

CORRECTING THE RECORD: ELENA KAGAN RECOGNIZES AND RESPECTS SECOND AMENDMENT RIGHTS

RHETORIC: Critics suggest that Solicitor General Kagan might not protect Second Amendment rights of Americans to possess weapons.

Elena Kagan: In Her Own Words

SENATOR LEAHY: Is there any doubt after the Court's decisions in *Heller* and *McDonald* that the Second Amendment to the constitution secures a fundamental right for an individual to own a firearm and use it for self-defense in their home?

SOLICITOR GENERAL KAGAN: There is no doubt, Senator Leahy. That is binding precedent and entitled to all respect to binding precedent in any case. **That is settled law.**

Elena Kagan has consistently expressed her respect for the *Heller* decision, guaranteeing Second Amendment rights for individuals.

FACT: Elena Kagan stated in her confirmation hearing to be Solicitor General of the United States, “**There is no question, after *Heller*, that the Second Amendment guarantees Americans ‘the individual right to possess and carry weapons in case of confrontation.’**” (Response to Written Questions submitted by Sen. Grassley) During her hearing and in response to questions from Senators, Kagan emphasized that she would give *Heller* “**the full measure of respect that is due to all constitutional decisions of the Court.**” (Response to Written Questions submitted by Sen. Grassley)

A 1987 memorandum Elena Kagan wrote as a law clerk for Justice Thurgood Marshall was consistent with Second Amendment law as it stood at the time she wrote it.

FACT: When Elena Kagan wrote a memorandum to Justice Marshall in 1987, Supreme Court precedent did not recognize an individual right to possess a firearm. **Her statement that she was “not sympathetic” to the petitioner’s claim that the District of Columbia’s gun laws violated his Second Amendment rights was consistent with the Court’s precedent at the time.**

FACT: Legal opinions are filled with the use of the word “sympathetic” as indicating agreement or disagreement with a legal argument. In 2008, Justice Thomas, dissenting alone in *Gonzalez v. United States*, wrote, “**In the end, I am sympathetic to petitioner’s argument . . .**”

When working for President Clinton, Elena Kagan construed firearms laws narrowly.

FACT: As a lawyer in the White House Counsel’s Office, she strongly disagreed with the ATF’s broad interpretation of a provision in the 1994 Violent Crime Control and Law Enforcement Act. The ATF interpreted the 1994 Crime Act to ban the importation of certain ammunition clips regardless of the date of manufacture. **Based on a plain reading of the statute**, Kagan rejected the ATF’s interpretation, arguing that the statute only allowed ammunition clips manufactured after the date of enactment to be banned. The ATF subsequently changed its position based upon Kagan’s analysis.