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Dear Senator Reid,

The Center for Inquiry is writing to you today to express our concern over the delay in confirming Dawn Johnsen, President Obama's nominee to head the Department of Justice's Office of Legal Counsel (OLC). President Barack Obama nominated Professor Johnsen for this critical position on February 11, 2009 and the Senate Judiciary Committee favorably reported her on March 19, 2009. Yet to date, with a minority refusing to enter into a time agreement for a floor vote, Professor Johnsen's nomination has not been voted on by the full Senate. This delay is both unprecedented and unacceptable.

We believe that the Office of Legal Counsel performs a critical role in guiding executive branch activities, advising the President and his Administration on the constitutionality of proposed policies, legislation, and executive orders. The position requires an individual of exceptional scholarship and unquestionable integrity, someone with the strength of character and tough-mindedness to deliver unbiased advice without qualification.

Given these steep requirements, Professor Johnsen is supremely qualified for this position. She has extensive previous experience in the Office of Legal Counsel, including service as acting head of OLC for over a year in the Clinton Administration, and has demonstrated throughout her career an ability to work with others across the political spectrum in the interest of supporting the rule of law. She has received support from legal scholars—liberal and conservative alike—as well as endorsements from officials from the administrations of former Presidents Ronald Reagan, George H. W. Bush, Bill Clinton, and George W. Bush. In 2004, after the past administration's OLC abuses came to light, she organized an impressive panel of former OLC lawyers which set forth a statement of principles to guide the office going forward. Many officials on both sides of the aisle have praised that document. As conservative legal scholar Doug Kmiec—the OLC head under Presidents Reagan and H. W. Bush—has affirmed, during her previous service at OLC, Johnsen “repeatedly separated policy preference from rendered opinion.”

The Senate should not allow the extraordinary obstruction of Professor Johnsen and many other executive branch nominations to continue. In the 60 years since the Senate changed the rules to allow debate on nominations to be brought to a close through a vote on cloture, there have been only 24 executive branch nominations on which cloture votes have been taken. Yet in just the first 9 months of the Obama Administration, the minority has already forced cloture votes on 5 nominees. Another 29 executive nominations are currently on the Senate's Executive Calendar, many of which have been pending for some time, raising the specter of yet more unprecedented and unnecessary cloture votes to fill key Administration positions. Indeed, by the end of October three months will have passed since the Administration nominated the overwhelming majority (80%) of these individuals. This obstruction has no historical precedent and should not be allowed to gain one. It throws sand in the gears of executive branch departments and agencies that are serving critical public needs. Furthermore, it destroys the deference traditionally provided to Presidents in shaping their Administrations, particularly with respect to sub-Cabinet level positions.

Professor Johnsen has the experience, the integrity, and the intellect to head this critical office. The Senate should confirm her without further delay. While we understand that the Senate has a busy legislative schedule—especially with the debate around healthcare taking shape—given Professor Johnsen's impeccable credentials, we see little need for debate regarding her appointment. We urge you to use the full force of your office to bring this nomination to a vote at the earliest possible date.

Sincerely,

Ronald Lindsay  
President and CEO  
Center for Inquiry

Toni Van Pelt  
Vice President and Director of Public Policy  
Center for Inquiry