

Kagan gets Obama nod as pick for high court

Will face challenges from left and right

By BEN CONERY AND KARA ROWLAND

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Touting her as a "consensus builder" who appreciates how the law "affects the lives of everyday people," President Obama on Monday nominated U.S. Solicitor General Elena Kagan to the U.S. Supreme Court, where she would be the court's fourth female justice and the first without judicial experience in 40 years.

While Ms. Kagan, 50, lacks the judicial paper trail of the other justices, statements she made as part of her 2009 nomination to solicitor general are sure to both appease and rankle conservative and liberal critics alike — especially during a tight election year with activists eager to tackle hot-button issues such as abortion, gun rights and privacy.

On abortion, Ms. Kagan defined a woman's right to the procedure as legally settled, but did advise the Clinton administration against the legality of late-term abortions. On guns, Ms. Kagan said established law provides an individual the right to bear arms.

The liberal-leaning [Center for Constitutional Rights](#) criticized Ms. Kagan for her role in what the group sees as the Obama administration's continuation of objectionable George W. Bush-era practices.

"I am sad to say that Solicitor General Elena Kagan's record indicates a troubling support for expanding presidential powers, something we must be vigilant about at this time," Vincent Warren, the group's director, said in a statement. "President Obama would appear to be seeking to appoint a Supreme Court judge who will endorse his policies and appease conservatives."

One Republican senator, James M. Inhofe of Oklahoma, already has said he opposes Ms. Kagan's

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Kagan to win the lifetime appointment of a justice.

Her documents from the Clinton ad-

ministration are likely to be similar to the thousands of pages of memos written by Chief Justice John G. Roberts Jr. during his time in the Reagan White House counsel's office, which provided limited insight into the legal reasoning of an up-and-coming lawyer, along with a few tidbits about his thoughts on executive privilege and other major debates of the day.

In addition to documents, Ms. Kagan will face close questioning over her decision as dean of Harvard Law School to prohibit the military from using the school's career office to try to recruit for the armed forces. Her stance was rejected by a unanimous Supreme Court, which ruled that the federal government could withhold funding for schools that failed to allow recruiters access.

On Monday, Ms. Kagan's allies sought to explain her stance.

The White House said recruiters still had access to students through the veterans office during her tenure at Harvard, and pointed to an appeals court that upheld her position, even though it was resoundingly rejected later by the Supreme Court.

Judiciary Committee Chairman Patrick J. Leahy, Vermont Democrat, said that even when recruiters were barred from the career office, they likely could sign up students at other places.

"Heck, when my youngest son joined the Marine Corps, he found that he could walk the three or four blocks from the campus to go down to the recruiting station and sign up," Mr. Leahy said.

He predicted that Ms. Kagan will be confirmed and in place before the Supreme Court begins its next session in October.

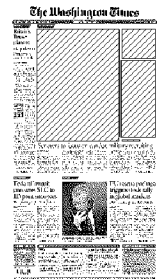
"She will be confirmed," he said, adding that he wants to turn the case into an opportunity to showcase what he thinks were recent bad decisions issued by the court's majority.

Asked about whether she will have to be more forthcoming this time, Mr. Leahy said he will allow any senators on the committee to ask whatever questions they want.

"We'll have a thorough, complete confirmation hearing," he said.

Ms. Kagan, who has spent her life in academia and private practice, in addition to her time in the Clinton White House, has never served as a judge. Analysts said that's all the more reason she will have to be open about her views this time.

"With 59 Democrats, there's lots of room for error, and you can still get con-



firmed, but I think there's going to be more pressure on her, whether it's through documents or being more forthcoming at the hearings than most nominees because she has such a thin record," said Curt Levey, executive director of the Committee for Justice, which lobbies for court nominees who adhere to a more conservative line.

Ms. Kagan has set the stage for close scrutiny. In 1995, she wrote that confirmation hearings should do more to probe Supreme Court nominees' views on how they would approach cases.

She backed away from that position in her 2009 hearing for solicitor general, saying that was skewed by her time as a staffer on the Senate Judiciary Committee and that she no longer agreed with what she'd written 14 years earlier.

"This has to be a balance. The Senate has to get the information that it needs, but as well, the nominee for any particular position, whether it is judicial or otherwise, has to be protective of cer-

tain kinds of interests," she said.

Ms. Kagan's nomination presents a particularly thorny question for Sen. Arlen Specter, who last year as ranking Republican on the Judiciary Committee opposed her nomination, arguing she had stonewalled his efforts to find out more about her philosophy.

Soon after, Mr. Specter switched parties to become a Democrat, and he now faces a tough primary battle against Rep. Joe Sestak. On Monday, Mr. Specter laid the groundwork for changing his mind to support Ms. Kagan as she seeks a higher office.

"I voted against her for solicitor general because she wouldn't answer basic questions about her standards for handling that job. It is a distinctly different position than that of a Supreme Court Justice," he said.

Mr. Sestak said he expects Mr. Specter will find a way to "backtrack" and that Mr. Specter's back-and-forth should worry Pennsylvania's Democratic voters.



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NOMINEE: Solicitor General Elena Kagan basks in the applause of President Obama and Vice President Joseph R. Biden Jr. Monday after being introduced by the president as his selection for the Supreme Court.