

Statement of Peter B. Hegseth

before the

United States Senate Committee on the Judiciary

concerning

“The Nomination of Elena Kagan to be an Associate
Justice of the Supreme Court of the United States”

July 1, 2010

Chairman Leahy, Ranking Member Sessions, and Members of the Committee, thank you for the opportunity to be here today. It’s a privilege to take part in these proceedings.

My name is Pete Hegseth and I am the Executive Director of Vets for Freedom, an organization of Iraq and Afghanistan veterans dedicated to supporting America’s war-fighters, and their mission on the battlefield. I received my commission from Princeton University in 2003, and have since served two tours with the U.S. Army, first at Guantanamo Bay, Cuba, and later in Iraq with the 101st Airborne Division. I’m currently an infantry Captain in the Massachusetts Army National Guard, and a graduate student at Harvard University. I’m before this committee today as a citizen and a veteran, and do not purport to speak on behalf of the military.

I will start with the bottom line up front. We are a nation at war; at war with a vicious enemy, on multiple fronts. I’ve seen this enemy first hand, as have a precious few from my generation. The enemy we face detests, and seeks to destroy, our way of life while completely ignoring, and exploiting, the laws of warfare.

This context motivates my testimony today. I have serious concerns about Elena Kagan’s actions toward the military, and her willingness to myopically focus on preventing the military from having *institutional and equal access* to top-notch recruits at a time of war. I find her actions toward military recruiters at Harvard unbecoming a civic leader, and unbefitting a nominee to the United States Supreme Court. Ms. Kagan is clearly a very capable academic, and the President has the right to nominate whomever he pleases. But in replacing the only remaining veteran on the Supreme Court in Justice John Paul Stevens—how did we reach a point in this country where we are nominating someone who—*unapologetically*—obstructed the military at a time of war? Ms. Kagan chose to use her position of authority to impede, rather than empower, the warriors who fight, and have fallen, for our freedoms.

I know a number of my fellow veterans will testify to Ms. Kagan’s personal support of veterans on Harvard’s campus. And Ms. Kagan has had good things to say about our troops, which I appreciate. But, for my money, actions always speak louder than words.

And Ms. Kagan's actions toward recruiters—with wars raging—undercut the military's ability to fight and win wars, and they trump her rhetorical explanations.

General David Petraeus, who wrote the book on counterinsurgency and is now tasked with waging war in Afghanistan, calls counterinsurgency “a thinking man's war.” Defeating our enemies, on the battlefield and in the courtroom, takes the best America has to offer. Yet in December of 2004 as you've heard many times already, Ms. Kagan—then Dean of the Harvard Law School—took the law into her own hands, blocking equal access for military recruiters on campus, in direct violation of federal law. Moreover, she even encouraged students to protest, and obstruct, the presence of military recruiters.

These actions coincided with my deployment to Guantanamo Bay; itself a legal maze of graduate-level proportions. Would not the legal situation there, and in the courtrooms of Iraq and Afghanistan, be better off with more participation from lawyers of Harvard Law School caliber? Don't we believe our best and brightest should be encouraged to serve?

In response to his critique, Ms. Kagan has repeatedly stated that, despite her decision to bar recruiters from the Office of Career Services, the number of military recruits actually increased during her tenure. Let's be clear. This happened *in spite* of Ms. Kagan, not because of her. But I ask a more important question: would not the number have been even higher had she supported recruiters, rather than actively opposing them?

To be fair, I don't begrudge Ms. Kagan's opposition to the so-called “Don't Ask, Don't Tell” legislation; reasonable people disagree about this policy. However, her fierce and activist opposition to the policy was intellectually dishonest and unnecessarily focused on the military.

In emails to students and statements to the press, Ms. Kagan slammed “the military's discriminatory recruitment policy.” Yet as a legal scholar, she knows better. She knows that the policy she “abhors” is not the military's policy, but a policy enacted by Congress and imposed on the military. In fact, after the law was passed, Ms. Kagan went to work for the very man who signed “Don't Ask, Don't Tell” into law—President Bill Clinton. So, for her to call it “the military's policy” is intellectually dishonest, and her opposition to military recruiters at Harvard Law School had the effect of shooting the messenger.

Likewise, while Ms. Kagan sought to block full access to military recruiters, she welcomed to campus numerous Senators and Congressmen who voted for the law she calls “a moral injustice of the first order.” Additionally, Harvard Law School has three academic chairs endowed by money from Saudi Arabia, a country where being a homosexual is a capital offense. So, rather than confront the Congressional source of the policy—or take a stand against a country that executes homosexuals—Ms. Kagan zeroed in on military recruiters for a policy they neither authored, nor emphasized.

In closing, the real “moral injustice” is granting a lifetime appointment to someone who, when it mattered, treated military recruiters like second-class citizens. I urge you to

consider this as you consider Ms. Kagan. Thank you for the opportunity to address this important topic, and I welcome your questions.