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**LAWYERS FOR A DEMOCRATIC ALTERNATIVE**

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September 16, 1991

Honorable Patrick Leahy  
United States Senate  
Washington, D.C. 20510

Dear Senator Leahy:

For the past week, we have looked on as the Judiciary Committee has begun to grapple with the nomination of Clarence Thomas to serve as an Associate Justice of the United States Supreme Court. If past hearings are any guide, the Committee will be hearing in the next week from the proponents and opponents of Judge Thomas. There will be calls for speedy confirmation of an "outstanding nominee," for "continued scrutiny" of the nominee's commitment to civil rights, privacy rights, and gender equality, and, no doubt, for outright rejection of Judge Thomas.

We are writing to you with a plea of a different sort-- not a plea to confirm or to reject Judge Thomas, but a plea to you and your Democratic colleagues to take a different approach:

**It is time to stand together and insist on the appointment of a highly respected, well-qualified, moderate Supreme Court Justice.**

Put another way, the Democrats in the Senate should draw up their own list of candidates for the Supreme Court, and call on the President to select a nominee from it.

Drawing up a list of Democratic alternatives is something that Senate Democrats have the constitutional power to do, have the political power to do, and that might even do some good for the Democratic Party. This would be a list of men and women that any bar committee would find well qualified to serve on the nation's highest court. It would be a list of people who could add some balance to a Court that is now skewed heavily to the right. It probably would not be a list composed entirely of avowed liberals. Rather, it would be a list of eminent and outstanding lawyers and judges that any American would be proud to have on the United States Supreme Court.

It is not hard to think of candidates for the list. Judge Ruth Bader Ginsburg is one. Judge Ginsburg has been a judge of the District of Columbia Circuit Court for almost a dozen years (not 18 months, like Judge Thomas), and has distinguished herself there as outstanding judge who is neither an ideological liberal nor an ideological conservative. Before joining the Court, Judge Ginsburg was a professor at one of the most prestigious law schools in the country, who had written extensively on important legal questions and had been repeatedly honored for her work. Judge Ginsburg was also a well-respected advocate, and an active participant in numerous bar organizations.

Another example is Judge Jose Cabranes, who serves as a federal District Judge in Connecticut. Judge Cabranes has also been on the bench for a dozen years, and has been described by members of the bar as a simply brilliant judge. In earlier years, Judge Cabranes served as Counsel to the Governor of Puerto Rico, as General Counsel of Yale University, and also was a founder of the Puerto Rican Legal Defense and Education Fund. Judge Cabranes has written widely on law and international affairs, and in 1988 was appointed by the Chief Justice as one of five federal judges to develop a long-range plan for the future of the federal judiciary.

A third example is Judge Amalya Kearse of the Second Circuit Court of Appeals, who has also come to be known as outstanding judge who is both moderate and open-minded. When she was appointed to the bench in 1979, Judge Kearse was a partner of one of the largest and most prestigious law firms in New York. She was also a board member of the Lawyer's Committee for Civil Rights Under Law and the Legal Defense and Education Fund-- in other words, an active and accomplished lawyer, a well-respected judge, and a clearly qualified candidate for the United States Supreme Court.

The constitutional premise for the development of a Senate list is plain from the language of the Constitution. Article II requires the Senate not simply to consent to judicial nominations, but to give advice and consent. For most of the 200 years since the Constitution was ratified, the Senate has routinely used the "advice" power to urge the appointment of judges to the lower federal courts. This advice has been given, received, and accepted hundreds, if not thousands of times. The Senate has also, although less often, used the power to urge the appointment of Justices to the Supreme Court. A prominent example is Justice Benjamin Cardozo, who was appointed by a reluctant President Herbert Hoover at the insistence of the Senate and many vocal members of the bar.

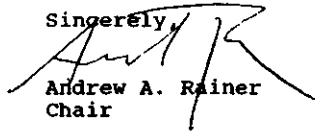
The political practicality of offering such advice lies in two facts. First, a majority of the American people trust the Senate, more than the President, to decide who should sit on the Supreme Court. In a recent New York Times/CBS poll, when respondents were asked whom they trusted more to make the right decisions about who should sit on the Court, 55 percent said the Senate, while only 31 percent said the President. Second, Democrats hold 57 of the 100 seats in the United States Senate. If the Democratic members were to put together their own list of moderate, respected candidates for the Supreme Court, and agreed to reject any nominee who was not on that list, they would have the power to make it stick.

Even more important, a list of alternatives would give Senate Democrats something positive and constructive to stand for, instead of simply playing a nay-saying role. Over the last decade, many Americans have begun to wonder what our Party has to offer. By drawing up our own list of candidates, Democrats would be standing for quality and balance on the Supreme Court, not "against Clarence Thomas."

Although President Bush has claimed that he picked Judge Thomas because he is the person best qualified to fill the current vacancy on the Supreme Court, the evidence certainly does not support this claim. Rather, it is clear that the President picked Judge Thomas because of a political philosophy Judge Thomas has vocally espoused for years.

The Democrats in the Senate therefore have every right to insist on a different philosophy-- to insist on quality and balance on the Supreme Court-- and to offer a list of strong and respected alternatives. We urge you and your colleagues to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew A. Rainer". The signature is stylized with a large, sweeping "R" and a long horizontal line extending to the left.

Andrew A. Rainer  
Chair

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