



## Elena Kagan Supreme Court Nomination

By Rod Blum

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Nineteen months ago America went to the polls and elected a President who was profoundly inexperienced and whose beliefs were concealed. And our country is worse off for that mistake. And now along comes Elena Kagan, Obama's choice for Supreme Court Justice. Like pre-election Obama, her beliefs are hidden while being woefully inexperienced judicially. In fact, she may have less experience, germane to the work of being a justice, than any justice in the last five decades. Zero judicial experience, fourteen months as U.S. solicitor general and two years as a private lawyer after finishing law school leaves America without much to thoroughly evaluate her. She has never been a judge or even argued a case in a Court of Appeals. Kagan is looking very much like a clone of Obama and we can't afford another mistake since the job Kagan is nominated for lasts a lifetime.

Though Kagan has not written at length on the role of the Courts, the little she has written is troubling. In a law review article, she concurred with the premise that the Courts primarily exist to protect the "despised and disadvantaged." The problem with this belief - which sounds frighteningly similar to Obama's view of the judicial system - is that it allows judges to favor whichever litigant they view as "despised and disadvantaged." Our judicial system is not to favor any one particular group, but to apply justice equally for all through impartial application of the Constitution; hence the blindfold on the Statue of Justice.

Disturbingly, while Kagan was Dean of Harvard Law School she denied military recruiters access to the campus due to her opposition to the government's ban on homosexuals openly serving in the military, specifically the "don't ask, don't tell" rule adopted during the Clinton Administration. She opposed the "Solomon Amendment", which denied federal funds to schools that barred military recruiters. The U.S. Supreme Court later disagreed with Kagan and upheld the Solomon Amendment in an 8-0 ruling.

Perhaps even more chilling are Kagan's views on free speech. In *United States v. Stevens*, Kagan argued in the government's brief that speech was not entitled to First Amendment protections if its harm outweighed its benefits. She wrote: "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." If the Court had accepted her position, it would have effectively repealed the First Amendment's protection of speech and replaced it by granting government the authority to decide what speech should be permitted. Chilling indeed.

One can accurately presume that Obama only nominates pro-abortion candidates. Kagan fits the bill. She has publicly and repeatedly criticized *Rust v. Sullivan* (1991 Supreme Court case upholding federal regulations on Title X family planning funds) as allowing the subsidization of “anti-abortion” speech.

As a law clerk, she also authored a memo stating that faith-based groups that operate pregnancy care centers should be excluded from counseling pregnant teens.

The American people agree. According to a 2008 national survey of actual voters, the Polling Company Inc. found that seventy percent of respondents preferred that judges not base their decisions on personal views and feelings. And according to a recent Quinnipiac University Poll, by a 16 point margin, more Americans believe the Supreme Court should only consider the original intentions of the authors of the Constitution instead of considering changing times and current realities. Fellow citizens - hold your Senator accountable on this nomination because our country cannot afford to roll the dice on another inexperienced candidate with a hidden agenda.