



## **SPECIAL REPORT**

# **THE CASE AGAINST THE CONFIRMATION OF JOHN ASHCROFT AS ATTORNEY GENERAL OF THE UNITED STATES**

PART ONE: AN OVERVIEW OF THE SENATE YEARS

**“I am a uniter, not a divider.”**

George W. Bush  
Presidential Campaign 2000

**“There are voices in the Republican Party today who preach pragmatism, who champion conciliation, who counsel compromise. I stand here today to reject those deceptions. If ever there was a time to unfurl the banner of unabashed conservatism, it is now.”**

John D. Ashcroft  
*Human Events*, April 10, 1998

January 4, 2001

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# THE EXTREMIST SENATE RECORD OF JOHN D. ASHCROFT

## I. THE SPECIAL NATURE OF THE OFFICE OF ATTORNEY GENERAL

People For the American Way has prepared this report in connection with the nomination of John D. Ashcroft to be Attorney General of the United States. It is extremely rare for People For the American Way to oppose the confirmation of a nominee for an Executive Branch position. But the extraordinary nature of John Ashcroft's record as an elected official – including demonstrated indifference and hostility toward individual rights and equal opportunity – compels us to oppose his confirmation as Attorney General.

The Attorney General is not simply the lawyer for the President. Rather, the Attorney General is also the lawyer for all the people of this country, a person with the power to affect, for good or ill, the lives of all Americans. As head of the Department of Justice, the Attorney General makes decisions that determine how justice is defined and pursued by the Executive Branch. Among other things, the Attorney General is the principal enforcer of our nation's civil rights laws and is entrusted with guaranteeing justice for all Americans. The Attorney General is also responsible for the enforcement of immigration laws and for federal laws protecting women's reproductive freedom and the environment. In choosing which cases the Justice Department will take up, the Attorney General plays a critical role in determining whether our nation will keep its promise to all Americans of equal justice under the law or will abandon this goal in favor of a narrow, extremist, and exclusionary vision of justice.

More than any other Cabinet member, the Attorney General exerts critically important influence beyond the Executive Branch itself. Through the Justice Department's role in recommending nominees to the federal courts, the Attorney General plays a major part in deciding what kinds of judges will preside over our nation's federal courts. The screening and selection process carried out in the Justice Department determines whether the men and women who come before the Senate for confirmation to the third branch of government are fair-minded individuals committed to equal justice under law for all Americans or are ideologues chosen to advance a specific social and legal agenda.

The Attorney General reviews proposed legislation and renders advice as to whether particular proposals violate the Constitution as interpreted by the Supreme Court. Through the Office of the Solicitor General, the Attorney General also represents the United States before the Supreme Court, where he or she is in a position to advocate on behalf of or in opposition to individual rights and freedoms and other matters of importance in the lives of all Americans.

For these reasons, the person chosen to be the Attorney General of the United States must be someone who has demonstrated the highest respect for the fundamental principles of equality under the law. The person confirmed to this critically important position must be committed to seeing to it that every American enjoys equal protection under the law and must be willing to pledge the power and resources at the Attorney General's command to the pursuit of equal justice.

And because of the Attorney General's unique powers and responsibilities as the nation's chief lawyer and prosecutor, he or she must also be a person beyond reproach, a person of integrity and judgment, and one with a temperament fit for this special position.

For these reasons, a high standard should be applied to the consideration of a nominee for Attorney General. The special nature of the Office of Attorney General should be of principal concern to the Senate Judiciary Committee as it considers Mr. Ashcroft's nomination. As former Solicitor General Archibald Cox stated fifteen years ago:

Respect for the law, the fairness with which law is administered, is the foundation of a free society. The individual who becomes Attorney General can do more by his past record than his conduct in office to strengthen or erode confidence in the fairness, impartiality, integrity, freedom from taint of personal influence, in the administration of law.

*Confirmation of Edwin Meese III: Hearings before the Sen. Comm. on the Judiciary, 99<sup>th</sup> Cong., 1<sup>st</sup> Sess. 450 (1985).*

In this report, we present an overview of John Ashcroft's voting record during his term in the United States Senate and of various actions and positions that he has taken during that time with respect to matters that bear upon his fitness to serve as the Attorney General of the United States. We do not attempt to address in this report the entirety of Ashcroft's record as a public official, which spans more than two decades, and includes not only his recent term in the Senate but also his service first as Attorney General and then as

Governor of Missouri. An analysis of Ashcroft's record as a state official in Missouri will follow in a subsequent report.

In the discussion below, we focus principally on examples from John Ashcroft's Senate record where he has deviated substantially from the mainstream on a number of issues critical to the consideration of a nominee for Attorney General, including civil and constitutional rights and individual freedoms, and on the principles of fairness, equal justice, judgement, and integrity. As demonstrated below, Ashcroft's record is one of rigidity and extremism. His views place him at the far right of the Republican Party, making him one of the most ultra conservative members of Congress and putting him out of step with the vast majority of Americans.

This report discusses at some length Senator Ashcroft's extensive role in opposing various minority candidates for judicial and Executive Branch positions. We do not contend that John Ashcroft is a racist, as some have claimed about him. Rather, the issue here is John Ashcroft's failure to demonstrate a commitment to fairness and equal opportunity, a commitment that should be considered a prerequisite for one who aspires to be the Attorney General. The issue is also John Ashcroft's lack of sensitivity and concern about the rights of women and minorities, as well as his ideological rigidity, all qualities that are antithetical to the ability to serve all Americans as our Attorney General.

In sum, Ashcroft's record in the Senate is not one that will, in the words of Archibald Cox, "strengthen confidence" in the fairness of the administration of law. To the contrary, it is a record of insensitivity toward those who most need the protections of the law, a record that leads inexorably to the conclusion that John Ashcroft should not be confirmed as Attorney General of the United States.

## II. ASHCROFT'S SENATE RECORD: VOTES AND POSITIONS DEMONSTRATING HIS IDEOLOGICAL EXTREMISM AND LACK OF COMMITMENT TO EQUAL JUSTICE FOR ALL

### A. Voting Record Ratings

John Ashcroft's voting record in the Senate firmly establishes his far right credentials. The *National Journal* wrote that, "Ashcroft's record in 1997 and 1998 put him in a tie as the most-conservative Senator, according to the *National Journal's* rankings."

According to that analysis, Senator Ashcroft was even farther to the right than Jesse Helms. Ratings by both right-wing and progressive interest groups confirm Senator Ashcroft's far right record and underscore the extreme nature and ideological rigidity of Ashcroft's views.

In particular, ratings by the Christian Coalition, the National Right to Life Committee, and the American Conservative Union show that throughout his six years in the United States Senate, John Ashcroft has been a consistent and reliable vote for right-wing legislative priorities. The Christian Coalition has given him a perfect 100% rating in every year but one since 1995 (with the ratings for that one year, 1999, unavailable on the organization's web site). The National Right to Life Committee rated Ashcroft 93% in 1995 and 100% every year since then. (Ratings for 2000 are not yet available on the group's web site.) Ashcroft also received 100% ratings from the American Conservative Union for 1996 through 1999, and 91% in 1995 and 96% for 2000.

On the progressive side, opinion is similarly unanimous about Ashcroft's voting record. The NAACP graded his performance as "F" for each of the last three Congresses. The Leadership Conference on Civil Rights gave him 10% ratings for the 104<sup>th</sup> and 105<sup>th</sup> Congresses. On the scorecards of the National Abortion and Reproductive Rights Action League ("NARAL"), Senator Ashcroft's votes earned him a solid 0% every year since 1995. (Ratings are not yet available for 2000.) The League of Conservation Voters gave Ashcroft an 11% in 1995-96 and 0% since then. On the AFL-CIO's ratings on issues affecting working people and their families, Ashcroft earned a meager 14% in 1996 and 0% every year since then. And Handgun Control reports that Ashcroft has opposed every single bill on their priority list during his six years in the Senate.

John Ashcroft takes pride in his ultra-conservatism. According to Ashcroft, “there are two things you find in the middle of the road. A moderate and a dead skunk, and I don’t want to be either one of those.” *St. Louis Post-Dispatch* (Aug. 25, 1998). In the same year he made that statement, Ashcroft also publicly repudiated the “deceptions” of pragmatism, conciliation, and compromise, and strongly advocated “unabashed conservatism.” *Human Events* (April 10, 1998).

## **B. Specific Votes and Positions**

Senator Ashcroft has taken many positions and voted in many ways with which People For the American Way disagrees. For example, we have opposed Senator Ashcroft’s attempts to promote religious school vouchers and so-called “charitable choice.” However, the particular positions and votes selected for discussion here reflect more than policy disagreements. Instead, they underscore the extreme nature of Ashcroft’s views and actions, and his lack of qualities critical for an Attorney General.

**1. Ashcroft’s sabotaging of Judge Ronnie White’s nomination.** In 1997, President Clinton nominated Judge Ronnie White of the Missouri Supreme Court to be a United States District Court Judge. Judge White, who had been appointed by Governor Mel Carnahan to the Missouri Court of Appeals and then to the state Supreme Court, was the first African-American to sit on the Missouri Supreme Court, and was unquestionably qualified to be a federal judge. Indeed, at the hearings on his nomination in May 1998, Judge White was introduced to the Senate Judiciary Committee by Republican Senator Christopher Bond of Missouri, who told the Committee:

It is a real pleasure to be able to join with my distinguished colleague, the senior member of Missouri’s congressional delegation, Congressman Clay, to urge that this committee act favorably upon and send to the floor for confirmation the nomination of Judge Ronnie White. . . My close friends and colleagues in the practice of law who have had the pleasure of working with Judge White over several years have assured me that he is a man of the highest integrity and honor. Judge White understands that the role of a Federal district judge is to interpret the law, not make the law. I have always believed that one of the most important duties I have as a Senator is to evaluate carefully the nominees for the Federal judiciary. I believe Judge White has the necessary qualifications and character traits which are required for this most important job.

*Confirmation Hearings on Federal Appointments: Hearings before the Sen. Comm. on the Judiciary*, 105<sup>th</sup> Cong., 2d Sess. 7-8 (1998).

Congressman Clay followed Senator Bond's introduction with his own remarks, noting that Senator Ashcroft had also confirmed the high regard accorded to Judge White by his colleagues on the Missouri Supreme Court, all of whom were Ashcroft appointees:

I might cite one incident that attests to the kind of relationship that Judge White has with many, and that is with a member of this committee – Senator Ashcroft. When I recommended Judge White to the President for nomination and the President nominated him, one of the first people that I conferred with was Senator Ashcroft. Senator Ashcroft then said he would get in touch with me at a later date.

At a later date, he told me that he had appointed six of the seven members to the Missouri Supreme Court. Ronnie White was the only one he had not appointed. He said he had canvassed the other six, the ones that he appointed, and they all spoke very highly of Ronnie White and suggested that he would make an outstanding Federal judge. So I think that is the kind of person we need on the Federal bench.

*Id.* at 9. Senator Ashcroft, a member of the Judiciary Committee, was present during this Committee hearing and did not contradict Congressman Clay's report of their conversation in any respect.

Nonetheless, more than two years elapsed between the time that Judge White was nominated and the date when the Senate finally voted on his nomination. Press reports indicated that Senator Ashcroft was responsible for blocking any vote on Judge White's nomination for this extraordinarily long period of time by placing a hold on the nomination. *See, e.g., "Confirm Ronnie White," St. Louis Post-Dispatch* (Aug. 11, 1999) (stating that Senator Ashcroft had at that point held Judge White's nomination in limbo for 776 days). In fact, the St. Louis federal district court seat to which Judge White had been nominated had been vacant so long that the vacancy was declared a judicial emergency by the Administrative Office of the U.S. Federal Courts. Judge White was one of a number of minority and female judicial nominees whose nominations were significantly delayed by the Senate, and for periods of time longer than the delays experienced by President Clinton's white male nominees. (*See also* discussion in B. 2., below.)

When Judge White's nomination finally was brought to the Senate floor in October 1999, Senator Ashcroft spearheaded a successful party-line fight to defeat White's confirmation, the first time in twelve years (since the vote on Robert Bork) that the full

Senate had voted to reject a nominee to the federal bench. In opposing Judge White's confirmation, Senator Ashcroft used the harshest of language to portray Judge White as soft on crime, stating:

[u]pon [Judge White's] nomination I began to undertake a review of his opinions. . . I believe Judge White's opinions have been and, if confirmed, his opinions on the Federal bench will continue to be procriminal and activist, with a slant toward criminals and defendants against prosecutors. . . [H]e will use his lifetime appointment to push law in a procriminal direction, consistent with his own personal political agenda. . .

145 Cong. Rec. S11872 (daily ed. Oct. 4, 1999) (statement of Sen. Ashcroft).

Senator Ashcroft then went on to characterize Judge White as someone with "a serious bias against a willingness to impose the death penalty." Referring specifically to Judge White's decisions in death penalty cases, Senator Ashcroft represented to his senatorial colleagues that:

Judge White has been more liberal on the death penalty during his tenure than any other judge on the Missouri Supreme Court. He has dissented in death penalty cases more than any other judge during his tenure. He has written or joined in three times as many dissents in death penalty cases, and apparently it is unimportant how gruesome or egregious the facts or how clear the evidence of guilt.

*Id.* Two months earlier, in a commentary written in the *St. Louis Post-Dispatch*, Senator Ashcroft had launched this line of attack, proclaiming that Judge White was "the most anti-death penalty judge on the Missouri Supreme Court" and that his record was "outside the court's mainstream." *St. Louis Post-Dispatch* (Aug. 18, 1999).

In fact, in the press and in the Senate, Ashcroft had grossly distorted and misrepresented Judge White's decisions in death penalty cases. Judge White had actually voted to uphold the imposition of the death penalty far more often than he had voted to reverse it. According to published reports, Judge White voted to affirm death sentences in 41 out of 59 capital cases that had come before the Missouri Supreme Court during his tenure. Moreover, also according to these reports, in the majority of the cases in which Judge White had voted not to impose the death penalty, he did so unanimously with the other members of the state Supreme Court – including judges who had been appointed by John Ashcroft when he served as the state's governor. And in two of the six cases in which Judge White wrote the decision for the Court upholding the imposition of the death penalty, he did so over the dissent of judges who had been appointed by Governor Ashcroft. Indeed, three



judges appointed by Ashcroft had voted to reverse death penalty sentences a greater percentage of the time than had Judge White.

In his statements on the Senate floor mischaracterizing Judge White as insufficiently committed to the death penalty, Senator Ashcroft specifically pointed to two – of only three – cases in which Judge White was the sole dissenter on the state Supreme Court with respect to imposing the death penalty. In relying specifically on these two cases, not only did Senator Ashcroft fail to provide his colleagues with pertinent information about Judge White’s dissents that would have dispelled the false light in which Ashcroft had placed Judge White, but he also created an ambush. At *no time* during the Senate’s hearings on Judge White, when Senator Ashcroft questioned him in person in May 1998, or later when Ashcroft submitted written questions to him, did John Ashcroft *ever* ask Judge White about these two decisions or raise any concern about why he had dissented. Thus, not only was Judge White never given an opportunity by Senator Ashcroft to explain himself, a gross unfairness in and of itself, he was also not given an opportunity to correct Senator Ashcroft’s misleading use of these dissents.

A fair reading of the dissents in these two cases plainly reveals that what was at issue was not Judge White’s willingness to impose the death penalty, but whether, in one case, the defendant’s right to effective assistance of counsel had been violated, and, in the other, whether the trial judge was biased and should have recused himself. Indeed, in the first case, in which the defendant had raised an insanity defense, Judge White expressly stated, “This is a very hard case. *If Mr. Johnson [the defendant] was in control of his faculties when he went on this murderous rampage, then he assuredly deserves the death sentence he was given.* But the question of what Mr. Johnson’s mental status was on that night is not susceptible of easy answers.” *Missouri v. Johnson*, 968 S.W.2d 123, 138 (Mo. 1998) (White, J., dissenting, emphasis added).

On the Senate floor, Ashcroft also told his colleagues that law enforcement officials in Missouri had “decided to call our attention to Judge White’s record in the criminal law.” 145 Cong. Rec. S11872 (daily ed. Oct. 4, 1999) (statement of Sen. Ashcroft). However, after the Senate rejected Judge White’s confirmation, the press reported that Senator Ashcroft had *solicited* opposition to Judge White from law enforcement officials. See “Law Enforcement’s Opposition to White Was Courted by Ashcroft; Police Group’s President Says it Rejected Senator’s Request to Oppose Judge,” *St. Louis Post-Dispatch* (Oct. 8, 1999). According to this article:

...the president of one of the state's biggest police groups, the Missouri Police Chiefs Association, said it had declined a request by Ashcroft's office to oppose White. . . Carl Wolf, president of the association, said his group received a letter from Ashcroft's office detailing White's decisions in death penalty cases. One of Ashcroft's staffers also called him and asked if the group would work against the nomination. "I just told them we had never taken that type of position before," Wolf said. As a policy, the association does not get involved in judicial nominations, he said. Wolf added that he knows White personally and has never thought of him as "pro-criminal" – a label Ashcroft applied to White's record. "I really have a hard time seeing that he's against law enforcement," Wolf said. "I've always known him to be an upright, fine individual and his voting record speaks for itself," Wolf said.

*Id.* In fact, a number of Missouri law enforcement officials and organizations, including the Missouri State Lodge of the Fraternal Order of Police, wrote in support of Judge White.

Senator Ashcroft not only misrepresented Judge White's willingness to affirm death sentences by blatantly mischaracterizing his decisions, he also ignored the fact that Senator Hatch had specifically questioned Judge White on this very issue during the May 1998 confirmation hearings before the Senate Judiciary Committee, for which Ashcroft was present. At that time, Senator Hatch asked Judge White whether he had "any legal or moral beliefs which would inhibit or prevent [him] from imposing or upholding a death sentence in any criminal case that might come before [him] as a Federal judge." White's answer was unequivocal:

Absolutely not, Mr. Chairman. The U.S. Supreme Court has ruled in several cases that the death penalty is constitutional, it doesn't violate the Eighth Amendment, and as a Supreme Court judge, I have written opinions affirming death sentences and have concurred in many others.

*Confirmation Hearings on Federal Appointments: Hearings before the Sen. Comm. on the Judiciary*, 105<sup>th</sup> Cong., 2d Sess. 16 (1998). When Judge White's nomination finally reached the Senate floor, Ashcroft prevailed on every one of his Republican colleagues to vote against confirmation.

Observers at the time noted a number of possible reasons why Senator Ashcroft had so misrepresented Judge White's record and orchestrated what one newspaper called "a sad judicial mugging." *The New York Times* (Oct. 8, 1999). Some noted that Senator Ashcroft was facing a highly-contested reelection battle against then-Governor Mel Carnahan (who had appointed Judge White) in which Ashcroft intended to make strong support for the death penalty an important issue. (Gov. Carnahan, at the urging of the Pope, had commuted a death sentence given to a convicted murderer.) It was also reported that Ronnie White's

pro-choice beliefs concerning women's reproductive freedom, views with which Senator Ashcroft strongly disagreed, may have played a role as well. Indeed, anti-choice forces in Missouri blamed Ronnie White, when he was a state legislator, for effectively killing a bill that would have prohibited all abortions in the state except those necessary to save the woman's life. Others have charged that Ashcroft's conduct reflected clear insensitivity to African Americans.

We cannot judge the reasons why Senator Ashcroft did what he did. What Senator Ashcroft's actions on the Ronnie White nomination demonstrated, however, was a clear lack of integrity. Ashcroft engaged in a reprehensible and irresponsible distortion of a nominee's record, he misled the Senate about that record, and he prevented a qualified nominee from being confirmed as a federal judge.

## **2. Ashcroft's extremist record on other Judicial and Executive Branch nominations.**

Unfortunately, Senator Ashcroft's opposition to the Ronnie White nomination was no exception. Ashcroft, unlike many other Senate Republicans, consistently delayed and opposed lower court nominations. Perhaps even more troubling, Ashcroft helped lead a minority of Senators to oppose Executive Branch nominations based on little more than policy disagreements with the nominees' positions on issues such as abortion and civil rights, completely changing the traditional standards by which such nominees have been considered. And a disturbingly large proportion of the nominees opposed by Ashcroft were women or minorities.

For example, Ashcroft played a key role in delaying and trying to defeat the nomination of Margaret Morrow to serve on the federal district court in Los Angeles in 1996. Morrow was an established corporate litigator with more than 20 years of experience. She earned an overwhelming number of bipartisan endorsements for her nomination -- including that of Republican Judiciary Chairman Orrin Hatch, who sent a letter to his colleagues on her behalf. She was the first woman to head the California Bar Association, and was twice named one of Los Angeles' top business lawyers. Nevertheless, far right interest groups and a few Senators, including Ashcroft, claimed that she was a liberal activist and unfit to serve on the bench, based on her efforts to promote *pro bono* legal work for the poor and on a misinterpretation of statements from her about bar association reform and ballot initiatives. Ashcroft and a few other Senators delayed a vote on her nomination for

almost two years. In the end, a bipartisan majority supported her confirmation, and Ashcroft was one of 28 Senators who voted against her confirmation.

A similar pattern of delay and opposition emerged with respect to a number of other female and minority judicial nominees. Ashcroft was one of only 11 Senators to vote against the confirmation of Margaret McKeown to the Ninth Circuit Court of Appeals in 1998, after a delay of almost two years. He was one of 29 Senators to vote against Sonia Sotomayor for the Second Circuit Court of Appeals, after a delay of more than a year. After a delay in acting on the nomination of more than 2 ½ years, Ashcroft was part of a minority of 34 Senators in opposing Susan Oki Mollway for confirmation to the federal district court in Hawaii, where she became the first Asian American woman to serve on the federal bench. He was one of 30 Senators to vote against Ann Aiken to become a federal district court judge in Oregon. Ashcroft and 30 other Senators voted to postpone indefinitely a vote on the nomination of Richard Paez to the Ninth Circuit Court of Appeals, and he was among a minority of Senators who voted against both Paez and Marsha Berzon for confirmation to that court after long delays.

John Ashcroft's opposition to the confirmation of minority nominees extended beyond the courts; he also worked with ultra conservative groups to help lead opposition to a number of Executive Branch nominations. For example, in 1998, the far right Family Research Council and Christian Coalition enlisted Senator Ashcroft's help in an effort to defeat the confirmation of Dr. David Satcher, an African-American, as Surgeon General. Satcher's nomination was easily approved by the Senate Labor and Human Resources Committee, and Senate Majority Leader Trent Lott announced that Satcher would probably be confirmed in early 1998. Nevertheless, Ashcroft took the lead in opposing Dr. Satcher, based largely on Dr. Satcher's support for reproductive choice. As in the case of Ronnie White, Ashcroft used extremely harsh language on the Senate floor to criticize Dr. Satcher, calling him "someone who is indifferent to infanticide." 144 Cong. Rec. S540 (daily ed. Feb. 10, 1998) (statement of Sen. Ashcroft).

As in Committee, Dr. Satcher had the support of a number of Republican Senators, including Fred Thompson and Bill Frist, himself a physician. Senator Frist, like Senator Ashcroft, disagreed with Dr. Satcher on the issue of so-called "partial birth" abortion. Unlike Ashcroft, however, Frist and other Republicans were satisfied with Dr. Satcher's pledge that he would not use his official position to promote his views on abortion. Ashcroft persisted

in his opposition, and joined less than a quarter of the Senate (23 Senators) in taking the extremely rare step of opposing cloture, thus seeking to delay indefinitely even a Senate vote on the nomination. Dr. Satcher was confirmed by almost two-thirds of the Senate on February 9, 1998, with Ashcroft as part of a 35-vote minority opposed to confirmation.

The Satcher nomination was only one example of Ashcroft's opposition to minority Executive Branch nominees. In 1995, he helped block the nomination of Dr. Henry Foster to become Surgeon General, also over the issue of abortion. A majority of 57 Senators supported the Foster nomination, but Ashcroft and others demanded a cloture vote, allowing a minority of the Senate to kill the nomination. Ashcroft also helped lead opposition to the confirmation of Bill Lann Lee as Assistant Attorney General for Civil Rights, helping block a vote by the full Senate. No one suggested that Lee lacked integrity or was not qualified; disagreement with Lee on the issue of affirmative action was enough to prevent a Senate vote.

Ashcroft was also a leader in blocking the confirmation of James Hormel to be Ambassador to Luxembourg. *Time* wrote that as a businessman, philanthropist, and law school dean, Hormel was “standard ambassadorial material,” but was opposed simply because he is “gay and a prominent advocate of gay rights.” *Time* (May 11, 1998). Only Ashcroft and Senator Jesse Helms voted against Hormel in a 16-2 vote in his favor in the Senate Foreign Relations Committee. That minority of two was able to block a vote on the Senate floor as a result of Helms’ position as Committee chair.

As one commentator has recently written, Ashcroft “used the forum of Senate confirmation hearings to act out his political dark side, savaging presidential nominees,” particularly minorities, and standing out “among his peers as a conservative attack dog.” *St. Louis Riverfront Times* (Dec. 27, 2000). In fact, if the standard used by Senator Ashcroft in attacking other Executive Branch nominees were applied to him, many Republican as well as Democratic Senators would oppose him. While People For the American Way believes that policy disagreements alone would generally not be a sufficient basis for opposing an Executive Branch nominee, Senator Ashcroft’s extreme record with respect to nominations is another key aspect of his far right record in the Senate that bears directly on his fitness to serve as Attorney General. Ashcroft’s record on nominations is particularly troubling for a nominee for Attorney General, an official whose critical responsibilities include helping to screen and select nominees to the federal courts.

3. Ashcroft's extremist views in opposition to abortion and common methods of birth control. It is well known that, throughout his long career, John Ashcroft has been a staunch opponent of the right of women to make their own reproductive decisions. What is less well known is that he is so extreme in his views that he supports enacting a federal law and amending the Constitution to ban abortions *even* when a woman has been raped or is the victim of incest. And he has advocated proposals in Congress that were so sweeping that they could have been invoked to use the government's power to ban common forms of contraception, including the pill and IUDs, a little-publicized goal of some anti-choice organizations.

In 1998, during his term as a United States Senator, John Ashcroft, along with only Senators Jesse Helms and Bob Smith, was an original sponsor in the 105<sup>th</sup> Congress of a proposed amendment to the Constitution (S.J. Res. 49, the "Human Life Amendment") and a proposed federal statute (S. 2135, the "Human Life Act") that would have prohibited all abortions except those medical procedures "required to prevent the death of either the pregnant woman or her unborn offspring, as long as [the law authorizing such procedures] requires every reasonable effort be made to preserve the lives of both of them." The proposed amendment and statute contained no exception for victims of rape or incest, nor did they contain any exception for abortions necessary to prevent injury, including serious or permanent injury, to the woman's health.

But Ashcroft's proposals threatened even more extreme results. The sweeping language of the proposed "Human Life Amendment" and "Human Life Act" defined human life as beginning at "fertilization," and could therefore have been invoked to ban some of the most widely accepted and dependable forms of contraception, such as the pill and IUDs, which may sometimes work by preventing a fertilized egg from implanting in the lining of the uterus. In fact, banning these methods of contraception is a goal of such extreme anti-choice organizations as the American Life League, which opposes all abortions, without exception. *See* [www.all.org](http://www.all.org). The American Life League considers common forms of contraception, specifically including the pill and IUDs, to be "abortifacient in action [that] kill already existing human beings," and opposes "these devices." *See* <http://www.all.org/issues/argue26.htm> (visited Dec. 27, 2000). The President of the American Life League has stated that the pill, the IUD, Norplant and Depo-Provera "can

and do kill, and are therefore not contraceptives – we are talking about abortion.” *See* “Pill Bill: Birth control is not healthcare,” [http://www.all.org/activism/pb\\_basic.htm](http://www.all.org/activism/pb_basic.htm) (visited Dec. 27, 2000).

John Ashcroft agrees that common forms of contraception that work by preventing implantation should be considered “abortifacients,” and he has taken other steps beyond the legislative proposals discussed above to deny women access to them. In 1998, Ashcroft was one of just eight Senators, including Jesse Helms and Bob Smith, who signed a letter in opposition to pending legislation to require federal employee health insurance plans to cover the cost of prescription contraceptives. In their letter, Senator Ashcroft and his handful of colleagues stated: “we are concerned with what appears to be a loophole in the legislation regarding contraceptives that upon failing to prevent fertilization, act *de facto* as abortifacients. Therefore, we believe this amendment is a precedent setting attempt to mandate coverage of other abortifacients.” They urged that the provision requiring coverage of contraceptives be dropped. *See* Letter to Senator Ben Nighthorse Campbell from Senators Brownback, Nickles, Ashcroft, Coats, Helms, Enzi, Bob Smith, and Hutchinson (Sept. 4, 1998).

The legislation that Ashcroft opposed was endorsed by leading medical organizations, including the American Medical Association, the American Academy of Family Physicians, and the American College of Obstetricians and Gynecologists. In a letter supporting the proposal, the medical groups stated that “[a]ccess to reliable contraception should be a part of even the most basic health care plans.” Congress ultimately enacted this proposal.

Lest there be any doubt about his desire to ban virtually all abortions, in May 1998, John Ashcroft submitted a written statement to *Human Events: The National Conservative Weekly* reconfirming his views. Ashcroft sent the document to correct statements in a form letter sent by his Senate office to his constituents saying that he believed in a woman’s right to choose to have an abortion in cases of rape or incest. In his statement to *Human Events*, Ashcroft repudiated the suggestion that he supported abortion in cases of rape or incest and detailed his lengthy public record in opposition to abortion. He summed up his position as follows: “[I]f I had the opportunity to pass but a single law, I would fully recognize the constitutional right to life of every unborn child, and ban every abortion except for those medically necessary to save the life of the mother.” *Human Events*, at 7 (May 29, 1998).

In May 1999, the same month in which Senator Ashcroft accepted an honorary degree from Bob Jones University (*see* below), he was also honored by the American Life League. And, as discussed previously, Senator Ashcroft's opposition to reproductive choice spurred him to lead a battle opposing the confirmation of Dr. David Satcher to be Surgeon General. Among his other votes denying women the right to make their own reproductive choices, Senator Ashcroft was in the minority in voting against a resolution that the Supreme Court's *Roe v. Wade* decision should not be overturned, (Harkin Amendment to S. 1692, 10/21/99, 51Y-47N), and in voting in favor of prohibiting the use of tax funds for emergency contraceptives. (RCV# 169, S. 3697, 6/30/00, 41Y-54N.)

**4. Other examples of Ashcroft's negative record on civil rights and indifference to the rights of women and minorities.** In addition to the inappropriate and disturbing manner in which he has dealt with the nominations of a number of minority and female nominees for Executive Branch and judicial positions, Senator Ashcroft's votes on legislation pertaining to civil rights matters underscore his insensitivity to the rights of minorities and women and his lack of commitment to full equality for all, as do other actions that he has taken during his term in the Senate.

For example, Senator Ashcroft in 2000 voted against the Hate Crimes Prevention Act, which would have amended federal law to recognize hate crimes based on sexual orientation, gender and disability, as well as expanded federal jurisdiction over these and other hate crimes already covered under federal law. (Kennedy Amendment to S. 2549, 6/20/00, 57 Yes-42 No.)

In May 1999, Ashcroft delivered the commencement address at and accepted an honorary degree from Bob Jones University. This school is infamous for its racially discriminatory policies and for the U.S. Supreme Court's well-known 1983 decision upholding the revocation of the school's tax-exempt status because of its policy of denying admission to applicants who have a spouse of a different race or who are known to advocate interracial marriage or dating. Apart from the school's racial policies, the President of Bob Jones University, Bob Jones III, has called Catholicism a "cult." His father, former University President Bob Jones, Jr., has said that "The papacy is the religion of Antichrist and is a satanic system." As recently as March 2000, the school's web site proclaimed, "We love the practicing Catholic and earnestly desire to see him accept the Christ of the Cross



[and] leave the false system that has enslaved his soul. . .” *St. Louis Riverfront Times* (March 1, 2000).

In 1998, Ashcroft was interviewed in the magazine *Southern Partisan*, which caters to a small group of neo-Confederate southerners and has been a major forum for neo-Confederate views, including the recurring theme that slavery was beneficial to the slaves. In his interview, Ashcroft praised the magazine for “help[ing] to set the record straight” against what he called “attacks the [historical] revisionists have brought against our founders.” *Southern Partisan*, at 28 (2d Quarter 1998). Adding more praise, he said, “You’ve got a heritage of doing that, of defending Southern patriots like Lee, Jackson and Davis. Traditionalists must do more. I’ve got to do more. We’ve all got to stand up and speak in this respect, or else we’ll be taught that these people were giving their lives, subscribing their sacred fortunes and their honor to some perverted agenda.” *Id.*

The magazine that Ashcroft so praised for its “heritage” and defense of “Southern patriots” has a long history of publishing racially insensitive views. For example, in 1983, Editor-in-Chief Richard Quinn wrote:

[M]assive evidence suggests that slave families were rarely separated. Efforts were made uniformly across the South to keep families together (in part because good morale was good for business). The record also shows that many freed slaves stayed South, kept close ties with their former owners and found for themselves a life altogether more satisfying than their cousins who ended up sleeping with rats in Harlem. . .

*Southern Partisan*, at 5 (Spring Issue 1983). More recently, in 1996 a *Southern Partisan* reviewer wrote of a book on slavery: “The greatest contribution of this work is that it exonerates slave owners by stating that they did not have a practice of breaking up slave families. If anything, they encouraged strong slave families to further the slaves’ peace and happiness in order to promote efficient work.” *Southern Partisan*, at 51 (1<sup>st</sup> Quarter 1996). *Southern Partisan’s* merchandising operation, the “Southern Partisan General Store,” has offered a T-shirt celebrating the assassination of Abraham Lincoln. The T-shirt bore the likeness of President Lincoln along with the legend “Sic Semper Tyrannis” (“thus always to tyrants”), the words shouted by John Wilkes Booth after he shot Lincoln. During the 2000 presidential campaign, when it was revealed that Richard Quinn, a top adviser to Senator John McCain in South Carolina, was also the Editor-in-Chief of *Southern Partisan*, George W. Bush’s campaign

spokesperson, Ari Fleischer, reacted by calling Quinn's writings "offensive." *The Washington Post* (Feb. 18, 2000).

In 1998, Ashcroft told CBS that he agreed with Senator Trent Lott's statement that homosexuality is a sin. Ashcroft charged that "in terms of public policy, the Democratic Party has an agenda of providing a special setting and special rights for homosexuals. I don't believe we should have special rights there." *The Hotline* (July 6, 1998). And despite broad public support for ending employment discrimination against gay men and lesbians, Senator Ashcroft in 1996 voted against the Employment Nondiscrimination Act, which would have prohibited workplace discrimination based on sexual orientation. (S. 2056, 9/10/96, 49Y-50N.)

Ashcroft also voted against moderating a Helms Amendment to the Ryan White Reauthorization bill, which authorized new funds for AIDS research. The moderating amendment, proposed by Senator Nancy Kassebaum, prohibited funds from being used to directly promote or encourage intravenous drug use, but clarified that funding was available for medical treatment and support services for individuals infected with HIV. Despite the potentially serious harm to people with AIDS that could have resulted, Ashcroft was one of only 23 Senators to oppose the Kassebaum provision. (Approved 76-23, 7/27/95.)

Ashcroft vigorously opposed any form of affirmative action as well as other anti-discrimination programs. In 1998, Ashcroft was one of 37 Senators to vote in support of an effort to eliminate the Disadvantaged Business Enterprise program, which requires recipients of federal transportation money to have affirmative action programs for women and people of color. (RCV# 23, 3/6/98.) Ashcroft also voted to weaken the 1977 Community Reinvestment Act (CRA), a federal law that has been important in efforts to promote economic opportunity and economic growth in low-income neighborhoods by discouraging banks from "redlining" minority areas in inner cities. Ashcroft voted against a motion to table (kill) an amendment that would have exempted banks with assets of less than \$250 million from the Act. The CRA requires federal regulators to consider a bank's lending record to all areas in the community it serves when deciding whether to allow a branch, merger or other endeavor. Despite Ashcroft's minority views, the motion was approved. (Motion agreed to 59-39, 7/28/98, H.R. 1151, RCV# 238.)

**5. Ashcroft's opposition to gun safety and gun control.** Ashcroft was ranked as one of the NRA's most reliable votes in the Senate, which reportedly spent close to \$400,000 on behalf of his reelection campaign. A look at several of Ashcroft's efforts in opposition to restricting access to guns shows why.

In 1999, Ashcroft was one of only 20 Senators to vote against an amendment to prohibit the sale or transfer of guns without safety locks. (S. 254, 5/18/99, 78Y-20N.) During his campaign for the Senate, Ashcroft opposed a ban on assault weapons. *St. Louis Post-Dispatch* (Oct. 25, 1994). And in 1999, Ashcroft urged Missouri voters to legalize the carrying of concealed weapons.

**6. Ashcroft's anti-environmental positions.** On issues involving environmental concerns, Ashcroft has won praise from the far right and criticism from environmental advocates. In 1998, Ashcroft introduced the "Economic Growth and Sovereignty Act" (S. 2019), which the right-wing Heartland Institute called "the boldest step yet taken by a member of the [Senate] that will ultimately decide the fate of the [Kyoto] treaty." According to Heartland, the Ashcroft measure "aims to undercut White House efforts to circumvent the Senate and impose limits on emissions of man-made greenhouse gases."

Ashcroft voted against a motion to table an amendment that would have limited the American Heritage Rivers Initiative, which gives federal assistance to river communities. He also voted to require congressional approval before President Clinton could implement the AHRI, which the President established by executive order. (Motion agreed to 57-42, Sept. 18, 1997, H.R. 2107, FY 1998 Interior Appropriations, RCV# 247.)

**7. Other votes demonstrating Ashcroft's rigid ideology.** Ashcroft was the only Senator to vote against the continuing resolution to keep the government running in 1999. (RCV# 296, H.J. Res. 68, 98Y-1N, 9/28/99)

Ashcroft received a 0% rating from the National Committee to Preserve Social Security and Medicare for the 1997-98 session and a 4% rating for his entire term in the Senate. Ninety-eight Senators, including 53 of 54 Republicans, received higher scores than Ashcroft. It is safe to say that Ashcroft has one of the worst records in the Senate with respect to preserving Social Security. In fact, Ashcroft told a class of middle school students

in 1998, “Social Security is a bad thing. It’s in debt and if I had a better deal than Social Security would you [sic] give it up? You bet I would.” *Fulton Sun-Gazette* (Nov. 19, 1998).

Ashcroft introduced bills to further restrict the welfare reform bill in 1995 by including Medicaid, food stamps and Supplemental Security Income (SSI) in block grants to the states. (S. 842, 843, 844, 845.)

Senator Ashcroft voted against a compromise on national testing offered by Senator Gregg (R-NH). Ashcroft was a leading right-wing opponent of such testing. The Gregg amendment established that the National Assessment Governing Board has exclusive authority over all policies for establishing and implementing voluntary national tests for 4th grade English and reading and for 8th grade mathematics. (Adopted 87-13, 9/11/97, RCV# 234, S. 1061, FY 1998 Labor-HHS Appropriations.)

Ashcroft voted against anti-tobacco legislation that increased taxes on tobacco products, required cigarette manufacturers to fund health and education programs, and gave the FDA the authority to regulate nicotine. (S. 1415, 57Y-42N, 6/17/98.) And Ashcroft was in a minority of less than one-third of the Senate that voted in 1998 against a national drunk driving standard. (S. 1173, RCV# 20, 62Y-32N, 3/4/98.)

Ashcroft also sponsored an unsuccessful amendment to completely eliminate funding for programs and activities carried out by the National Endowment for the Arts. (Interior Appropriations bill, 9/17/97, 23Y-77N.)

**8. Ashcroft’s cavalier approach to amending the Constitution.** As the foundational document of our government, the Constitution is not something that should be amended lightly. Indeed, in the more than 200 years since it was ratified, the Constitution has been amended only 27 times (including the ten amendments of the Bill of Rights). Nonetheless, in his single term in the United States Senate, John Ashcroft introduced or co-sponsored no fewer than seven proposed constitutional amendments (none of which was adopted by Congress), including the extremist “Human Life Amendment” discussed above. He publicly supported several other possible amendments as well.

Senator Ashcroft was the sole sponsor of a proposed constitutional amendment that would have changed the very framework so carefully constructed by the Framers for amending the Constitution. S.J. Res. 58 (July 31, 1996). Ashcroft’s proposal would have authorized two-thirds of the states to propose constitutional amendments to Congress and

required that those amendments be submitted to the state legislatures for ratification unless *disapproved* by two-thirds of the members of each House of Congress during the session in which it was submitted, a very high hurdle for defeating a proposed amendment. Ashcroft's measure would have made it easier for the Constitution to be amended, and thus easier for it to become the vehicle for the advancement of political and ideological agendas. In an editorial entitled "Mr. Ashcroft's Unwise Amendment," the *St. Louis Post-Dispatch* (Aug. 10, 1996) called this proposal "unwise, unnecessary and potentially dangerous," and the *Atlanta Journal and Constitution* (Aug. 10, 1996) termed it "drastic constitutional tinkering."

## CONCLUSION: THE WRONG MAN FOR THE JOB

Without going any further back than this overview of John Ashcroft's record during his just-completed term as a Senator, there is no question that Ashcroft's extreme views on individual rights and liberties place him at the far right of his party and out of the mainstream of American belief.

On significant matters of individual rights and liberties, issues that routinely come before the Attorney General of the United States for enforcement policy decisions, John Ashcroft's record demonstrates a lack of commitment to justice. During his six years in the United States Senate, John Ashcroft, time and again, sought to use the power of his office to undermine justice and derail individual rights. On issues of civil rights, reproductive rights, workers' rights, environmental protection, gun safety and regulation, and more, Ashcroft's positions have been consistent with the most extreme voices of the right wing. He has cast his lot among those seeking to thwart or dismantle the machinery of equal opportunity. He has favored turning individuals' most private decisions about reproductive health – even on contraception – over to government regulation. He has sided with the polluters, the gun manufacturers, and big tobacco against the interests of the people.

Ashcroft has also shown himself willing to sacrifice the truth in service of a right-wing agenda. He engaged in a campaign of distortion to sabotage Judge Ronnie White's nomination to a seat on the United States District Court and misled his Senate colleagues about Judge White's record and views. He helped turn other judicial and Executive Branch nominations into ideological struggles, seeking to reject nominees such as David Satcher and Margaret Morrow under a right-wing litmus test. An elected official with John Ashcroft's record of extremism should not be entrusted with the responsibility of helping to decide whether our next federal court judges and Supreme Court Justices are fair-minded individuals committed to the fundamental American principle of equal justice for all, or are ideologues chosen to advance a specific social and legal agenda. And John Ashcroft has shown a disturbing willingness to sacrifice even the Constitution in the interests of advancing right-wing causes, introducing or co-sponsoring more than half a dozen constitutional amendments in just six years.

The Attorney General is the principal enforcer of our civil rights laws and other federal laws, a person with enormous influence in determining whether our country will

achieve its promise of equal justice for all. Yet John Ashcroft's record in the Senate and his views suggest that his commitment is not to upholding the law and the Constitution but to making the law and the Constitution bend to right-wing ideology. Would an Attorney General Ashcroft commit his Justice Department to protecting the reproductive rights of women by enforcing the Freedom of Access to Clinic Entrances Act, when he has so vigorously and frequently espoused virtually unconditional opposition to abortion? Could an Ashcroft Justice Department be counted on to move equality of opportunity forward when he has demonstrated extraordinary indifference, if not outright hostility, to the rights of women and minorities? When a person is nominated for the position of Attorney General, there should be no doubt whether that person will engender public confidence that he or she will vigorously enforce these laws and see to it that they are invoked to achieve the purposes for which they were enacted. In the case of John Ashcroft, the doubts are overwhelming. And an elected official who in the late 20<sup>th</sup> Century would accept an honorary degree from Bob Jones University and heap praise upon a publication like *Southern Partisan* simply lacks the judgment and sensitivity required of the individual entrusted with the Office of Attorney General.

The Attorney General of the United States is one of the most important public officials in our nation, a person who has enormous power and influence over the lives of all Americans. This position requires a person of fairness, judgment, and integrity. It also requires sensitivity to those who have suffered discrimination, and a demonstrated commitment to achieving this nation's promise of equality for all. The person who holds this position must be supremely well qualified for it. Americans deserve no less. His record in the Senate shows, however, that John Ashcroft is not that person.