



Republican National Lawyers Association

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For Immediate Release
Thursday, June 24, 2010

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Kagan's Troubling Views on the First Amendment *Kagan Favors Political Censorship*

Washington, D.C. – The Republican National Lawyers Association's (RNLA) Chair, David Norcross, spoke at a press conference today on Supreme Court nominee and Solicitor General Elena Kagan's judicial philosophy. Specifically, Norcross discussed Kagan's positions on the First Amendment:

Elena Kagan needs to answer many questions during her upcoming confirmation hearing next week, arguably none more important than her extremely troubling statements regarding the First Amendment.

During the *Citizens United* hearing, Kagan stated that "a pamphlet is pretty classic electioneering" and their distribution could be restricted by the government. I agree a pamphlet is classic electioneering material, as this country was founded in large part by the use of pamphlets such as *Common Sense* by Thomas Paine. However, her position against pamphlets amounts to government censorship, exactly the kind of restriction on speech that the First Amendment was designed to protect against.

Citizens United was not the first time Elena Kagan has advocated for limiting free speech. While an aide in the Clinton White House she co-authored a memo to President Clinton that stated in part: "This is inevitable in light of the Supreme Court's view – which we 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. . . . [W]e also think the Court should reexamine its premise that the freedom of speech guaranteed by the First Amendment always entails a right to throw money at the political system." Money is required to speak to a mass audience of voters and by limiting it, one is limiting the ability to speak about politics.

During this period, Kagan also went out of her way to prevent lawyers at the Justice Department from officially noting their serious legal concerns with campaign finance legislation in order to help the Clinton administration achieve its political goals.

Kagan's overtly partisan and political approach to the First Amendment is inappropriate for a Supreme Court justice. If confirmed as a Supreme Court justice, she will be immune from the democratic aspect of electoral process, but she will be able to affect that process in an extremely troubling way if she continues to advocate for a political party over the Constitution.

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