

NATIONAL RIFLE ASSOCIATION OF AMERICA
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030



NRA

July 1, 2010

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

We are writing to announce the National Rifle Association's position on the confirmation of Solicitor General Elena Kagan as Associate Justice of the United States Supreme Court.

Other than declaring war, neither house of Congress has a more solemn responsibility than the Senate's role in confirming justices to the U.S. Supreme Court. As the Senate considers the nomination of Solicitor General Kagan, Americans have been watching to see whether this nominee – if confirmed – would respect the Second Amendment or side with those who have declared war on the rights of America's 80 million gun owners.

During confirmation hearings, judicial nominees make carefully crafted statements regarding issues with which they do not personally agree. They often speak in terms of "settled law" or "I understand the right". When those statements are contradicted by an entire body of work over a nominee's career, however, it would be foolhardy to simply take them at face value. In Ms. Kagan's own words, "you can look to my whole life as to what kind of justice I would be." We agree.

As she has no judicial record on which we can rely, we have only her political record to review. And throughout her political career, she has repeatedly demonstrated a clear hostility to the fundamental, individual right to keep and bear arms guaranteed under the U.S. Constitution.

As a clerk for Justice Thurgood Marshall, Ms. Kagan said she was "not sympathetic" to a challenge to Washington, D.C.'s ban on handguns and draconian registration requirements. As domestic policy advisor in the Clinton White House, a colleague described her as "immersed" in President Clinton's gun control policy efforts. For example, she was involved in an effort to ban more than 50 types of commonly-owned semi-automatic firearms – an effort that was described as: "taking the law and bending it as far as we can to capture a whole new class of guns." And as U.S. Solicitor General, she chose not to file a brief last year in the landmark case *McDonald v. Chicago*, thus taking the position that incorporating the Second Amendment and applying it to the States was of no interest to the Obama

Administration or the federal government. These are not the positions of a person who supports the Second Amendment.

During her confirmation hearings last year, Justice Sonia Sotomayor repeatedly stated that the Supreme Court's historic *Heller* decision was "settled law". Even further, in response to a question from Chairman Leahy, she said "I understand the individual right fully that the Supreme Court recognized in *Heller*." Yet last Monday in *McDonald*, she joined a dissenting opinion which stated: "I can find nothing in the Second Amendment's text, history, or underlying rationale that could warrant characterizing it as 'fundamental' insofar as it seeks to protect the keeping and bearing of arms for private self-defense purposes".

We would also note that both *Heller* and *McDonald* were 5-4 decisions. The fact that four justices would effectively write the Second Amendment out of the Constitution is completely unacceptable. Ms. Kagan has repeatedly declined to say whether she agrees with the dissenting views of justices Stevens, Breyer, Ginsburg and Sotomayor, which leaves unanswered the very serious questions of whether she would vote to overturn *Heller* and *McDonald* or narrow their holdings to a practical nullity.

This nation was founded on a set of fundamental freedoms. Our Constitution does not give us those freedoms – it guarantees and protects them. The right to defend ourselves and our loved ones is one of those. The fundamental, individual right to keep and bear arms is another. These truths are what define us as Americans.

Any individual who does not believe that the Second Amendment guarantees a fundamental right and who does not respect our God-given right of self-defense should not serve on any court, much less receive a lifetime appointment to the highest court in the land. Justice Sotomayor's blatant reversal on this critical issue requires that we look beyond statements made during confirmation hearings and examine a nominee's entire body of work. Unfortunately, Ms. Kagan's record on the Second Amendment gives us no confidence that if confirmed to the Court, she will faithfully defend the fundamental, individual right to keep and bear arms of law-abiding Americans.

For these reasons, the National Rifle Association has no choice but to oppose the confirmation of Solicitor General Elena Kagan to the U.S. Supreme Court. Given the importance of this issue, this vote will be considered in NRA's future candidate evaluations.

Thank you for your attention to our concerns. Should you have any questions or wish to discuss further, please do not hesitate to call on us personally.

Sincerely,



Wayne LaPierre
Executive Vice President
NRA



Chris Cox
Executive Director
NRA-ILA

cc: Majority Leader Harry Reid; Republican Leader Mitch McConnell; Members of the United States Senate