

KEY VOTE "NO" ON ELENA KAGAN FOR THE SUPREME COURT

August 3, 2010

Dear Senator:

On behalf of over a million FreedomWorks members nationwide, I urge you to VOTE NO on cloture on the confirmation of Elena Kagan to the Supreme Court. The Senate's "Gang of 14" has agreed to only filibuster a Supreme Court nomination in extreme circumstances and we believe this constitutes such a circumstance.

Kagan made it clear in her confirmation hearing that she sees almost no limit to federal power. This makes her unable to fulfill her primary function as a justice on the Supreme Court—defending our liberties by defending Constitution, which clearly limits federal power, including protection from legislative and executive branch over-reach.

Her response to a question from Sen. Tom Coburn (R-Okla.) was the most revealing glimpse at her judicial philosophy. During Kagan's confirmation hearings, Sen. Coburn asked, "If I wanted to sponsor a bill and it said Americans, you have to eat three vegetables and three fruits every day, and I got it through Congress and it's now the law of the land...does that violate the Commerce Clause?"

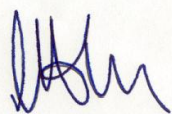
Kagan responded, "Sounds like a dumb law...but I think that the question of whether it's a dumb law is different from the question of whether it is Constitutional and I think courts would be wrong to strike down laws that they think are senseless just because they're senseless."

Coburn responded, "The question I'm asking you, do we have the power to tell people what they have to eat every day?...What is the extent of the Commerce Clause?"

Kagan was unable to answer. Anyone who is unsure whether or not we the people grant the federal government the power through the Constitution to tell us how much of what type of food to eat is clearly unfit for the Supreme Court.

We will count your vote on cloture on Elena Kagan's confirmation as a KEY VOTE when calculating the FreedomWorks Economic Freedom Scorecard for 2009. The Economic Freedom Scorecard is used to determine eligibility for the Jefferson Award, which recognizes members of Congress with voting records that support economic freedom.

Sincerely,



Matt Kibbe
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FreedomWorks



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