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July 21, 2011

The Honorable Charles Grassley
Senate Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Grassley:

Thank you for your questions for the record following my testimony at the June 29, 2011 hearing: "Barriers to Justice and Accountability: How the Supreme Court's Recent Rulings Will Affect Corporate Behavior."

In response to your first question, which provided me with the opportunity to expand my comments and respond to statements by the Committee members, I would like to expand upon and clarify a brief exchange with Chairman Leahy. In my opening statement, I noted that claims suggesting that *Janus Capital Group, Inc. v. First Derivative Traders* permitted corporate fraud or even provided a roadmap to fraud were erroneous because Congress granted the SEC authority in Section 104 of the Private Securities Litigation Reform Act to bring enforcement actions for fraud committed by aiders and abettors. As I was discussing the severity of the penalties at issue—the fact that the SEC procured more than \$10 billion in disgorgement and penalties between 2002 and 2008—Chairman Leahy interjected to state that this timespan was before what he deemed the "roadmap" for fraud created by *Janus Capital*. Because the time for my prepared remarks was cut short by this exchange, I simply wish to clarify that *Janus Capital* did not create a roadmap, unless it is a roadmap to enforcement. Congress granted the SEC authority to bring enforcement actions against aiders and abettors, and that is true both before and after *Janus Capital* (which makes prior enforcement totals relevant). Accordingly, to claim that the *Janus Capital* decision creates a roadmap to fraud is an indictment of *Congress's* regulatory decisionmaking, and suggests that Congress somehow promoted corporate fraud in deciding that the proper way to regulate aiders and abettors was through SEC enforcement, not through a private cause of action. The suggestion is simply too incredible to be true, as are related claims against the Supreme Court.

Your second question asked about how these accusations against the Court affect the legal system and how it is perceived. In my written and oral testimony, I provided evidence that there is no factual basis for the claim that the Court is unduly pro-business or anti-little guy. Indeed, in this term and in recent terms, the Court has ruled against business-interests in major cases; in those cases that it has ruled for businesses, it often does so by supermajority margins in decisions joined or written by some of the most liberal members of the Court. And so, it appears far more likely that rather than simply picking winners they like and losers that they dislike, the Justices are attempting to actually apply the law, regardless of the parties.

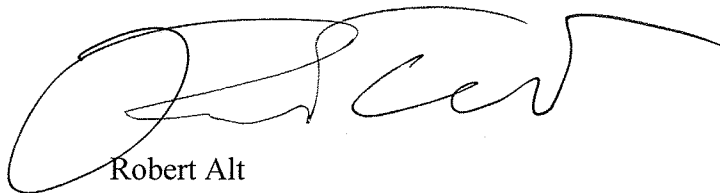
This kind of justice without regard to parties is how it should be and is what the American people expect. However, there is a drumbeat in Congress and among some activists that the Court is too pro-business. The fact that neither the merits nor the statistics bear this out has not diminished the hue and cry.

These accusations have the potential to do genuine harm. As Alexander Hamilton correctly stated in Federalist 78, the courts "have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of [their] judgments." Indeed, throughout our history, the courts, lacking the purse or the sword, rely in large measure for their authority on persuasion, not just of the other branches, but of the public. Accusations that the Supreme Court is playing favorites and that parties will not have a fair hearing undoubtedly undermines the very public confidence that the courts rely upon to carry out their vital functions effectively. It is all the more regrettable when the accusations are spurious, and appear to be motivated by little more than special and partisan interests.

Speaking out against judicial decisions with which you disagree is consistent with free speech and a vigorous democracy. But falsely maligning not only decisions but the integrity of the Court itself in such a way as to impair public confidence in impartial justice does a service to no one.

Thank you again for your questions, and for the opportunity to testify..

Very truly yours,



Robert Alt