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# Confirm Harold Koh as State Department Legal Adviser



By Brandt Goldstein

Those hoping President Obama will restore the rule of law were delighted last week when he nominated Yale Law School Dean Harold Koh as Legal Adviser at the State Department. I have known Koh for two decades and wrote a book that covered a key part of his early career. As scores of his colleagues in government, private practice and academia will attest, he is a brilliant and hard-working lawyer with a strong dedication to protecting America's interests and upholding our Constitution. Koh is, by any objective measure, the best qualified person ever nominated for Legal Adviser — the lawyer who provides advice on the panoply of legal issues that face the State Department.

Unfortunately, some on the extreme right have already begun to misread and misquote Koh's record to scrape together opposition to him. Hopefully, the Senate Foreign Relations Committee will have the good sense to brush aside their attacks and swiftly confirm Koh — taking an important step toward ensuring our security and standing around the world.

After eight years during which officials were too often chosen for their politics, not their competence, Koh's record boasts the impeccable credentials we should expect of all nominees to top government posts. A Marshall Scholar at Oxford, a Harvard Law graduate, and a former Supreme Court clerk, he is a leading expert on national security law and international law and one of the most influential and productive scholars and practitioners in his field. Still in mid-career, Koh has authored or co-authored eight books and won scores of awards for his human rights work and achievements in international law.

Koh's legal positions are grounded in the commonsense views that the president shouldn't have unfettered discretion in foreign affairs and that adhering to our treaty obligations, international law, and human rights makes us safer and stronger. Since the mid-1980s, Koh has argued that Congress and the courts have an important role to play in foreign policy and national security — a sensible (and legally and historically accurate) position

that the Bush administration ignored to disastrous effect. Koh has dedicated equal effort to showing that — as the founders themselves believed — our country will be at its safest and most secure if we respect our international obligations, rather than adopting go-it-alone unilateralism.

Koh's writings are not only principled, pragmatic, and persuasive; he has also served with distinction in both Democratic and Republican presidential administrations, winning high praise from liberals and conservatives alike. As a young lawyer, he clerked for a Republican judge (Malcolm Wilkey of the D.C. Circuit) and worked in the Reagan Justice Department under Ted Olson (later George W. Bush's Solicitor General), from whom he continues to enjoy strong support. Later, Koh served as an assistant secretary of state in the Clinton State Department, working with both Democrats and Republicans on safeguarding religious freedom and preventing human trafficking.

In court, Koh has challenged both republican and democratic administrations in the name of constitutional principle and the rule of law. In 1993, as a young professor, he led the legal fight to shut down this nation's first Guantanamo detention camp, which at the time held innocent Haitian refugees. As explained in my book [Storming the Court](#), Koh sued both the first Bush administration and the Clinton administration to establish the principle that Guantanamo is not a law-free zone. Koh later pressed this view on behalf of Cuban detainees in the mid-1990s and then again during the post-9/11 years, when the second Bush administration's lawless use of Guantanamo alienated all of our allies. Koh has staked out an equally strong position against torture. His views are firmly in the mainstream - in line with those of most Americans and similar to the views of Senator John McCain.

Given Koh's sterling record, sensible views, and standing on both sides of the aisle, why should anyone challenge his nomination? His critics on the far right seem to want yes-men who will disregard treaty obligations, ignore international law, and construe the Constitution to let the president behave like a king. President Obama sees things differently. He believes liberty and the rule of law can advance security. And he expects the highest level of competence and independent judgment from officials in his government, not legal technicians ready to explain away the law so the White House can do as it pleases.

I know from personal experience that Harold Koh has the qualities to be Legal Adviser. From 1999-2005, while working on my book, I spent many dozens of hours interviewing Koh about his views on Guantanamo, presidential power, and foreign policy. Koh is a man of integrity and conviction who holds the greatest respect for our Constitution - far more, I dare say, than many of those in the past administration. He understands and believes in the rule of law, and has lived and litigated that belief over a distinguished career. The son of South Korean immigrants exiled in this country after the downfall of a democratic government in 1960, he is a genuinely patriotic American. In office, he worked night and day to carry out the work of both Democratic and Republican administrations, and as a private citizen he has spoken out fearlessly against what he believes are mistaken, misguided policies. The Senate Foreign Relations Committee will learn all of this when Koh appears at his nomination hearing next month, and the committee should swiftly confirm him as Legal Adviser. He deserves the position, but far more important, our nation deserves to have him there.

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