



Center for Military Readiness



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

For Immediate Release

June 29, 2010

Kagan Official Actions Disrespected Military and Law

In her testimony before the Senate Judiciary Committee today, **Solicitor General Elena Kagan**, nominated to be an Associate Justice of the **United States Supreme Court**, did not give satisfactory responses to questions from Ranking Member **Jeff Sessions** on her record with regard to military issues.

Elaine Donnelly, President of the **Center for Military Readiness (CMR)**, drew attention to Kagan's pattern of anti-military decisions. "In each case in which she has had an opportunity to side with military policy as stipulated in law, General Kagan has chosen the opposite position. Her record calls into question not only her legal judgment, but her lack of regard for the tradition of judicial deference to the other branches of government—a long-standing principle that is vital to national security."

She added, "During her testimony today Ms. Kagan claimed that she was trying to provide 'full and complete access' for students desiring military careers. On the contrary, her removal of military recruiters from the Office of Career Services was second-class treatment betraying a lack of respect for the military as well as a lack of respect for duly-enacted law. Kagan's "separate but equal" policy for military recruiters was motivated not by principle, but by the desire for federal funds for Harvard University."

In a [letter for the record](#) addressed to the **Senate Judiciary Committee**, CMR expressed concern about official decisions made by Kagan in her capacity as Solicitor General as well as the former Dean of Harvard Law School:

Witt v. Department of the Air Force

- In her current capacity as Solicitor General, Kagan failed to file a petition for Supreme Court review of an unprecedented and burdensome 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. (**Section 654, Title 10**, commonly mislabeled "**Don't Ask, Don't Tell**")
- This means that the Department of Justice will have to defend the law under

unusual rules that the statute does not require. Her irresponsible decision to allow the Ninth Circuit to substitute its judgment for the findings of Congress enacted in current law calls into question her support for the military as well as her respect for a duly-enacted law that she has the duty to defend.

- Even if the Department of Justice prevails in the *Witt* case, the unfortunate procedural ruling of the Ninth Circuit will remain until it is challenged, inviting more litigation under rules in conflict with those used in other circuits.
- General Kagan's irresponsible failure to ask for review of the rogue procedural ruling on the Ninth Circuit in the *Witt* case contradicted assurances she had given to Senator Sessions in a letter to Senator Specter dated March 18, 2009.

Military Recruiters and Rumsfeld v. Fair

- Elena Kagan demonstrated flawed logic by joining an *amicus* brief challenging the Solomon Amendment in *Rumsfeld v. Fair*. The Supreme Court rejected her position and upheld the constitutionality of that legislation, which protects equal access for military recruiters on college campuses, with a unanimous (8-0) vote.
- 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.
- Acting as Dean of Harvard Law School while *Rumsfeld v. Fair* made its way through the courts, Kagan removed military recruiters from the Office of Career Services at Harvard.
- Contrary to Ms. Kagan's excuses for this action, the ruling of the Third Circuit Court of Appeals overturning Solomon was immediately stayed pending Supreme Court review. Moreover, the Harvard campus is not within the Third Circuit's jurisdiction. Dean Kagan's decision to give second-class status to military recruiters, therefore, violated the Solomon Amendment.
- Former Dean Kagan's gratuitous actions toward military recruiters showed disturbing contempt for legal judgments with which she disagreed, as well as misplaced antagonism toward the military due to a law that Congress passed.

Mrs. Donnelly added, "In the two situations described above, General Kagan deliberately acted in opposition to laws protecting the culture and best interests of the American military. In view of these official actions, the Center for Military Readiness opposes confirmation of Elena Kagan to be an Associate Justice of the Supreme Court."

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.