

SUPREME COURT EMERGENCY TASK FORCE



CONFIDENTIAL BRIEF

CONCERNING

President Obama's Nominee
Elena Kagan

JUNE, 2010

PREPARED FOR AND ISSUED EXCLUSIVELY TO:

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I. EXECUTIVE SUMMARY

“I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as (name of position) under the Constitution and laws of the United States. So help me God.”

– Oath of office for federal judges

US Solicitor General Elena Kagan, President Barack Obama’s nominee to replace retiring Supreme Court Justice John Paul Stevens, is completely unqualified for a lifetime seat on the highest court in the land.

Respect should be shown for a President’s choice of nominees, especially those directly serving him in his Administration for one or two terms. **But a Supreme Court Justice — who does not work for the president, but the people — serves for life, and can in effect continue a president’s policies for decades after he leaves office.**

Elena Kagan has fought tirelessly all her adult life for the left’s extreme political and social agenda, working her way up and into behind-the-scenes policy-making roles at the highest levels of the Democrat party’s political machine. Of course she has the same right all Americans enjoy to work in support of her political values.

But that is exactly why Elena Kagan is completely disqualified to serve on the Supreme Court.

Elena Kagan is a political operative of the first order—who even lamented the failure of socialism in America! We already know where she stands on virtually every controversial issue tearing our nation apart today. From abortion to same-sex marriage, gun rights to gay rights, political liberty to religious liberty, constitutional rights for foreign terrorists vs letting our military decide how best to protect us, Elena Kagan has spent some 30 years aggressively pushing the same hard left agenda of Obama/Reid/Pelosi.

These issues will continue to come before the Supreme Court. If seated, she must either recuse herself from dozens and dozens of future cases, or secretly pretend not to favor one side over the other. Either choice is completely unacceptable.

Elena Kagan is also a cheerleader for the most activist judges in America, and the world. Her “judicial heroes” aggressively legislate from the bench and promote liberal social policy from unaccountable lifetime positions. She has made it clear that she will rule, as Barack Obama has called for, according to “empathy” and her own personal political agenda, rather than by faithfully applying the rule of law.

Elena Kagan cannot possibly be an impartial justice on the Supreme Court, or on any court in America. Therefore, she must be rejected by the US Senate. Whether or not that happens remains to be seen.

But what Americans must do now is unite and demand their Senators get full answers in televised hearings to the tough questions raised in this Brief. That process will reveal to all Americans the truly radical, destructive agenda of the Obama Administration and its allies in Congress.

While the outcome of the Senate hearings is not yet known, one thing is certain: American voters will remember how their Senators voted on Elena Kagan in November.

II.

ELENA KAGAN BACKGROUND

BARACK OBAMA'S IDEAL LIBERAL ACTIVIST

“We need somebody who’s got the heart to recognize – the empathy to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old. And that’s the criteria by which I’m going to be selecting my judges.”

– Barack Obama

ELENA KAGAN BIOGRAPHY

Born: New York City, 1960

Education:

- o B.A., *summa cum laude*, Princeton University, 1981
- o M.Phil., Worcester College, Oxford, 1983
- o J.D., *magna cum laude*, Harvard Law School, 1986
- o *Supervising Editor*, Harvard Law Review

Employment:

- o *Judicial Clerk*, Judge Abner Mikva, D.C. Circuit, 1986-1987
- o *Judicial Clerk*, Justice Thurgood Marshall, Supreme Court, 1987-1988
- o *Staff Member*, **Dukakis for President Campaign**, 1988
- o *Associate*, Williams & Connolly LLP, 1989-1991
- o *Professor*, University of Chicago Law School, 1991-1997 (**where she first met Obama**)
- o *Special Counsel*, Senate Judiciary Committee, 1993 (summer)
- o *Associate Counsel to the President* (**Clinton**), 1995-1999
- o *Deputy Assistant to the President* (**Clinton**) for Domestic Policy, 1997-1999
- o *Professor*, Harvard Law School, 2001-2009
- o *Dean*, 2003-2009 (**where she illegally kicked US Military recruiters off campus**)
- o *Solicitor General of the United States*, U.S. Department of Justice, 2009-present
- o Confirmed by a 61-31 vote, March 19, 2009.

On May 14, 2010, *Washington Post* Staff Writer Karen Tumulty wrote of Barack Obama: “Last year, he offered that one of his main criteria was ‘empathy’ – a much-criticized standard that he has since refined to ‘a keen understanding of how the law affects the daily lives of the American people.’ ”

But to understand this president’s real standard, one must go back to a 2001 interview of then-Illinois state Senator Obama on Chicago Public Radio’s “Odyssey” program. His position was that the Warren Court wasn’t radical enough, that his ideal court would “**break free from the essential constraints that were placed by the Founding Fathers in the Constitution**” and mandate “**redistribution of wealth, and of more basic issues such as political and economic justice in the society.**”

Elena Kagan shares that Obama vision. That is why he selected her for the Supreme Court.

III.

FIVE ESSENTIAL CONSTITUTIONAL PRINCIPLES BINDING ON ALL SUPREME COURT JUSTICES

“Judges are like umpires. Umpires don’t make the rules; they apply them. ... They make sure everybody plays by the rules. ... It is that rule of law that protects the rights and liberties of all Americans. ... [W]ithout the rule of law, any rights are meaningless. ... If I am confirmed ... I will remember that it’s my job to call balls and strikes and not to pitch or bat.”

– Chief Justice John Roberts

1. INTERPRET THE LAW, DON’T LEGISLATE FROM THE BENCH.

Judges must interpret the Constitution of the United States as written and not attempt to modify it, either by inventing new rights or by ignoring or diluting rights already there. The Constitution provides an amendment process that gives that power to the people and their elected officials.

2. USE RULE OF LAW AS THE STANDARD, NOT PERSONAL, POLITICAL OR SOCIAL AGENDAS.

Judges must not use their positions to replace the text of the law and Constitution of the United States with their own personal feelings or agenda or “life experiences.” Nor should they allow empathy, political favor, or political identification to affect their legal decisions.

3. STAY WITHIN THE ENUMERATED POWERS THAT PROTECT AMERICAN CITIZENS AND STATES FROM TYRANNY.

Judges must understand that the Federal government has no power if the Constitution does not explicitly provide it. The Founders did this to maximize personal and economic liberty. The Constitution reserves all other rights to the states and to the people.

4. PRESERVE CHECKS AND BALANCES.

Judges must respect the delicate checks and balances and the separation of powers among the branches of government, refusing to become a tool of either the Legislative or Executive branches, prepared to invalidate efforts of either branch that oversteps its constitutionally delegated powers.

5. GIVE FOREIGN LAW NO AUTHORITY OVER OUR CONSTITUTION.

The Constitution is an American document, and declares that it shall be “the supreme Law of the Land.” Foreign law has no place as precedent or authority in the interpretation of the Constitution.

IV.

THE CASE AGAINST ELENA KAGAN 100% UNQUALIFIED TO SERVE ON ANY COURT IN AMERICA

“[T]he opinion which gives to the judges the right to decide what laws are constitutional and what not ... would make the judiciary a despotic branch. ... [T]he germ of dissolution of our federal government is ... the federal Judiciary ... working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped.”

– Thomas Jefferson

The following list of reasons why Elena Kagan is not qualified to serve on the Supreme Court — or any court in America — is by no means exhaustive. But it does reveal her utter lack of qualifications for a

lifetime post, as well as her extreme departure from mainstream America, the rule of law, and the Constitution's plain meaning as originally intended by our Founding Fathers. That's because Kagan has spent her entire adult life aggressively promoting a radical political and social agenda.

Elena Kagan will be the first nominee in almost four decades with no judicial experience (Rehnquist was the most recent, but he had extensive courtroom experience arguing both private and government cases). Kagan herself had written about how important it is that a judicial nominee's prior experience demonstrates mastery of the "craft" of judging. Before her present job last year, Kagan had virtually no courtroom experience.

A. JUDICIAL & POLITICAL PHILOSOPHY

SOCIALIST & RADICAL SYMPATHIZER

Elena Kagan's senior college thesis, 'To The Final Conflict: Socialism In New York City, 1900-1933,' explored and **lamented socialism's failure**. It was 1981, just after the election of President Reagan and other conservatives. Kagan had written of her great unhappiness about those results, while looking forward to future victories for radical candidates and causes. Her advice for reviving the socialist movement included:

"... the experience of New York may yet suggest a new solution to this critical problem.... The story is a sad one but also a chastening one for those who, more than half a century after socialism's decline, still wish to change America ..."

"Radicals have often succumbed to the devastating bane of sectarianism; it is easier, after all to fight one's fellows than it is to battle an entrenched and powerful foe. Yet if history of Local New York shows anything, it is that American radicals cannot afford to become their own worst enemies. In unity lies their only hope."

Her thesis was dedicated to her brother "whose involvement in radical causes led me to explore the history of American radicalism in the hope of clarifying my own political ideas."

QUESTION 1. Is Elena Kagan still sad about the decline of radical socialism in America, and would she still like to restore Socialists hope and power to change America?

FOREIGN LAW

In 2006, as Dean of Harvard Law School, Kagan changed the 100-year-old curriculum to require International and Comparative Law, while dropping the required study of Constitutional Law, turning it into an elective. Last year, when questioned by Senator Arlen Specter about the use of foreign law in cases, Kagan answered, "At least some members of the Court find foreign law relevant in at least some contexts. When this is the case, I think the Solicitor General's office should offer reasonable foreign arguments to attract those Justices' support."

QUESTION 2. Does Elena Kagan still think that foreign law has a place in Supreme Court arguments, or any federal court, or is the Constitution and US law unquestionably the only law of the land?

"DESPISED AND DISADVANTAGED" STANDARD

In a law review article, she expressed agreement with the idea that Courts exist primarily to look out for the "despised and disadvantaged." In other words, judges should use their personal feelings toward a client rather than securing equal justice for all through impartially applying the Constitution and laws—much like President Obama's "empathy" standard for a judge's rulings.

POWER OF THE PRESIDENT

Kagan has argued in favor of increasing presidential control over the federal bureaucracy, a real concern in light of President Obama's unprecedented power grab through unaccountable czars and other means. She wrote glowingly about how presidential power "expanded dramatically during the Clinton years," arguing that it "promotes the values of administrative accountability and effectiveness."

LIBERAL AGENDA – CLINTON ERA

While it appeared that President Clinton was spending most of his time defending himself from scandal, Elena Kagan was among a small group of staffers that worked behind the scenes pursuing an aggressive

policy agenda. Starting in 1997, she aggressively worked to advance liberal policies such as affirmative action, abortion rights, gun control, tobacco regulation, and campaign finance reform (leading to the political-speech censoring McCain Feingold law).

GOLDMAN SACHS

Kagan received \$10,000 in 2008 for serving as a member of the Research Advisory Council of the Goldman Sachs Global Markets Institute, during the worldwide economic meltdown. While the Obama Administration and Democrats continue bashing Republican ties to Goldman-Sachs, why should Elena Kagan's ties be ignored? Can she be trusted to rule impartially with future related lawsuits, or will she have to recuse herself?

JUDICIAL ACTIVIST "HEROES"

Judge Abner Mikva - The first year after Kagan graduated from law school, she clerked for a federal judge described as one of the most activist in America. During an interview Mikva stated: "I think judges tend to be too separate from the political process," and described *Roe v Wade* as a "pleasant surprise" that "preempted the whole political process."

Thurgood Marshall - In 1987, Kagan clerked for Supreme Court Justice **Marshall**, a civil rights icon she called "**the greatest lawyer of the 20th century.**" His work advancing civil rights is widely admired. But later as a justice, he opposed the death penalty while supporting racially based affirmative action, and calling taxpayer-funded abortion "a vital constitutional right." Marshall also said, "An unwanted child may be disruptive and destructive of the life of any woman ..."

Aharon Barak - The retired chief judge of the Supreme Court of Israel is considered one of the most activist liberal judges in the entire world. But Elena Kagan called him "**... my judicial hero. He is the judge who has best advanced democracy, human rights, the rule of law, and justice.**"

Judge Barak calls his own book, *The Judge in a Democracy*, "a textbook for judicial activists." Judge Robert Bork said it "establishes a world record for judicial hubris." For example, Barak says that in some cases a judge may need to go "beyond actually deciding the dispute" and instead "make law." He claims "the judge may give a statute a new meaning, a dynamic meaning, that seeks to bridge the gap between law and life's changing reality... that suits new social needs." Barak also believes judges have the right to:

- "[J]udge the deployment of troops in wartime" and to countermand military orders
- Make the government, in the name of "human dignity," alleviate homelessness and poverty
- "[O]verride statutes" with no accountability to the executive or legislative branches
- Declare "any government action that is 'unreasonable' is illegal"

In other words, Barak believes in **government by the judiciary**, or simply "judicial tyranny."

QUESTION 3. Does Elena Kagan agree with her activist judicial heroes who argue that judges should be allowed to legislate from the bench and ignore the rule of law, promote their own personal agendas, or try to help "the despised and disadvantaged" rather than rule impartially?

Cass Sunstein - When it was announced in 2008 he would be joining the Harvard Law School faculty, Dean Kagan said: "**Cass Sunstein is the preeminent legal scholar of our time – the most wide-ranging, the most prolific, the most cited, and the most influential. His work in any one of the fields he pursues – administrative law and policy, constitutional law and theory, behavioral economics and law, environmental law, to name a non-exhaustive few – would put him in the very front ranks of legal scholars; the combination is singular and breathtaking.**"

This is a frightening statement indeed, and very revealing about Elena Kagan considering that Cass Sunstein advocates:

- Removing organs from terminally ill patients without their permission
- Giving animals the right to file lawsuits against humans

- Taxpayer-funded abortion, despite “people with religious or other objections”
- Ending government recognition of marriage; the word marriage would no longer appear in any laws; only civil unions between any two people would have legal status
- Redistribution of wealth from the US to poor nations through climate change policy
- A Fairness Doctrine enforcing “diversity” on the airwaves by a panel of “nonpartisan experts”

Cass Sunstein is currently on leave from Harvard, serving as Administrator of the White House Office of Information and Regulatory Affairs, another Obama regulatory czar.

QUESTION 4. Does Elena Kagan actually agree with the outrageous and extreme political and social views of Cass Sunstein, whose work and influence she so highly praises?

B. SOCIAL & POLITICAL ISSUES

ABORTION

Kagan has contributed money to the National Partnership for Women and Families (NPWF), whose president said “the nation will continue to benefit from having that kind of champion on its highest court.” She repeatedly criticized Supreme Court decisions and federal laws ensuring taxpayers don’t fund abortion. She campaigned for a pro-abortion candidate (Dukakis), clerked for pro-abortion judges (Judge Mikva and Justice Marshall), and worked for pro-abortion presidents (President Clinton and President Obama). As pro-abortion Senator Barbara Boxer stated: “... everyone she worked for held that view.” In fact, Justice Marshall believed not only that the Constitution legalized abortion, but also outlawed any restrictions – even notification of minors’ parents – and mandated that states pay for the procedure. To Justice Marshall, abortion offered “an escape” from poverty and racial injustice.

Perhaps most disturbing, Kagan treated pro-life activists like violent criminals, creating a task force in the Department of Justice and a grand jury to investigate peaceful pro-lifers.

QUESTION 5. In view of Elena Kagan’s lifetime participation in advancing unrestricted access to abortion for all women, is there any hope that laws offering reasonable restrictions of any kind – from parental consent for minors, to bans on partial birth abortions and taxpayer funding – could possibly get a fair and impartial hearing before her?

PARTIAL BIRTH ABORTION BAN & CLINTON VETO

In 1997, as associate White House Counsel, Elena Kagan advised President Clinton to support – for political reasons only – a bill banning partial birth abortions, even though she believed the bill was both unconstitutional and toothless. She wrote: “We recommend that you endorse the Daschle amendment in order to sustain your credibility on HR 1122 and prevent Congress from overriding your veto.”

QUESTION 6. Does Elena Kagan agree that supporting a bill that one believes is unconstitutional for political gain is a breach of one’s oath and duty (at least) to uphold the Constitution?

ANTI-RELIGIOUS BIAS

In 1987, in a case centered on a religiously affiliated group that provided pregnancy testing, adoption counseling and childcare, Kagan wrote a memo that government funds must not be granted to such organizations since such groups may “inject” religious teaching. During Senate hearings earlier this year Kagan reversed course and called her own memo “the dumbest thing I ever read.” She added, “I indeed believe that my 22-year old analysis, written for Justice Marshall, was deeply mistaken.” Her position was rejected by the Supreme Court.

QUESTION 7. On what grounds does Elena Kagan now disagree with her earlier bias against religiously affiliated social service providers?

LESBIAN, GAY, BISEXUAL, TRANSGENDER (LGBT) VS RELIGIOUS LIBERTY

Kagan was a research assistant for one of the leading legal defenders of gay civil rights, Laurence Tribe, and has been an outspoken defender of LGBT rights. Today she serves in the Obama Administration with

lesbian activist Chai Feldblum, the Equal Employment Opportunity Commissioner who helped draft the Employment Non-Discrimination Act (ENDA). ENDA would punish businesses, schools and even Christian ministries for firing or not hiring those confused over their own sexual identity. These include transgenders and “she-males” (females above the waist, males below), who are demanding access to every classroom in America. Feldblum said she can’t think of an instance in which religious freedom trumps “gay rights.” She also said that when LGBT and religious rights conflict, “society should come down on the side of protecting the liberty of LGBT people.” Feldblum also stated: “There can be a conflict between religious liberty and sexual liberty, but in almost all cases the sexual liberty should win.’ ”

QUESTION 8. Does Elena Kagan agree with her fellow Obama Administration official that gay rights should always (or ever) trump religious rights, or that sexual liberty should win over religious liberty?

* * * **RECUSAL ALERT** * * *

Would Kagan – as a strong supporter of Obama Administration policy – recuse herself from all ENDA and other cases of LGBT bias and other cases where religious liberty and sexual liberty conflict?

DEFENSE OF MARRIAGE ACT (DOMA)

DOMA was a bi-partisan bill which, while fiercely opposed by leftists and homosexual activists, is widely supported by most Americans. The law merely protects the right of states that do not recognize same-sex marriage from being legally forced to do so by other states that permit same-sex marriage. As US Solicitor, Kagan argued before the Supreme Court that the popular law should be overturned. The brief filed by her Department of Justice declared “this Administration does not support DOMA as a matter of policy [and] believes that it is discriminatory.”

QUESTION 9. Does Elena Kagan still agree with the Obama Administration that DOMA should be overturned as discriminatory, and that the few states which allow same-sex marriage should be given the power to force their standards on the majority of states which do not?

* * * **RECUSAL ALERT** * * *

Would Elena Kagan recuse herself from future lawsuits attempting to overturn the Defense of Marriage Act?

PORNOGRAPHY

Kagan stated in a law review article that **efforts to regulate pornography “not only will fail, but also should fail.”**

QUESTION 10. Can Elena Kagan really see no legitimate reason for a society to protect its members, especially children, from the well-documented harmful effects of pornography?

* * * **RECUSAL ALERT** * * *

Having revealed her complete bias against anti-porn regulations, would Kagan recuse herself from all pornography-related cases?

FREE SPEECH VS. GOVERNMENT CENSORSHIP

As US Solicitor, Kagan aggressively argued at the Supreme Court in the *Citizens United* case that businesses had no right to fund efforts for or against political candidates. She claimed government had the power, under campaign finance laws, to ban certain books and pamphlets based on who was producing them. The Court ruled against her, triggering President Obama’s outrageous state-of-the-union rebuke of the justices, and his promise to work to undo the ruling. During his introduction of his Supreme Court nominee, the President cited Kagan’s personal passion for that case.

Also, in a 1996 paper, “Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine,” Kagan argued it may be proper to suppress speech because it is offensive to society or to the government. Kagan’s name was also on a brief, *United States v. Stevens*, stating: “Whether a given category of speech enjoys First Amendment protection depends upon a categorical balancing of the value of the speech against its societal costs.”

QUESTION 11. Does Kagan still believe the Supreme Court ruled incorrectly in *Citizens United*, and that businesses should not have the First Amendment freedom of speech to help elect or defeat politicians who will affect their company's success?

* * * **RECUSAL ALERT** * * *

Will Elena Kagan recuse herself from future lawsuits attempting to overturn the Citizens United ruling?

OBAMACARE

Elena Kagan has long been involved in efforts to implement a nationalized, government-run healthcare policy since the Clinton Administration, then known as "HillaryCare." The wildest schemes of many liberals were at last greatly exceeded with the recent passage of the massive overhaul of America's entire healthcare system, often referred to as "ObamaCare."

QUESTION 12. As a longtime advocate of nationalized healthcare, can Elena Kagan provide fair and impartial rulings for the coming lawsuits from states and other sources challenging the recent federal healthcare bill?

2ND AMENDMENT

Contrary to every American's right to self defense as enshrined in our Constitution, Elena Kagan urged Justice **Thurgood Marshall** to vote against hearing a District of Columbia man's appeal for a gun-possession conviction. The man's "sole contention is that the District of Columbia's firearms statutes violate his constitutional right to 'keep and bear arms,'" Kagan wrote. "I'm not sympathetic."

Per the *LA Times*, Kagan was very involved in formulating gun control policy for Clinton, a hallmark of his Administration. Her Clinton-era efforts to restrict the importation of some guns, mandate trigger-locks on federal law-enforcement officers' guns, and efforts to close gun shows are three issues Senators must question.

QUESTION 13. Does Elena Kagan still believe that there is no individual constitutional right for Americans to own guns?

* * * **RECUSAL ALERT** * * *

Would Elena Kagan recuse herself from future lawsuits regarding the 2nd Amendment individual right to keep and bear arms?

D. NATIONAL SECURITY

TERRORISTS TRIALS IN CIVILIAN COURTS

Ms. Kagan opposed legislation designed to prevent terrorists convicted in military tribunals from using civilian courts to challenge their convictions. She compared Congress's effort, on a bipartisan basis, to clarify the laws governing the War on Terror to the "fundamentally lawless" actions of a "dictatorship."

President Obama has stated that he plans to replace Justice Stevens with a person of "similar qualities." Two of Stevens's key wartime opinions — *Rasul v. Bush* and *Hamdan v. Rumsfeld* — put rights of our enemies above the safety of our citizens.

Stevens recently reversed a 1950 Supreme Court ruling, *Johnson v. Eisentrager* when German prisoners captured in China at the end of WWII sought to challenge their convictions in American courts. They lost, with the ruling saying:

"Nothing in the text of the Constitution extends such a right, nor does anything in our statutes. ... Ruling otherwise would "plac[e] the litigation weapon in unrestrained enemy hands" (i.e., letting enemy combatants wage war on America through our legal process) and give our enemies "a more protected position than our own soldiers" (who serve under military justice).

Stevens helped reverse that, allowing foreign terrorists to demand their release from US courts. Four years later, Justice Stevens ruled that foreign terrorists in US custody overseas had a constitutional right of *habeas corpus*. And in *Hamdan v. Rumsfeld* Stevens struck down the system of military commissions for terrorists set up in the wake of 9/11, dismissing the authority that Congress gave the President to fight

al Qaeda, as well as the President's constitutional power as commander-in-chief of US forces. Nothing in the Constitution even hints that the Supreme Court has that kind of power.

QUESTION 14. Does Kagan agree with Justice Stevens that foreign terrorists should receive constitutional rights from American courts, even if that means putting terrorists' legal rights over the safety of US citizens?

9/11 TERROR ATTACKS & SAUDI LEGAL PROTECTION

In May of 2009, Elena Kagan, as US Solicitor General, convinced the US Supreme Court to reject a lawsuit against the Saudi Arabian government filed by family and victims of the 9/11 terror attacks. The Saudi royal family had sent millions to al Qaeda prior to the attack. Kagan, as President Obama's Solicitor General, argued the case would harm US foreign policy with the oil-rich Islamic kingdom. Sen. Arlen Specter (D-PA) harshly accused Kagan: "She wants to coddle the Saudis." One mother of a United Flight 93 victim said, "We were terribly disappointed. ... We had hoped she would be with us so that we could have our day in court."

MILITARY RECRUITERS KICKED OFF HARVARD DURING WARTIME

As Dean of Harvard Law School, **Kagan threw military recruiters off campus — during a time of war — because the law prohibits homosexuals from serving in the military.** "This action causes me deep distress," Kagen wrote. **"I abhor the military's discriminatory recruitment policy." It is a "profound wrong — a moral injustice of the first order."**

As Dean, Kagan joined other law professors in a 2004 lawsuit arguing that the Solomon amendment, despite its plain text, allowed law schools to bar access to military recruiters. Her legal argument was so flawed it was unanimously rejected by the Supreme Court — even by former ACLU attorney Justice Ruth Bader Ginsburg.

Overturning this law will have a devastating impact on military morale, recruitment and retention. Plus, it would end promotions and even careers for officers and chaplains who defend traditional marriage as a matter of conscience.

Any officer with deeply held views about the **immorality of homosexual behavior would have no future in Elena Kagan's military.** Our national security is far too important to become a plaything in the hands of judicial activists like Ms. Kagan. Her nomination ought to be rejected on these grounds alone.

QUESTION 15. Can Elena Kagan really think of nothing more morally unjust than the military following the law passed by Congress to ban homosexuals from military service?

* * * **RECUSAL ALERT** * * *

Will Elena Kagan recuse herself from future lawsuits resulting from the ban on homosexuals serving in the military?

ISLAMIC LAW & FUNDING

While Dean Kagan worked aggressively to keep military recruiters off Harvard's campus, she was hypocritically promoting a richly endowed "research" program called The Islamic Legal Studies Program. Part of Harvard Law School since 1991 and funded mainly by Muslim Gulf States, its stated purpose is "to advance knowledge and understanding of Islamic law." The program works closely with the **Harvard Islamic Finance Project**, which became an official part of the Law School in 2003, when Professor Kagan became Dean.

Whatever Dean Kagan had against the US military's so-called "Don't Ask, Don't Tell," that law pales in comparison to the harsh punishment of homosexuals called for by Shariah advisors — including those connected directly to the Harvard Islamic Finance Project. While life in prison is called for by Shariah law, extreme violence against homosexuals is condoned and practiced throughout much of the Muslim world.

Sheikh Muhammed Taqi Usmani, a former Pakistani judge and chief Shariah advisor to a sponsoring bank of Harvard's Islamic Finance Project, wrote in his book *Islam and Modernism*: "Killing is to continue until the unbelievers pay jizyah (subjugation tax) after they are humbled or overpowered." And writing in The

Harvard Crimson April 14, 2009 Harvard Muslim Student Chaplain, Taha Abdul-Basser, who has lectured regularly at the Islamic Finance Project, declared apostasy from Islam a **capital offense** (i.e., deserving death).

Shariah is totally incompatible with our Constitutional Republic, where rights come from God and are granted equally to all. Under Shariah, rights are allocated according to religion and gender.

QUESTION 16. How does Elena Kagan justify punishing the US Military for obeying the law banning homosexuals from serving in the military, while promoting a lucrative partnership for Harvard with Muslim sponsors to promote Shariah law, which calls for the brutal punishment of homosexuals, and death for those who leave Islam?

V.

16 QUESTIONS SENATORS MUST DEMAND ELENA KAGAN ANSWER FULLY AND TRUTHFULLY DESPITE HER PREVIOUS REFUSAL TO REVEAL HER TRUE INTENTIONS

*[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ...
Judges of the supreme Court ..."*

– Constitution of the United States, Article 2, Section 2

Elena Kagan's academic writings are sparse — just nine articles, two of which are book reviews — and with very little courtroom experience. At the same time, the Clinton Presidential Library is scrambling to deliver some 160,000 pages of documents from Kagan's years as Clinton policy advisor. Even with delayed hearings, Senators will be hard-pressed to absorb all relevant information about this crucially important nominee. To get to know this nominee and her qualifications for a seat on the highest court in the land, Senators must demand she give full answers to their questions.

You would think Kagan agrees. In 1995 she wrote: **"When the Senate ceases to engage nominees in a meaningful discussion of legal issues, the confirmation process takes on an air of vacuity and farce, and the Senate becomes incapable of either properly evaluating nominees or appropriately educating the public."** She argued that Supreme Court nominees should undergo a searching inquiry into the nominee's substantive views of the law, be willing to comment on particular issues, and that not answering Senators' questions makes a **"mockery"** of the hearing process.

Yet when Kagan herself was a nominee for US Solicitor General, she refused to answer many of the Senators' questions. As a result, 31 Senators voted against her. Here are questions (from the previous section) along with 6 "Recusal Alerts" that Senators must know about Elena Kagan.

- Q. 1 Is Elena Kagan still sad about the decline of radical socialism in America, and would she still like to restore hope and power to it in order to change America?**
- Q. 2 Does Elena Kagan still think that foreign law has a place in Supreme Court arguments, or any federal court, or is the Constitution and US law unquestionably the only law of the land?**
- Q. 3 Does Elena Kagan agree with her activist judicial heroes who argue that judges should be allowed to legislate from the bench and ignore the rule of law, promote their own personal agendas, or try to help "the despised and disadvantaged" rather than rule impartially?**
- Q. 4 Does Elena Kagan actually agree with the outrageous and extreme political and social views of Cass Sunstein, whose work and influence she so highly praises?**
- Q. 5 In view of Elena Kagan's lifetime participation in advancing unrestricted access to abortion for all women, is there any hope that laws offering reasonable restrictions of any kind — such as those the Supreme Court has often approved — could possibly get a fair and impartial hearing before her?**
- Q. 6 Does Elena Kagan agree that advising a president to sign a bill that one believes is unconstitutional for political gain — as she did with President Clinton on a bill banning partial birth abortion — is a breach of one's oath and duty to uphold the Constitution?**

Q. 7 On what grounds does Elena Kagan now disagree with her earlier bias against religiously affiliated social service providers?

Q. 8 Does Elena Kagan agree with her fellow Obama Administration official that gay rights should always (or ever) trump religious rights, or that sexual liberty should win over religious liberty?

* * * **RECUSAL ALERT** * * *

Would Kagan recuse herself from all ENDA and other cases of LGBT bias and other cases where religious liberty and sexual liberty conflict?

Q. 9 Does Elena Kagan still agree with the Obama Administration that DOMA should be overturned as discriminatory, and that the few states which allow same-sex marriage should be given the power to force their standards on the majority of states which do not?

* * * **RECUSAL ALERT** * * *

Would Elena Kagan recuse herself from future lawsuits attempting to overturn the Defense of Marriage Act?

Q. 10 Can Elena Kagan really see no legitimate reason for a society to protect its members, especially children, from the well-documented harmful effects of pornography?

* * * **RECUSAL ALERT** * * *

Having revealed her complete bias against anti-porn regulations, would Kagan recuse herself from all pornography-related cases?

Q. 11 Does Kagan still believe the Supreme Court ruled incorrectly in *Citizens United*, and that businesses should not have the First Amendment freedom of speech to help elect or defeat politicians who will affect their company's success?

* * * **RECUSAL ALERT** * * *

Will Elena Kagan recuse herself from future lawsuits attempting to overturn the Citizens United ruling?

Q. 12 As a longtime advocate of nationalized healthcare, can Elena Kagan provide fair and impartial rulings for the coming lawsuits from states and other sources challenging the recent federal healthcare bill?

Q. 13 Does Elena Kagan still believe that there is no individual constitutional right for Americans to own guns?

* * * **RECUSAL ALERT** * * *

Would Elena Kagan recuse herself from future lawsuits regarding the 2nd Amendment individual right to keep and bear arms?

Q. 14 Does Kagan agree with Justice Stevens that foreign terrorists should receive constitutional rights from American courts, even if that means putting terrorists rights over the safety of US citizens?

Q. 15 Can Elena Kagan really think of nothing more morally unjust than the military following the law passed by Congress to ban homosexuals from military service?

* * * **RECUSAL ALERT** * * *

Will Elena Kagan recuse herself from future lawsuits resulting from the ban on homosexuals serving in the military?

Q. 16 How does Elena Kagan justify punishing the US Military for obeying the law banning homosexuals from serving in the military, while promoting a lucrative partnership for Harvard with Muslim sponsors to promote Shariah law, which calls for the brutal punishment of homosexuals, and death for those who leave Islam?

VI.

STRATEGY TO ENGAGE AMERICA IN THE BATTLE BUILDING ON OUR PAST SUPREME COURT NOMINATION VICTORIES

Our plan is based on past Traditional Values Coalition victories for Supreme Court Justices Clarence Thomas, Samuel Alito and Chief Justice John Roberts. Only this time, we must make sure the nominee is rejected, not approved.

OBJECTIVE: Force Elena Kagan to answer all questions listed here, and others that may arise before the hearing, fully and truthfully during her Senate confirmation hearings, and in front of the national news media cameras.

PURPOSE: To reveal that Elena Kagan is another Obama radical who is 100% unqualified to sit on our Supreme Court, and who intends to use her lifetime appointment to suspend our Constitution and permanently change America into a socialist state.

ACTIVITIES & GOALS: Distribute 100 copies of this Supreme Court Emergency Task Force Briefing to every US Senator, and at least 200 additional copies to their staff.

Distribute 3,500 copies of this Briefing to every major news media outlet in America, including radio, television, cable, newspapers, magazines and Internet and blog news sites.

Mail up to 1 million copies of this Briefing and Petitions to patriotic Americans in every state to inform and activate them into a united grassroots movement against Elena Kagan.

Deliver at least 100,000 Petitions to Senators demanding they get full and truthful answers from Elena Kagan to the 16 Traditional Values Coalition questions.

Run ads on radio, newspaper and other cost-effective media ...

Schedule guest appearances by TVC Chairman Rev. Lou Sheldon and Executive Director Andrea Lafferty, on talk radio and television programs.

Hold press conferences in Washington, DC, at the steps of the Supreme Court itself, as we have done before.

BUDGET: \$2,750,000

Traditional Values Coalition is depending on our loyal supporters to quickly provide the funds to inform and rally the American people, creating a grassroots TIDAL WAVE of petitions, letters, e-mails, faxes and phone calls to the US Senate.

Your petition will put every Senator on notice that millions of Americans – including you – know Elena Kagan is totally unqualified for the Supreme Court ... that she is another extreme Obama-liberal activist ... and that they must expose and reject her, or face a voter backlash in November!

Your two petitions to both US Senators from your state, include all 16 of the toughest questions from your Traditional Values Coalition Briefing.

And by the way, please don't assume you already know how your Senators will act or vote.

Even liberal Senators see the handwriting on the wall. They know their constituents are furious, and have been betrayed by their elected "representatives." They can and will listen to the American people ... but only if we unite our voices in a national shout!

So please do your part by returning your signed petition, and your gift, today.

VII.

ABOUT TRADITIONAL VALUES COALITION

“Of all the dispositions and habits, which lead to political prosperity, Religion and morality are indispensable supports. ...[R]eason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principle.”

– George Washington – Farewell Address, 1796

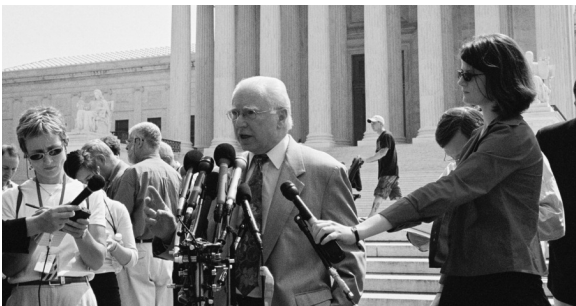
Traditional Values Coalition (TVC) is America’s largest non-denominational, grassroots church lobby, speaking on behalf of more than 43,000 allied churches and millions of like-minded patriots. Founded in 1980 by Rev. Louis P. Sheldon, Chairman, with day-to-day operations, media relations, and legislative strategy directed by Executive Director Andrea Lafferty, TVC empowers and equips people of faith to preserve the priceless heritage we share living in a Constitutional Republic, under God.

The traditional values upon which our nation was founded, and by which it has long prospered, are drawn from the Bible. They are seen in the principles outlined in the Declaration of Independence, our Constitution, and the writings of the Founding Fathers.

In short, Bible-based traditional values are what created, preserved and prospered our nation for over two centuries. These include life, religious liberty, traditional marriage and family structure, protection of children, freedom from public obscenity and pornography. Americans will lose all our rights and freedoms if we reject these core values.

To ensure people of faith stay in the fight, please send your most generous donation today to:

Traditional Values Coalition is recognized by the IRS as a 501(c)(4) charitable organization that lobbies government officials on behalf of your Christian values. Therefore, gifts to TVC are NOT tax-deductible. Organizations that do more than a small amount of lobbying are prohibited from giving a tax deduction.



▲ **TVC Chairman, Rev. Louis P. Sheldon, addressing the news media at the Supreme Court.**

TVC Executive Director, Andrea Lafferty, with Chief Justice Roberts at his White House swearing-in ceremony — another victory for America, and for our supporters who made it possible! ▶



▲ **Our efforts pay off! Andrea Lafferty, with Justice Alito for his White House swearing-in ceremony — a great day for America!**

Our first Supreme Court win, Clarence Thomas. We rallied America’s black pastors, who came to DC and lined the hallways of the Senate Office Building to encourage him during the hearings! People magazine reported Mrs. Thomas telling Clarence the pastors were “angels.” ▶





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