

Written by William J. Olson
Thursday, 29 July 2010 20:10

Thank you, Senator Schumer and Senator Sessions and Senator Hatch.

Our law firm represents one of the nation's leading Second Amendment groups, Gun Owners of America, and we have filed amicus briefs in Supreme Court cases such as *Heller* and *McDonald*.

Despite the court's decisions in *Heller* and *McDonald*, Americans understand that the right to keep and bear arms continues to be in jeopardy. Both victories were achieved by narrow 5-4 votes. And Ms. Kagan is not a person who could be expected to defend the Second Amendment.

Early in her career, Ms. Kagan evidenced visceral hostility to the people's right to keep and bear arms as a law clerk to Justice Thurgood Marshall in the *Sandidge* case. I'm familiar with that case because with Dan Peterson I filed the only amicus brief supporting Mr. Sandidge.

I searched for my Sandidge file and here's what I found. Mr. Sandidge was an African-American man who worked at a laundromat in the District. He was required to carry its cash receipts with him to his apartment over the laundromat, which necessitated him leaving the building and walking around the street briefly between the two entrances.

Mr. Sandige had been robbed previously. When arrested he was carrying a .25 caliber semi-automatic pistol to protect himself. Ms. Kagan urged Justice Marshall to deny the petition for cert. for one reason. "I'm not sympathetic." Supreme Court rules set forth the standards for granting cert. I'm not sympathetic is not among them.

If Ms. Kagan meant that she was not sympathetic with his legal position, remember that the Sandige Court had ruled that the Second Amendment was only a collective right, not an individual right. If Ms. Kagan meant that she was not sympathetic with Mr. Sandige, Ms. Kagan turned her back on a man who was made into a felon for exercising his right to keep and bear arms.

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In 1997, in *Printz v. United States*, the Supreme Court struck down a Brady Bill requirement that state and local law enforcement officers must work for the federal government, doing background checks on handgun sales. While that case was still pending, the Clinton White House was designing an end-run strategy should it lose the case, and Ms. Kagan was in the thick of it.

An e-mail reveals her role:

Based on Elena's suggestions, I have sought options as to what POTUS [the President of the United States] could do by executive action. For example, could he, by executive order, prohibit a federal firearms licensee from selling a handgun without a chief law enforcement officer certification?

Ms. Kagan appears to believe that the president could circumvent Congress and act without statutory authority to impose restrictions on firearms.

Ms. Kagan then worked on the presidential directive that would suspend the importation of firearms that were legal under the law that Congress had passed. When asked in these hearing by Senator Grassley on Tuesday of this week whether the Second Amendment codified a preexisting right, or whether the right to keep and bear arms was created by the constitution, she replied, "I never really considered the question."

When Grassley asked whether the Second Amendment right was a "fundamental right," Ms. Kagan said it was, because the majority of justices in the *McDonnell* case said so. The Kagan view of rights is that they are whatever a majority of the Supreme Court rules at a particular time in a particular case. But under that philosophy, what the Court grants, the Court may take away.

If Ms. Kagan does not know whether inalienable rights to defend ourselves from criminals and tyrants comes from God, as the Declaration of Independence states, or from government, she cannot be trusted to protect our God-given right to self-preservation.

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During these hearings, Ms. Kagan also acknowledged that *Heller* had precedential weight and agreed to abide by it, but refrained from providing her own personal views or whether the case was rightly decided. When asked whether the Second Amendment protected an individual right, she said there's no question, after *Heller*, that the Second Amendment contained such a guarantee.

That's nice, but what about before *Heller*? *Heller* did not rewrite the Second Amendment. The Supreme Court decision only rejected a false notion that it protected only collective rights. Ms. Kagan's answer that she is bound by *Heller* provides us no assurance that as a justice she is bound by the second amendment as written by the framers.

Thank you, Mr. Chairman.

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