



Written by on June 24, 2010

The G.O.P. Looks at Elena Kagan

"I wouldn't take it off the table," USA Today on June 24 quoted Sen. Jeff Sessions of Alabama, the ranking minority member of the Senate Judiciary Committee, when he told reporters that he's not ruling out the possibility of a filibuster against President Obama's Supreme Court nominee, Elena Kagan.

Sessions continued by saying that whether or not Republican Senators utilize a filibuster will depend on how the Judiciary Committee's hearings go, stating: "I don't think you can predict the outcome."



Reflecting on several one-on-one meetings he had Kagan (left), Sessions said he found the nominee personally likable, noting: "She's engaging and fun to be with.... She's smart."

The report noted that Sessions said he accepted the compromise reached in 2005 by a bipartisan group of Senators dubbed the "Gang of 14." That agreement, which pertained only to the 109th Congress, stated that the seven Democratic Senators would no longer vote along with their party on filibustering judicial nominees (except in "extraordinary circumstances," as defined by each individual Senator), and in turn, the seven Republicans would break with then-Majority Leader Bill Frist and the Republican leadership on voting for what was called the "nuclear option." (This option allows a simple majority to override precedent and end a filibuster.)

Sessions told reporters that he decided against a filibuster in the case of Obama's first nominee, Justice Sonia Sotomayor, but would not reveal his opinion concerning use of the filibuster to delay Senate confirmation of Kagan. "Each senator will have to decide," he said.

A report in the *New York Times* of June 23 quoted from a speech that Senate Minority Leader Mitch McConnell (R-Ky.) delivered on the Senate floor that day, citing memorandums and notes that Kagan wrote about campaign finance during the Clinton administration, including one in which she scribbled apparently joyful notes in the margins to the effect that a ban on soft money "affects Repubs, not Dems!"

"In other words," McConnell said, "these memos and notes reveal a woman whose approach to the law was as a political advocate — the very opposite of what the American people expect in a judge."

The *Times* also quoted from a new memorandum issued by the Republican Policy Committee in the Senate assessing Kagan's political philosophy. It calls her a "a liberal political lawyer with activist judicial sympathies," and cites a lecture Kagan gave at West Point in 2007, in which she described her time in the Clinton administration, saying, "Most of the time I spent in the White House, I did not serve as an attorney; *I was instead a policy adviser.*" (Emphasis added.)

Noted Senator John Cornyn (R-Texas): "She's had two years at a major law firm where she never tried a case to a jury verdict or judgment. Obviously the job of political advisor is very different than that of a judge — a judge can't take sides."



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However, observed the *Times* writer: "Republicans have shown little appetite to block the nomination by filibuster, and the math in the Senate works against them: Democrats and Democratic-leaning independents account for 59 votes, more than enough to confirm Ms. Kagan."

The report's conclusion: "Unless Ms. Kagan fumbles at her confirmation hearings next week or some other unforeseen obstacle arises, members of both parties expect she will be confirmed."

Pro-life activist Randall Terry perceived Republican opposition to the Kagan nomination as so weak that he announced plans to protest outside the offices of Senators McConnell and number two-ranking Republican Senator Jon Kyl of Arizona on June 24 "to draw attention to the cowardice and treachery of Senate Republicans."

An interesting commentary on Kagan's fitness — or lack thereof — to serve on the High Court came from Judge Robert Bork, a former President Ronald Reagan nominee whose own confirmation was voted down by the Senate by a 58-42 vote in 1987, after attack's upon the nominee that sometimes bordered on the vicious. In fact, in March 2002, the *Oxford English Dictionary* added an entry for the verb "Bork" as U.S. political slang, with this definition: "To defame or vilify (a person) systematically, esp. in the mass media, usually with the aim of preventing his or her appointment to public office; to obstruct or thwart (a person) in this way."

Bork, who has since continued his career as a highly respected legal scholar, was recently quoted in an AP story published by the *Boston Globe*, as offering his opinion that Kagan's expressed admiration for the liberal former president of Israel's Supreme Court, Aharon Barak, disqualifies her to serve on the U.S. high court, because Barak "may be the worst judge on the planet — the most activist."

An article from the JTA Jewish news service on June 24 quoted a statement from the Orthodox Union that described Bork's assessment of Kagan as "bizarre," while stating, "It is certainly true that Chief Justice Barak was a proud and aggressive judicial activist who led the Israeli Supreme Court into making decisions many questioned — and we were among the many doing so."

The JTA article also quoted a statement from the Rabbinical Alliance of America that described Kagan as "non-kosher" because of her past defense of laws legalizing abortion. The article noted, "Reports of [Kagan's] views on abortion are based mostly on internal White House memos during her stint as a domestic policy adviser to President Clinton."

"It should be clear that Ms. Kagan's long line of forebearers, presumably tracing back to Sinai, would have sacrificed their lives rather than embrace the anti-G-d, counter-sanctity agenda that she has lived and promoted," JTA quoted the Rabbinical Alliance statement. "We are puzzled as to why President Obama would not honor a different minority with this nomination."

Photo: Supreme Court nominee Elena Kagan, President Obama's choice to replace retiring Justice John Paul Stevens, meets with Sen. Jeff Sessions (R-Ala.) as she makes the rounds: AP Images



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