



January 31, 2008

Hon. Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Hon. Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Re: Richard Honaker

Dear Senator Leahy and Senator Specter:

I am writing on behalf of People For the American Way and our members and activists nationwide, including our members and activists in Wyoming, in opposition to the confirmation of Richard Honaker to the United States District Court for the District of Wyoming. Mr. Honaker, a former state legislator and now an attorney in private practice, is a staunch anti-choice advocate who has long sought to undermine the right of women to reproductive freedom. In addition, he has a disturbing record on the fundamental constitutional principle of government neutrality toward religion and has made many extreme statements concerning this issue. He has publicly disparaged those who do not share his own religious beliefs and, for more than 15 years, has served as a Board member of a right-wing, anti-gay organization.

In light of this record, Mr. Honaker's nomination has provoked significant controversy and opposition, including from women's rights advocates in Wyoming most familiar with his anti-choice activism, as well as from leading national women's rights organizations, including NOW, the National Women's Law Center, and NARAL Pro-Choice America. Given the Senate's practice of not moving controversial judicial nominees once the country is in the midst of the presidential election season, as it is now, the Committee should not proceed with this nomination.

In any event, it is clear from Mr. Honaker's record that he should not be confirmed. As more than 200 law professors wrote to the Senate Judiciary Committee in July 2001, no federal judicial nominee is presumptively entitled to confirmation. Because federal judicial appointments are for life and significantly affect the rights of all Americans, and because of

the Senate's co-equal role with the President in the confirmation process, nominees must demonstrate that they meet the appropriate criteria. These include not only an "exemplary record in the law," but also an "open mind to decision-making" and a "record of commitment to the progress made on civil rights, women's rights, and individual liberties."<sup>1</sup> For the reasons discussed below, Richard Honaker does not satisfy these criteria, and the Committee should not vote to confirm him.

- **Mr. Honaker has a disturbing record on government neutrality toward religion and a legal philosophy that threatens church-state separation**

While much of the opposition to Mr. Honaker's confirmation has justifiably been focused on his anti-choice activism, it is critical that the other disturbing aspects of his record not be overlooked, in particular his antagonistic views about government neutrality toward religion and his longtime service as a Board member of a far right, anti-gay organization. Mr. Honaker's record is replete with writings and speeches indicating that he not only questions the fundamental constitutional principle of government neutrality toward religion, but also that he equates American democracy with Christianity -- the Religious Right's "Christian Nation" view of America -- an ideology that threatens religious liberty and church-state separation. Mr. Honaker believes that the Bible is "true in law," and has publicly disparaged non-"Judeo-Christians" as unable to sustain "political liberty." The following excerpts from Mr. Honaker's writings and speeches are indicative of these views:

"Autonomy is the new secular religion sanctioned by the United States Supreme Court. The Supreme Court no longer talks about America as a Christian nation or about the Christian underpinnings of law. In moving even beyond the pale of neutrality, it openly advances the idea of autonomy, stating that 'personal dignity and autonomy are central to the liberty protected by the Fourteenth Amendment.'"<sup>2</sup>

"It doesn't take a legal scholar to perceive that the nation's highest court, its universities and law schools, its political institutions, and its news media, have moved racially [sic] away from a Christian base toward a secular base in which man, not God, is the creator of values, of rights, of law, and of justice."<sup>3</sup>

"We would like to see political liberty established in an Islamic country -- Iraq -- but the question is, how will political liberty sustain itself in the absence of a Judeo-Christian base?"<sup>4</sup>

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<sup>1</sup> See Law Professors' Letter of July 13, 2001. A full copy of this letter, which elaborates further on these criteria, is available from People For the American Way.

<sup>2</sup> Richard Honaker, "Heralding the Good News of Jesus Christ," *Reformed Herald*, Nov. 1992, available at: <<http://incolor.inebraska.com/stuart/justice.htm>> (visited January 25, 2008) (hereafter "Heralding the Good News").

<sup>3</sup> *Id.*

<sup>4</sup> Richard Honaker, "Liberty," Speech to the State Home School Convention (May 21, 2005) (emphasis added).

“Neutrality was not neutrality at all. It was a calculated method of moving American society away from its Christian base and toward a secular base.”<sup>5</sup>

“I came to know that if the Bible is true, if Christianity is true, then it is true in family life. It is true in economics. It is true in law, and it is true in all facets of human endeavor.”<sup>6</sup>

“As Americans, if taught accurately, history can teach us that the greatest American patriots and leaders were Christians, and that there is indeed a Christian basis for American institutions of law, government, and business. History can teach us the truth.”<sup>7</sup>

Mr. Honaker speaks disdainfully of those who disagree with his views on neutrality as “secularists,”<sup>8</sup> ignoring the fact that many people of faith recognize the importance of government neutrality toward religion, and support church-state separation as vital to religious liberty and freedom of conscience. Mr. Honaker’s disparagement of government neutrality toward religion calls into serious question his ability to approach fundamental constitutional principles with an open mind and to apply the law faithfully even if it does not conform to his beliefs.

In this regard, of added concern is that Mr. Honaker since 1992 has served as a member of the Board of Directors of the Home School Legal Defense Association (“HSLDA”).<sup>9</sup> Although this organization, co-founded by right-wing activist Michael Farris, has a benign-sounding name suggesting that it is merely an advocate for the interests of parents who are home-schooling their children, in fact it is a group that advocates liberty-restricting ideological positions on a range of matters having nothing to do with home-schooling.

For example, as reported by *Salon* in 2000, Chip Berlet, “analyst at Political Research Associates and longtime observer of the Christian right,” observed that “[t]he efforts of HSLDA and similarly motivated organizations . . . are major players behind recent efforts to mandate creationist curriculum and attack environmental education, sex education, and multicultural classroom material.”<sup>10</sup> Reaching out to youth, HSLDA has created an “army of

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<sup>5</sup> *Heralding the Good News*.

<sup>6</sup> *Id.* (emphasis added).

<sup>7</sup> Richard Honaker, “History,” Speech to the 2005 Homeschoolers of Wyoming convention (May 20, 2005) (emphasis added). This and Mr. Honaker’s other speeches cited herein were provided by Mr. Honaker to the Committee in response to the Committee’s Questionnaire.

<sup>8</sup> *Heralding the Good News*.

<sup>9</sup> Richard Honaker, Responses to Senate Judiciary Committee Questionnaire, Answer No. 7, at 3 (March 20, 2007).

<sup>10</sup> Helen Cordes, “Battling For the Heart and Soul of Home-Schoolers,” *Salon* (Oct. 2, 2000), available at <[http://archive.salon.com/mwt/feature/2000/10/02/homeschooling\\_battle/print.html](http://archive.salon.com/mwt/feature/2000/10/02/homeschooling_battle/print.html)> (visited

eager teen activists . . . called Generation Joshua,” to “help defeat the giants of abortion, same-sex marriage and judicial activism.”<sup>11</sup>

Even further from home-schooling is the HSLDA’s anti-gay advocacy. On its web site, in support of “efforts to constitutionally define marriage as between a man and a woman,” HSLDA states:

It is impossible to say that the God of the Bible would sanction rights of homosexual marriage. Thus, there is no such right in a God-based theory of rights. Any man-made theory of rights is no theory at all. Thus, the argument for gay rights is an argument that fundamentally erodes the very premise of all human rights as rights. HSLDA is not willing to move into an era of human privileges. We believe this would jeopardize our liberty to teach our children at home and bring them up in the nurture and admonition of the Lord.<sup>12</sup>

Mr. Honaker himself has disparaged gay rights as “special interests,”<sup>13</sup> when of course there is nothing “special” at all, for example, about being able to get or hold a job based on one’s qualifications. This is not a “human *privilege*” -- to use HSLDA’s words -- but, in America, a recognized legal *right*.

Given his record and clearly expressed views, it is apparent that Mr. Honaker believes it appropriate to allow his interpretation of the Bible and his personal religious beliefs to determine American law and public policy, even when that means denying legal rights to individual Americans. Such an ideology is antithetical to constitutional principles of equality under the law.

- **Mr. Honaker has worked to undermine women’s reproductive freedom**

Mr. Honaker has written that abortion is “wrong, and no one should have the right to do what is wrong.”<sup>14</sup> As a Wyoming state legislator, Mr. Honaker in 1991 introduced a bill entitled the “Human Life Protection Act” that would have prohibited abortion, except to protect a woman’s life or in cases of incest or rape, but then only if the victim had reported the crime within five days of its occurrence, a highly unrealistic requirement in many instances.<sup>15</sup> The bill did not pass, but Mr. Honaker introduced a similar near-total abortion

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January 30, 2008).

<sup>11</sup> Art Moore, “Homeschoolers Hit Campaign Trail,” *WorldNetDaily* (Sept. 14, 2004), available at: <[http://www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=40429](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=40429)> (visited January 31, 2008).

<sup>12</sup> “About HSLDA,” available at <<http://www.hslda.org/about/default.asp>> (visited January 28, 2008) (emphasis added).

<sup>13</sup> Richard Honaker, legislative campaign speech (July 1994) (claiming that “working men and women” are “not particularly excited about socialized health care, . . . hiring quotas for minorities, about special interests for gays . . .”).

<sup>14</sup> *Heralding the Good News* (emphasis added).

<sup>15</sup> For the underlying authorities in this paragraph concerning Mr. Honaker’s record, see

ban the following year. This also did not pass. Having failed legislatively in his efforts to ban abortion, Mr. Honaker then represented the Unseen Hands Prayer Circle in its successful efforts to place the “Human Life Protection Act” on the state ballot in 1994. The measure was rejected overwhelmingly by Wyoming voters.

In response to Mr. Honaker’s nomination to the federal bench, advocates in Wyoming for women’s reproductive freedom, all too familiar with his record on this issue, came forward in opposition to his confirmation.<sup>16</sup> An editorial in the Casper, Wyoming, *Star Tribune* concerning Mr. Honaker’s nomination found it

difficult to imagine that President Bush or his advisers on the selection, Wyoming Sens. Craig Thomas and Mike Enzi, could find no worthy nominee in the state whose nomination would be less contentious. Honaker’s history on the abortion issue was hardly a secret.<sup>17</sup>

The editorial went on to conclude that “Wyoming does not need to be in the middle of yet another debate over one of the country’s most divisive issues -- particularly when state legislators and voters long ago decided the issue in Wyoming.”<sup>18</sup>

On March 24, 2007, Mr. Honaker -- *already a nominee* to the district court -- sent a remarkable letter to Sharon Breitweiser, Executive Director of NARAL Pro-Choice Wyoming, seeking to preserve his chance at a lifetime judgeship by telling Ms. Breitweiser that she ought not worry about his anti-choice record because, if confirmed, he would “faithfully apply[] the precedent of the United States Supreme Court and the Tenth Circuit . . .”<sup>19</sup> Moreover, Mr. Honaker wrote that “it is unlikely that any case involving the abortion issue would ever come before the United States District Court in Wyoming,” and “[i]n any event, on such a controversial subject, the losing party would appeal to the Tenth Circuit, and perhaps on to the United States Supreme Court, and nobody would remember what the trial judge did anyhow.”<sup>20</sup>

Apart from containing what has now become the standard, rote promise of all judicial nominees to follow precedent, Mr. Honaker’s letter is astonishing in its implicit suggestion

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NARAL Pro-Choice America and NARAL Pro-Choice Wyoming Fact Sheet re Richard H. Honaker, available at: <<http://www.prochoiceamerica.org/assets/files/Courts-Noms-Honaker.pdf>> (visited January 25, 2008).

<sup>16</sup> See, e.g., Sharon Breitweiser, “The Horrifying Honaker Nomination” (Mar. 21, 2007), available at <[http://www.bushvchoice.com/archives/2007/03/the\\_horrifying.html](http://www.bushvchoice.com/archives/2007/03/the_horrifying.html)> (visited January 28, 2008).

<sup>17</sup> Editorial, “Honaker’s Abortion Views Overshadow Qualifications,” *Casper Star Tribune* (Mar. 21, 2007), available at: <<http://www.trib.com/articles/2007/03/21/editorial/editorial/e717a5b2afbe9fb1872572a400822648.txt>> (visited January 28, 2008).

<sup>18</sup> Id.

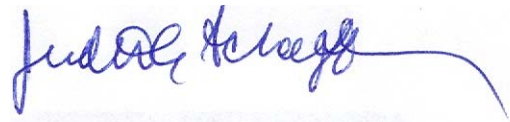
<sup>19</sup> Letter from Richard Honaker to Sharon Breitweiser (Mar. 24, 2007).

<sup>20</sup> Id.

that Americans really need not care who sits on federal district courts, or what their qualifications are, because trial judges do not matter much and can always be reversed. Such a suggestion completely overlooks not only a trial judge's decision-making authority in non-jury cases but also the critical role of trial judges in how a case is conducted, which includes ruling on motions and deciding what evidence is even permitted in the record. It also overlooks the significant fact that not all litigants who lose in the district court have the resources, financial or otherwise, to pursue their cases further.

There is no "trial judge" exception to the important criteria for those seeking to be confirmed to lifetime positions on the federal bench. Mr. Honaker does not satisfy those criteria, and he should not be confirmed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Judith E. Schaeffer", with a long horizontal flourish extending to the right.

Judith E. Schaeffer  
Legal Director

cc: All Members, Senate Judiciary Committee