

February 1, 2010

The Honorable Senator Harry Reid
Senate Majority Leader
522 Hart Senate Office Bldg
Washington, DC 20510

Dear Senator Reid:

We, the undersigned, are professors of law at leading universities around the country.

We are writing out of concern for the delay in confirming Dawn Johnsen, President Obama's nominee to head the Department of Justice's Office of Legal Counsel (OLC). Professor Johnsen's nomination has been pending on the Senate's Executive Calendar since it was favorably reported by the Senate Judiciary Committee on March 19, 2009. To date, however, because of the minority's refusal to enter a time agreement, Professor Johnsen's nomination has not been voted on by the full Senate. This delay is extraordinary and unacceptable.

The Office of Legal Counsel plays a critical role in guiding executive branch activities, advising the President and his Administration on the constitutionality of proposed policies, legislation, and executive orders. It requires an individual of exceptional scholarship and unimpeachable integrity, someone with the strength of character and tough-mindedness to deliver unbiased advice without qualification.

Professor Johnsen is immensely qualified for this position. She has extensive previous experience in the Office of Legal Counsel, including service as its acting head for more than a year during the Clinton Administration. Doug Kmiec – the OLC head under Presidents Ronald Reagan and George H.W. Bush – has applauded Professor Johnsen's track record during that service, noting that she "repeatedly separated policy preference from rendered opinion."

Throughout her career, Professor Johnsen has demonstrated an ability to work with others across the political spectrum in support of the rule of law. She has been endorsed by officials from the administrations of Presidents Ronald Reagan, George H. W. Bush, Bill Clinton, and George W. Bush. In 2004, after Bush administration OLC abuses came to light, she organized an impressive panel of former OLC lawyers to develop a statement of principles to guide the office going forward. That document has been praised by Republican and Democratic officials alike.

The extraordinary obstruction of Professor Johnsen and other executive branch nominations must not be allowed to continue. In the 60 years since the rules of the Senate were changed to allow debate on nominations to be brought to a close through a vote on cloture, there have been only 36 executive branch nominations on which cloture motions have been filed. During the entire eight years of George W. Bush's presidency, cloture was filed on 15 nominees. Yet, as you know, in just the first nine months of the Obama Administration, you were forced to file cloture petitions on 10 nominees. Another 63 executive nominations are currently on the Senate's Executive Calendar, many of which have been pending for some time, raising the specter of yet more unprecedented and unnecessary cloture votes to fill key Administration positions.

This level of obstruction is simply unacceptable. It frustrates the ability of executive branch agencies and departments to serve critical public needs. And it defies the deference traditionally provided Presidents in shaping their Administrations, particularly with respect to sub-Cabinet level positions.

Professor Johnsen has the experience, the integrity, and the intellect to head this critical office. We urge you to bring this nomination to a vote at the earliest possible date.

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