



Written by [Raven Clabough](#) on August 5, 2010

Elena Kagan Approved as 112th Supreme Court Justice

The full Senate voted 63-37 on Thursday, August 5, to confirm Elena Kagan to the U.S. Supreme Court. With the support of nearly all Democrats, as well as five Republicans, there was very little surprise over the final outcome.

Senate debates over the new Supreme Court justice began on Tuesday, where Democrats touted Kagan as an intelligent and highly qualified candidate and Republicans asserted that Kagan was wholly inexperienced and would be a radical leftist judicial activist.



Most Democrats have showered Kagan with praise from the day President Obama nominated her, with few exceptions, including Senator Arlen Specter, who was alleged to be frustrated by Kagan's inability to provide transparent answers to questions posed by the Senate Judiciary Committee. However, when it came vote of the full Senate, all but one Democrat voted in favor of Kagan. The stand-alone Democrat was conservative Democratic Senator Ben Nelson of Nebraska.

The five Republicans who voted in favor of Kagan are Susan Collins, Olympia J. Snowe, Lindsey Graham, Judd Gregg, and Richard Lugar, none of whom are up for reelection this year. These Republicans have faced opposition from their constituents as well as the conservative group, The Traditional Values Coalition.

Kagan was approved by the Senate Judiciary Committee in July with a virtual party-line vote of 13-6, with only Republican Senator Lindsey Graham breaking from the GOP.

Graham has defended his break from the GOP in the vote for Kagan by contending that Presidents are allotted certain spoils, including the right to virtually uncontested appointments.

As noted by the *LA Times*, "In the past, a president's well-qualified nominees usually won easy confirmation from the Senate." Justices John Paul Stevens, Antonin Scalia, and Anthony Kennedy were all unanimously approved by the Senate. However, this likely had more to do with one party giving in on a candidate when there was no hope of victory for a party's side, rather than accepted principle — that and the fact that after Ronald Reagan's nominee Robert Bork was unjustly pilloried for answering Senate committee questions in a matter-of-fact manner and having his beliefs be twisted and used against him in a smear campaign, nominees for the Supreme Court almost invariably give very vague, glib answers to Senators during questioning.

This pattern has changed somewhat in the last decade, however, as Supreme Court nominations have faced party-line votes. Barack Obama joined in the fray as a Senator, voting against President George W. Bush's 2006 chief justice nominee, John Roberts, Jr.

Not changing, it seems, however, that public opinion has once again taken a backseat to political maneuvering. In July, Rasmussen reported that 76 percent of Americans were closely following news reports about Elena Kagan. Likewise, Gallup reported, "If confirmed, Kagan would be the first



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successful nominee in recent years whose nomination was backed by less than a majority of Americans in the final poll before the Senate confirmation vote.”

Rasmussen also reported that 50 percent of Americans view Kagan as an “ideological liberal,” likely a reason for her low approval ratings.

Curt Levey of the Daily Caller writes, “The explanation for Kagan’s unpopularity goes deeper than ideological labels. At the end of the day, Kagan and her supporters are faced with this inescapable reality: on the issues that have dominated the public debate about her nomination, polls show that Kagan is on the wrong side of the American people by very large margins.”

Levey indicates that one such issue is gun rights, a right that is supported by almost 80 percent of Americans, according to a 2009 CNN poll, and one to which Kagan has openly admitted to be unsympathetic.

Republicans who have adamantly opposed Kagan include Senators Jeff Sessions (Ala.), Orin Hatch (Utah), Tom Coburn (Okla.), and Jon Kyl (Ariz.).

Kagan’s appointment will prove to be an issue in the midterm elections as well. Republican U.S. Senate Candidate Carly Fiorina, running in opposition to Barbara Boxer, has [slammed her opponent for her support of Kagan](#). Similarly, Florida’s Republican Senatorial candidate Marco Rubio [has criticized his opponent](#), Independent Governor Charlie Crist, for his support of Kagan.

With Kagan confirmed, there are now four Democratic appointees sitting on the Supreme Court for the first time since 1971. Likewise, for the first time ever, three are women.

Photo of Elena Kagan: AP Images



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