

CONSERVATIVE ACTION PROJECT

The Conservative Action Project, chaired by former Attorney General Edwin Meese, is designed to facilitate conservative leaders working together on behalf of common goals. Participants include the CEO's of over 100 organizations representing all major elements of the conservative movement—economic, social and national security.

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Tony Perkins, President, Family Research Council
William Wilson, President, Americans for Limited Government
Wendy Wright, President, Concerned Women for America
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(All organizations listed are for identification purposes only)

MEMO FOR THE MOVEMENT

Senate Should Reject Nomination of Elena Kagan: An Inexperienced Rubber Stamp

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RE: With his nomination of Elena Kagan to the Supreme Court, President Obama once again fulfilled his threat to nominate judges who would decide cases on the basis of emotions and personal politics rather than fidelity to the original meaning of the Constitution. Kagan has no judicial experience, less relevant legal experience than any nominee in memory, and an extreme background of political activism that raises serious doubts about her ability to put the law ahead of a political agenda.

ACTION: The Senate should reject Kagan's nomination and urge President Obama to nominate someone who is in the mainstream of American legal thought. Because of her extreme approach to analyzing the Constitution and results orientated philosophy the Senate should delay any final action until all documents are released.

ISSUE IN BRIEF: If confirmed, Elena Kagan could serve well over 30 years on the Supreme Court. Her record of far left political activism suggests she would reject a principled Constitution-based judicial philosophy and instead embrace liberal judicial activism. She could cast the fifth vote to invent a constitutional right to same sex marriage, to continue using foreign law to re-write our Constitution along liberal lines, and to reverse the landmark decisions of *D.C. vs. Heller* and *McDonald vs. Chicago* guaranteeing our Second Amendment right to bear arms. There are many reasons the Senate should reject the Kagan nominations—here are a few:

- **Kagan does not have the necessary experience.** What legal experience she does have is as a political lawyer, working for the Clinton Administration on controversial issues including the Paula Jones scandal, Whitewater, partial birth abortion, and Second Amendment rights, or for the Obama Administration, for which she has argued only a handful of cases.
- **Kagan would rubber stamp ObamaCare.** During her hearings, Kagan refused to admit that it would be unconstitutional for the national government to force Americans to eat fruits and vegetables. Kagan told Senator Coburn that such legislative enactments are entitled to “substantial deference,” clearly signaling that she would uphold ObamaCare.
- **Kagan's official actions blocked military recruiters at the height of the war.** When Kagan became Dean of Harvard Law School, military recruiters had full access to on campus recruiting services. After becoming dean, however, Kagan criticized the “Don't Ask, Don't Tell” policy, calling it “a profound wrong—a moral injustice of the first order.” She disregarded the Solomon Amendment, which was still in effect pending Supreme Court review, and denied equal access to military recruiters at Harvard's Office of Career Services.
- **Kagan condoned Shariah law.** Kagan did not object when Harvard University accepted \$20 million from Prince Alwaleed bin Talal to create an Islamic Studies program, including research and courses at Harvard law School, even though the Shariah law promoted by the program makes homosexuality a capital offense.
- **Kagan worked to undermine the individual right to bear arms.** As an adviser to President Clinton, Kagan also drafted the directive banning the importation of 58 types of firearms and related accessories. According to White House records, Kagan's colleague José

Cerda stated of the administration's policies at the time, "We are taking the law and bending it as far as we can to capture a whole new class of guns."

- **Kagan has a radical pro-abortion record.** As an adviser to President Clinton, Kagan wrote a memo proposing an exception to the partial-birth abortion ban that would have made the ban practically meaningless. She also rewrote the "neutral" American College of Obstetricians and Gynecologists' letter opposing the ban on partial birth abortions.
- **Kagan has publicly embraced judicial activism.** She called Israeli Judge Aharon Barak, one of the most radical supporters of judicial activism, her "judicial hero." In her Oxford graduate thesis, Kagan wrote that it "is not necessarily wrong or invalid" for judges "to mold and steer the law in order to promote certain ethical values and achieve certain social ends."
- **Kagan refused to embrace the principles of the Declaration of Independence.** When Senator Coburn asked Kagan whether she personally believed "what the Declaration of Independence says, that we have certain inalienable and God-given rights that aren't given in the Constitution, that are ours, ours alone, and that the government doesn't give those to us," Kagan couldn't bring herself to say yes and instead tried to divert the question to how she would act as a justice. (The question whether Kagan personally believes that we have inalienable rights is distinct from the question whether the Declaration of Independence properly plays a role in constitutional interpretation.)
- **Kagan gives disproportionate weight to foreign law.** Kagan rewrote Harvard Law School's curriculum to require first year law students to take courses in international and comparative law. Students were not required, however, to take a class in Constitutional law in order to graduate.
- **Kagan would invent a right to same sex marriage.** When the Defense of Marriage Act was challenged, Kagan approved a DOJ brief that stated that "this Administration does not support DOMA as a matter of policy, believes that it is discriminatory, and supports its repeal," and that rejected Congress's primary justification for DOMA. As one gay marriage supporter put it, "This new position is a gift to the gay-marriage movement."
- **Kagan has argued for limits on free speech.** Kagan's arguments in *Citizens United v. FEC* were rejected by the Supreme Court but they demonstrated a certain degree of hostility to free speech in the political arena. Perhaps an indication of the importance Kagan placed in this case was best summed up by President Obama on the day he nominated her: "Despite long odds of success.....Elena still chose it (*Citizens United*) as her very first case to argue before the court."
- **Kagan is indifferent to Property Rights.** In response to a question from Senator Charles Grassley concerning the Supreme Court decision in *Kelo*, Kagan avoided the constitutional issue of property rights and explained the goal of *Kelo* was to leave the issue to the states.

FOR ADDITIONAL INFORMATION ON THE NOMINATION OF ELENA KAGAN TO THE SUPREME COURT PLEASE VISIT THESE WEBSITES:

http://www.rasmussenreports.com/public_content/politics/obama_administration/may_2010/47_now_hold_unfavorable_view_of_kagan

<http://www.heritage.org/Research/Reports/2010/06/Key-Questions-for-Elena-Kag>
<http://www.washingtontimes.com/news/2010/jun/24/the-case-against-kagan/>

<http://www.nationalreview.com/bench-memos/230371/next-chicago-gun-rights-case-and-why-it-important-kagan-confirmation/robert-alt>
LIFELONG POLITICAL ACTIVIST KAGAN FAILS OWN TEST FOR SUPREME COURT NOMINEES

<http://www.aolnews.com/opinion/article/opinion-will-the-real-elana-kagan-show-up-at-her-confirmation/19531864>

<http://www.nationalreview.com/bench-memos/230331/kagan-rush-judgment/hans-von-spakovsky>

CMR Letter to Senate Judiciary Committee re Kagan Nomination

<http://article.nationalreview.com/437296/kagans-abortion-distortion/shannen-w-coffin?p=1>

<http://dailycaller.com/2010/06/30/the-kagan-deception/>

<http://www.cnn.com/2010/POLITICS/06/30/kagan.videos/>

vetsforfreedom.org/multimedia/press-releases/2010/6/30/statement-pete-hegseth-prepared-remarks-for-kagan-confirmation-hearings

Kagan on Life: As Radical as they Come

<http://thehill.com/homenews/administration/106533-nra-likely-to-score-kagan-nomination-as-key-vote-against-gun-rights>

http://www.rasmussenreports.com/public_content/politics/obama_administration/june_2010/42_still_oppose_kagan_s_confirmation_but_87_expect_her_to_be_confirmed

Kagan's Testimony Reveals A Weak Constitution

Fact: Kagan is Anti-Second Amendment

<http://www.nationalreview.com/bench-memos/230671/ed-whelan-s-excellent-testimony/carrie-severino>

Statement of CFJ Executive Director Curt Levey:

Kagan Testimony Review—Action as SG on Defense of Marriage Act

<http://www.washingtonexaminer.com/opinion/columns/OpEd-Contributor/Ken-Klukowski-Red-state-Dems-should-save-themselves-oppose-Kagan-97798349.html>

http://news.yahoo.com/s/ap/us_kagan_the_fundraiser

<http://www.desmoinesregister.com/article/20100713/OPINION03/7130334/-1/DMSOU>

<http://article.nationalreview.com/437760/elena-kagans-dont-ask-dont-tell-sharia-policy/andrew-c-mccarthy>

[Kagan's Sabotaging of "Don't Ask, Don't Tell"](#)
["Elena Kagan Disrespected Military and the Law."](#)

<http://www.youtube.com/watch?v=fpsWRH2rmqY>

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