts' nomination and says that Roberts 'is not an ideological person at all.' " - *Broward Daily Business Review, June 5, 2001*
- ∇ "'If you called into central casting for the perfect appellate judge, this is who they'd send.' " - *Washington Post, May 23, 2001 (quoting Charles Cooper, Roberts' former colleague at the Justice Department)*
- ∇ "'They are both exceptionally well-qualified appellate advocates.'" - *Washington Post, May 23, 2001 (quoting Seth Waxman, Solicitor General during the Clinton Administration, referring to Roberts and fellow D.C. Circuit nominee Miguel Estrada)*
- ∇ "Mr. Roberts, 46, is widely seen, among both judges and attorneys, as one of the capital's top appellate advocates." - *John Harwood & Robert Greenberger, Wall Street Journal, May 10, 2001*
- ∇ "Also nominated by Bush's father, Roberts is a popular member of the bar who is considered a politically well-connected moderate. A specialist in making oral arguments before the Supreme Court, he is considered among the two or three most effective lawyers there." - *Ron Fournier, Associated Press, May 9, 2001*
- ∇ "Walter Dellinger, acting solicitor general in the Clinton administration, said yesterday that, although he couldn't comment knowledgeably on all the nominees, 'this is a very strong list in terms of professional qualifications.' In particular, he cited John Roberts, a Washington lawyer and Supreme Court practitioner, and Michael McConnell, a University of Utah law professor." - *Robert Greenberger, Wall Street Journal, May 9, 2001*
- ∇ "Roberts has clerked for Chief Justice William Rehnquist, served in the Justice Department under Bush's father and has been active in conservative circles. That did not stop E. Lawrence Barcella, a prominent Washington lawyer who is generally liberal, from praising him. 'He's a very smart guy,' Barcella said. 'He certainly has a tremendous amount of experience. I'm not sure he's as bedrock conservative as some of the others.' " - *Chicago Tribune, May 5, 2001*
- ∇ "Roberts is viewed by many as the best Supreme Court advocate in private law firm practice. His briefs are uncommonly well-written, reflecting his view that 'the most important part of a Supreme Court case is the briefing.' " - *Tony Mauro, American Lawyer, October 30, 2000*
- ∇ "'He is one of the two or three best lawyers I have ever seen in more than 30 years as a lawyer,' says E. Barrett Prettyman, Jr., a partner at Hogan & Hartson, where he knew Roberts. He is an extraordinary talent and a wonderful briefwriter.' " - *Washington Post, December 16, 1991*

John Roberts: The Myths v. The Facts

Myth: *The National Abortion Rights Action League* (NARAL) is opposing the nomination of John Roberts because of his stance on *Roe v. Wade*. Their opposition is based on a 1991 brief written by Mr. Roberts filed in the Supreme Court in *Rust v. Sullivan*. He wrote that the Supreme Court's conclusion that there is a fundamental right to an abortion and that government has no compelling interest in protecting prenatal human life throughout pregnancy "finds no support in the text, structure, or history of the Constitution." (National Journal, 5/26/01)

Facts:

- ☐ Mr. Roberts is a leader of the appellate bar who is widely admired by his colleagues for his accomplishments and intellect. He understands that a judge is bound by precedent and must decide cases in light of their facts and existing law.
- ☐ In *Rust v. Sullivan*, the Solicitor General successfully defended regulations promulgated by the Secretary of Health and Human Services which prohibited the use of federal funds for abortion-related services.
- ☐ NARAL is attacking Mr. Roberts for work done while he was serving the U.S. Government as Deputy Solicitor General.
- ☐ As Deputy Solicitor General, it was Mr. Roberts' duty and responsibility to advance the position of the President and the United States in litigation, and it is inappropriate to assail a nominee based on work he or she did while representing a client in court.
- ☐ Even *The Washington Post* editorial board attacked Mr. Roberts' critics on this basis, stating that "[i]t is generally a mistake to confuse a lawyer's position with that of his client. The solicitor general's office is obligated to defend acts of Congress and government policies where reasonable arguments can be made on their behalf. Those arguments aren't always popular – and we disagreed with the government's position in *Rust*. There's no merit, however, in opposing a nominee for having, as a government lawyer, represented the position of the United States." (Washington Post, Editorial, June 7, 2001.)

Myth: Pro-choice groups, such as NARAL, are opposing the nomination of John Roberts because "[h]e has argued consistently [in court cases], whenever possible, that there is no right of choice." Specifically, NARAL has stated that he supported Operation Rescue and pro-life demonstrators in arguments before the Supreme Court. (Broward Daily Business Review, 6/5/01; The Washington Times, 5/9/01)

Facts:

- ☐ Mr. Roberts has had a long and distinguished career, including arguing 36 cases argued before the Supreme Court. Throughout his entire career, Mr. Roberts has only participated in two cases which have had any bearing on abortion issues: *Rust v. Sullivan* and *Bray v. Alexandria Women's Health Clinic*.
- ☐ This criticism, once again, is an attack on the work did while serving the U.S. Government as Deputy Solicitor General of the United States.
- ☐ When specifically asked during the first round of oral arguments whether he was asking that *Roe v. Wade* be overruled, Mr. Roberts answered "No, Your Honor, the issue doesn't even come up."
- ☐ Roberts was not representing a party in the case, but appeared as amicus curiae on behalf of the United States in support of petitioners to argue that the 1871 Civil Rights Act (also known as the Ku Klux Klan Act of 1871) was improperly applied to abortion clinic protestors because their actions were directed at the act of abortion, not at a class of protected individuals.

- Mr. Roberts contended, and the Court agreed, that the dispute belonged in state court. During oral re-arguments in the case, Mr. Roberts specifically stated that the United States was not before the Court to defend the protestors' tortuous conduct but to defend the proper interpretation of that Act.

Myth: In representing 18 states and D.C. in the antitrust litigation against Microsoft, Mr. Roberts defended comments made by Judge Thomas Penfield Jackson likening Microsoft to a drug gang. (The Washington Post, 5/23/01)

Facts:

- Roberts was selected by to represent the states in their suit against Microsoft because of his recognized legal talents. Again, Mr. Roberts is being attacked for advocating on behalf of his client.
- John Roberts never condoned Judge Jackson's comments. Mr. Roberts only stated on behalf of his clients, that he did not believe the comments made in the media after the trial was over were sufficient legal grounds to call into question the lower court's finding.

Myth: Marcia Kuntz, the director of the Alliance for Justice's judicial selection project has raised concerns over the nomination of Roberts because of the conservative positions he has taken in court cases. (The Washington Post, 5/23/01)

Facts:

- John Roberts' distinguished record as an advocate shows that he does not limit himself to cases that can be said to have a "conservative" ideology. Roberts has argued on behalf of clients and involving issues that fall all along the political spectrum and on both sides of many issues.
- Mr. Roberts understands that a judge must decide cases based on law and precedent, not on the positions he has argued on behalf of clients in litigation or on his own personal views.
- Richard Lazarus, director of the Supreme Court Institute at Georgetown University Law Center, supports Roberts' nomination and says that Roberts "is not an ideological person at all...In the eight years since he left the solicitor general's office, I don't think Roberts has filed a single amicus brief for a conservative ideological organization. And I will guarantee that given his prominence, he's being asked all the time to do so. He just hasn't played at all in that game." (The Broward Daily Business Review, 6/5/01)

Myth: Mr. Roberts has been criticized for representing big business in an attempt to erode the American with Disabilities Act. (The Nation, 6/4/01; Legal Times, 5/14/01)

Facts:

- Toyota Motor Manufacturing v. Williams in an example of Mr. Roberts' sound legal work. In this case, Mr. Roberts explored whether an employee with carpal tunnel syndrome fell under the protections of the American with Disabilities Act, and the Supreme Court ultimately ruled unanimously in favor of Toyota which was represented Mr. Roberts.
- The Justices of the Supreme Court have recognized that the ADA is loosely drafted and similar questions have been raised in innumerable cases.
- Mr. Roberts understands that positions taken in litigation as an advocate for a client must have no bearing on decisions he will make as a judge.

Who is Miguel Estrada?

- Miguel Estrada is one of President Bush's nominees to serve as a judge on the Court of Appeals for the District of Columbia. He was one of President Bush's original 11 nominees, nominated on May 9, 2001.
- Miguel Estrada was born in Tegucigalpa, Honduras. He immigrated to the United States as a teenager, speaking virtually English. If confirmed, he would be the first Hispanic judge on the Court of Appeals for the District of Columbia Circuit.
- Mr. Estrada is currently a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Appellate and Constitutional Law Practice Group and the Business Crimes and Investigations Practice Group.
- Mr. Estrada has argued 15 cases before the U.S. Supreme Court. From 1992 until 1997, he served as Assistant to the Solicitor General of the United States. He previously served as Assistant U.S. Attorney and Deputy Chief of the Appellate Section, U.S. Attorney's Office, Southern District of New York.
- Mr. Estrada served as a law clerk to the Honorable Anthony M. Kennedy of the U.S. Supreme Court from 1988-1989, and to the Honorable Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit from 1986-1987.
- Mr. Estrada received a J. D. degree magna cum laude in 1986 from Harvard Law School, where he was editor of the Harvard Law Review. Mr. Estrada graduated with a bachelor's degree magna cum laude and Phi Beta Kappa in 1983 from Columbia College, New York.

What They Are Saying About Miguel Estrada:

- ▽ "Miguel Estrada deserves a hearing, and Mr. Bush deserves to have his nominees considered in a timely manner. The only thing preventing that in the case of Mr. Estrada is Democratic fear of the political damage they could sustain from such a nomination." – *Ruben Navarette, Dallas Morning News, April 3, 2002*
- ▽ "I have no doubt that on the bench, Miguel will faithfully apply the precedents of his court, and the Supreme Court, without regard to his personal views or his political perspectives. His belief in the rule of law, in a limited judiciary, and in the separation of powers is too strong for him to act otherwise." – *Ron Klain, former Counsel to Vice President Gore*
- ▽ "Every chief executive deserves to have his judicial nominees considered in a timely manner. And, given his life's accomplishments alone, Miguel Estrada deserves better treatment than the United States has given him. This man deserves a hearing. Now." – *Dallas Morning News, Editorial, April 4, 2002*
- ▽ "As a matter of fundamental integrity, Miguel will follow a legal argument where it takes him and will not succumb to leaps of faith or lapses of logic to reach a desired result." – *Randolph D. Moss, fellow former Supreme Court law clerk and Clinton administration Justice Department Official, May 18, 2001.*
- ▽ "We are confident that Mr. Estrada will fulfill the duties of the United States Circuit Judge for the District of Columbia Circuit with fairness, intelligence and commitment to the ideals of the United States." – *Rick Davolina, LULAC National President, July 3, 2001*
- ▽ "From his humble beginnings as an immigrant from Honduras who achieved a stellar academic career at Columbia University and Harvard Law School, to his varied and impressive achievements in the Justice Department and private firms, Mr. Estrada has shown himself to be of superior talents and accomplishments." – *Elizabeth Lisboa-Farrow, Chair, U.S. Hispanic Chamber of Commerce, July 17, 2001*
- ▽ "Mr. Estrada's distinguished and impressive career illustrates the promise and opportunity that America offers to all immigrants, especially Hispanic immigrants. ...Mr. Estrada's confirmation will break new ground for Hispanics in the judiciary. The time has come to move on Mr. Estrada's nomination. I urge the Senate Committee on the Judiciary to schedule a hearing on Mr. Estrada's nomination and the U.S. Senate to bring this highly qualified nominee to a vote." – *Rafael Santiago, National President of the Hispanic National Bar Association, October 12, 2001*
- ▽ "In private practice, Mr. Estrada has earned the reputation as a top-notch advocate among the elite appellate bar in Washington, D.C. In sum, his resume reflects accomplishments in nearly all aspects of the law, including government and private sector achievement and both trial and appellate excellence. ... The time has come to move on Mr. Estrada's nomination" – *November 15, 2001 letter signed by all 49 Republican members of the Senate.*
- ▽ "A necessary qualification for any candidate for a position within the Federal Judiciary should be a proven record of success as a practicing attorney. I believe that it is also necessary for a candidate to be familiar with the inner-workings of the Court, and to have respect for the law enforcement community of which they are an important part. Mr. Estrada meets both of these important criteria, as evidenced by his unanimous "well qualified" rating from the American Bar Association, the ABA's highest rating." – *Steve Young, National President, Fraternal Order of Police, November 29, 2001*
- ▽ "He would, as a judge, absolutely keep an open mind in any type of case," says John Manning, a Columbia University law professor who has known Estrada since law school and worked with him in the SG's office. "He has a lot of pride in the finished legal product. He's a lawyer's lawyer." - *Legal Times, June 25, 2001*

Miguel Estrada

Miguel Estrada, nominee to the D.C. Circuit, is an American Success story. His legal experience far exceeds that of the average nominee, and he has bipartisan support from a broad range of groups and individuals. His nomination has been before the Senate since May 9, 2001. He deserves a hearing from the Judiciary Committee and a prompt confirmation.

- ☐ **Miguel Estrada is an American success story.**
 - ☐ Born in Tegucigalpa, Honduras, immigrated to the United States as a teenager speaking virtually no English.
 - ☐ Graduated Phi Beta Kappa from Columbia College in New York, and Harvard Law School where he was editor of the Harvard Law Review.
 - ☐ If confirmed, he would be the first Hispanic judge on the Court of Appeals for the D. C. Circuit.
- ☐ **Miguel Estrada is widely respected.** He has earned recognition for the thoroughness of his preparation and the quality of his written and oral advocacy in both in private practice and government service.
 - ☐ Partner with Gibson, Dunn & Crutcher LLP in Washington, D.C. where he is a member of the firm's Appellate and Constitutional Law Practice Group and the Business Crimes and Investigations Practice Group.
 - ☐ Assistant U.S. Solicitor General during the Bush and Clinton Administrations from 1992 to 1997.
 - ☐ Assistant U.S. Attorney and Deputy Chief of the Appellate Section for the U.S. Attorney's Office, Southern District of New York
- ☐ **Miguel Estrada has a combined level of appellate and trial experience that far exceeds that of the average Court of Appeals nominee, and even exceeds that of many Supreme Court nominees.**
 - ☐ Argued 15 cases before the U.S. Supreme Court, both criminal and civil.
 - ☐ Tried 10 cases as a prosecutor and argued 7 cases before the U.S. Court of Appeals for the Second Circuit as Assistant U.S. Attorney for the Southern District of New York
 - ☐ The American Bar Association has rated Estrada "well qualified." **Democrats have called the ABA rating the "Gold Standard."**
- ☐ **Miguel Estrada has earned the public support of a broad bipartisan range of individuals and groups.**
 - ☐ Ron Klain, Counsel to former Vice President Gore
 - ☐ Randolph D. Moss, Clinton Administration Justice Department official
 - ☐ Fraternal Order of Police
 - ☐ League of United Latin American Citizens
 - ☐ The Hispanic Chamber of Commerce
- ☐ **Miguel Estrada has demonstrated a commitment to community service apart from his distinguished record of government service.**
 - ☐ Represented Virginia death row inmate Tommy David Strickler before the Supreme Court *pro bono*. Estrada argued a new trial should be granted because the prosecution had withheld evidence that could raise questions as to the credibility of a key eyewitness.
 - ☐ Represented an incarcerated defendant who was seeking habeas corpus relief from his state conviction.
 - ☐ Member of the National Board of Directors of the Center for Community Interest since 1998.
- ☐ **Miguel Estrada has been nominated to serve on a court that presently has four vacancies.**
 - ☐ In July 2001, when there were only three vacancies, the Chief Judge of the D.C. Circuit wrote to Chairman Leahy that court "certainly requires the service of [two more] active judges, and could arguably benefit from the service of a third."
 - ☐ "Sen. Joe Biden, D-Del.said in March 1997 that 'the D.C. Circuit needs 12 judges to handle its complex caseload.'" – The Daily Oklahoman 11/29/01

Miguel Estrada: The Myths v. The Facts

Myth: Marcia Kuntz, director of the Alliance for Justice's judicial selection project, said her group has concerns about Estrada because he has "sometimes taken conservative positions in court cases." (The Washington Post, 5/23/01)

Facts:

- ☐ Estrada served for four years in the Department of Justice under President Clinton, and argued many cases on behalf of the Government at that time.
- ☐ Miguel Estrada has a broad and varied background in which he has followed the law at all times, not a political ideology.
- ☐ Miguel Estrada has participated in cases representing parties from across the political spectrum.
 - ☐ When he worked at the Clinton Justice Department, Estrada filed an amicus brief on behalf of the Government that was on the same side of the case as National Organization for Women. The Supreme Court unanimously agreed with Estrada in NOW v. Scheidler that a federal law prohibiting the use of violence to deny individuals their civil rights (RICO) could be applied to antiabortion protestors.
 - ☐ Estrada argued *pro bono* on behalf of a Virginia death row inmate

Myth: Paul Bender, who served as Deputy Solicitor General while Estrada was at the Justice Department, said he never assigned Estrada cases involving the rights of women, homosexuals, or criminal defendants because he "didn't trust his judgment." Bender added that Estrada's "ideological viewpoints are very strong, similar to those of Scalia and Thomas...and that causes his judgment to be unbalanced." (The National Journal, 5/19/01) Paul Bender also said, "I think he lacks the judgment and he is too much of an ideologue to be an appeals court judge." (The Washington Post, 5/23/01)

Facts:

- ☐ Estrada has received praise and support from legal experts on all sides of the political spectrum:
- ☐ **Ronald Klain**, who was Vice President Gore's chief of staff and has known Estrada since Harvard, said Estrada would be able to "faithfully follow the law." (The Washington Post, 5/23/01)
- ☐ **Otto Obermaier**, Estrada's former boss at the U.S. Attorney's office in the Southern District of New York, praised his intellect. (The National Journal, 5/19/01)
- ☐ **Seth Waxman**, Solicitor General under President Clinton, speaking about both Estrada and John Roberts, said "[t]hey are both exceptionally well-qualified appellate advocates." (The Washington Post, 5/23/01)
- ☐ **Robert S. Litt**, a former top Clinton Justice Department official, said: "Miguel has an absolutely brilliant mind. He is a superb analytical lawyer and he's an outstanding oral advocate." (The Washington Post, 5/23/01)
- ☐ In private practice, Estrada defended a death penalty inmate although his background was in criminal prosecution.
 - ☐ He worked *pro bono* on the appeal of Virginia death row inmate Tommy David Strickler. Mr. Estrada argued a new trial should be granted because the prosecution had withheld evidence that could raise questions as to the credibility of a key eyewitness.
 - ☐ His co-counsel, Barbara Hartung, said his work on the case indicated that Estrada "would treat all his cases in a very thorough and fair manner."

Priscilla Owen

Justice Priscilla Owen, nominee to serve on the 5th Circuit, is an accomplished jurist of exceptional integrity, character, and intellect. The superb credentials she has earned through her extensive experience as judge and private practitioner make her an extraordinarily well-qualified nominee. Her nomination has been before the Senate since May 9, 2001. She deserves a hearing from the Judiciary Committee and a prompt confirmation.

- **Justice Owen's integrity and accomplishments have earned her the respect of her colleagues and the people of Texas.**
 - Justice Owen has served with distinction as a Justice on the Texas Supreme Court since first being elected in 1994.
 - Her reelection bid in 2000 marked the first time a candidate has sought election to a full term on the Texas Supreme Court and failed to draw an opponent from either major political party in the primary race or the general election.
 - Every major newspaper in Texas endorsed her reelection bid in November of 2000, and she was reelected by an overwhelming majority.
 - Tom Phillips, Chief Justice of the Texas Supreme Court has characterized Justice Owen's work as fair and diligent. – *Houston Chronicle*, May 10, 2001
 - The American Bar Association has *unanimously* rated Justice Owen "well qualified," its highest possible rating. **This ABA rating has been called the "Gold Standard" by Democrats on the Judiciary Committee.**
- **Justice Owen has superb professional and academic credentials.**
 - Justice Owen practiced commercial litigation in Texas for 17 years before becoming a judge and was a partner at the national law firm of Andrews & Kurth.
 - Justice Owen graduated *cum laude* from Baylor University and Baylor Law School and was a member of the Law Review at Baylor Law School.
 - Justice Owen earned the highest grade on the Texas Bar Exam.
- **Justice Owen has demonstrated a strong commitment to her community.**
 - Justice Owen has served as the Texas Supreme Court Liaison to statewide committees regarding legal services to the poor and *pro bono* legal services.
 - She was part of a committee that successfully encouraged the Texas Legislature to enact legislation that has resulted in millions of dollars per year in additional funds for providers of legal services to the poor.
 - She was instrumental in organizing a group known as Family Law 2000 that seeks to find ways to educate parents about the effect the dissolution of a marriage can have on their children and to lessen the adversarial nature of legal proceedings when a marriage is dissolved.
- **Justice Owen has the strong support of her home state Senators.** Senator Hutchison has written to Senator Leahy that "Justice Owen's stellar academic achievements and professional experience are remarkable."
- **The people of the 5th circuit in Texas, Louisiana and Mississippi need Justice Owen on the bench.** Justice Owen has been nominated to fill a vacancy on the Fifth Circuit that has been declared a "judicial emergency" by the Judicial Conference of the United States, one of 40 such emergencies around the Nation.

Who is Priscilla Owen?

- Priscilla Owen is one of President Bush's nominees to serve as a judge on the Court of Appeals for the 5th Circuit. She is one of President Bush's original 11 nominees, submitted to the Senate on May 9, 2001.
- Priscilla Owen is currently serving her second term as a Justice on the Texas Supreme Court. She was first elected in 1994, and was reelected by an overwhelming majority in November 2000.
- Prior to her election 1994, she was a partner in the Houston office of the national law firm, Andrews & Kurth, L.L.P. where she practiced commercial litigation for 17 years.
- Justice Owen graduated from Baylor University, *cum laude*. She went on to graduate from Baylor University Law School, *cum laude*, in 1977 and was a member of the Baylor Law Review. Thereafter, she earned the highest score in the state on the Texas Bar Exam.
- Justice Owen has served as the liaison to the Supreme Court of Texas' Court-Annexed Mediation Task Force and to statewide committees regarding legal services to the poor and *pro bono* legal services. She was part of a committee that successfully encouraged the Texas Legislature to enact legislation that has resulted in millions of dollars per year in additional funds for providers of legal services to the poor.
- Justice Owen has been nominated for a position designated as a judicial emergency by the Administrative Office of the United States Courts.

What They Are Saying About Justice Priscilla Owen:

- ▽ "... Justice Owen's lifelong record is one of accomplishment and integrity. She is one of the few judicial nominees to receive a unanimous 'well qualified' rating from the American Bar Association." - *Dallas Morning News, editorial, February 10, 2002.*
- ▽ "She has limited her campaign contributions and supported proposals to remove politics from the judicial process." - *Dallas Morning News, editorial, October 26, 2000.*
- ▽ "A conservative, Owen has the proper balance of judicial experience, solid legal scholarship and real-world know-how to continue to be an asset on the high court." - *Houston Chronicle, editorial, September 24, 2000*
- ▽ "Justice Owen's stellar academic achievements and professional experience are remarkable. She earned a cum laude Bachelor of Arts degree from Baylor University and graduated cum laude from Baylor Law School in 1977. Thereafter, she earned the highest score on the Texas Bar Exam." - *Senator Kay Bailey Hutchison Letter to Chairman Leahy, March 15, 2002.*
- ▽ "Justice Owen is eminently qualified to serve on the Fifth Circuit bench, having served with distinction since 1995 as a member of the Supreme Court of Texas and as an accomplished attorney in private practice for almost 20 years prior to that time. Her academic and scholarly experience is also exceptional." - *Senator Gramm and Hutchison Letter to Chairman Leahy, October 12, 2001.*
- ▽ "'She's what Bush said (in nominating her): She tries to follow the legislative will in every case and apply the law, not invent it,' he said." - *Tom Phillips, Chief Justice, Texas Supreme Court, Houston Chronicle, May 10, 2001.*
- ▽ "Justice Owen is a superlative individual in every way. She is extremely bright, she possesses great integrity and is equipped with the character and moral virtues necessary for the high office she holds as well as the high office for which she has been nominated."
- ▽ "Based on my knowledge of Justice Owen for the past 30 years, I believe that you simply cannot make a more solid choice for the 5th U.S. Circuit Court of Appeals." - *Herbert H. Reynolds, Baylor University President and former Chair of the Texas Commission on Judicial Efficiency, Letter to All Members of the Senate Judiciary Committee, March 25, 2002.*
- ▽ "Justice Owen and I were adversaries for a number of years in an oil and gas case involving a claim for several million dollars. Throughout the extensive discovery and pre-trial process, as well as during the trial, Justice Owen conducted herself in an exemplary fashion. Always knowledgeable of the facts and the law, she also exercised the cooperation and professionalism in her conduct and respect for witnesses, parties, opposing counsel, and the Court that is so often missing from advocates." - *Attorney Jon David Ivey Letter in Support of Justice Owen's Nomination, May 23, 2001.*
- ▽ "She is smart and has a strong work ethic, which is critical because of the heavy caseload at the 5th Circuit, he says. 'Her pedigree in terms of intellectual ability is excellent,' Alexander says, noting that Owen graduated [in the top of] her class at Baylor University School of Law in 1977." - *Texas Lawyer, May 14, 2001, statement by Doug Alexander, a partner in Austin's Scott, Douglass & McConnico.*
- ▽ "'She's a precise questioner,' Hunt says. 'She couldn't be that way unless she had done her homework and studied.'" - *Texas Lawyer, May 14, 2001, statement by Appellate Specialist Don Hunt, with Mullin Hoard Brown Langston Hunt & Joy in Lubbock.*

Justice Priscilla Owen: The Myths v. The Facts

Myth: Kate Michelman, the president of the National Abortion Rights Action League (NARAL), has said, “‘We regard her as someone who exemplifies the most extreme hostility to reproductive rights of any of the nominees that President Bush has named,’ Ms. Michelman said.” “Justice Owen is an opponent of abortion rights for minors without their parents' permission.” (New York Times, 4/7/02)

Facts:

- ☐ Justice Owen has always faithfully applied statutes enacted by the Legislature. Her only role in these cases was to interpret and apply a new statute enacted by the Texas legislature. The statute provides that girls under 18 must notify parents before having an abortion unless a court is notified and finds that the girl is sufficiently mature to make the decision without parental notification.
- ☐ The law enacted by the Texas Legislature and interpreted by the Texas Courts is consistent with decisions of the U.S. Supreme Court. The U.S. Supreme Court has long held that parental notification statutes are entirely consistent with the constitutional right to abortion the Court established in *Roe v. Wade*.
- ☐ The Justices on the Texas Supreme Court disagreed about the application of the parental notification statute in certain cases as well as about the proper standard of appellate review. But those were ordinary judicial disagreements about how to interpret a vague statute and what standard to apply in reviewing certain lower-court decisions.

Myth: “...liberal advocacy groups have raised questions about the relationship of Justice Owen's opinions to donations she received from Texas corporations, including Enron, the Houston energy giant that filed for protection under Chapter 11 of the bankruptcy law.” (New York Times, 4/7/02)

Facts:

- ☐ Priscilla Owen has always followed the law to render sound judgments, regardless of whom is arguing before her.
- ☐ The Texas Constitution provides that state judges must run for their seats and the Texas Code of Judicial Conduct provides that the candidates may solicit and accept campaign funds.
 - ☐ It is well established that judicial recusal is neither necessary nor appropriate in cases involving parties or counsel who contributed to that judge's campaign.
 - ☐ An elected system of judicial selection is not unique to Texas and has not in the past precluded future appointment to the federal judiciary. Appointees of President Clinton had run and been elected in contested elections: for example, Fortunato “Pete” Benevides and James Dennis, who both now serve on the 5th circuit.
 - ☐ Justice Owen has long advocated reform of the system of elected judges in Texas.
- ☐ In her elections, Justice Owen was supported by many entities and individuals, some of which made contributions to her campaign committee.
 - ☐ In her most recent election in November of 2000, Justice Owen's campaign received *no contributions* from Enron, its employees, or its political action fund.

- ❑ In the 1994 election cycle, her campaign committee received approximately \$1.2 million in contributions from over 3,000 different contributors. Employees of Enron and its employee-funded political action committee contributed less than \$9000 – or less than 1% - of her contributions. The committee received no corporate contributions from Enron or any Enron-affiliated corporation.
- ❑ Like employees of many corporations, employees at Enron contributed to many political candidates in Texas. In fact, *seven* of the nine current Texas Supreme Court Justices received Enron contributions, and several of them received more than Justice Owen's campaign committee received.

Myth: Justice Owen has consistently ruled in favor of the Enron corporation, a campaign contributor, when they have come before her. She even ruled against a school district and in favor of Enron. (American Lawyer, 4/4/02)

Facts:

- ❑ Priscilla Owen follows the law regardless of who is arguing before her.
- ❑ Justice Owen has shown no preference to Enron in her rulings. Of the 14 proceedings in which Enron was a party since Justice Owen took her seat, her vote can be characterized as favorable to Enron in six of the cases and adverse in five cases. With respect to the three remaining cases, one case cannot be characterized either way, one was dismissed by agreement of the parties, and one she did not participate in.
- ❑ Justice Owen's opinion in *Enron Corp. v. Spring Creek Independent School District*, 922 S.W.2d 931 (Tex. 1996), was the unanimous opinion of the court and raises no legitimate questions.
 - ❑ The case was a complex property tax law case: the constitutionality of a property tax statute that allowed market value of inventory to be set on one of two different dates was in question.
 - ❑ Justices Raul Gonzalez and Rose Spector, the two Democrat Justices on the Court at that time, have written to Chairman Leahy to explain the issue in question.
 - ❑ The lawyer who represented a party opposing Enron in this case, Robert Mott, recently was quoted as saying that criticism of Justice Owen for her role in this case is "nonsense" and a "bunch of crap."

Myth: Justice Owen consistently rules in favor of big business and against consumers, employees, and the environment. "But activists from consumer, environmental and abortion rights groups such as Texans for Public Justice, the Sierra Club and the Texas Abortion and Reproductive Rights Action League say they plan to converge on Washington this month to discuss Owen's record with members of the Senate Judiciary Committee." (American Lawyer, 4/ 4/02)

Facts:

- ❑ Justice Owen has a strong record of protecting employees, consumers and the environment. She consistently writes or joins opinions that are in the mainstream and often votes to affirm lower court decisions, respecting the role of lower courts in weighing the evidence.

For example:

- Justice Owen has protected employees from accepting blame for on-the-job injuries, and she ruled that insurance agents who had been deceived by their company should have the recourse of the courts.
- Justice Owen has upheld a manufacturer's duty to make cigarette lighters child resistant; preventing businesses from avoiding lawsuits on business name technicalities; and she ruled to force an insurance company to pay \$50,000 under an insurance policy when a gun accidentally discharged.
- Justice Owen has upheld conservation measures passed by the Texas Legislature; approved government limits on withdrawals of aquifer water from wells; and favored enforcement of city laws that protect water quality and control pollution.

Brooks Smith

Judge Brooks Smith, nominee to serve as a judge on the 3rd Circuit Court of Appeals, has had a distinguished career, having served as a judge for 17 years - 13 at the federal District court level after being *unanimously confirmed by the Senate*. He has received overwhelming support for his nomination from his peers. Judge Smith's nomination has been before the Senate since September 10, 2001, and he has diligently responded to questions from Judiciary committee members at a hearing. His nomination should be moved to the Senate floor, and he should be confirmed.

- ☐ **Brooks Smith has a long and distinguished career as a jurist.**
- ☐ Judge Smith has served as U.S. district Judge of the Western District of Pennsylvania for 13 years and he presently presides as the District's Chief Judge.
- ☐ Judge Smith was **unanimously confirmed by the Senate in 1988**, and at the time of his appointment by President Reagan, he was one of the youngest federal judges in the country.
- ☐ Judge Smith served as a Judge of the Court of Common Pleas of Blair County for four years after being appointed by then-Governor Thornburgh. He was then elected to a ten-year term after receiving the *nominations of both major political parties*.
- ☐ Smith has been a member of the Criminal Procedural Rules Committee of the Supreme Court of Pennsylvania and the Board of Directors of the Federal Judges Association.

- ☐ **Judge Smith has been recognized for his outstanding work.**
- ☐ The American Bar Association has rated Judge Smith "well qualified." **Democrats have called the ABA rating the "Gold Standard."**
- ☐ Smith was rated "Highly Recommended" by the Allegheny County Bar Association and the Somerset County Bar Association, the two Pennsylvania county bar associations that know his work the best.
- ☐ Chief Justice William Rehnquist appointed Smith to serve on the Advisory Committee on Criminal Rules of the U.S. Judicial Conference from 1993 to 1999.

- ☐ **Smith enjoys broad bipartisan support from those who know him and his record.**
- ☐ Seventeen members of the Pennsylvania Congressional Delegation, including 8 Democrats
- ☐ Both U.S. Senators from Pennsylvania
- ☐ Former Attorney General Dick Thornburgh
- ☐ Edward Becker, Chief Judge of the Third Circuit, to which Smith has been nominated
- ☐ All ten of his District Court Colleagues
- ☐ Every U.S. Attorney for the Western District of Pennsylvania who served under Presidents Carter, Reagan, Bush and Clinton
- ☐ The Board of the Women's Bar Association of Western Pennsylvania
- ☐ Reginald Belden, President of the Pennsylvania Bar Association

- ☐ **Judge Smith has been an active and committed member of his community and has dedicated his time to numerous organizations.**
- ☐ The Domestic Abuse Project of Blair County
- ☐ Family and Childrens' Service of Blair County
- ☐ The Salvation Army
- ☐ Blair County Legal Services Corporation,
- ☐ Blair County Society for Crippled Children and Adults

Who is Brooks Smith?

- Brooks Smith is one of President Bush's nominees to serve as a judge on the Court of Appeals for the 3rd Circuit. President Bush nominated him on September 10, 2001. Judge Smith has already received a hearing from the Senate Judiciary Committee and has worked diligently to answer questions of the Committee members.
- Brooks Smith is currently the Chief Judge of the United States District Court for the Western District of Pennsylvania. He has served as a judge of that court since November of 1988 when he was unanimously confirmed by the Senate. When President Reagan appointed him, he was one of the one of the youngest federal judges in the country at age 36.
- Previously, Judge Smith was a Judge of the Court of Common Pleas of Blair County, Pennsylvania. He was appointed to that court in 1984 by then-Governor Dick Thornburgh, and was elected the following year to a ten-year term after receiving the nominations of both major political parties. While serving on the common pleas court, Smith was designated administrative judge by the Chief Justice of Pennsylvania.
- Prior to his service as a judge, Smith was a practitioner with a law firm in Altoona, Pennsylvania. He became an associate with Jubelirer, Carothers, Krier and Halpern in 1976, and later became managing partner of that firm.
- From 1983 until 1984, he served as Blair County District Attorney. He had previously served as an assistant district attorney, and as a special prosecutor assigned to investigating organized crime.
- Judge Smith is a 1973 graduate of Franklin and Marshall College and a 1976 graduate of the Dickinson School of Law.
- He was appointed by Chief Justice Rehnquist to serve on the Advisory Committee on Criminal Rules of the U.S. Judicial Conference from 1993 to 1999. He has been a member of the Criminal Procedural Rules Committee of the Supreme Court of Pennsylvania and the Board of Directors of the Federal Judges Association.
- He is a former board member of the Salvation Army, Blair County Legal Services Corporation, Family and Childrens' Service of Blair County, the Domestic Abuse Project of Blair County, and the Blair County Society for Crippled Children and Adults.

What They Are Saying About Judge Brooks Smith:

- ∇ “No doubt Judge Smith is more conservative than a judge Al Gore might nominate to this position. But he is not an extremist, he is held in high regard by those who know him best and he has acknowledged that he should have recused himself earlier in the Black case. The Judiciary Committee, Sen. Biden included, should approve his promotion to the appeals court.” -*Pittsburgh Post-Gazette Editorial, March 13, 2002*
- ∇ "He is unpretentious and down-to-earth, a really nice person who is committed to the ideals of equal justice in the courts." - *U.S. District Judge Anne E. Thompson, a Democrat on the New Jersey bench, Pittsburgh Post-Gazette, February 25, 2002*
- ∇ "I was chief judge when Smith was appointed to this court [in 1988] and I've been impressed with his work ever since. I think he will be a wonderful addition to the circuit court. He's a calm, deliberate guy, very intelligent." - *Senior U.S. District Judge Maurice B. Cohill Jr., Pittsburgh Post-Gazette, September 11, 2001*
- ∇ "His decisions have not always been in my clients' favor, but they have always been well-reasoned. That's all you can ask of a judge -- to fairly assess your case." - *Shelly Pagac, Pittsburgh lawyer and co-president of the Women's Bar Association of Western Pennsylvania, Pittsburgh Post-Gazette, February 25, 2002*
- ∇ "We know he is a fairly conservative judge, but that makes no difference so long as he is fair, and that is his reputation." "He doesn't have an imperious judicial style. He's a decent man on the bench and that counts for a lot." – *John M. Burkoff, Democrat and associate dean and law professor at the University of Pittsburgh, Pittsburgh Post-Gazette, February 25, 2002*
- ∇ “He is exceptionally intelligent, thoughtful, hard-working and conscientious. When appearing before Judge Smith, you can be assured your case and issues will receive fair and thorough consideration.” – *Shelly R. Pagac, Co-President and Cynthia Reed Eddy on behalf of the Women’s Bar Association of Western Pennsylvania, letter to the Editor, Pittsburgh Post Gazette, February 14, 2002*
- ∇ “I know Brooks Smith. I appeared before him as an assistant U.S. attorney; I served with him on the federal trial bench; and I reviewed his work when I was on the court of appeals. He is an outstanding judge with an unrelenting intellect, abiding instinct for fairness and a sense of decency that knows no bounds.” – *Tim Lewis, former Judge for the U. S. Third Circuit Court of Appeals, letter to the editor, Wall Street Journal, February 27, 2002*
- ∇ “By any measure of judicial merit, Brooks Smith is qualified to serve.” – *Richard Thornburgh, former Pennsylvania Governor and U.S. Attorney General, Pittsburgh Post Gazette, February 26, 2002*

Michael McConnell

Michael McConnell, nominee to the 10th circuit, has had a distinguished career that has earned him a reputation as one of the top legal scholars in the country. His nomination has received overwhelming support from constitutional lawyers and across the ideological and political spectrum. McConnell's nomination has been before the Senate since May 9, 2001. He deserves a hearing from the Judiciary Committee and a prompt confirmation.

- ☐ **Michael McConnell has had a distinguished career as Professor and public servant.**
 - ☐ McConnell is currently a Presidential Professor at the University of Utah College of Law. He has also taught at the University of Chicago Law School and Harvard Law School.
 - ☐ Professor McConnell has served as the Chair of the Constitutional Law Section of the Association of American Law Schools, as Co-Chair of the Emergency Committee to Defend the First Amendment and as a member of the President's Intelligence Oversight Board.
 - ☐ McConnell served as Assistant Solicitor General at the Department of Justice and Assistant General Counsel at the Office of Management and Budget.
 - ☐ He clerked for Justice William J. Brennan, Jr., of the U.S. Supreme Court and Chief Judge J. Skelly Wright of the U.S. Court of Appeals for the D.C. Circuit – two judges often considered two of the most “liberal” in American history.
- ☐ **Professor McConnell's professional and academic credentials are superb.**
 - ☐ McConnell graduated from the University of Chicago Law School at the top of his class and was the Comment Editor of the University of Chicago Law Review.
 - ☐ McConnell has argued 11 cases before the United State Supreme Court.
 - ☐ The American Bar Association has rated McConnell “well qualified.” **Democrats have called the ABA rating the “Gold Standard.”**
- ☐ **Professor McConnell has earned a reputation as one of the most outstanding constitutional lawyers and scholars in the country legal minds in the country.**
 - ☐ McConnell is widely regarded as one of the country's most distinguished legal scholars in the field of constitutional law and theory, particularly in the area of the religion clauses of the First Amendment.
 - ☐ McConnell has earned the reputation of a fair and open-minded thinker who follows the law to its reasonable conclusion, not to a conclusion dictated by any personal view.
 - ☐ His writings on the First Amendment are regularly relied upon not only by other legal scholars, but also by the courts.
- ☐ **Professor McConnell's nomination has received overwhelming support from across the political spectrum.**
 - ☐ Over 300 faculty members from law schools across the country have signed a letter to the Judiciary Committee voicing their strong support for Michael McConnell's nomination and urging a speedy hearing and confirmation.
 - ☐ This support comes even from “liberal scholars” such as Professor Cass Sunstein from the University of Chicago Law School and Sanford Levinson from the University of Texas School of Law.
- ☐ **Professor McConnell has been nominated to the 10th circuit – a circuit that is presently one-quarter vacant, lacking three judges on a 12-judge court.**
 - ☐ America is facing a judicial vacancy crisis. Michael McConnell is an extremely well-qualified individual who as a judge could help to alleviate the burden facing the 10th circuit.
 - ☐ The people of the 10th circuit in Wyoming, Colorado, Kansas, Utah, New Mexico and Oklahoma deserve to have an individual like Michael McConnell on the bench.

Who is Michael McConnell?

- Michael McConnell is one of President Bush's nominees to serve as a judge on the United States Court of Appeals for the 10th Circuit which includes Colorado, Wyoming, Utah, New Mexico, Kansas and Oklahoma. McConnell was one of the President's original 11 nominees, nominated on May 9, 2001.
- McConnell is currently the Presidential Professor at the University of Utah College of Law.
- McConnell received a B. A. from Michigan State University (1976) and a J. D. from the University of Chicago (1979), where he graduated at the top of his class and was Comment Editor of the *University of Chicago Law Review*.
- Upon graduation, he served as law clerk to Chief Judge J. Skelly Wright on the United States Court of Appeals for the District of Columbia Circuit, and then for Associate Justice William J. Brennan, Jr., on the United States Supreme Court.
- Professor McConnell was Assistant General Counsel of the Office of Management and Budget (1981-83), and Assistant to the Solicitor General (1983-85), after which he joined the faculty of the University of Chicago Law School in 1985.
- McConnell has argued eleven cases in the United States Supreme Court and has published widely in constitutional law and constitutional theory, with a specialty in the Religion Clauses of the First Amendment.
- He has served as Chair of the Constitutional Law Section of the Association of American Law Schools, Co-Chair of the Emergency Committee to Defend the First Amendment, and member of the President's Intelligence Oversight Board.

Michael McConnell: The Myths v. The Facts

Myth: According to interest groups like *Americans United for the Separation of Church and State*, Michael McConnell favors tearing down the barriers between church and state and is hostile to individual rights. (Press Release, *Americans United for Separation of Church and State*, 5/ 9/01.)

Facts:

- ☐ Professor McConnell is widely recognized to be one of our nation's leading experts on the issues of religious liberty and federal power. His positions are thoughtful and widely respected by both liberals and conservatives. Most notably, McConnell has consistently argued that religious people and groups deserve equal treatment, not favored treatment, by government.
- ☐ McConnell argued against a School Prayer Amendment because he believed it would intrude on the liberty of religious minorities and non-believers.
- ☐ McConnell has argued that religious groups should have access to government property and subsidies so long as they do not receive preferential treatment relative to secular groups.
- ☐ Professor McConnell's dedication to equal access for all groups is evidenced by his diverse representation of groups from all perspectives, including the Mormons, Hare Krishnas, Jehova's Witnesses, Christian Scientists, Bible clubs, Catholic school, and Eckanakar, a New Age religion. *The Salt Lake Tribune*, 3/11/00.

Myth: According to interest groups like the *National Organization of Women*, the *National Abortion Rights Action League*, and the *Center for Reproductive Law and Policy Inc.*, Michael McConnell does not agree that women have a constitutional right to an abortion and will seek to overturn *Roe v. Wade*. (National Journal, 5/26/01.)

Facts:

- ☐ Professor McConnell recognizes that the Supreme Court precedent setting forth the basic abortion right must be followed by lower court judges. McConnell has intense respect for the rule of law, and as a judge would follow the precedent established by the Supreme Court, including *Roe v. Wade*.
- ☐ Professor McConnell agrees with many constitutional scholars – both pro-choice and pro-life, who have argued that the Supreme Court overstepped the bounds of proper judicial decision-making in *Roe v. Wade*. He believes that by constitutionalizing abortion law, political leaders have been prevented from exploring reasonable middle-ground approaches. He has said that “[i]f the courts would get out of the business of regulating abortion, most legislatures would pass laws reflecting the moderate views of the great majority.” (*The Wall Street Journal*, January 22, 1998.)
- ☐ Professor McConnell's nomination has received praise and support from supporters of abortion rights proponents Professor Cass Sustein of the University of Chicago Law School and Sanford Levinson of the University of Texas Law School.

Myth: According to the *National Abortion Rights Action League*, Professor McConnell opposes the Freedom of Access to Clinic Entrances (FACE) Act, intended to protect women who visit clinics that perform abortions.

Facts:

- ☐ Professor McConnell is a passionate believer in the right of all persons to engage in vigorous, even unpleasant, speech, regardless of the issue or political persuasion of the protester.
- ☐ Professor McConnell disagreed with the FACE Act as drafted because he believed it did not adequately protect free speech and was vague and overly broad. The act did not expressly say that certain expressive conduct protected under the First Amendment, such as peaceful pickets or protests, was not intended to be regulated by the bill.

Myth: Professor McConnell cannot claim to be able to interpret the laws fairly for all people considering he argued before the Supreme Court in *Boy Scouts v. Dale* to allow the Boy Scouts to exclude homosexuals from leadership positions within the organization. (Rocky Mountain News, 5/10/01.)

Facts:

- ☐ The Supreme Court agreed with Professor McConnell that an organization has a constitutional right to choose leaders who agree with the organization's goal.
- ☐ Professor McConnell has stated he would defend the First Amendment right of any organization to choose its leaders, whether it is the Boy Scouts or a gay rights organization.
- ☐ Professor McConnell supported East High School's Gay/Straight Alliance when it sought to meet at the Salt Lake City School. Rather than let the groups meet, the district eliminated all non-curricular clubs, which McConnell argued against. In the end the Gay/Straight Alliance was allowed to meet due in part to the 1984 Equal Access Act, which Professor McConnell strongly supports.