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TO:

Patrick Leahy (D-VT) Chairman] 202-224-3479
Senate Committee on the Judiciary

and to All Members of the Committee:

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<u>Dick Durbin (D-IL)</u>	202-228-0400
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<u>Ted Cruz (R-TX)</u>	202-228-0755
<u>Jeff Flake (R-AZ)</u>	202-226-4386

FROM: Thomas B. Heffelfinger

DATE: February 15, 2013

RE: Nomination of B. Todd Jones as Director of the Bureau of Alcohol, Tobacco,
Firearms and Explosives

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Original to follow by mail: ☐ Yes ☒ No

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February 15, 2013

VIA FAX (202-224-9516)

The Honorable Patrick J. Leahy
United States Senate
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: B. Todd Jones, Nominee, Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

Dear Senator Leahy:

I write in strong support for the confirmation of B. Todd Jones as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). I have known Mr. Jones for almost 25 years and can speak to his character, professionalism and reputation.

I have practiced law in the State of Minnesota for approximately 35 years. My practice has been almost evenly divided between public service and private practice. Currently, I am a partner with the law firm of Best & Flanagan LLP in Minneapolis, practicing in the areas of white collar criminal defense and Native American law. In From September 2001 to February 2006, I was the United States Attorney for the District of Minnesota. I was appointed by President George W. Bush and confirmed by your Committee and the full Senate. During my period of service as United States Attorney, I also chaired the United States Department of Justice Native American Issues Subcommittee. I have had the honor to testify six times before the United States Senate Committee on Indian Affairs either as a government representative or as a private citizen. From September 1991 to April 1993, I also served as the United States Attorney for the District of Minnesota. I was appointed by President George H. W. Bush and was confirmed by your Committee and the full Senate. Prior to Mr. Jones' appointment as United States Attorney for the District of Minnesota in 2008, I was the only United States Attorney in the District of Minnesota who served twice as a result of appointments by two different Presidents. From 1981 to 1988, I was an Assistant United States Attorney in the District of Minnesota, responsible for the prosecution of a wide range of criminal conduct, including white collar crime, guns, drugs and crimes in Indian Country. From 1976 to 1981, I was an Assistant Hennepin County

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Attorney, primarily responsible for the prosecution of habitual, violent offenders. When not employed as a state or federal prosecutor, I have been in private practice with three different Minneapolis law firms. A copy of my resume is attached for your consideration.

I first met Mr. Jones in approximately 1989. At that time, as a partner with the law firm of Opperman, Heins & Paquin, I attempted to hire Mr. Jones as an associate in our firm. I was very impressed with him personally and professionally. Unfortunately, he chose to accept a position with another firm. In 1992, as United States Attorney for the District of Minnesota, I hired Mr. Jones to be an Assistant United States Attorney for the District of Minnesota. I sought him out and he was one of my first hires. During the balance of my first term as United States Attorney, Mr. Jones was my subordinate and I found him at all times to be highly competent. I assigned him to the prosecution of drug offenses, especially drug offenses coming out of the Cities of Minneapolis and St. Paul. I further assigned to him to outreach with both communities to attempt to reduce violent crime and drug activity in those communities. He performed admirably in that position. After leaving the United States Attorney position in 1993, I continued my professional association with Mr. Jones, while we were both in private practice and when he returned to the United States Attorney's Office ultimately as United States Attorney under President Clinton. During my second term as United States Attorney from 2001 to 2006, I continued to have ongoing professional dealings with Mr. Jones. Following President Obama's election, I was honored to be appointed by Senator Amy Klobuchar to serve on a screening committee to identify individuals she could consider for nomination to the position of United States Attorney. Mr. Jones was a consensus recommendation to Senator Klobuchar.

My practice, either as a prosecutor or as a defense lawyer, has kept me in constant contact with Minnesota local, state and federal law enforcement officers and prosecutors. As fellow current and former United States Attorneys, Mr. Jones' performance in that position is well known to me. His performance has also been a subject of comment to me by current and former law enforcement and prosecutorial leaders. I can report to you without hesitation that Mr. Jones enjoys a stellar reputation in the State and District of Minnesota as a prosecutor for his professionalism, effectiveness, efficiency, competence and ethical demeanor. This opinion is based not only on my own 25 years of experience with Mr. Jones, but also

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on feedback I have received from others who have had direct experience with him as an Assistant United States Attorney and during his two terms as United States Attorney.

I was disheartened, surprised and offended upon reading the letter from former FBI Special Agent in Charge (SAC) Donald Oswald questioning the reputation and competence of Mr. Jones. Mr. Oswald's opinion could not be further from the truth and further from the reality of Mr. Jones' actual reputation in the State and District of Minnesota.

In the areas of guns and drugs, in my experience, Mr. Jones has been an innovative United States Attorney. He has focused on the prosecution of criminal offenders in a manner that is efficient, effective and utilizes the combined resources of state and federal authorities. Efficient and effective prosecution is not all about numbers and does not necessarily mean that that prosecution must be undertaken in federal court. For example, Minnesota state firearms laws are very stringent. Recognizing this, during the late 1990s, then United States Attorney Jones developed a program with the Minnesota County Attorneys wherein each gun case would be reviewed by a representative of the United States Attorney's Office and an appropriate county attorney. The matter would be prosecuted in the jurisdiction in which the defendant would face the greatest penalties. As a result, some cases ended up in state court and some in federal court. The end result was the offender received the maximum sentence available under state or federal law. The goal was not numbers -- the goal was effective prosecution. This was an innovative program developed under a Democratic-appointed United States Attorney. When I succeeded Mr. Jones in approximately 2001 as a Republican appointee, I was impressed by the program and continued and attempted to expand upon it.

In the area of drug and gang prosecutions, Minnesota has a long tradition of state/federal task forces. As United States Attorney in the late 1990s and again since 2008, Mr. Jones has continued that long tradition. The result of cross-jurisdictional gang and drug task forces is that some cases are prosecuted in state court, while others are prosecuted in federal court. Both Minnesota state and federal law provide serious sanctions for gang and drug activity and the United States Attorney must make decisions regularly whether to defer to state prosecution as compared to federal prosecution. This is true under Mr. Jones' leadership and was true under my leadership.

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Considering the vitriolic nature of Mr. Oswald's criticism, I am not surprised that he failed to report to you that Mr. Jones has undertaken one of the most significant gang and drug prosecutions in the history of the District of Minnesota in regard to the prosecution of members of the Native Mob. This prosecution is the result of an investigation commenced while I was United States Attorney by a tribal, state and federal task force. This long-term investigation has addressed one of the most dangerous organized drug rings in Indian Country nationally, not to mention the State of Minnesota. The trial of this matter is currently taking place in the United States District Court in Minneapolis.

In the State and District of Minnesota, there are very few state and local resources available for the investigation or prosecution of white collar crime. As a result, these labor-intensive investigations must be undertaken federally. In late 2008, Minnesota found itself facing an explosion of significant white collar crimes, including mortgage fraud and Ponzi schemes by individuals like Tom Petters and Trevor Cook. Had the United States Attorney for the District of Minnesota not devoted the appropriate resources to these crimes, they would not have been investigated and prosecuted effectively. As a lawyer on the other side of the table from Mr. Jones' Assistant United States Attorneys, I will report to you that his office has been aggressive in attacking white collar crime in the District of Minnesota. This was an appropriate utilization of his resources. I will also report to you that had such a situation arisen during my tenure as a Republican-appointed United States Attorney for the District of Minnesota, I would have similarly reallocated my resources to address this explosion of fraud.

The United States Attorney for each federal district is the chief federal law enforcement official for that district. As such, that individual is responsible for the implementation of the policies of the President and of the Attorney General. That United States Attorney is also responsible for developing strategies that will meet the unique law enforcement needs of his or her respective district. Mr. Jones has performed that duty responsibly and highly proficiently during two separate terms in office.

I am disheartened by former SAC Oswald's vitriolic attack on Mr. Jones. Mr. Oswald, whom I note had never served as an SAC before his appointment in Minnesota, overlooks the fact that the United States Attorney, not the FBI SAC or any

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other federal agency SAC, is the federal official responsible for establishing law enforcement priorities in his or her district. There is a procedure wherein an SAC may question the priorities of a sitting United States Attorney. That procedure involves consultation with the Director of the FBI and the Deputy Attorney General. Mr. Oswald does not report that he used established procedures while he was in office to raise his concerns. I also note that Mr. Oswald was in the District of Minnesota for only one year before returning to Florida. One year in Minnesota is hardly long enough to learn how to shovel snow, much less long enough to learn what Mr. Jones' reputation is among local, state and federal law enforcement officials.

In conclusion, I strongly recommend that the Senate Judiciary Committee confirm the nomination of Mr. Jones to serve as the Director of ATF. He is highly qualified for that position and will be able to effectively and efficiently direct ATF into the fulfillment of their duties and mission of reducing gun violence in America. Mr. Jones' reputation as an effective, efficient, competent, ethical and professional lawyer and prosecutor will further enhance his ability to effectively lead ATF.

Thank you for your consideration in this matter. If you have any questions, please contact me.

Sincerely,


Thomas B. Heffelfinger

TBH:jmt
Enclosure

cc w/enc. via fax to Committee members:

Hon. Chuck Grassley, Ranking Member
Hon. Chuck Schumer
Hon. Sheldon Whitehouse
Hon. Al Franken
Hon. Richard Blumenthal

Hon. Dianne Feinstein
Hon. Dick Durbin
Hon. Amy Klobuchar
Hon. Christopher CA. Coons
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