



More Disturbing Views from Elena Kagan

- **Argued “foolishly” in favor of religious discrimination**
“I think the [district court] got the case right. The funding here is to be used to support projects designed to discourage adolescent pregnancy and to provide care for pregnant adolescents. It would be difficult for any religious organization to participate in such projects without injecting some kind of religious teaching. ... [W]hen the government funding is to be used for projects so close to the central concerns of religion, all religious organizations should be off limits”¹ [Emphasis in original]. At her hearings for Solicitor General, Kagan referred to this (her own) memo as “the dumbest thing [she] ever heard.”

- **Holds prominent judicial activist as her “judicial hero”**
Kagan called Aharon Barak her “judicial hero.” “He is the judge who has best advanced democracy, human rights, the rule of law, and justice.”²

Aharon Barak is a famous judicial activist who wrote in his book, *The Judge in a Democracy*, “The judge may give a statute new meaning, a dynamic meaning, that seeks to bridge the gap between law and life’s changing reality without changing the statute itself. The statute remains as it was, but its meaning changes, because the court has given it a new meaning that suits new social needs.”³

- **Is against a federal ban on assisted suicide**
Kagan advised President Bill Clinton that a Federal Ban on Assisted Suicide was “a fairly terrible idea.”⁴
- **Supports human cloning for research**
“The attached Kagan/Gibbons memo recommends that you follow [the National Bioethics Advisory Committee] in *not* banning the cloning of embryos for research.”⁵

¹ Memorandum from Elena Kagan to Justice Thurgood Marshall on *Kendrick v. Bowen* (1987).

² Rebecca Agule, *Distinguished Israeli Jurist Receives 2006 Justice Prize*, Harvard Law Record, Sept. 28, 2006.

³ Aharon Barak, *The Judge in a Democracy*, 4, Princeton UP, 2006.

⁴ NLWJC – Kagan, DPC – Box 002 – Folder 011, Assisted Suicide [2], p.31.

⁵ Memorandum from Staff Secretary Todd Stern for the President (June 8, 1997), NLWJC – Kagan DPC - Box 006 - Folder 019 Cloning [2], p. 49.