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May 15, 2015

Senator Charles Grassley
135 Hart Senate Office Building
Washington, DC 20510

Re: The 7th Circuit Judicial Selection/Wisconsin

Dear Senator Grassley:

I am the co-chair of the Wisconsin Judicial Selection Commission and am authorized by the members of the commission, Richard Esenberg and William Curran to express our opinion on the recent developments surrounding the advancement of certain candidates to the White House for consideration for this important appointment. We are the members of the Commission appointed by Senator Johnson.

We feel compelled to inform you of the unilateral actions taken by Senator Baldwin on May 8, 2015 and to correct her misrepresentation of the Commission's work.

In April 2013, Senator Johnson and Senator Baldwin signed a Judicial Compact that set forth their agreement to fill vacancies for Federal Judge and U.S. Attorney positions. This agreement has provided remarkable results filling vacancies in both the Western and Eastern District Courts of Wisconsin in the last year.

We began screening for the Seventh Circuit vacancy last because it lacked urgency due, in part, to declining caseloads at that court. As we are sure you are aware, this seat has been vacant for so long because in 2008 Senator Feingold abandoned the bipartisan commission set up with Congressman Sensenbrenner, an action which created gridlock. Now, Senator Baldwin has chosen to go down that same failed partisan path.

In Senator Baldwin's May 8th letter to the President advancing eight names for consideration to fill the vacancy on the Seventh Circuit Court of Appeals, she inaccurately claims that these candidates were "selected as finalists by a bipartisan commission." This is false.

The Commissioners merely agreed to interview these eight of the overall applicants for that vacancy. The agreement to interview a candidate was in no sense an "endorsement" of those candidates. It was not even a collective determination that these candidates were "qualified." It is improper and inaccurate to suggest that interviewees enjoy some form of imprimatur from the Commission. Senator Baldwin's decision to so advance their names puts us in a difficult position. While we would prefer not to discuss the Commission's work at all, remaining silent allows this

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misrepresentation of our work to go uncorrected. While we will not divulge the particulars of the Commission's deliberation as to any individual, we will say that these candidates had distinctly different levels of support. As noted in a published report, the details which were provided by Senator Baldwin or her staff, some candidates received the requisite five votes for recommendation to Senator Baldwin and Senator Johnson. Others – including some that Senator Baldwin has now forwarded to the White House as “finalists” – may have received little or no support from *either* the Republican or Democratic Commissioners.

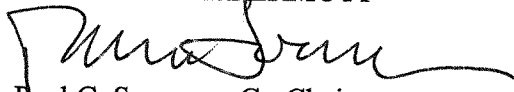
As we indicated to Senator Baldwin in an earlier letter, we would have preferred that Senator Baldwin and Senator Johnson accept for review and possible submission the two candidates who were able to garner the agreed upon bipartisan support. Apparently, this is exactly what Senator Baldwin requested of Senator Johnson on March 4th – and he agreed. What happened between March 4th and May 8th?

By advancing all eight candidates who were interviewed, Senator Baldwin has violated the confidentiality of the process, thereby risking reputational harm to those candidates that did not clear the bipartisan bar. In order to protect the reputations of all eight candidates, we encourage the Senate Judiciary Committee to let the White House know that the Committee will not to consider any of the candidates advanced to the White House by Senator Baldwin in this fashion.

We appreciate your consideration of this matter.

Sincerely,

STEINHILBER, SWANSON, MARES,
MARONE & McDERMOTT



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PGS/cak

cc: William Curran, Member
Richard Esenberg, Member
Honorable James Sensenbrenner