

May 9, 2014

Dear Senator:

The undersigned organizations, each of which is deeply committed to the preservation and advancement of civil rights, women's rights, constitutional rights, and environmental protections, strongly urge you to vote in favor of the confirmation of David J. Barron to the United States Court of Appeals for the First Circuit.

Professor Barron is a highly respected and brilliant lawyer and scholar who is exceedingly well-qualified to serve as an appellate judge. His strongest supporters span the ideological spectrum, all agreeing that Barron is highly qualified to serve on the First Circuit. Such agreement regardless of ideology undercuts partisan efforts to paint Professor Barron as something that he is not.

Professor Barron's supporters include former Reagan Solicitor General Charles Fried¹ and Harvard Law Professor John F. Manning (a former law clerk to Judge Robert Bork and Justice Antonin Scalia), who has described Professor Barron as "undeniably brilliant" and "an unusually talented and careful lawyer" who will "understand and faithfully carry out the duties of a circuit judge. Indeed, he will excel at the job."² Jack Goldsmith, who served in the Office of Legal Counsel under George W. Bush, calls this "an easy case for confirmation."³

Notably, former federal appellate judge and now Stanford Law Professor Michael McConnell has just written to the Senate in support of Professor Barron's confirmation, stating:

I do not often interject myself into the politics of judicial confirmations, but in the case of David Barron I make an exception. In my opinion, David Barron is one of President Obama's two or three best nominations to the appellate courts. Based on his scholarship and record of public service, he has the potential to be one of this nation's outstanding jurists.⁴

Some conservative groups have painted a picture of Professor Barron that bears little resemblance to reality. To this, the conservative Judge McConnell writes:

Some groups have described Barron as "an unabashed proponent of judicial activism." That characterization, frankly, demonstrates a lack of familiarity with the tone of much academic debate over constitutional issues.⁵

Professor Barron began his legal career with two prestigious clerkships, the first on the Court of Appeals for Judge Stephen Reinhardt, and the second for the Supreme Court, where he was a law clerk to Justice John Paul Stevens. He then served for three years in the Department of Justice Office of Legal Counsel ("OLC") during the Clinton Administration (1996-99), and returned for a second stint during the

¹ See Letter from Charles Fried to Hon. Patrick Leahy and Hon. Charles Grassley (Sept. 24, 2013) ("Fried Letter").

² Letter from John F. Manning to Hon. Patrick Leahy and Hon. Charles Grassley (Sept. 16, 2013).

³ Letter from Jack Goldsmith to Hon. Patrick Leahy and Hon. Charles Grassley (Sept. 24, 2013).

⁴ Letter from Michael W. McConnell to Hon. Harry Reid, *et al.* (May 7, 2014).

⁵ *Id.*

Obama Administration (2009-10), where he served as the Acting Assistant Attorney General, charged with providing, as OLC describes it, “authoritative legal advice to the President and all of the Executive Branch agencies.”⁶ OLC is one of the most highly regarded legal shops in the federal government, and its attorneys are lawyers’ lawyers. Sixteen of Professor Barron’s former colleagues at OLC, who collectively have served in both Republican and Democratic Administrations, have written to the Senate in support of his confirmation, stating that:

During our time at OLC, we witnessed firsthand David’s brilliant legal intellect, exceptional character, and considered judgment on the most pressing legal issues facing the Executive Branch. . . He pushed each of us to be open-minded and to consider all sides of an argument before reaching a final conclusion. And he set the most rigorous professional standards for the Office to ensure that OLC’s advice was of the highest possible quality and represented the best possible view of the law.⁷

Surrounding his public service at OLC, Barron has been a distinguished Professor at Harvard Law School, where he is, according to Charles Fried, a “beloved and respected teacher.”⁸

We are confident that David Barron would serve with great distinction on the First Circuit, and we urge you to vote promptly to confirm him.

Alliance for Justice
Communication Workers of America
Constitutional Accountability Center
Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
National Association for the Advancement of Colored People (NAACP)
National Council of Jewish Women
National Partnership for Women & Families
People For the American Way

⁶ See <http://www.justice.gov/olc/>.

⁷ Letter from Amit Agarwal, *et al.* to Hon. Patrick Leahy and Hon. Charles Grassley (Nov. 15, 2013).

⁸ Fried Letter, *supra* n.1.