



July 6, 2010

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Member, Senate Judiciary Committee
335 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Sessions:

We are writing on behalf of Constitutional Accountability Center, a public interest law firm, think tank and action center dedicated to fulfilling the progressive promise of the Constitution's text and history, to urge that Solicitor General Elena Kagan be confirmed promptly as an Associate Justice of the United States Supreme Court.

General Kagan is overwhelmingly qualified to serve on our Nation's highest court. She has stellar academic credentials and an exemplary professional record as an attorney, as an academic, as a teacher, and as a public servant. She has served as Dean of one of our country's leading law schools, and, in her current position of Solicitor General, is the lawyer for the United States government before the Supreme Court -- further indication of her extraordinary credentials and the enormous regard in which she is held by others. In addition, as General Kagan thoroughly demonstrated at her confirmation hearing, she has a brilliant mind, a remarkable breadth of legal knowledge, an ability to consider and communicate legal matters clearly, and a temperament that will suit her well as a Justice.

Particularly important, from CAC's perspective as an organization dedicated to the Constitution's text and history, was General Kagan's substantive testimony, including her respect for text and history and her recognition of the important roles that each plays in constitutional interpretation. General Kagan appropriately rejected the notion of a "living Constitution," correctly explaining that the Constitution can be changed only by amendment, and insisting that constitutional rights be rooted in the text. Similarly, she also testified that judges must decide cases based on the law. Her testimony utterly refuted charges by critics that she will be a "judicial activist."

We were also impressed by General Kagan's articulation of the role of a judge and of the importance of courts. Although General Kagan acknowledged that a judge may appropriately be likened to an "umpire" in that she must be a neutral arbiter, she further explained that a judge is not a mindless robot but must instead bring wisdom and good judgment to the job of judging. And she made it very clear that she viewed it as a judge's responsibility to give both sides in a case a fair shake. As General Kagan explained:

One of the glorious things about courts is that they do provide [a] level playing field in all circumstances and all cases. Even when that level playing field is not provided by other branches of government, even when there is some imbalance with respect to how parties come to Congress or the President or the state houses, the obligation of courts is to provide that level playing field, to make sure that every single person gets the opportunity to come before the court and gets the opportunity to make his best case and gets a fair shake. . . .

Everybody is entitled to fair consideration. It doesn't matter whether you are an individual or you're a corporation or you're the government . . . you get equal treatment by the Court.

Elena Kagan has demonstrated that she has the qualifications, experience, intellect and temperament to serve with great distinction on the Supreme Court. We urge every Senator to support her confirmation.

Respectfully,

A handwritten signature in cursive script that reads "Doug Kendall". The signature is written in black ink and is positioned above the printed name and title.

Douglas T. Kendall
President

Judith E. Schaeffer
Vice President