The Honorable Patrick Leahy
c/o Mr. Bruce Cohen
Ranking Member, Committee on the Judiciary
United States Senate
Dirksen Senate Office Building, SD 152
Washington, DC 20510

Dear Chairman Specter and Senator Leahy:

As deans or former deans of law schools, we have special interest in the legal system and experience in both the academic and the practical worlds. Deans of law schools oversee the curriculum, help shape the instructional program, and are instrumental in the appointment of faculty who will educate young lawyers. We are deeply invested in the law, in assuring that lawyers enter the profession with full respect for the integrity of the law and for the rule of law.

Our experience gives us a distinctive vantage on the process of selecting and confirming judges. It is from that vantage that we write in support of Judge Samuel Alito.

Over many years of public service as a prosecutor, public official, and judge, Sam Alito has promoted the rule of law and has performed each of these roles skillfully, honorably, and in keeping with the best traditions of the law. He has demonstrated the sort of thoughtfulness, care, and reasoned judgment that we hope for in our faculty and our graduates.

Although we are hopeful about this process, we are distressed by recent attacks on Judge Alito that distort his record and its meaning. Such attacks depart from the sort of civil, deliberative process that Judge Alito and the American people deserve.

Judge Alito's decisions as a Circuit Judge have been consistently reasonable and in accord with law. Critics have misstated his opinions in cases such as *Planned Parenthood v. Casey*, *Doe v. Groody*, and *United States v. Rybar*, to name just a few. In *Casey*, Judge Alito voted to uphold regulations of abortion adopted by the Commonwealth of Pennsylvania, including a requirement that a woman notify her husband. The notice requirement had broad exceptions, including if a woman asserted that she was afraid of her husband's reaction. This decision was a reasonable construction of the law as it stood at the time. In *Groody*, Judge Alito concluded that police should not be subject to suit for money damages for acting under the terms of a search warrant and accompanying affidavit. While the warrant was more restrictive, the affidavit specifically said it was necessary to search "all persons" on the premises of a suspected drug dealer. The issue before the court was not whether the search was proper or good policy but whether police should be faced with possible money penalties for acting reasonably on the basis of the warrant and affidavit. Far from upholding the "strip search" of a 10-year-old girl, this opinion reasonably questions the use of damage litigation against police. And in *Rybar*, Judge Alito followed the path marked by the

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Supreme Court's *Lopez* decision in declaring that while states can and do regulate sales of guns that are not in interstate commerce, Congress can only do so if it makes findings that support the connection of the guns to its authority over interstate commerce. All of these decisions by Judge Alito, whether one agrees or disagrees with the outcome, demonstrate thoughtful and reasoned decision-making and a commitment to legal authority.

Opponents of Judge Alito also have made much of statements Judge Alito made 20 years ago. First, he criticized the use of quotas to enforce equal protection obligations – taking a position that has been accepted by the Supreme Court and the American people. Second, he also criticized the basic holding of *Roe v. Wade*. Criticism of particular legal decisions is perfectly consistent with respect for the law. And no one, including Judge Alito, can know how he would respond if asked to reconsider a precedent he has criticized. Such questions come before judges in a particular case arising in a particular context and on a particular legal claim. Chief Justice Rehnquist criticized the decision in *Miranda v. Arizona*, but voted to reaffirm it when the issue came before the Court, concluding that it had become so ingrained in the fabric of the law as to merit continued adherence even if he would have decided the matter differently in the first instance. Judge Alito's record shows that he decides such matters carefully and thoughtfully within the framework of the law.

We urge the Senate to hold hearings that are respectful and dignified. Based on all we know now, we believe that the Senate should vote to confirm Judge Alito to the Supreme Court.

Respectfully,

Honorable Ronald A. Cass
Dean Emeritus & Former Melville Madison Bigelow Professor of Law,
Boston University School of Law
Past President, American Law Deans Association
Former Commissioner & Vice-Chairman, United States International Trade Commission

Bernard Dobranski
Dean, Professor & President, Ave Maria School of Law
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