June 13, 2005

Dear Senator:

I am writing on behalf of People For the American Way and our more than 750,000 members and activists nationwide in opposition to the confirmation of Thomas B. Griffith, General Counsel of Brigham Young University, to the United States Court of Appeals for the District of Columbia Circuit. For the reasons discussed below, Mr. Griffith has not met the high burden of demonstrating that he satisfies the criteria for a lifetime appointment to the second highest court in our nation.

To the contrary, Mr. Griffith has taken extreme positions on Title IX -- one of this country's most important anti-discrimination laws -- which reflect that, if confirmed, he would pose a threat to this and other laws crucial to securing equality of treatment and equal opportunity for every American. In addition, Mr. Griffith's continuing practice of law in Utah for nearly five years without being admitted to the state Bar as required by statute, coupled with his suspension on two separate occasions from the District of Columbia Bar for failure to pay mandatory Bar dues, indicate that he is, at best, someone with a disturbingly cavalier approach to his legal obligations, and, at worst, someone who considers himself above the law. In either case, far from exemplifying the highest standards of the legal profession -- standards we should demand of all federal judges -- Mr. Griffith fails to satisfy the minimum criteria for a lifetime position judging others. Mr. Griffith's disturbing record has justifiably resulted in substantial editorial criticism of his nomination.

I. Mr. Griffith's extreme legal positions on Title IX

The legal positions taken by Mr. Griffith as a member of the Commission on Opportunity in Athletics belie a commitment to the progress made on women's rights in this country, and reflect a troubling legal philosophy. The Commission was created in 2002 by Secretary of Education Roderick Paige to evaluate whether and how current standards regulating the application of Title IX of the Education Amendments of 1972 to athletics should be revised. Over the past thirty years, Title IX has been instrumental in expanding opportunities for women and girls in education, particularly in sports.

Nevertheless, the Commission made a series of recommendations to Secretary Paige -- recommendations supported by Mr. Griffith -- that,

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according to the National Coalition for Women and Girls in Education, "if accepted, would have devastated current Title IX athletics policies and reduced the athletic opportunities and scholarship dollars to which women and girls are legally entitled."[1] Not only had Mr. Griffith supported the Commission's harmful recommendations, which he has recently described as "modest,"[2] but he also made one of his own that was so extreme and contrary to existing law that it was rejected 11-4 by the Commission, a body itself dominated by individuals willing to weaken Title IX significantly.

Specifically, Mr. Griffith proposed the elimination of one prong of the independent three-part test that has long been used for determining compliance with Title IX. Under this prong of the test, a school is in compliance with Title IX if it can demonstrate that the athletic opportunities for males and females are in substantial proportion to each gender's representation in the student body of the school. In support of his extreme proposal, Mr. Griffith contended that the proportionality test is inconsistent with the language of Title IX and a violation of the Equal Protection Clause of the Constitution, and attacked the test, stating that: "It is illegal, it is unfair, and it is wrong."[3]

In taking this position, Mr. Griffith rejected the holdings of each of the eight Circuit Courts of Appeals that has considered, and upheld, the proportionality test.[4] When other Commissioners pointed this out, Mr. Griffith responded that the courts "were wrong" and "I

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[1] Letter of National Coalition for Women and Girls in Education to Hon. Orrin Hatch and Hon. Patrick Leahy (May 17, 2004), at 1. The Commission's recommendations were rejected by Secretary Paige.

[2] Answers of Thomas B. Griffith to Senate Judiciary Committee Questionnaire, at 16.

[3] Transcript of the Jan. 30, 2003 hearing of the Commission on Opportunity in Athletics, at 26-27.

[4] See Miami University Wrestling Club v. Miami University, 302 F.3d 608 (6th Cir. 2002); Chalenor v. University of North Dakota, 291 F.3d 1042 (8th Cir. 2002); Pederson v. Louisiana State University, 213 F.3d 858 (5th Cir. 2000); Neal v. Board of Trustees of The California State Universities, 198 F.3d 763 (9th Cir. 1999); Boulahanis v. Board of Regents, 198 F.3d 633 (7th Cir. 1999), cert. denied, 530 U.S. 1284 (2000); Cohen v. Brown Univ., 991 F.2d 888 (1st Cir. 1993) (Cohen I), and Cohen v. Brown Univ., 101 F.3d 155 (1st Cir. 1996) (Cohen II), cert. denied, 520 U.S. 1186 (1997); Horner v. Kentucky High School Athletic Ass'n, 43 F.3d 265 (6th Cir. 1994); Kelley v. Board of Trustees, University of Illinois, 35 F.3d 265 (7th Cir. 1994), cert. denied, 513 U.S. 1128 (1995); Roberts v. Colorado State Board of Agriculture, 998 F.2d 824 (10th Cir. 1993), cert. denied, 510 U.S. 1004 (1993); Williams v. School District of Bethlehem, 998 F.2d 168 (3d Cir. 1993).

for one don't believe in the infallibility of the judiciary."[5] Not only was Mr. Griffith's proposal soundly rejected by the Commission, but he himself later described it as "radical"[6] and noted that it "went down in flames."[7] And the Department of Education's own Office of Civil Rights subsequently stated that "with respect to the three-prong test, which has worked well, OCR encourages schools to take advantage of its flexibility, and to consider which of the three prongs best suits their individual situations. . . . Each of the three prongs is thus a valid, alternative way for schools to comply with Title IX."[8]

Mr. Griffith's efforts to eliminate the proportionality test appear to reflect a legal view that is clearly out of the mainstream and would seriously undermine important legal principles that have protected women from discrimination. Such a legal view evidences a disregard for a key component of Title IX and a legal philosophy at odds with a commitment to the progress made on eradicating discrimination based on gender in this country. Title IX cases continue to come before the courts, including the D.C. Circuit; Mr. Griffith's strongly held views on this matter, as well as his apparent disdain for judicial precedent, would pose a serious threat to Title IX were he to be confirmed.

Moreover, the legal positions that Mr. Griffith took in support of his proposal, specifically the fact that he was "unalterably opposed" to what he called the use of "numeric formulas" to evaluate Title IX compliance, which he contended violates the Equal Protection Clause, also raise serious questions about his legal views concerning other important aspects of the civil rights laws. For example, his position raises significant concerns about whether he is opposed to other remedies for discrimination in other contexts, such as affirmative action remedies for discrimination in contracting or employment, and whether he disagrees with other legal principles for determining the existence of unlawful discrimination, including the use of statistical evidence to prove that facially neutral policies have had a disparate impact on women or racial or ethnic minorities.

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[5] Transcript of the Jan. 30, 2003 hearing of the Commission on Opportunity in Athletics, at 106.

[6] Remarks at 43d Annual Conference of National Association of College and University Attorneys (June 22, 2003), as included in Letter of American Association of University Women to Senate Judiciary Committee (June 16, 2004), at 1.

[7] Transcript of the Jan. 30, 2003 hearing of the Commission on Opportunity in Athletics, at 249.

[8] Further Clarification of Intercollegiate Athletics Policy Guidance Regarding Title IX Compliance, a letter from Gerald Reynolds, Assistant Secretary for Civil Rights, U.S. Department of Education (July 11, 2003).

None of these serious concerns was dispelled by Mr. Griffith's responses to questions posed to him by members of the Judiciary Committee. To the contrary, in his effort to explain away his opposition to the proportionality test, Mr. Griffith now claims merely that some have "misused" the test to create quotas, and that he does not believe that the proportionality test "inevitably leads to the use of gender quotas."[9] However, if it were truly Mr. Griffith's belief that the proportionality test has been misused rather than that it is wrong, then the appropriate remedy would not be to eliminate that test, as Mr. Griffith proposed, but to take steps to provide others with the proper interpretation of the law.

It is also important to note that Mr. Griffith's disturbing record on Title IX has prompted significant opposition to his confirmation from leading organizations concerned with eradicating gender discrimination in our society and ensuring equal opportunity for women and girls, particularly in sports and education, including the Women's Sports Foundation, the American Association of University Women, the National Women's Law Center, the National Organization for Women, and the National Partnership for Women and Families.

II. Mr. Griffith has been suspended twice by the District of Columbia Bar, including once for three years, and has practiced law without a license for nearly five years in Utah

Very serious concerns are also raised by the fact that Mr. Griffith has been engaged in the practice of law in Utah for nearly five years without becoming a member of the Utah Bar, when state law expressly requires everyone practicing law in Utah to be admitted to the Utah Bar. Utah Code Ann. § 78-9-101(1). These concerns, which are significant in and of themselves, also exist against the backdrop of Mr. Griffith's two suspensions from the District of Columbia bar for failure to pay his mandatory Bar dues, including one suspension for three years, a time during which Mr. Griffith continued to practice law in D.C. and then in Utah.

Although some of Mr. Griffith's defenders maintain that his Bar problem in the District of Columbia was the result of inadvertence, it is clear that no such excuse can be made as to the situation in Utah. Moreover, as set forth below, not only did Mr. Griffith's hearing testimony fail to resolve these concerns, but new and disturbing information also emerged about Mr. Griffith's record and his clear failure to comply with his legal obligations.

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[9] Response of Thomas B. Griffith to the Written Questions of Senator Edward M. Kennedy at 3 (Responses 2a, 2b)(Dec. 3, 2004).

A. Mr. Griffith has been suspended twice by the D.C. Bar, and also did not disclose the first suspension in either set of answers to the Judiciary Committee's questionnaire

According to Mr. Griffith's answers to the Senate Judiciary Committee's questionnaire posed to him when he was first nominated in 2004 (at 4, question 11), his membership in the D.C. Bar "lapsed for non-payment of dues on November 30, 1998 due to a clerical oversight, but was reinstated on November 13, 2001."[10] Mr. Griffith's questionnaire answers also reflect that, well before 1998, he had allowed his only other state court Bar membership (in North Carolina) to lapse (at 4, question 11), and also that he was practicing law in the District of Columbia at the time of his "lapse" in D.C. Bar membership, first as Senate Legal Counsel, then as a partner at Wiley, Rein & Fielding (at 2). In 2000, he became General Counsel of Brigham Young University in Provo, Utah, but his answers to the questionnaire reflect that he was not then and is not now a member of the Utah Bar (at 2-4, questions 6 and 11).

Thus, according to the information Mr. Griffith provided to the Committee, for the three years following November 1998, he was not an active member in good standing of any state court Bar, yet he continued to practice law and apparently to hold himself out as authorized to do so, first in the District of Columbia and then in Utah. Rule 49 of the District of Columbia Court of Appeals prohibits the unauthorized practice of law in the District of Columbia, and requires, except as otherwise expressly permitted, that an attorney engaged in the practice of law in the District of Columbia must be "enrolled as an active member of the District of Columbia Bar."

It was also learned after Mr. Griffith's hearing that he has been suspended not once but twice by the D.C. Bar for failing to pay

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[10] Mr. Griffith's answers to the Committee's questionnaire do not elaborate on what he calls this "clerical oversight." Several of Mr. Griffith's defenders have contended that he did not receive his D.C. Bar invoice in 1998 while serving as Senate Legal Counsel. It is our understanding that, each year, the District of Columbia Bar mails out invoices for dues, with two follow-up notices if the dues are not timely paid, a total of three separate invoices for dues. If a member's dues are not paid after the third notice, the attorney is administratively suspended from the Bar and the Bar so notifies the Clerks of the District of Columbia Court of Appeals and the D.C. Superior Court. See <http://www.dcbar.org/for_lawyers/washington_lawyer/august_2002/barcounsel.cfm> (visited June 8, 2004) and <http://www.dcbar.org/inside_the_bar/structure/bylaws/article03.cfm#sec1 (visited July 2, 2004). According to the District of Columbia Bar, it had the same business address on file for Mr. Griffith in 1997 as it did in 1998.

mandatory Bar dues. According to Griffith's answers to post-hearing questions, "While working as Senate Legal Counsel, I was late in the payment of my bar dues in 1996 and 1997. My 1997 dues were not paid until January 1998, causing a temporary suspension of little over a month."[11] This was in addition to Griffith's three-year suspension from the D.C. Bar (Nov. 1998-Nov. 2001), which previously had been disclosed publicly.

Nevertheless, Mr. Griffith did not identify his first suspension from the D.C. Bar in his answers to the Senate Judiciary Committee's questionnaire that he submitted in May 2004, nor did he identify it in the answers that he submitted to the Committee (under oath) on February 15, 2005 in connection with his re-nomination. This is despite the fact that Question 11 of the Committee's questionnaire specifically required Mr. Griffith to "List all courts in which you have been admitted to practice, with dates of admission and lapses if such memberships lapsed. Please explain the reason for any lapse of membership." (Emphasis added.)

B. Mr. Griffith has practiced law for nearly five years in Utah without a license, despite state law requiring everyone who practices there to become a member of the Utah Bar and despite being advised by the state Bar to take the Bar exam

Mr. Griffith became the General Counsel of Brigham Young University in 2000, but he is still not a member of the Utah Bar. Utah law mandates that, "[u]nless otherwise provided by law, a person may not practice law or assume to act or hold himself out to the public as a person qualified to practice law within this state if he (a) is not admitted and licensed to practice law within this state; [or] (b) has been disbarred or suspended from the practice of law. . . ." Utah Code Ann. § 78-9-101(1). Mr. Griffith has admitted that he has "practiced law in Utah since beginning my responsibilities as Assistant to the President and General Counsel at Brigham Young University in August 2000."[12]

As discussed below, Mr. Griffith has been specifically informed

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[11] Responses of Thomas B. Griffith to the Written Questions of Senator Patrick J. Leahy at 1 (Response 2)(Dec. 3, 2004).

[12] Responses of Thomas B. Griffith to the Written Questions of Senator Russell D. Feingold at 1 (Response 1)(Dec. 3, 2004). See also Responses of Thomas B. Griffith to the Written Questions of Senator Patrick J. Leahy at 12 (Response 26a)(Dec. 3, 2004)("As Assistant to the President and General Counsel of the University, I routinely give legal advice to the President of the University, members of the President's Council . . . and administrators, staff, and employees of the University").

by the Utah State Bar that there is no "general counsel" exception to Utah law requiring all practicing attorneys to be licensed in the state. See also Carol D. Leonnig, "Judicial Nominee Practiced Law Without License in Utah," *Washington Post*, June 21, 2004, at A1. While declining to comment on Mr. Griffith's specific situation, Katherine Fox, the General Counsel of the Utah Bar, has stated, "Unless [a general counsel] were doing things in which they were never practicing law, they need to get licensed." Id. (emphasis added).

Although Mr. Griffith and his supporters have maintained that his multi-year suspension from the D.C. Bar resulted from an inadvertent "clerical oversight," there is no such explanation for his practice of law in Utah for nearly five years without having been admitted to the Bar of that state, in disregard of the clear statutory requirement that he be admitted to the Utah Bar. According to the Utah State Bar Rules Governing Admissions, a number of options exist for an attorney admitted elsewhere who moves to Utah to become admitted to the Utah Bar. These include timely moving for "reciprocal admission" to the Bar based on the attorney's lawful practice of law in another jurisdiction that grants similar reciprocity to Utah attorneys, or taking the Utah Bar exam.[13] According to the *Washington Post*, Mr. Griffith was unable to obtain reciprocal admission to the Utah Bar because he "did not meet the Utah State Bar requirement that he be a lawyer in good standing in his previous state for three of the previous four years." Carol D. Leonnig, "Judicial Nominee Practiced Law Without License in Utah," *Washington Post*, June 21, 2004, at A1. This still left Mr. Griffith with the opportunity to take the Utah Bar exam in order to avoid the unauthorized practice of law in Utah. Id.

Indeed, it was revealed at Mr. Griffith's confirmation hearing that the Utah State bar had specifically advised Mr. Griffith in 2003 to take the Bar exam. A letter to Mr. Griffith dated May 14, 2003 from Katherine A. Fox, General Counsel of the Utah Bar, specifically advised him that "Utah does not have and has never had" a "general counsel rule exception." In this same letter, Ms. Fox also advised Griffith that, since there was no general counsel exception to the law requiring all attorneys practicing in Utah to be admitted to the Utah Bar, and since Griffith was not eligible to waive into the Utah Bar, he was "fortunate, however, to have a viable option remaining, i.e., admittance by examination," and she "encourage[d] [him] to start preparing [his] application as soon as possible."

Ms. Fox concluded her May 14, 2003 letter to Griffith by again reminding him that

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[13] See <http://www.utcourts.gov/resources/rules/ucja/index.htm#Chapter%2018>, Chapter 18 (visited June 15, 2004).

> we have no general counsel exception rule allowing individuals who serve in such positions to actually practice law without Utah licensure. Towards that end, it would be a prudent course of action to limit your work to those activities which would not constitute the practice of law. If such activities are unavoidable, I strongly urge you to closely associate with someone who is actually licensed here and on active status. Finally, just so you know, all applicants are required to undergo a character and fitness assessment prior to being permitted to take the examination. Practicing law without a Utah license has been an issue for some applicants in the past and has resulted in delayed admission or even denial.

Despite this letter from the General Counsel of the Utah Bar, Mr. Griffith still has never taken the Utah Bar exam nor been admitted to the Utah Bar, but has continued to engage in the practice of law in Utah.

C. Mr. Griffith gave false answers, under oath, to the Utah State Bar

Documents released to the public at Mr. Griffith's hearing on November 16, 2004 reveal that in November 2003, he gave a false answer, under oath, to the Utah Bar that he had never been "suspended" as an attorney. Question 52 on an application that Griffith signed under oath on November 19, 2003 to take the Utah Bar exam -- an exam he never ultimately took -- asked, "Have you ever been disbarred, suspended, censured, sanctioned, disciplined or otherwise reprimanded or disqualified, whether publicly or privately, as an attorney?" (Emphasis added.) Mr. Griffith answered "No" to this question, although, as he knew then, he had been suspended by the D.C. Bar for three years (from Nov. 1998-Nov. 2001).[14]

When Senator Hatch asked Mr. Griffith at his hearing about the very clear discrepancy between his written answer to Question 52 and the actual facts, Griffith testified that "the thought never crossed my mind that the question might relate to a temporary lapse due to an inadvertent failure to pay bar dues." Given the very clear wording of Question 52, however, which contains no qualification or exception for the type of suspension, as well as the opportunity on the form itself for Griffith to have explained a "yes" answer, in addition to the fact that the question was to be answered under oath, Griffith's testimony was extremely troubling.[15]

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[14] According to questions posed to Mr. Griffith by Senator Leahy, Griffith wrote a letter to the D.C. Bar on Nov. 7, 2001 stating that he had been "suspended for non-payment of dues . . . ." Responses of Thomas B. Griffith to the Written Questions of Senator Patrick J. Leahy at 9 (Question 21)(Dec. 3, 2004).

[15] In his answers to post-hearing questions, Mr. Griffith compounded his effort to read a limitation into Question 52 that simply was not

The documents released at Mr. Griffith's hearing also revealed that he had given another problematic answer, under oath, to the Utah Bar. Question 46 of the Bar application that Griffith signed under oath on November 19, 2003 asked, "Have you ever given legal advice and/or held yourself out as an attorney, lawyer, or legal counselor in the state of Utah? If 'Yes,' please provide a full explanation . . . " Mr. Griffith answered "yes," and further stated "Since August 2000, I have served as Assistant to the President and General Counsel at Brigham Young University. When called upon to act in my capacity as an attorney, I have done so as a member of the Bar of the District of Columbia . . ." (Emphasis added.) However, as Mr. Griffith well knew when he answered this question, at the time he began working at BYU in August 2000, he had been suspended from the D.C. Bar, a suspension not lifted until Nov. 2001.

D. Mr. Griffith's post-hearing written answers did not resolve and in fact reinforced these serious concerns

A number of Senators on the Judiciary Committee posed post-hearing questions to Mr. Griffith regarding his Bar problems and lapses. Mr. Griffith's answers to those questions did not resolve the concerns regarding his continuing unlicensed practice of law in Utah.

To the contrary, Mr. Griffith has attempted to avoid responsibility for violating Utah state law requiring that everyone practicing law in the state be licensed to do so by claiming that it is permissible for him to practice law in Utah without being admitted to the state Bar so long as he is "associated" with a Bar member.[16] However, Griffith has admitted in his written answers that there is no such "association" exception in the Utah statute requiring that every person practicing law in the state must be a licensed member of the Utah Bar.[17] He has further admitted that "I am aware of no sections of the Utah Bar rules that expressly permit an unlicensed attorney to practice in 'close association' with a Utah-licensed lawyer."[18] Worse, according to Griffith's answers, he believes that he may continue to practice law "indefinitely" in Utah as the General Counsel of BYU

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there, stating "I read the question as calling for information whether the applicant had ever been sanctioned for misconduct by a disciplinary authority, which I have never been." Responses of Thomas B. Griffith to the Written Questions of Senator Patrick J. Leahy at 9 (Response 21)(Dec. 3, 2004).

[16] See, e.g., Responses of Thomas B. Griffith to the Written Questions of Senator Dianne Feinstein at 1 (Response 1)(Dec. 3, 2004).

[17] Responses of Thomas B. Griffith to the Written Questions of Senator Russell D. Feingold at 7 (Response 6iii)(Dec. 3, 2004).

[18] Responses of Thomas B. Griffith to the Written Questions of Senator Dianne Feinstein at 3 (Response 7)(Dec. 3, 2004).

without ever becoming a member of the Utah Bar, so long as he is "closely associated" with a Bar member.[19] But in responding to Senators' written questions, Griffith could cite to no Utah statute or Utah Bar rule that supports such a contention, nor any advice from the Bar authorizing him to practice in the state indefinitely without being admitted to the Bar.

Indeed, the letter sent to Griffith on May 14, 2003 by Utah Bar General Counsel Katherine A. Fox, quoted above, admonished Griffith to start preparing his application to take the Utah Bar exam "as soon as possible." Under no objective reading of this letter could it be concluded that an attorney working as a general counsel could continue to practice law indefinitely in Utah without taking the Bar exam and being admitted to the state Bar. The only fair reading of Ms. Fox's advice about being "closely associated" with an active Bar member is that it was a temporary measure to be undertaken by someone until he could take the Bar exam (which Griffith has had at least nine opportunities to take in the past four years).[20] Any other reading, including Griffith's self-serving reading, would mean the Utah Bar has effectively amended state statutory law by creating a "general counsel" exception to the statute requiring that everyone practicing law in the state must be admitted to the Bar, an exception that Griffith himself admits does not exist and that the Utah Bar has specifically informed him does not exist.

It is also worth noting that Mr. Griffith admitted in his written answers that he does not always have Utah Bar members present with him when he renders legal advice to or otherwise discusses legal matters with his clients -- BYU officials. According to Griffith, "it has not been my understanding that it is necessary to have a Utah lawyer present on each of those occasions . . ."[21] According to Griffith, citing no authority, it is sufficient for him to consult with Utah lawyers. Among those lawyers, he says, are the other attorneys in his office, the very same attorneys that he, as the General Counsel, is charged with supervising. The very notion that "consulting" subordinates can somehow exempt Mr. Griffith indefinitely from the statutory obligation that he be admitted to the Utah Bar further

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[19] Responses of Thomas B. Griffith to the Written Questions of Senator Russell D. Feingold at 9 (Response 9ii)(Dec. 3, 2004).

[20] This is also the only objective reading of a letter dated July 2, 2004 to Senator Orrin Hatch from John C. Baldwin, the Executive Director of the Utah State Bar. Indeed, Mr. Baldwin reconfirmed in his letter that "[t]hose who engage in the practice of law in Utah must be licensed by the Utah Supreme Court through the Utah State Bar. There is no general counsel exception rule which allows persons who serve in such positions to practice law without licensure." (Emphasis added.)

[21] Responses of Thomas B. Griffith to the Written Questions of Senator Patrick J. Leahy at 13 (Response 26f)(Dec. 3, 2004).

underscores that Griffith's effort to avoid responsibility for failing to become a licensed member of the state Bar is simply too clever by half. His answers are devoid of any basis in controlling state law.

Mr. Griffith also revealed in his written post-hearing answers that in January 2004, he asked a second year law student working in his office to research "Utah laws and practices on bar admissions regarding in-house counsel." Her advice was that "the safest course for a Utah corporation would be to ask its in-house lawyers to join the Utah Bar."[22] Griffith tried to deflect the import of this advice, which he has never followed, by claiming that the student's research "did not identify" what Griffith characterized as "the consistent advice reflected in the views of the current and former officials of the Utah Bar who have written the Committee that in-house counsel in Utah need not join the local bar provided that they are associated with Utah lawyers and make no appearances or filings in court."[23] He further stated that he did not question the student's advice since "it was always my intention to join the Utah Bar."[24] Significantly, however, Griffith has never joined the Utah Bar, and he has passed up every one of at least nine opportunities he has had to take the state Bar exam since he began practicing law in Utah.

This is a very serious matter. Both the *New York Times* and the *Salt Lake Tribune* -- one of the leading newspapers in Mr. Griffith's home state -- have published editorials stating that in light of Mr. Griffith's failure to abide by applicable Bar licensing rules, particularly in Utah, where the failure clearly has been knowing, he should not be confirmed for the federal bench.[25] According to the *Salt Lake Tribune*,

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[22] Responses of Thomas B. Griffith to the Written Questions of Senator Patrick J. Leahy at 11 (Response 25; emphasis added)(Dec. 3, 2004).

[23] Id. Like the letter to Mr. Griffith from Utah Bar General Counsel Fox and the letter to Senator Hatch from Bar Director Baldwin, the letter to the Committee to which Mr. Griffith referred in this answer did not state that in-house counsel could continue indefinitely to practice law in Utah without becoming licensed. And, like Mr. Griffith's written and oral testimony, it was devoid of citation to any supporting legal authority. See Letter of John A. Adams, *et al*. to Hon. Orrin G. Hatch (June 28, 2004).

[24] Responses of Thomas B. Griffith to the Written Questions of Senator Patrick J. Leahy at 11 (Response 25; emphasis added)(Dec. 3, 2004).

[25] "A Nominee With No License," *New York Times*, June 27, 2004, at Section 4, p. 12; "Expired License," *Salt Lake Tribune*, June 27, 2004, at AA1.

> A license is the essence of being a professional. Plumbers and teachers know that, and so should lawyers. Playing by the rules is what the law is about. Any lawyer who does not exemplify that concept in his own behavior should not be on the bench, especially one as important as the appellate court in D.C.

"Expired License," *Salt Lake Tribune*, June 27, 2004, at AA1. Similarly, the *New York Times*, noting that Mr. Griffith "practiced law in two separate jurisdictions without the required license" and "has shown a striking disregard for the rules, and his profession," concluded that "[t]he Senate should not confirm him, and it should regard his situation as a reminder of the need to be vigilant in vetting the administration's remaining nominees." "A Nominee With No License," *New York Times*, June 27, 2004, at Section 4, p. 12.[26]

Mr. Griffith's oral testimony and his written answers reveal someone who not only has failed to comply with the very clear statute regarding the requirements for the practice of law in Utah, but also someone now seeking to avoid responsibility for that serious lapse. From his application to the Utah Bar falsely denying under oath that he had ever been "suspended" previously as a lawyer, to the responses he has given the Judiciary Committee, Mr. Griffith's answers are flatly inconsistent with his professional obligations. And the post-hearing information that he has provided about his failure to pay mandatory D.C. Bar dues further reveals an attorney who has clearly disregarded important legal requirements pertaining to his profession. Mr. Griffith's conduct, and his testimony about his conduct, are unworthy of someone seeking a lifetime judgeship on the second most important court in this country.

CONCLUSION

The federal courts of appeals play a critical role in our judicial system, second in importance only to the Supreme Court. Because the Supreme Court hears so few cases, the courts of appeals really are the courts of last resort for most Americans, giving a federal appellate judge considerable power to impose his or her own jurisprudential views in a particular case. And particularly because the Supreme Court hears so few cases, the protection of civil and constitutional rights by the judiciary depends in large measure on the appellate courts.

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[26] A columnist for the *The Daily Camera*, reviewing Mr. Griffith's situation with the D.C. and Utah Bars, has written that Griffith "apparently thinks that rules don't apply to him," and has called him an "embarrassment." Christopher Brauchli, "Two More Feathers in Bush's Cap," *The Daily Camera* (July 24, 2004) <http://www.bouldernews.com/bdc/opinion_columnists/article/0,1713,BDC_2490_3060115,00.html> (visited Sept. 15, 2004).

Among the courts of appeals, the D.C. Circuit is considered of particular importance, in part because of its jurisdiction over administrative and regulatory agencies –- bodies that are crucial to the implementation of federal law nationwide and to the protection of legal rights and interests critical to Americans. With respect to certain agency conduct, such as some important Federal Communications Commission and environmental matters, the D.C. Circuit has exclusive jurisdiction. It is imperative that anyone confirmed to this court completely satisfy the criteria for confirmation. For the reasons discussed above, however, Mr. Griffith has not met these criteria, and the Senate should not approve his nomination to the United States Court of Appeals for the District of Columbia Circuit.

Sincerely,

Ralph G. Neas
President