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January 28, 2009

Honorable Patrick Leahy, Chairman
United States Senate Committee on the
Judiciary
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

Honorable Arlen Specter, Ranking Member
United States Senate Committee on the
Judiciary
711 Hart Building
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Senator Specter:

I am writing in support of the nomination of Elena Kagan to serve as Solicitor General of the United States. Although we belong to different political parties and undoubtedly have different political views, I believe strongly that she possesses the necessary skill, wisdom, and temperament to serve ably as Solicitor General of the United States.

I have come to know Dean Kagan in recent years in her capacity as Dean of my alma mater, the Harvard Law School. Dean Kagan came to that job from the Clinton Administration, where she had served in the White House Counsel's Office. Among the first things she did was to hire several prominent and outstanding young conservative scholars to join the HLS faculty. This sent a strong signal to conservative alumni that, despite her own party affiliation, she was committed to intellectual diversity and meritocracy at the Law School, and was determined to serve the long-term best interests of the institution rather than any narrow ideological agenda. This also sent a powerful message of inclusion to conservative alumni, many of whom had previously felt somewhat alienated from an institution they perceived as hostile to their points of view.

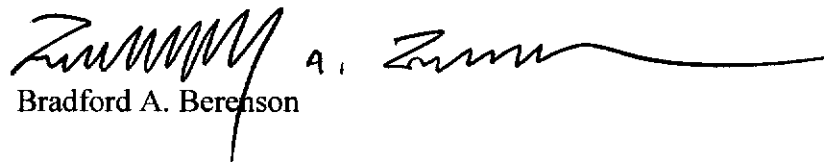
This open-minded approach to political and philosophical differences was also reflected in her treatment of students and student groups on campus. During her tenure, the Federalist Society became one of the largest and most active student groups on campus, and numerous leaders of the Harvard Federalist Society freely attest to the respectful, cooperative, and indeed supportive manner in which Dean Kagan and her office interacted with them. She encouraged the robust debate over jurisprudence and legal principles on campus of which the Federalist Society was a part. Dean Kagan also affirmatively reached out to alumni to generate ideas for how to improve the law school and its curriculum, which prompted a large number of previously passive alumni to re-connect to the school and to become more active in its affairs.

Honorable Patrick Leahy, Chairman
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January 28, 2009
Page 2

The record of Dean Kagan's accomplishments in both public and private life provide considerable assurance that she will be a great success in the position to which President Obama has nominated her. Her skill as a leader and manager are unquestioned, as she has led Harvard Law School, an institution far harder to manage than the Solicitor General's Office, into a period of robust renaissance. Her previous government experience at the center of the Executive Branch equips her well to understand and respond in constructive ways to the needs and interests of the various federal agency and department clients she will serve as Solicitor General. Her legal acumen is more than equal to the task she faces, as reflected in her scholarship. The spirit of toleration and fair-minded consideration of competing views she brought to the Deanship reflect the sort of temperament and judgment that will inspire confidence in the Justices of the Supreme Court as well as the private parties with whom she will need to interact as SG. The same institutional loyalty that has enabled her to put Harvard Law School's interests ahead of her own will undoubtedly cause her to do likewise in service of the United States. And while her skill as an oral advocate has yet to be demonstrated to the same compelling degree as these other necessary and important qualities, the precedents provided by predecessors such as Erwin Griswold and Charles Fried, both Harvard Law School professors who assumed the position of Solicitor General without significant experience as advocates before the Supreme Court, provide strong reasons to feel confident that she will excel in that capacity as well.

In sum, I believe this is an outstanding nomination. Although there is little doubt that the United States will take positions in the Supreme Court in the Obama Administration with which I will disagree, if Dean Kagan is the Solicitor General, I know they will be arrived at honestly, reasoned soundly under the law, and presented responsibly and skillfully to the Supreme Court. I urge the Committee to promptly recommend her confirmation to the Senate.

Sincerely,


Bradford A. Berenson