

## CORRECTING THE RECORD: ELENA KAGAN WILL NOT USE FOREIGN LAW TO INTERPRET THE U.S. CONSTITUTION AND LAWS

**RHETORIC:** *Republican Senators have suggested that Elena Kagan will look to foreign law to interpret the U.S. Constitution.*

### Solicitor General Kagan: In Her Own Words

“I do believe **this is an American Constitution**, one interprets it by looking at the text, the structure, our own history, and our own precedents, and that **foreign law does not have precedential weight**. . . . [Foreign opinions] **are not any kind of ground, independent ground for making a decision. . . .**” (*To Senator Kyl*, June 30, 2010)

**Conservative judges and lawyers have recognized that there are legitimate, limited purposes for which it is appropriate to review foreign law.**

**FACT:** Justice Alito recognized at his confirmation hearing that judges may permissibly refer to the law of other nations in some instances:

“There are other legal issues that come up in which I think **it is legitimate to look to foreign law**. For example, if a question comes up concerning the interpretation of a treaty that has been entered into by many countries, I don’t see anything wrong with seeing the way the treaty has been interpreted in other countries. I wouldn’t say that that is controlling, but **it is something that is useful to look to.**”

**Elena Kagan’s support of a broad law school curriculum, including classes on international and comparative law, confirms that she is a pragmatic thinker with mainstream views.**

**FACT:** Elena Kagan, like most Americans, believes that our students must be able to compete in a global marketplace. The Harvard law school faculty voted unanimously to broaden the curriculum while she was dean. In order to better prepare students for an increasingly complex world, the faculty added courses in legislation and regulation, complex problem solving, and international and comparative law. **These changes are well within the legal mainstream and were approved by both conservative and liberal professors.**

**As Harvard Law School Dean, Kagan did not “drop” constitutional law for “foreign law” at Harvard.**

**FACT:** Elena Kagan did not remove constitutional law from the list of required course at Harvard Law School. Harvard has many classes on constitutional law, but there is not, and was not before Kagan became dean, a required course on constitutional law.

**FACT:** Elena Kagan strongly supports classes on constitutional law. She is a constitutional law scholar and **taught constitutional law at Harvard**. She also regularly taught constitutional law when she was a professor at the University of Chicago Law School.