



## Kagan's Warped Domestic vs. International Law Views

- **Abhors the military's behavior requirements**

"I abhor the military's discriminatory recruitment policy. ... The military's policy deprives many men and women of courage and character from having the opportunity to serve their country in the greatest way possible. This is a profound wrong -- a moral injustice of the first order. And it is a wrong that tears at the fabric of our own community, because some of our members cannot, while others can, devote their professional careers to their country."<sup>1</sup>

- **Violated federal law to advance her specific policy preferences**

Federal law known as the Solomon amendment says that any university that receives federal money must allow campus access by ROTC or military recruiters "in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer."

As dean of Harvard Law School, Kagan barred military recruiters in direct violation of the law and tried to advance her cause by influencing the courts through an amicus brief in *Rumsfeld v. Fair*.<sup>2</sup> A case where U.S. Supreme Court upheld *unanimously* (8-0) the constitutionality of that legislation, completely disagreeing with Kagan's flawed logic.

- **Emphasizes "international law" over Constitutional law**

As dean at Harvard, Kagan made "International/Comparative Law" a required first-year course, while ignoring Constitutional law as a requirement altogether.

Kagan believes in using "foreign law arguments to attract these Justices' support for the positions" she took as Solicitor General.<sup>3</sup>

- **Not sympathetic of the Second Amendment**

In a memo to Justice Marshall Kagan said she was "not sympathetic" toward a man who contended that his constitutional rights were violated when he was convicted for carrying an unlicensed pistol in the District of Columbia.<sup>4</sup> This area should be explored more at the hearings, especially since the Supreme Court since then has held that the Second Amendment is an individual right.<sup>5</sup>

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<sup>1</sup> Elena Kagan, Email from the Dean to Harvard Law School Students (Oct. 6, 2003).

<sup>2</sup> *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006).

<sup>3</sup> Written Questions for Elena Kagan, Nominee to be Solicitor General of the United States *available at* <http://judiciary.senate.gov/nominations/111thCongressExecutiveNominations/upload/Kagan-QFRs.pdf>.

<sup>4</sup> Memorandum from Elena Kagan to Justice Thurgood Marshall (Aug. 27, 1987).

<sup>5</sup> *District of Columbia v. Heller*, 554 U.S. \_\_\_\_ (2008).