

Q & A: Ben Wittes

Michael Sean Winters | Jul. 12, 2010 | Distinctly Catholic

This week in Q & A, we will address the upcoming confirmation vote for Elena Kagan. Our first interviewee is Benjamin Wittes, Senior Fellow and Research Director in Public Law at The Brookings Institution.

The question: What is the best reason to vote to confirm, or to vote not to confirm, Elena Kagan?

Ben Wittes: Elena Kagan should be confirmed both on her own very considerable merits and out of deference to the President's qualified choice. The two issues are related but importantly distinct. Let me take them in turn.

First, Kagan herself: The suggestion that Kagan is not qualified is absurd and reflects a sadly narrow conception of qualification to serve on the Supreme Court. If she has no judicial experience, this is only because the Senate did not confirm her to the D.C. Circuit when President Clinton nominated her a decade ago. Since then, she has been one of the few truly visionary law school deans in recent American history. She has served honorably, if briefly, as solicitor general. She has admirers from across the political spectrum. If someone of this caliber cannot muster nearly-unanimous confirmation, I fear we have reached the point (one I have long been predicting) in which the opposition party will oppose anyone nominated by the party in power whom its leaders did not preclear for confirmation.

Second, elections are supposed to matter. Barack Obama won the election. That means he gets to nominate people to the Supreme Court. It is one thing to oppose a nominee who falls outside some broad ideological swatch that constitutes the "mainstream" (however you want to define that) of American jurisprudence. It is quite another to oppose someone who falls smack dab in it, as she does. This is what Democrats did in opposing Samuel Alito and John Roberts during the Bush administration. Now Republicans, in opposing Sonia Sotomayor and Elena Kagan, are doing the same. It really amounts to a refusal to recognize the consequences of elections. One shouldn't oppose Roberts or Alito because they are not likely to be the justices that John Kerry would have nominated had he won, and one shouldn't oppose Kagan because one would have preferred that John McCain get to nominate justices.

Tomorrow's Interview: Notre Dame Law Professor Rick Garnett, editor of the excellent blog [Mirror of Justice](#) [1].

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