

April 2, 2009

Senator John F. Kerry, Chairman
Senator Richard G. Lugar, Ranking Member
Committee on Foreign Relations
U.S. Senate
Dirksen Senate Office Building
Washington, DC 20510-6225

Re: Nomination of Harold Hongju Koh to Be Legal Adviser of the U.S.
Department of State

Dear Chairman Kerry and Ranking Member Lugar:

The undersigned signatories are personally familiar with the character and professional qualifications of Harold Hongju Koh, currently Dean of the Yale Law School. We know Dean Koh to be a highly intelligent, hard working and ethical individual. In addition to serving as the 15th Dean of Yale Law School, Dean Koh is the Gerard C. and Bernice Latrobe Smith Professor of International Law at Yale. He is a graduate of Harvard College, Oxford University (where he was a Marshall Scholar), and Harvard Law School. From 1998 to 2001, he served as Assistant Secretary of State for Democracy, Human Rights and Labor, and previously served on the Secretary of State's Advisory Committee on Public International Law. Before joining Yale, he practiced law at Covington and Burling from 1982 to 1983 and at the Office of Legal Counsel in the Department of Justice from 1983 to 1985. He served as a law clerk to U.S. Supreme Court Justice Harry Blackmun, and to Judge Malcolm Richard Wilkey of the U.S. Court of Appeals for the District of Columbia Circuit. He is also a prolific author.

Dean Koh is a personal friend, and former colleague, of a number of the undersigned, and we admire his spirit even while we do not share the legal and policy views he has advanced over the years. We note that Dean Koh has served in both Republican and Democratic Administrations, and we expect that, if confirmed, he would listen with an open mind to views contrary to his own, including those expressed on Capitol Hill.

We believe that Dean Koh's notable professional credentials and accomplishments, together with his sterling personal reputation, qualify him to serve as Legal Adviser of the U.S. Department of State which is, of course, a political appointment in the Administration of President Obama.

Each of the signatories below has been honored and privileged to serve our country in various Presidential and political appointments in the Administrations of Presidents Ronald Reagan, George H.W. Bush, and George W. Bush. Though we do not endorse the legal or policy views and academic theories espoused by Dean Koh, given Dean Koh's professional credentials and accomplishments, we can understand President Obama's decision to nominate Dean Koh for a position in his Administration. We believe that this nomination is worthy of respect and deference, and warrants your Committee's favorable advice and consent.

Our support for Dean Koh's nomination to be Legal Adviser reflects not only our views of Dean Koh, but also the nature of the appointment and our understanding that the Constitution, which provides for a Unitary Executive, vests the nation's executive power, and responsibility for

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management and direction of the Executive Branch, in the President. We believe that the President is, as a general rule, entitled to staff his policy-making positions with appointees in whom he has special trust and confidence

The position of Legal Adviser is not a life-time appointment. It is a political position in which the incumbent serves at the pleasure of the President, and must be expected to carry out the policy agenda of the President. We believe that Dean Koh has amply demonstrated that he possesses the requisite intellectual ability and personal character to enable him to promote the President's agenda, and to discharge, with professional distinction, the duties of the office of Legal Adviser under the direction of President Obama and Secretary of State Hilary Clinton.

We ardently hope that the policies designed and implemented by President Obama and Secretary Clinton, and carried out with Dean Koh's legal advice and advocacy, will effectively protect the national security of the United States, and will advance our country's sovereign interests around the world. We reserve the right to take issue with the Administration and Dean Koh, if he is confirmed, regarding the substance and execution of the Administration's policies, but we do not hesitate to believe that Dean Koh is more than capable of ably supporting the agenda of President Obama and his Administration.

Thank you for considering our views.

Respectfully submitted,

Brian G. Cartwright

General Counsel, U.S. Securities and Exchange
Commission (2006-2009)
Law Clerk to Hon. Sandra Day O'Connor (1981-1982)
Law Clerk to Hon. Malcolm R. Wilkey (1980-1981)

David D. Hiller

Associate Deputy Attorney General (1982-1983)
Special Assistant to Attorney General William French
Smith (1981-1982)
Law Clerk to Hon. Potter Stewart (1979-1980)
Law Clerk to Hon. Malcolm R. Wilkey (1978-1979)

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Alan Charles Raul

Vice Chairman, Privacy and Civil Liberties Oversight Board
(2006-2008)
General Counsel, U.S. Department of Agriculture (1989-
1993)
General Counsel, Office of Management and Budget
(1988-1989)
Associate Counsel to President Reagan (1986-1988)
Law Clerk to Malcolm R. Wilkey (1980-1981)

Nicholas Rostow

General Counsel and Senior Policy Adviser, U.S.
Permanent Representative to the United Nations (2001-
2005)
Staff Director, Senate Select Committee on Intelligence
(1999-2000)
Counsel and Deputy Staff Director, House Select
Committee on U.S. National Security and
Military/Commercial Concerns with the
People's Republic of China (1998-1999)
Special Assistant for National Security Affairs to Presidents
Reagan and George H.W. Bush and Legal Adviser to
the National Security Council (1987-1993)
Special Assistant to the Legal Adviser,
U.S. Department of State (1985-1987)

cc: Members of the Senate Committee on Foreign Relations (via email to Chief Counsel
Frank Lowenstein at frank_lowenstein@foreign.senate.gov)