



POSTION: SOLICITOR GENERAL

NOMINEE: Elena Kagan

Born: April 28, 1960

Occupation: Dean of Harvard Law School and Charles Hamilton Houston Professor of Law at Harvard University.

Education: BA summa cum laude, Princeton University, 1981; MPhil, Worchester College, Oxford, 1983; JD magna cum laude, Harvard Law School, 1986

Clinton White House: 1995-1996 associate counsel to the President; 1997-1999 deputy assistant to the President for Domestic Policy; 1997-1999 deputy director Domestic Policy Council.

NOTE: From 1986 to 1987 Ms. Dean Kagan served as a judicial clerk for Judge Abner Mikva on the U.S. Court of Appeals for the D.C. Circuit. From 1987-1988 she also served as a judicial clerk for Supreme Court Justice Thurgood Marshall. Dean Kagan briefly served as a staff member for Michael Dukakis's presidential campaign. During the summer of 1993 she served as Special Counsel to the Senate Judiciary Committee to work on the confirmation of Supreme Court Justice Ruth Bader Ginsburg.

HOMOSEXUAL ISSUES

Gays in the Military

“Last year candidate Barack Obama repeatedly opined that students should have military service opportunities on campus. However, President Obama's nominee for solicitor general, Harvard Law School Dean Elena Kagan, believes the military should be barred from campus. In fact, she fought all the way to the United States Supreme Court, trampling on students' constitutional rights all the way there, in order to deny qualified students the opportunity to serve our country . . . Kagan's staunch ideological opposition to the military and providing qualified students the opportunity to serve puts her well outside of the mainstream. Even Bill Clinton, who dodged a military draft during Vietnam, signed the law Kagan opposes, the Solomon amendment, with overwhelming congressional and public support.

Solomon, simply put, seeks to facilitate voluntary military service by asking colleges and universities to allow students to meet with military recruiters on campus and to participate in the Reserve Officers' Training Corps (ROTC). Schools whose policies or practices obstruct students from taking part are ineligible for federal funding.

Yet, Kagan, who has categorized the law as "immoral" at a 2003 Harvard student forum, argued in support of the position of the Forum for Academic and Institutional Rights, the so-called FAIR coalition, claiming elite schools have a right to taxpayer largesse while simultaneously barring the military - a radical view the Supreme Court unanimously struck down . . . Yet, leftwing views like Kagan's still disparage the sacrifices our military makes and cause real, quantifiable harm to students and to our nation at taxpayer expense. According to Harvard's annual financial statements, the school received \$473 million of our hard-earned dollars during the 2003-4 school year, while FAIR, with Kagan's help, won an injunction against the military in the Third Circuit. Harvard took another \$511 million during the following school year and, for 2005-6, \$517 million more as the Supreme Court heard and rejected FAIR's claims.

Even Ruth Bader Ginsberg, a former American Civil Liberties Union lawyer and centerpiece of the liberals' high court coalition, couldn't find a way to justify these spurious, anti-student claims and recognized Congress' ability to condition taxpayer spending.” Flagg Youngblood, “Solicitor General Flimflam,” *The Washington Times*, January 30, 2009.

<http://www.washingtontimes.com/news/2009/jan/30/solicitor-general-flimflam/print/>

Hate Crimes

Believes courts should support hate crime laws and that when reviewing regulations of speech, courts could “evaluate motive directly, they could remove the lion’s share of the First Amendment’s doctrinal clutter.” Elena Kagan, *Private Speech, Public Purpose: The Role of Government Motive in First Amendment Doctrine*, 63 U. CHI. L. REV. 413, 516 (1996).

“In her 1993 *University of Chicago Law Review* piece, she wrote that proposed regulations on hate speech and pornography failed to adhere to the fundamental First Amendment principle of viewpoint neutrality — that the government cannot favor certain private speakers or viewpoints over others. Her 1996 article on government motive in First Amendment cases has been cited more than 115 times — an enviably high number for a secondary source. In that article she declares that “the application of First Amendment law is best understood and most readily explained as a kind of motive-hunting.” David Hudson, Jr., “Solicitor-general nominee: impressive First Amendment resume,” FirstAmendmentcenter.org.

<http://www.firstamendmentcenter.org/analysis.aspx?id=21093>

On Questioning of Presidential Nominees

“Kagan herself has called for the Senate to use confirmation hearings “to engage nominees in meaningful discussion of legal issues.” In her 1995 review (62 U. Chi. L. Rev. 919) of Stephen L. Carter’s *The Confirmation Mess*, Kagan argues that the “critical inquiry” that the Senate should conduct on a Supreme Court nominee “concerns the votes she would cast, the perspective she would add (or augment), and the direction in which she would move the institution.” Kagan draws as “the fundamental lesson of the Bork hearings ... the essential rightness—the legitimacy and the desirability—of exploring a Supreme Court nominee’s set of constitutional views and commitments.”

Although Carter’s book and Kagan’s review focus heavily on Supreme Court nominees, they also address DOJ nominations (especially Clinton’s 1993 nomination, subsequently withdrawn, of Lani Guinier to be AAG for Civil Rights), and Kagan’s view of the Senate’s role applies fully to those (and other executive-branch) nominations. That, of course, is hardly surprising, as the case for careful scrutiny of the legal views of DOJ nominees, even if combined with greater deference to the president, seems widely accepted.” Ed Whelan, “Obama’s SG Pick Elena Kagan,” *NRO’s The Corner*, January 7, 2009.

<http://bench.nationalreview.com/post/?q=NjQ2ZmJiZGFjZjY1M2JjMTk4OTYwZDgwOTZkODE5ZTM>

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MISCELLANEOUS

Despite being asked to be America’s Solicitor General, who argues cases before the Supreme Court, Ms. Kagan has never argued before the Supreme Court. In fact, she has never litigated a case to verdict or trial