

30 YEARS OF POLITICAL ADVOCACY

ELENA KAGAN: “I Think You Can Look To My Whole Life For Indications Of What Kind Of A Judge Or Justice I Would Be.”

(Judiciary Committee, U.S. Senate, Confirmation Hearing, 6/29/10)

1980: Worked On Senate Campaign Of Noted Liberal Rep. Elizabeth Holtzman

When Democratic Rep. Holtzman Lost In 1980, Kagan Believed “The World Had Gone Mad, That Liberalism Was Dead.” “She spent a summer working on the Senate race of New York Democratic Rep. Elizabeth Holtzman; when Holtzman lost in the 1980 Republican sweep, Kagan cried. As she later wrote, she believed ‘the world had gone mad, that liberalism was dead.’”

[\(“Nomination Is No Surprise To Those Who Know Kagan,” *USA Today*, 5/11/10\)](#)

- **ELENA KAGAN: “The Defeat” Of Holtzman “By An Ultra-Conservative Machine Politician Just Come From The Town Of Hempstead Was Not A Pleasant Thing To Watch.”** “I worked for Liz Holtzman last summer — some 14 hours a day, six days a week. So that night I was at the Brooklyn Academy of Music, attending what I was fairly certain was going to be a celebration. Instead, it was a wake. And let me tell you there is nothing more depressing than drinking vodka and tonics and watching Walter Cronkite with 500 other people whose expectations had differed similarly from reality. I got kind of drunk that night. A lot of people did. Most of us had grown to admire, even to love, Liz or rather, not Liz herself — actually, she was not terribly personable — but her intelligence, her integrity, her ideals. The defeat of those qualities by an ultra-conservative machine politician just come from the town of Hempstead was not a pleasant thing to watch.” [\(Elena Kagan, “Fear And Loathing In Brooklyn,” *The Daily Princetonian*, 11/10/80\)](#)

Watching Holtzman’s Defeat, Kagan Hoped A “More Leftist Left Will Once Again Come To The Fore”

“In My More Rational Moments, I Can Now Argue That ... Perhaps More Leftist Left Will Once Again Come To The Fore.” “In my more rational moments, I can now argue that the next few years will be marked by American disillusionment with conservative programs and solutions, and that a new, revitalized, perhaps more leftist left will once again come to the fore.” [\(Emphasis In Original: Elena Kagan, “Fear And Loathing In Brooklyn,” *The Daily Princetonian*, 11/10/80\)](#)

1988: Worked “Conducting Research On The Opposition” For The Dukakis Campaign

“[Elena Kagan’s] Start In Politics Came In 1988, When She Volunteered On Michael Dukakis’ Campaign For President. A Self-Described Flunky, She Worked In The Research Department, Defending Dukakis From Political Attacks And Conducting Research On The Opposition.” [\(“She’s A White House Veteran,” *The Los Angeles Times*, 5/11/10\)](#)

1995-99: Worked “To Score Points Against The Republican Congress” In The Clinton White House

“Government Service: Deputy Assistant to the President for Domestic Policy, 1997-1999. Associate Counsel to the President, 1995-1996.” [\(“Elena Kagan - Nominee to be Associate Justice of the U.S. Supreme Court,” Judiciary Committee, U.S. Senate, Accessed 6/23/10\)](#)

ELENA KAGAN: “During Most Of The Time I Spent In The White House, I Did Not Serve As An Attorney; I Was Instead A Policy Adviser. ... It Was Part Of My Job Not To Give Legal Advice, But To Choose When And How To Ask For It.” ([Elena Kagan, Remarks At West Point, 10/17/07](#))

“E-Mails From Elena Kagan's Work As An Aide In The Clinton White House Portray The Supreme Court Nominee As Driven And Opinionated, With A Flair For Political Tactics And Little Tolerance For Flowery Rhetoric. A Review Of The Tens Of Thousands Of Pages Of Her E-Mails Released Friday Also Shows How Kagan Often Had To Place Political Considerations Before Policy Views.” (“Clinton-Era E-Mails Show Kagan’s Political Savvy,” *AP*, 6/21/10)

- **During “Her Stint As A Domestic Policy Aide... She Suggested Transforming What Was Supposed To Be A Routine Literacy Event At A Maryland School Into A Chance To Score Points Against The Republican Congress.”** (“Clinton-Era E-Mails Show Kagan’s Political Savvy,” *AP*, 6/21/10)
- **ELENA KAGAN On Campaign Finance Proposals: “Soft \$ Ban – Affects Repubs, Not Dems!”** (Elena Kagan, Notes, DPC – Box 006 – Folder 006, KCL – 0003690, Clinton Presidential Library, 2/3/97)

“Over The Past Decade” Kagan Has Donated Generously To “Democratic Candidates And Causes”

“Supreme Court Nominee Elena Kagan Has Given At Least \$12,050 Over The Past Decade To Democratic Candidates And Causes — Including To The President Who Nominated Her and a sitting senator who will get to vote on her nomination — according to federal campaign finance records. Kagan maxed out to her boss and appointer, President Barack Obama, with \$4,600 in contributions in June of 2008, adding to the \$2,000 she gave him when he ran for the U.S. Senate.” ([“Elena Kagan Donated To President Obama, John Kerry,” Politico, 5/10/10](#))

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Elena Kagan And Opposition Research

Dems Previously Said Kagan’s Experience “Is About Prying Into Personal Lives Of Other Candidates In Order To Try To Dig Up Dirt On Them. A More Partisan Choice Could Not Have Been Made”

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“[Elena Kagan’s] Start In Politics Came In 1988, When She Volunteered On Michael Dukakis’ Campaign For President. A Self-Described Flunky, She Worked In The Research Department, Defending Dukakis From Political Attacks And Conducting Research On The Opposition.” ([“She’s A White House Veteran,” The Los Angeles Times, 5/11/10](#))

Senate Democrats On Opposition Researchers: “A More Partisan Choice Could Not Have Been Made,” Nominations Shouldn’t Be Used To “Advance A Political Crony” Or “Political Operative”

SEN. SHELDON WHITEHOUSE (D-RI): “As Those Of Us Who Have Been Through This Sort Of Thing Know, ‘Research Director’ Is Not About Looking Up Old Statutes; It Is About Prying Into Personal Lives Of Other Candidates In Order To Try To Dig Up Dirt On Them. A More Partisan Choice Could Not Have Been Made.” “What Mr. Griffin lacked in prosecutorial experience, he

more than made up for in political experience. Mr. Griffin is a former aide to Presidential adviser Karl Rove. He is also a former Republican National Committee research director. As those of us who have been through this sort of thing know, 'research director' is not about looking up old statutes; it is about prying into personal lives of other candidates in order to try to dig up dirt on them. A more partisan choice could not have been made ... It is just hard to believe that Mr. Tim Griffin was the best person possible, at least not as we ordinarily define those terms." (Sen. Whitehouse, Congressional Record, S.2338, 2/28/07)

- **WHITEHOUSE: "An Opposition Researcher For The Republican Party" May Not "Be Able To Set Those Partisan Motivations Completely And Totally Aside."** SEN. SHELDON WHITEHOUSE (D-RI): "Tim Griffin, I gather, was an opposition researcher for the Republican Party. Is that --" MS. SARA TAYLOR: "Tim Griffin has served as a director of research for the Republican National Committee, yes. It's -- so he was the director of research." WHITEHOUSE: "And that would include opposition research?" TAYLOR: "That would include research on Republican candidates' opponents." WHITEHOUSE: "Which is customarily referred to in the trade as 'opposition research.'" TAYLOR: "Yes." WHITEHOUSE: "Okay. Did it give you any hesitation that someone who chose that particular career path would be in any way inhibited in setting aside the motivations that would cause someone to pursue that particular career and be a fully independent United States attorney and be able to set those partisan motivations completely and totally aside?" (Judiciary Committee, U.S. Senate, Hearing, 7/11/07)

SEN. PAT LEAHY (D-VT): **Denounced Efforts To "Advance A Political Crony."** "The Attorney General removed respected U.S. attorney Bud Cummins and replaced him with the interim appointment of Tim Griffin, a former political operative for Karl Rove. ... This was not a vacancy created by necessity or emergency. This was a vacancy created by choice to advance a political crony." (Sen. Leahy, Congressional Record, S.1994, 2/15/07)

SEN. DIANNE FEINSTEIN (D-CA): **"Senators Pryor And Lincoln Have Raised Significant Concerns About How ... The Administration Appointed Their Top Lawyer In Charge Of Political Opposition Research, Tim Griffin. I Have Been Told Mr. Griffin Is Quite Young, 37, And Senators Pryor And Lincoln Have Expressed Concerns About Press Reports That Have Indicated Mr. Griffin Has Been A Political Operative For The RNC."** (Sen. Feinstein, Congressional Record, S.549-50, 1/16/07)

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Elena Kagan & Pamphlet Banning

As Solicitor, Elena Kagan's Office Argued The U.S. Government Could Ban Books Before She Personally Revised The Position To Argue The Ban Would Only Apply To Pamphlets

SG Elena Kagan's Office: **"[The U.S. Government] Could Prohibit The Publication Of The Book"**

JUSTICE ALITO: **"You Think That If -- If A Book Was Published, A Campaign Biography That Was The Functional Equivalent Of Express Advocacy, That Could Be Banned?" ... MALCOLM L. STEWART, Deputy Solicitor General:** **"If The Book Contained The Functional Equivalent Of Express Advocacy."** ([Citizens United v. Federal Election Commission, Oral Argument, 3/24/09](#))

CHIEF JUSTICE ROBERTS: **"If It's A 500-Page Book, And At The End It Says, And So Vote For X, The Government Could Ban That?" ... MALCOLM L. STEWART, Deputy Solicitor General:** **"We**

Could Prohibit The Publication Of The Book.” ([Citizens United v. Federal Election Commission, Oral Argument, 3/24/09](#))

JUSTICE SOUTER: “To Point Out How Far Your Argument Would Go, What If A Labor Union Paid An Author To Write A Book Advocating The Election Of A Or The Defeat Of B? And After The Manuscript Was Prepared, They Then Went To A Commercial Publisher, And They Go To Random House. Random House Says, Yes, We Will Publish That. . . . We’re Talking About How Far The Constitutional Ban Could Go, and We’re Talking About Books.” ... **MALCOLM L. STEWART, Deputy Solicitor General:** “The Labor Union’s Conduct Would Be Prohibited. . . .And I Think It Would Be Constitutional To Forbid The Labor Union To Do That.” ([Citizens United v. Federal Election Commission, Oral Argument, 3/24/09](#))

SG Elena Kagan Revises Her Office’s Position: “The FEC Has Never Applied This Statute To A Book” But “A Pamphlet Would Be Different.”

JUSTICE GINSBURG: “May I Ask You One Question That Was Highlighted In The Prior Argument, And That Was If Congress Could Say No TV And Radio Ads, Could It Also Say No Newspaper Ads, No Campaign Biographies? Last Time The Answer Was, Yes, Congress Could, But It Didn’t. Is That -- Is That Still The Government’s Answer?” **ELENA KAGAN, Solicitor General:** “The Government’s Answer Has Changed, Justice Ginsburg. . . .The government’s view is that although 441b does cover full-length books . . . the FEC has never applied 441b in that context.” ... **CHIEF JUSTICE ROBERTS:** “We Don’t Put Our First Amendment Rights In The Hands Of FEC Bureaucrats; And If You Say That You Are Not Going To Apply It To A Book, What About A Pamphlet?” **GENERAL KAGAN:** “I think a -- a pamphlet would be different. A pamphlet is pretty classic electioneering, so there is no attempt to say that 441 b only applies to video and not to print.” ([Citizens United v. Federal Election Commission, Oral Argument, 9/9/09](#))

U.S. Supreme Court: “This Troubling Assertion Of Brooding Governmental Power Cannot Be Reconciled With The Confidence And Stability In Civic Discourse That The First Amendment Must Secure.”

OPINION OF THE COURT: “This Troubling Assertion Of Brooding Governmental Power Cannot Be Reconciled With The Confidence And Stability In Civic Discourse That The First Amendment Must Secure.” “The Government contends that *Austin* permits it to ban corporate expenditures for almost all forms of communication stemming from a corporation. . . . If *Austin* were correct, the Government could prohibit corporation from expressing political views in media beyond those presented here, such as by printing books. The government responds ‘that the FEC has never applied this statute to a book,’ and if it did, ‘there would be quite [a] good as-applied challenge.’ . . . This troubling assertion of brooding governmental power cannot be reconciled with the confidence and stability in civic discourse that the First Amendment must secure.” (Citizens United v. Federal Election Commission, United States Supreme Court, Decided 1/21/10)

CONCURRING OPINION (Chief Justice Roberts & Justice Alito): “The Government Urges Us In This Case To Uphold A Direct Prohibition On Political Speech. It Asks Us To Embrace A Theory Of The First Amendment That Would Allow Censorship Not Only Of Television And Radio Broadcasts, But Of Pamphlets, Posters, The Internet, And Virtually Any Other Medium That Corporations And Unions Might Find Useful In Expressing Their Views On Matters Of Public Concern. Its Theory, If Accepted, Would Empower The Government To Prohibit Newspapers From Running Editorials Or Opinion Pieces Supporting Or Opposing Candidates

For Office, So Long As The Newspapers Were Owned By Corporations—As The Major Ones Are. First Amendment Rights Could Be Confined To Individuals, Subverting The Vibrant Public Discourse That Is At The Foundation Of Our Democracy. The Court Properly Rejects That Theory, And I Join Its Opinion In Full. The First Amendment Protects More Than Just The Individual On A Soapbox And The Lonely Pamphleteer.” (Citizens United v. Federal Election Commission, United States Supreme Court, Decided 1/21/10)

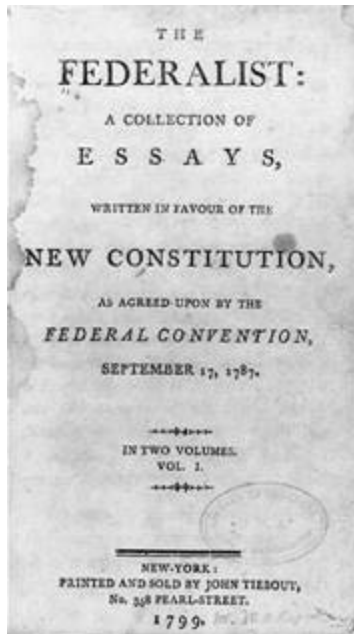
CONCURRING AND DISSENTING OPINION (Justice Scalia): “The Notion ... That Modern Newspapers, Since They Are Incorporated, Have Free-Speech Rights Only At The Sufferance Of Congress, Boggles The Mind.” (Citizens United v. Federal Election Commission, United States Supreme Court, Decided 1/21/10)

Notable Pamphlets

The Famous Pamphlet *Common Sense*:



“In January 1776, little more than a year after emigrating from England, Thomas Paine penned his famous radical pamphlet *Common Sense*, in which he urged the American Colonies to declare independence and immediately sever all ties with the British monarchy. Published just as colonists learned of George III's speech proclaiming the American Colonies in rebellion against the Crown, *Common Sense* became an instant best seller with several thousand copies sold within days.” ([“American Treasures Of The Library Of Congress,” U.S. Library Of Congress, Accessed 5/14/10](#))



[“On November 10, 1787,](#) George Washington thanked Alexander Hamilton for sending him a copy of the pamphlet written by ‘Publius.’”

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