



UNION OF ORTHODOX JEWISH
CONGREGATIONS OF AMERICA
Institute for Public Affairs

August 29, 2005

STEPHEN J. SAVITSKY
President

RABBI TZVI H. WEINREB
Executive Vice President

HARVEY BLITZ
Chair, Board of Directors

MARK BANE
Chair, Inst. for Public Affairs

NATHAN J. DIAMENT
Director

Hon. Arlen Specter, Chair
Hon. Patrick Leahy, Ranking Member
& Members of the U.S. Senate
Committee on the Judiciary
Washington, DC 20510
By Facsimile & Electronic Mail

Dear Senators,

We write to you on behalf of the **Union of Orthodox Jewish Congregations of America** with regard to an issue which has arisen in the context of the Judiciary Committee's consideration of the nomination of John Roberts to the United States Supreme Court.

The Union of Orthodox Jewish Congregations of America, the nation's largest Orthodox Jewish umbrella organization representing nearly 1,000 congregations nationwide, is a non-partisan, religious organization and – like most other organizations in the American Jewish community -- it has been the UOJCA's longstanding policy neither to endorse nor oppose judicial nominees in the confirmation process. However, we feel compelled to inform you of our views on a key issue of import to our community which has been raised with regard to Judge Roberts' nomination.

The issue relates to charges that Judge Roberts' views on the relationship between religion and state in our society, as framed by the Free Exercise and Establishment Clauses of the First Amendment, are outside of the mainstream and that, in the words of the critics, he has a "record of hostility to the separation of church and state" and that "his brand of...jurisprudence would bring about...radical results with potentially devastating consequences for religious minorities." As members of a minority faith community within this great nation, we write to you to state that we believe these assertions are misleading distortions of his record to date. While there is more to be learned about Judge Roberts' views on matters of religion and state, calling for his rejection based upon these assertions is wrong.

While it is admittedly difficult to glean from an attorney's past work-product on behalf of a client, including the government, his personal views, there is to begin with one document in Judge Roberts' records which seem to offer an encouraging insight into his perspective on religion related matters - a memorandum to Counsel Fred Fielding dated August 20, 1984, regarding remarks to be made by President Reagan to an ecumenical prayer breakfast. After noting that "the remarks repeatedly refer to the role of 'the Church'" Roberts stated: "...many of our citizens do not worship in churches, but in temples or mosques. I recommend...that the references to 'the Church' or 'churches' be changed to references to religion or religions." This comment

ADVISORY COMMITTEE

Jeffrey Ballabon
Ben Chouake
Benham Dayanim
Howard Friedman
Mandell Ganchrow
Ahuva Genack
Lorraine Hoffman
Steven Laufer
Nathan Lewin
Gary Litke
David Luchins
Louis Malcmacher
Matthew Maryles
Philip E. Milch
Aron Raskas
Howard Rhine
Ben Ringel
Sheldon Rudoff
Martin Wasserman
Dov Zakheim

YOUNG LEADERSHIP
REPRESENTATIVES

Jason Cyrulnik
Yitz Stern
Corey Tarzik

The Institute for Public Affairs is the non-partisan public policy research and advocacy center of the Union of Orthodox Jewish Congregations of America, the nation's largest Orthodox Jewish umbrella organization founded in 1898.

*National Headquarters
11 Broadway
New York, NY 10004*



by then-counsel Roberts regarding a set of short remarks to be delivered early in the morning in the dead-of-August to a clergy group indicates a clear sensitivity and appreciation for the diversity of religious faith in America and the need for a President to acknowledge that diversity wherever possible.¹ This perspective is the proper one to underlie a judge's view when analyzing a case involving the Constitution's religion clauses as well.

Subsequently, while serving in the White House Counsel's office or in the Solicitor General's office, Mr. Roberts participated in developing or presenting the United States' views to the Court in four critical religion clause cases; *Wallace v. Jaffree*, *Mergens v. Westside Sch. Dist.*,² *Lee v. Weisman* and *Employment Division v. Smith*. In each of these cases, the positions advocated by the United States in amicus briefs were neither extreme nor even unreasonable interpretations of the religion clauses' requirements. The fact that in three out of the four of the cases the high court was closely divided indicates as much.

While our own organization and constituency might disagree with either the Supreme Court's decision³ or the position advocated by the then-Administration in any of these cases, neither we, nor any reasonable review of these cases and their briefs, can credibly assert that either side asserted a radical outcome; only those who advocate the most extreme views of religion-state relations in America – either total separation or total integration – could assert as much.

The Orthodox Jewish community, like so many other American faith communities, has benefited greatly from the religious liberty guaranteed by our Constitution. For us, this issue is the seminal issue upon which the Supreme Court can impact our lives. We urge you to consider this issue and the perspective a Justice Roberts would bring to it, if confirmed. We pray your committee's deliberations will be fair and serve the nation well.

Sincerely,



Mark Bane



Nathan J. Diament

¹ We believe it is worth noting that the most widely circulated critiques of Judge Roberts' record on religion-state matters have consistently omitted mention of items in his record – such as the 8/20/84 memo or DOJ amicus brief in the *Mergens* case – which are at odds with their assertions.

² See note 1.

³ Re: *Wallace* and *Weisman* - the UOJCA opposes government sponsored prayer in public schools, although we support moments of silence; Re: *Mergens* - the UOJCA strongly supports the principle of equal access to public facilities by religious groups; Re: *Smith* – the UOJCA strongly opposes the cramped view of the Free Exercise Clause resulting from the *Smith* case and has worked to enact and defend remedial legislation including the Religious Freedom Restoration Act (to be reviewed again by the Supreme Court this term in *Gonzales v. O Centro Espirita*) and Religious Land Use & Institutionalized Persons Act (upheld unanimously last term in *Cutter v. Wilkinson*).