



Center for Military Readiness



Promoting high standards and sound priorities for our military men and women.

**For Immediate Release**

**June 24, 2010**

## **Kagan Supreme Court Nomination: An Affront to the U.S. Military**

The **Center for Military Readiness**, an independent public policy organization that specializes in military/social issues, opposes the nomination of **Solicitor General Elena Kagan** to replace the retiring **Justice John Paul Stevens** on the **U.S. Supreme Court**.

**President Barack Obama** has chosen a nominee whose only significant record indicates deliberate hostility and opposition to laws protecting the culture and best interests of the American military.

Senators considering this nomination should question Elena Kagan's flawed logic and anti-military attitude that she expressed by signing an *amicus* brief challenging the Solomon Amendment in *Rumsfeld v. Fair*. It is significant that the U.S. Supreme Court upheld the constitutionality of that legislation, which protects equal access for military recruiters on college campuses, with a unanimous (8-0) vote. Even Justice **Ruth Bader Ginsberg**, who along with Justice Stevens was arguably the most liberal among the Court's members at that time, did not agree with Kagan's anti-military views.

Kagan, as Dean of Harvard Law School while *Rumsfeld v. Fair* made its way through the courts, removed military recruiters from the Office of Career Services at Harvard even though there was an immediate stay on the **U.S. Third Circuit Court of Appeals** ruling overturning Solomon, pending Supreme Court review. Dean Kagan's deliberate discrimination against military recruiters, therefore, was in violation of the Solomon Amendment, and even more inappropriate because the Harvard campus is not located within the territory of the Third Circuit.

The Supreme Court's unanimous rejection of the challenge to Solomon not only repudiated Kagan and her colleagues' *amicus* brief, but exposed her to be a liberal activist promoting an ideological agenda contrary to federal law.

In addition, senators should ask Elena Kagan about problematic decisions she has made as Solicitor General. In her current capacity, Kagan failed to appeal the unjustified and problematic procedural ruling of the **U.S. Ninth Circuit Court of Appeals** in a case challenging the 1993 law stating that homosexuals are not eligible for military service. (*Witt v. Department of the Air Force*).

In a National Review Online article titled [“SG Kagan’s Subversion of ‘Don’t Ask, Don’t Tell’ Law.”](#) **Ed Whelan**, President of the **Ethics and Public Policy Center**, reported on Kagan’s irresponsible failure to appeal the rogue procedural ruling of the Ninth Circuit in the *Witt* case. Her decision contradicted assurances she had given to **Sen. Jeff Sessions** (R-AL) in a letter to **Sen. Arlen Specter** (then-R-PA) dated March 18, 2009.

As the Senate undertakes its hearings on Kagan’s nomination next week, it should closely examine this nominee’s pattern of anti-military decisions. In each case that Kagan has had an opportunity to side with military policy as stipulated in law and precedent, she has chosen the opposite position. The public record of Elena Kagan proves once again that actions speak louder than words.

To schedule an interview on this subject, call **Elaine Donnelly** at **734/464-9430** or CMR Executive Director **Tommy Sears** at **202/347-5333** (Washington, D.C. office) or **202/330-1390** (cell).

\* \* \* \* \*

*The Center for Military Readiness is an independent public policy organization that specializes in military/social issues. More information on this and related topics is available on the CMR website, [www.cmrlink.org](http://www.cmrlink.org).*

\* \* \* \* \*

*The Center for Military Readiness is an independent public policy organization that specializes in military/social issues. More information on this and related topics is available on the CMR website, [www.cmrlink.org](http://www.cmrlink.org).*