

# REPUBLICAN NATIONAL LAWYERS ASSOCIATION



August 3, 2010

The Honorable Harry Reid  
Majority Leader, United States Senate  
522 Hart Senate Office Bldg  
Washington, DC 20510

The Honorable Mitch McConnell  
Republican Leader, United States Senate  
361-A Russell Senate Office Building  
Washington, DC 20510

Dear Senators Reid and McConnell:

**The Republican National Lawyers Association opposes Elena Kagan's confirmation as an Associate Justice of the United States Supreme Court and urges senators to vote against her confirmation.**

The Republican National Lawyers Association (RNLA) is the principal national organization representing Republican lawyers across the country. We have followed the nomination of Solicitor General Kagan closely and write today to urge you to vote against her confirmation to the United States Supreme Court. The RNLA's opposition to Ms. Kagan is based on a number of factors, including her lack of experience in the actual practice of law, her inability to set aside her personal views when interpreting the law and the Constitution, and her questionable views on the First Amendment.

Elena Kagan's lack of experience on the bench would not be problematic were she to have *any* experience in the actual practice of law. Ms. Kagan has less real-world legal experience than any Supreme Court nominee in 50 years. She spent roughly two years in private practice as a young lawyer and 14 months as Solicitor General. According to the Congressional Research Service, other justices without prior judicial experience practiced law for an average of 21 years before their appointment to the Supreme Court. The combined lack of practical legal and judicial experience raises serious doubts about Ms. Kagan's fitness to serve as a justice of the Supreme Court. As Judge Robert Bork said after admitting he was initially inclined to support her, "Ms. Kagan has not had the time to develop a mature philosophy of judging."

RNLA further opposes Ms. Kagan's nomination because of her failure to set aside personal political and policy views in interpreting and applying the law, as demonstrated by her actions as Dean of Harvard Law School in barring military recruitment on campus. We are troubled by these circumstances not because Ms. Kagan was opposed to "don't ask, don't tell" as a policy, but rather because she chose to simply ignore the law because of her opposition to the policy. In the words of Senator John McCain: "While Kagan is entitled to her opinion, she was not entitled to ignore the law that requires universities to allow military recruiters on campus under terms of equal access with all other recruiters." This blatant disregard for the rule of law is deeply troubling in a nominee to this nation's highest court, particularly given Ms. Kagan's lack of any other record by which to judge her ability to set aside personal beliefs in favor of impartially administering justice.

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Finally, RNLA Chair David Norcross submitted testimony for Ms. Kagan's confirmation hearings, which detailed his opposition to her nomination based on her disconcerting record on First Amendment issues. Specifically, Norcross cited Kagan's argument in *Citizens United* that suggested the FEC could not only regulate, but could actually ban the distribution of political pamphlets. He noted: "To allege that the FEC could take such action amounts to government censorship, exactly the kind of restriction on speech that the First Amendment was designed to protect against." Moreover, it is important to keep in mind that political pamphlets such as *Common Sense* or the Federalist Papers are the very type of documents that aided in the formation of our nation. Unsurprisingly, the Court rejected these claims and not a single justice embraced Ms. Kagan's views regarding such clearly unconstitutional prepublication censorship.

Documents from the Clinton Presidential Library show that Ms. Kagan was willing to ignore the Constitution, skirt Supreme Court rulings, and rebuke settled First Amendment jurisprudence all in the name of achieving partisan political ends regarding campaign finance reform. Most troubling of all, on one occasion Ms. Kagan stated:

It is unfortunately true that almost any meaningful campaign finance reform proposal raises constitutional issues. This is a result of the Supreme Court's view – which I believe to be mistaken in many cases – that money is speech and that attempts to limit the influence of money on our political system therefore raise First Amendment problems. . . . I also think that the Court should reexamine its premise that the freedom of speech guaranteed by the First Amendment entails a right to throw money at the political system.

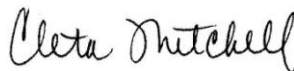
As that is precisely what the First Amendment guarantees, this leaves little doubt as to how Ms. Kagan will treat First Amendment cases should she be confirmed.

**Due to Ms. Kagan's lack of practical legal experience, her elevation of personal views over the rule of law and the Constitution, and her troubling views on the First Amendment right to free speech, we urge senators to vote against the nomination of Ms. Kagan as an Associate Justice of the United States Supreme Court.**

Sincerely,



David A. Norcross  
Chair



Cleta Mitchell  
Co-Chair



Charles Bell  
President