United States Senate

WASHINGTON, DC 20510

June 23, 2005

The Honorable George W. Bush
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

We write as a unified caucus to urge you to consult in making future judicial nominations, particularly to the United States Supreme Court. The way to avoid the divisiveness and discord that occurred over past judicial nominations is through consensus and cooperation in the selection of future candidates.

Recent events make this more clear than ever. Just last month, 14 Senators from both sides helped narrowly avert a Constitutional crisis by reaching an agreement on judicial nominations. A centerpiece of that agreement was a call for genuine consultation:

> We believe that, under Article II, Section 2, of the United States Constitution, the word "Advice" speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Bipartisan consultation is the best path to a fair and reasoned confirmation process. It is also the best antidote to the antipathy of the past several years.

Presidents have, with great success, sought the advice of Senators before nominating candidates to the Supreme Court, as well as to the lower courts. Presidents as diverse as Bill Clinton, Herbert Hoover, and Ulysses S. Grant have solicited the views of Senators before naming Supreme Court nominees. President Clinton consulted with Senator Orrin Hatch, then-Chairman of the Senate Judiciary Committee, and as a result, his nominees – Ruth Bader Ginsburg and Stephen Breyer – sped through the confirmation process. Each of us urges you to do the same.

We are encouraged that in some of your recent public utterances, you have appeared to commit to consultation with the Senate. At a press conference on May 31, 2005, you said, "I

look forward to talking to members of the Senate about the Supreme Court process to get their opinions, as well, and will do so – and will do so. . . . [W]e will consult with the Senate."

To date, however, we are unaware of any attempt on your part to follow through on that commitment by directly reaching out to Senators who are not members of your own party. We sincerely hope that you will consult meaningfully with Senators on both sides of the aisle well in advance, especially in the event of a Supreme Court vacancy. In light of what is at stake for our country, we urge you to follow the words of the May 23rd Compromise and to follow through on your encouraging public statements committing to consultation with the Senate.

It is what our Constitution requires, what our tradition favors, and what our citizens want.

Respectfully,

Harry Reid

Richard J. Durbin

Debbie Stabenow

Charles Schumer

Patrick Leahy

Christopher Dodd

Patty Murray

Jack Reed

Joe Biden

Daniel K. Inouye

Bill Nelson

Tom Harkin

Hillary Rodham Clinton

Ken Salazar

Dianne Feinstein

Barbara Boxer

Tom Carper

Carl Levin

Ron Wyden

Paul Sarbanes

Mary Landrieu

Herb Kohl

Ken Salazar

Blanche L. Lincoln

Mark Pryor

Barbara A. Mikulski

Byron L. Dorgan

Jim F. Kerry

Tim Johnson

Jim Jeffords

Russell D. Feingold