

SUPREME COURT: Kagan introduced as nominee (05/10/2010)

By Gabriel Nelson, E&E reporter

Describing her as a "consensus builder" with a "keen understanding" of the Supreme Court's impact on ordinary citizens' lives, President Obama introduced Solicitor General Elena Kagan today as his choice to replace retiring Justice John Paul Stevens.

Speaking at a White House press conference, Obama said that Kagan has "repeatedly defended the rights of shareholders and ordinary citizens against unscrupulous corporations," pointing to her argument on behalf of the federal government last year in the Supreme Court campaign finance case *Citizens United v. Federal Election Commission*.

That case marked the first time arguing before the court for Kagan, 50, who was dean of Harvard Law School before becoming the federal government's top legal advocate.

"I have felt blessed to represent the United States before the Supreme Court, to walk into the highest court in this country when it is deciding its most important cases -- cases that have an impact on so many people's lives," Kagan said this morning. "To represent the United States there is the most thrilling and the most humbling task a lawyer can perform."

If confirmed to a seat on the other side of that bench, Kagan would be the only current justice without prior judicial experience.

Republicans will likely attack Kagan on that point during her confirmation hearings. In statements today, Senate Minority Leader Mitch McConnell of Kentucky said Republicans will examine whether Kagan "possesses the requisite experience to serve on the Supreme Court."

"Kagan's lack of judicial experience and short time as solicitor general, arguing just six cases before the court, is troubling," said Sen. Jeff Sessions (R-Ala.), the ranking member of the Senate Judiciary Committee. "The public expects Supreme Court nominees to possess a mastery of the law, a sound judicial philosophy, and a demonstrated dedication to the impartial application of the law and the Constitution. With no judicial opinions to consider, it will be especially important that other aspects of her record exhibit these characteristics."

Both Senate Majority Leader Harry Reid (D-Nev.) and Judiciary Chairman Patrick Leahy (D-Vt.) today praised Obama's decision to look outside the courtroom for his nominee.

"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," Leahy said in a statement.

Leahy referenced the court's 2008 decision in *Exxon v. Baker* to reduce Exxon Mobil Corp.'s punitive damages in the *Exxon Valdez* oil spill from \$2.5 billion to \$500 million. That case has once again become topical in light of the recent explosion at the Deepwater Horizon oil rig in the Gulf of Mexico, which has caused a spill that could eventually eclipse the *Exxon Valdez* spill in cost.

In cases such as *Citizens United* and *Exxon*, Leahy said, "we have seen the Supreme Court -- the final arbiter of the federal judiciary -- put aside precedent and congressional intent to elevate the interests of corporations and diminish the interests of hardworking Americans."

Though the Democrats are one vote short of a filibuster-proof 60 seats in the Senate, Kagan would likely garner enough Republican support to forestall such a maneuver.

She was confirmed as solicitor general by a 61-31 margin last year, with seven Republicans voting in her favor. Sen. Arlen Specter (D-Pa.), then a Republican, voted against her confirmation.

Replacing Stevens with Kagan would be unlikely to swing the ideological balance of the court, which has often split 5-4, with Stevens among the four justices on the court's liberal wing. Liberals and environmentalists have largely bemoaned the loss of Stevens, a left-leaning stalwart who wrote landmark opinions in cases such as *Massachusetts v. EPA*, in which the court required U.S. EPA to regulate greenhouse gases as pollutants under the Clean Air Act.

"We look forward to the Senate's deliberations on this important nomination as the court is sharply and closely divided on the fate of basic environmental safeguards and citizens' access to court. Respect for and understanding of environmental laws that protect all Americans are essential," said Glenn Sugameli, a staff attorney at Defenders of Wildlife who leads the advocacy group's Judging the Environment project. "The next justice will help determine the fate of basic environmental safeguards for decades to come."

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