



Kagan Remains Vague in Day Three of Hearings

Day three of Elena Kagan's hearings to be the next Supreme Court justice was expected to be relatively amicable as the remaining members of the Senate Judiciary Committee — all Democrats — finished their round of questions. After spending the last two days fending off Republican interrogation, friendly faces would have been well received by Kagan. Unfortunately for Kagan, however, the day consisted of a few touchy moments between the nominee and her more critical Democratic and Republican interrogators.



Democrat Arlen Specter grilled Kagan on whether she agreed with a standard set by Justice Kennedy in a 1997 case, and true to form, Kagan was unwilling to answer the question. To this, Specter replied, "I am struggling to find a reason not to vote against her." This provoked Kagan to say, "You shouldn't want a judge who will sit at this table and who will tell you that she will reverse a decision without listening to arguments and without reading briefs and without talking to colleagues."

Republican Senator Tom Coburn behooved Kagan to empathize "with those of us that feels there's a low confidence right now in the institutions of government." He asked, "Have you ever contemplated the idea of what your freedom was like 30 years ago and what it's like today? There's a marked change in this country when I was 20, and today when I am 62.... Is that important? The fact that confidence of all government institutions is at all all time low? Should we be concerned about it?"

Kagan responded, "Confidence in our institutions is terribly important, confidence in the Supreme Court is terribly important. But I do believe the job of a Supreme Court justice is deciding cases."

Coburn also questioned Kagan on the issue of guns, and whether she believes that Americans have a "fundamental right" to bear arms. Kagan said she accepts the recent ruling by the Supreme Court about the right to possess firearms but would not answer whether she believed that the right was fundamental.

Angered by Kagan's unwillingness to answer the question, Coburn questioned whether Kagan believe in "inalienable rights." Kagan responded, "You should not want me to act in any way on the basis of such a belief.... I think you should want me to act on the basis of law."

Republican Senator Jeff Sessions resumed his interrogation of Kagan's relationship with the military while she served as Solicitor General, this time focusing on her decision not to seek Supreme Court review of two decisions concerning the "don't ask, don't tell" policy. The first decision, made by the First Circuit, upheld the policy, while the second decision, determined by the Ninth Circuit, allowed any person discharged from the military under "don't ask, don't tell" to have a hearing where the government was required to prove that the discharged member was a danger to the efficiency of the military.

Senator Charles Grassley, Republican, questioned whether Kagan believed marriage was a legal right of



Written by [Raven Clabough](#) on July 1, 2010

the states to decide. The question went unanswered, however, as Kagan pointed out that the question was now being considered in the courts, thereby being inappropriate for her to comment upon.

Republican Senator Orin Hatch grilled Kagan on the issue of partial-birth abortion, which was supported by former President Bill Clinton, whom Kagan served as a domestic policy aide. Under Clinton, Kagan wrote a note indicating that it would be a “disaster” if the American College of Obstetricians and Gynecologists did not make an exception for partial-birth abortion if the life of the mother is endangered.

In response to Hatch, Kagan defended her note by remarking that she felt it best for the organization’s statement to adequately reflect its full view, which is that in some instances, partial-birth abortions were “medically best” and claims to have “no agenda with respect to this issue.”

At the end of the day, Kagan’s appointment seems relatively certain, while the potential for a Republican filibuster appears unlikely.

Sessions confessed that he remained “uneasy” over Kagan’s potential appointment, while Leahy admitted confidence, indicating to Kagan that she will likely not have to sit at the table for questioning again.

Kagan concluded by ensuring the Senate Judiciary Committee that she would remain an impartial judge despite her connections to two highly liberal administrations: Clinton and Obama.

On Thursday, Republicans and Democrats will invite outside witnesses to speak on behalf of Kagan, and should prove to be a day of fawning over the likely soon-to-be-appointed justice.

Photo of Elena Kagan: AP Images



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