

**DEFENDERS OF WILDLIFE  
AUDUBON  
CLEAN WATER ACTION  
EARTHJUSTICE  
ENDANGERED SPECIES COALITION  
FRIENDS OF THE EARTH  
GREENPEACE USA  
LEAGUE OF CONSERVATION VOTERS  
NATIONAL HISPANIC ENVIRONMENTAL COUNCIL  
SIERRA CLUB  
THE WILDERNESS SOCIETY**

**ADVOCATES FOR THE WEST  
ALASKA WILDLIFE ALLIANCE  
ALASKA CENTER FOR THE ENVIRONMENT  
AUDUBON SOCIETY OF RHODE ISLAND  
CALIFORNIANS FOR ALTERNATIVES TO TOXICS  
CITIZENS FOR PUBLIC RESOURCES  
COLORADO ENVIRONMENTAL COALITION  
CONSERVATION NORTHWEST  
ECOLOGY CENTER  
ENDANGERED HABITATS LEAGUE  
ENVIRONMENTAL PROTECTION INFORMATION CENTER (EPIC)  
FRIENDS OF THE COLUMBIA GORGE  
FRIENDS OF BLACKWATER  
GREAT OLD BROADS FOR WILDERNESS  
GREEN DELAWARE  
GULF RESTORATION NETWORK  
HOOSIER ENVIRONMENTAL COUNCIL  
IDAHO CONSERVATION LEAGUE  
IDAHO RIVERS UNITED  
KENTUCKY RESOURCES COUNCIL, INC.  
MAGIC  
McKENZIE GUARDIANS  
MIDWEST ENVIRONMENTAL ADVOCATES  
MONTANA ENVIRONMENTAL INFORMATION CENTER  
NORTHWEST ENVIRONMENTAL ADVOCATES  
OREGON WILD  
PUBLIC LANDS WITHOUT LIVESTOCK  
SAN JUAN CITIZENS ALLIANCE  
SODA MOUNTAIN WILDERNESS COUNCIL  
SOUTHERN UTAH WILDERNESS ALLIANCE  
WATERWATCH OF OREGON  
WESTERN ENVIRONMENTAL LAW CENTER  
WILDEARTH GUARDIANS  
THE XERCES SOCIETY FOR INVERTEBRATE CONSERVATION**

August 3, 2010

**Re: Confirmation of Elena Kagan as an Associate Justice of the U.S. Supreme Court**

Dear Senator:

We write to express our strong support for confirmation of Solicitor General Elena Kagan as an Associate Justice of the U.S. Supreme Court. General Kagan is extremely well qualified to serve on the Supreme Court and we endorse her nomination without qualification.

After graduating with distinction from Princeton University, Oxford, and Harvard Law School, Elena Kagan clerked for D.C. Circuit Judge Abner Mikva and Supreme Court Justice Thurgood Marshall. She worked in a leading law firm, and was a professor at the University of Chicago School of Law and at Harvard Law School, where she also served as Dean. Her public service includes work with the Senate Judiciary Committee and the Clinton White House and as President Obama's Solicitor General.

Her devotion to the law, temperament, breadth of experience, and stellar accomplishments have attracted bi-partisan supporters, including all Solicitors General from 1985 through her predecessor in 2009.

Ultimately, the Supreme Court decides the fate of lawsuits that attack safeguards for [clean air](#), [clean water](#), [endangered species](#), and special natural places. For example, Americans depend upon fair Justices to uphold anti-pollution and conservation laws against unjustifiable claims that their enactment exceeded Congress' [Commerce Clause](#) authority, and that these and other laws take away non-existent "property rights" to pollute.

The Court is narrowly and deeply split on critical constitutional and statutory environmental protection issues, as exemplified by dissenting justices' apt criticism of plurality opinions. In a 1992 [case](#) that threatened vital [access to courts](#) by redefining the Constitution's "[Cases and Controversies](#)" clause, Justice O'Connor joined a dissent that condemned the plurality opinion's "slash-and-burn expedition through the law of environmental standing."

Four dissenting Justices in the 2006 [Rapanos](#) case described how a "revisionist" plurality opinion displayed "antagonism to environmentalism.... The "impropriety of crafting these new conditions [on Clean Water Act jurisdiction] is highlighted by the fact that no party or amicus has suggested either of them .... [T]he plurality disregards ... its own obligation to interpret laws rather than to make them."

General Kagan's record and her Supreme Court confirmation hearing testimony demonstrate an essential understanding of the importance of fair Court decisions that uphold, enforce and correctly interpret laws that protect people, wildlife, and the environment.

As dean of Harvard Law School, Elena Kagan made environmental law a top priority. She helped found the [Environmental Law Program](#), and, in one of her most high-profile hires, recruited prominent environmental scholar [Jody Freeman](#) to lead it. [John Leshy](#), an environmental law professor at the University of California Hastings College of the Law, [said](#) that Harvard environmental law “came from nowhere and became a respected program. I give her a lot of credit for that.”

Dean Kagan’s [letter in the summer 2008 Harvard Law Bulletin](#) described how “this program is fast becoming an international leader in showing how law schools (and lawyers) can actively shape a field that will in many ways determine the world’s future.” She discussed how the [Environmental Law and Policy Clinic](#) which she started was “the heart of our environmental program ... HLS students are involved in a growing array of placements that give them a chance to effect change in the real world. ... I hope you'll share my pride in the work that students, faculty and alumni are doing to tackle the environmental dangers we all face-and my determination that Harvard Law School continue to make a difference in this vital sphere of law and policy.”

General Kagan’s answers to questions at her Supreme Court confirmation hearing recognized the broad scope of congressional Commerce Clause authority (which is the basis for most federal environmental laws) and the importance of Court precedents that defer to Congress in this area. She described what

was really the great recognition of those New Deal years, was that deference to Congress was appropriate in this area. ... the current state of the law is to grant broad deference to Congress in this area, to assume that Congress knows what’s necessary in terms of the regulation of the country’s economy, but to have some limits. ... Congress has broad authority under the commerce clause to act.

Sen. Feinstein asked about “many environmental statutes, such as the Clean Water Act, the Endangered Species Act, the Clean Air Act,” in which Congress has included provisions permitting citizens or citizen groups to bring lawsuits to redress violations of the law. ... and ensure that our nation’s environmental protections are not ignored.” In responding, General Kagan appropriately emphasized the role of Congress in defining within broad limits who should have standing to enforce these laws.

[T]he court has also made clear that Congress can define, within broad limits, a set of people who Congress believes is injured by a particular practice such that they can bring suit. So the standing question is one that I think is not entirely, but to a great extent within Congress’s control, that Congress can say, look, there are, you know, some set of people, and it gets to define those people as it wants who are injured by some kind of action and who should have an entitlement to go to court to redress that action. ...

Congress does that in legislation, and if Congress does do that in legislation, within broad limits, as I say, but if Congress does, the court should respect that and should hold that such a suit complies with Article III.

Upholding and enforcing environmental and conservation laws, often requires courts to clarify ambiguous laws by relying on congressional purposes and real-world effects of varying interpretations, as General Kagan described in testimony.

[O]ne ... good and appropriate approach is to look to the purposes of the statute and to try to figure out which interpretation of the statute is more consistent with that congressional purpose.

And one way to do that is to say, well, what would that interpretation of the statute actually do in the world and is that consistent with what Congress thought ought to be done?

This focus on statutory purposes and effects is enhanced by her testimony that “courts have an important role to play in protecting people under the law who -- who are injured by corporate misconduct or by any other.”

General Kagan's ability to understand and correctly interpret statutes and regulations should be enhanced by her years of work for the Senate Judiciary Committee and Clinton White House, and as President Obama's Solicitor General. This included detailed analyses of environmental, conservation and administrative law and related issues.

Elena Kagan's impeccable credentials, wealth of experience, and exceptional legal mind will benefit the Court and the nation. We urge her swift confirmation.

For more information, please contact Glenn Sugameli, [Judging the Environment](#) Staff Attorney, Defenders of Wildlife, at 202-682-9400.

Sincerely,

Rodger Schlickeisen, President  
**Defenders of Wildlife**

Mike Daulton, Senior Director  
**Audubon**

Lynn Thorp  
National Campaigns Coordinator  
**Clean Water Action**

Trip Van Noppen, President  
**Earthjustice**

Leda Huta, Executive Director  
**Endangered Species Coalition**

Erich Pica, President  
**Friends of the Earth**

Kyle Ash, Senior Legislative Representative  
**Greenpeace USA**

Gene Karpinski, President  
**League of Conservation Voters**

Roger Rivera, President  
**National Hispanic Environmental Council**

Debbie Sease, National Campaign Director  
**Sierra Club**

William Meadows, President  
**The Wilderness Society**

Laird J. Lucas, Executive Director  
**Advocates for the West**

Toby Smith, Executive Director  
**Alaska Center for the Environment**

John Toppenberg, Director  
**Alaska Wildlife Alliance**

Eugenia Marks, Senior Director of Policy  
**Audubon Society of Rhode Island**

Patricia Clary, Executive Director  
**Californians for Alternatives to Toxics**

Tom Giesen, Coordinator  
**Citizens for Public Resources**

Elise Jones, Executive Director  
**Colorado Environmental Coalition**

Mitch Friedman, Executive Director  
**Conservation Northwest**

Mike Garfield, Director  
**Ecology Center**

Dan Silver, Executive Director  
**Endangered Habitats League**

Scott Greacen, Executive Director  
**Environmental Protection Information  
Center (EPIC)**

Kevin Gorman, Executive Director  
**Friends of the Columbia Gorge**

Judith Rodd, Director  
**Friends of Blackwater**

Veronica Egan, Executive Director  
**Great Old Broads for Wilderness**

Alan Muller, Executive Director  
**Green Delaware**

Cynthia Sarthou, Executive Director  
**Gulf Restoration Network**

Jesse Kharbanda, Executive Director  
**Hoosier Environmental Council**

Rick Johnson, Executive Director  
**Idaho Conservation League**

Kevin Lewis, Conservation Program Director  
**Idaho Rivers United**

Tom FitzGerald, Director  
**Kentucky Resources Council, Inc.**

Robin Bayer, President  
**Magic [Palo Alto, CA]**

James Baker, President  
**McKenzie Guardians**

Kimberlee Wright, Executive Director  
**Midwest Environmental Advocates**

James D. Jensen, Executive Director  
**Montana Environmental Information  
Center**

Nina Bell, J.D., Executive Director  
**Northwest Environmental Advocates**

Regna Merritt, Executive Director  
**Oregon Wild**

Mike Hudak, Director  
**Public Lands Without Livestock**

Megan Graham, Executive Director  
**San Juan Citizens Alliance**

Dave Willis, Coordinator  
**Soda Mountain Wilderness Council**

Scott Groene, Executive Director  
**Southern Utah Wilderness Alliance**

John DeVoe, Executive Director  
**WaterWatch of Oregon**

Greg Costello, Executive Director  
**Western Environmental Law Center**

John Horning, Executive Director  
**WildEarth Guardians**

Scott Hoffman Black, Executive Director  
**The Xerces Society for Invertebrate  
Conservation**