

TESTIMONY OF MR. TONY PERKINS
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WASHINGTON, D.C.

BEFORE THE
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

CONFIRMATION HEARINGS FOR THE APPOINTMENT OF
ELENA KAGAN TO THE SUPREME COURT OF THE UNITED STATES

JULY 1, 2010

Chairman Leahy, Ranking Member Sessions, and members of the Committee,

Thank you for the invitation to testify.

As one who has spent a number of years in uniform, as a Marine and a police officer, my remarks will focus primarily on Ms Kagan's treatment of military recruiters at Harvard Law School.

As has been pointed out while Dean of the law school she defied the requirements of a federal law, known as the Solomon Amendment. Her violation of this federal law was motivated by her vehement opposition to the military's prohibition against open homosexuality.

This protracted incident, combined with the just made public report of her re-writing of the medical findings of ACOG on partial birth abortion as advisor in the Clinton White House, raises doubts as to whether she possesses the requisite judicial temperament and impartial nature required of a Supreme Court justice.

On the former topic, when Ms. Kagan did comply with the law she wrote to the campus making clear just how grudging her cooperation with the military was in light of the military's "repugnant" policy.¹ She declared, "I abhor the military's discriminatory recruitment policy," and she added that the policy was "a profound wrong—a moral injustice of the first order."

"A moral injustice of the first order?" Of all the moral injustices throughout history that man has inflicted on man, she equates them to a military policy enacted by Congress?

Mr. Chairman, the purpose of our military is to fight and win this country's wars. War is the most difficult human activity, bar none. It requires organized groups of men and women to act with strategic and tactical lethality while its members are simultaneously being wounded and killed.

In war, the normal ways of living are completely sacrificed in the harsh, punishing environment of combat. Even in peacetime settings and in units not engaged in combat, great sacrifices are required. Military life, by its nature, must be characterized by a regular lack of privacy and repeated situations of forced intimacy.

As military experts have testified and this Congress has affirmed, in such an environment it is *not* “a moral injustice of the first order” to minimize the sexual exposure that such conditions forces on soldiers, sailors, Marines, and airmen. *It is the only sensible and effective way to run a military organization.*

It should be noted that the current law on homosexuality in the military has been *repeatedly* challenged—and upheld—by the federal courts. And the Supreme Court unanimously upheld the Solomon Amendment.

Some have defended Ms. Kagan’s actions regarding the military, claiming they do not demonstrate that she is “anti-military.” There is truth in that, only in that she does not oppose the military simply because they *are* the military. However, she clearly *does* oppose the military because they have not yet bowed to the demands of the sexual counter-culture. Her record would suggest that it is not that Ms. Kagan does not want the military to defend our nation against terrorism; it’s just that she wants to *use* the military to advance radical social policies more.

This becomes very clear when one examines the amicus brief that Ms Kagan signed on to in the Solomon case. This brief began with a sweeping declaration that is startling in its implications. “We are deeply committed to a fundamental moral principle: ‘A society that discriminates based on sexual orientation – or that tolerates discrimination by its members-is not a just society’.”

Note that Kagan and the professors condemn not only a society that “discriminates,” but a society “that tolerates discrimination by its members.” I abhor discrimination based on race and other immutable characteristics, but the implications of this are chilling for the freedom of speech and the freedom of religion. It should alarm those who live in the 45 states that define marriage as the union of a man and a woman, and to the tens of millions of Americans who affirm biblical moral teaching.

Her own statements make obvious that Elena Kagan would strike down any marital statute – including the federal Defense of Marriage Act – which defines marriage as being between one man and one woman.

At question is not whether Ms Kagan is a good person or even skilled in the law.

What is in question is her ability to be an impartial jurist. Her record makes clear she is an impassioned activist that only sees laws and in some cases science as mere obstacles to overcome in pursuit of a far left agenda.

We do not need a justice on the Supreme Court who sees it as her life mission to write the homosexual version of Roe v. Wade by striking down one-man, one-woman marriage across America. These positions and the temperament accompanying them make her unfit to sit as an associate justice on the Supreme Court. I urge the Senate to reject her nomination.

NOTES

¹ E-mail, Dean Kagan to Harvard Law School, October 9, 2003.