

Elena Kagan has demonstrated, time and time again, that she understands that.

In fact, listening is one of her strong suits. Justice Stevens often said that openly debated differences benefit democracy and he promoted what he called “understanding before disagreeing.” The lawyer and teacher the President has chosen to succeed Justice Stevens believes the same.

When General Kagan spoke last year to graduates of Harvard Law School, where she was beloved by the students and faculty alike, she reminded them: “You only learn something when your ears are open, not when your mouth is open.” That shows wisdom. It takes a smart person to recognize that we make progress and make the right decisions when we approach each person and each problem with an open mind. It takes a smarter one to say as much.

So I hope each Senator will approach this vote the way General Kagan will approach each question that comes before the Court: with deference to the facts, the evidence, and our shared national interests.

General Kagan is a public servant who has remained far above the political fray and will be the only Justice who comes from outside the judicial monastery. She is a student and teacher of the law who looks up from her books out into the real world. She knows that while we are a nation of laws and not of men, the former has a genuine and personal impact on the lives of the latter.

Because of her intellect and integrity; her reason, restraint, and respect for the rule of law; her unimpeachable character and unwavering fidelity to our Constitution, I am proud to cast my vote for Elena Kagan’s confirmation to be a Justice of the U.S. Supreme Court.

We are going to wait until the hour of 3:30 arrives before we start to vote. Senator LEAHY, at that time, will have a request to make.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the nomination of Elena Kagan to be an Associate Justice on the Supreme Court of the United States.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Elena Kagan, of Massachusetts, to be an Associate Justice of the United States Supreme Court?

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 229 Ex.]

YEAS—63

Akaka	Bingaman	Cardin
Baucus	Boxer	Carper
Bayh	Brown (OH)	Casey
Begich	Burr	Collins
Bennet	Cantwell	Conrad

Dodd	Klobuchar
Dorgan	Kohl
Durbin	Landrieu
Feingold	Lautenberg
Feinstein	Leahy
Franken	Levin
Gillibrand	Lieberman
Goodwin	Lincoln
Graham	Lugar
Gregg	McCaskill
Hagan	Menendez
Harkin	Merkley
Inouye	Mikulski
Johnson	Murray
Kaufman	Nelson (FL)
Kerry	Pryor

NAYS—37

Alexander
Barrasso
Bennett
Bond
Brown (MA)
Brownback
Bunning
Burr
Chambliss
Coburn
Cochran
Corker
Cornyn

Crapo
DeMint
Ensign
Enzi
Grassley
Hatch
Hutchinson
Inhofe
Isakson
Johanns
Kyl
LeMieux
McCain

Reed
Reid
Rockefeller
Sanders
Schumer
Shaheen
Snowe
Specter
Stabenow
Tester
Udall (CO)
Udall (NM)
Warner
Webb
Whitehouse
Wyden

Stacy Rich from Senator MURRAY’s staff who helped manage the floor.

I commend and thank the hard-working staffs of the other Democratic members of the Judiciary Committee for their tremendous contributions to this effort.

I also commend and thank Senator SESSIONS, the committee’s ranking Republican, and his staff, in particular, Brian Benczkowski, Danielle Cutrona, Ted Lehman, and Lauren Pastarnack, for their hard work and professionalism.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

The PRESIDING OFFICER. The Senator from Michigan.

UNANIMOUS CONSENT REQUEST— S. 3454

Mr. LEVIN. Mr. President, it is obvious we are not going to be able to get to the Defense authorization bill this week. However, it is important we get to it as soon as possible after we return. In order to facilitate that, I ask unanimous consent that at a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to the consideration of Calendar No. 414, S. 3454, national defense authorization.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Reserving the right to object, and I do so with some reluctance, I remind my colleagues that last year we took up the consideration of the Defense authorization bill without warning. The distinguished chairman of the committee introduced a hate crimes bill which had no business on the Defense authorization bill, filled up the tree, and then, of course, we spent a great amount of time on hate crimes.

I have only been a member of this committee since 1987. I have never seen what the chairman of the committee did last year by bringing forth a totally irrelevant and very controversial issue and putting it on the Defense authorization bill. We spent weeks on that when we should have been spending time on defending this Nation. It was a betrayal of the men and women who are serving this country.

I am not going to allow us to move forward, and I will be discussing with my leaders and the 41 Members of this side of the aisle as to whether we are going to move forward with a bill that contains the don’t ask, don’t tell policy repeal before—before—a meaningful survey of the impact on battle effectiveness and morale of the men and women who are serving this Nation in uniform.

It is, again, the chairman of the committee and the majority leader and the other side moving forward with a social agenda on legislation that was intended to ensure this Nation’s security.

The nomination was confirmed.

The PRESIDING OFFICER. A motion to reconsider this vote is considered made and laid on the table. The President shall be notified of the Senate’s action.

Mr. LEAHY. Mr. President, the Senate has concluded our consideration of the nomination of Elena Kagan and confirmed her as an Associate Justice on the U.S. Supreme Court. For the second time in 2 years, we have considered a nomination for a lifetime appointment to the Supreme Court, one of our most consequential responsibilities. I am proud that process we followed in considering this nomination in the Judiciary Committee and in the Senate has garnered praise from many Senators for its fairness and thoroughness.

We could not have given this nomination the attention it deserved without the help of dedicated staff. For months, the staff of the Judiciary Committee has worked long hours dutifully to obtain and review extensive amounts of documents and information and help Senators in our review. I wish to thank the following members of the majority staff in particular, Jeremy Paris, Erica Chabot, Kristine Lucius, Shanna Singh Hughey, Maggie Whitney, Hasan Ali, John Amaya, Sarah Hackett, Sarah Hasazi, Michael Gerhardt, Elise Burditt, Noah Bookbinder, Anya McMurray, Liz Aloï, Tara Magner, Kelsey Kobelt, Juan Valdivieso, Matt Virkstis, Curtis LeGeyt, Roslyne Turner, Erin O’Neill, Julia Gagne, Brian Hockin, Joseph Thomas, Elizabeth Saxe, Katharine McFarland, Miles Clark, Christine Paquin, David Zayas, Lydia Griggsby, Adrienne Wojciechowski, Dan Taylor, Patrick Sheahan, Matt Smith, Scott Wilson, Kiera Flynn, Rachel Pelham, Bree Bang-Jensen, Chuck Papirmeister, and Bruce Cohen. I also thank my staff for their hard work on this nomination, in particular, Edward Pagano, David Carle, Laura Trainor, and Kevin McDonald. I would also like to thank