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## Kagan gets Obama nod as pick for high court

By [Ben Conery](#), [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.

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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 nomination.

"The position for which she has been nominated has lifetime tenure, and it is concerning that the President has placed such trust in a nominee that has not been properly vetted through a judicial career, having worked mostly in academia and never before as a judge," he said in a statement.

The last time a president nominated someone without judicial experience was in 1971, when President Nixon picked Lewis F. Powell Jr. and William H. Rehnquist.

But White House and Senate Democrats are confident that Ms. Kagan will endure this summer's confirmation grilling in time to replace retiring Justice John Paul Stevens in October.

Mr. Obama lauded Ms. Kagan, the former dean of Harvard Law School, as "one of the nation's foremost legal minds" who will bring "fair-mindedness and skill as a consensus builder" to the court, highlighting the fact she was both the first female dean at Harvard Law and the first female solicitor general.

"While we can't presume to replace Justice Stevens' wisdom or experience, I have selected a nominee who I believe embodies that same excellence, independence, integrity and passion for the law and who ultimately can provide that same leadership on the court," Mr. Obama said, standing next to Ms. Kagan and Vice President Joseph R. Biden Jr.

On Monday, Ms. Kagan said she was "honored" and "humbled" by the nomination.

"The court is an extraordinary institution in the work it does and in the work it can do for the American people by advancing the tenets of our Constitution, by upholding the rule of law, and by enabling all Americans, regardless of their background or their beliefs, to get a fair hearing and an equal chance at justice," she said during a ceremony in the East Room of the White House.

Justice Stevens, an appointee of President Ford, announced his retirement last month after 35 years on the bench.

If Ms. Kagan is confirmed, she will become the 112th justice in the court's history and join Justices Ruth Bader Ginsburg and Sonia Sotomayor, Mr. Obama's first appointment, on the bench — the first time three female justices will have served together on the high court.

Most conservative lawmakers had a muted reaction to Mr. Obama's second choice to the court since taking office.

Senate Minority Leader Mitch McConnell, Kentucky Republican, vowed to ensure that Ms. Kagan's record reflects fidelity to the law.

"She has been nominated for a lifetime appointment on the nation's highest court, and we will carefully review her brief litigation experience, as well



as her judgment and her career in academia, both as a professor and as an administrator," Mr. McConnell said. "Fulfilling our duty to advise and consent on a nomination to this office requires a thorough process, not a rush to judgment."

Sen. Jeff Sessions — an Alabama Republican and ranking member of the Judiciary Committee, which will conduct Ms. Kagan's confirmation hearings — said it is "unwise" to make a decision on Ms. Kagan's nomination until fresh review of her nomination is done.

Mr. Sessions, in what has been a consistent criticism of Ms. Kagan since her nomination as solicitor general, expressed dismay at her decision as Harvard law dean to ban military recruiters from campus because of the ban on openly gay service members.

The Senate approved Ms. Kagan's nomination as solicitor general by a vote of 61-31 in March 2009, with the support of seven Republicans. While that approval might make it politically more difficult for a member of the GOP to vote against her this time, nominations to the Supreme Court are taken more seriously because they are lifetime appointments.

The administration has sought to portray Ms. Kagan as a moderate choice, focusing on praise she received for reaching out to conservative professors and groups during her tenure at Harvard.

During her time as dean, she garnered support from several high-profile conservatives, including former Solicitor General Theodore Olson, who served under Mr. Bush. Ms. Kagan hired several right-leaning academics, including Jack Goldsmith, who also served under Mr. Bush; Adrian Vermeule, a former Justice Antonin Scalia clerk, and Jack Manning, a former clerk for conservative Judge Robert Bork.

A conservative law professor at Harvard, Charles Fried, recently praised her efforts in the New Republic, saying she made every effort to ensure students and faculty across the ideological spectrum felt at home.

"She has managed to get the once notoriously faction-ridden faculty to embrace the appointment not only of former Scalia and [Justice Anthony M.] Kennedy clerks, but also of several hard lefties, both categories of persons who previously could not have made it to the floor of the faculty," wrote Mr. Fried, a solicitor general under President Reagan.

Before going to Harvard, Ms. Kagan taught at the University of Chicago Law School from 1991 to 1997, the same time that Mr. Obama taught there.

Ms. Kagan also has long-standing ties to the previous Democratic administration.

From 1995 to 1999, she worked for President Clinton, first as an associate counsel to the president and later as deputy assistant to the president for domestic policy.

The Associated Press reported Monday that Ms. Kagan urged Mr. Clinton in 1997 to support a ban on late-term abortions.

Mr. Clinton nominated her to the D.C. appeals court in 1999, but the Republican-controlled Congress never scheduled a vote. President Bush ultimately appointed future Chief Justice John G. Roberts to that seat.

Ms. Kagan has appeared before the Roberts-led Supreme Court a half dozen times during her nearly year as solicitor general.

Ms. Kagan's first argument before the court was the Citizens United v. Federal Election Commission case, in which a divided court sided against the Obama administration by striking down limits on corporate and union spending in elections, arguing it violated free speech.

That decision drew criticism from high-ranking Democrats, including Mr. Obama, who lashed out against the Roberts-led court during his State of the Union address in January.

Before becoming solicitor general, Ms. Kagan had never argued before the Supreme Court, which is not particularly unusual for a solicitor general. She also had relatively little other courtroom experience.

She worked for Washington powerhouse law firm of Williams and Connolly from 1989 to 1991, but never tried a case to reaching a verdict.

Sen. Patrick J. Leahy, a Vermont Democrat and chairman of the Senate Judiciary Committee, said Ms. Kagan will bring a "diversity of experience missing since Justice [Sandra Day] O'Connor retired in 2006."

"I have urged President Obama to look outside the judicial monastery to identify qualified nominees who will bring a diversity of life experience to the court. Elena Kagan is just such a nominee," Mr. Leahy said.

Mr. Obama called on the Senate to act on her nomination so that she can be seated before the court's term begins in October.

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