

**Testimony of Patricia Lee Refo on the Nomination of Solicitor General Elena Kagan as
Associate Justice on the Supreme Court of the United States**

I am a partner in the law firm of Snell & Wilmer in Phoenix, Arizona and Co-chair, with Dean JoAnne A. Epps of Temple University Beasley School of Law, of the Committee for the Evaluation of Supreme Court Nominees of the National Association of Women Lawyers (“NAWL”). On behalf of NAWL, I submit this testimony for the record in support of the confirmation of Solicitor General Elena Kagan.

The mission of the Committee is to review and evaluate the qualifications of each nominee to the United States Supreme Court with an emphasis on laws and decisions regarding women’s rights or that have a special impact on women. After careful evaluation of General Kagan’s background and qualifications, the Committee has concluded that General Kagan is well qualified for this position, which is the highest recommendation permitted. Based on its extensive review, the Committee is confident that General Kagan possesses the requisite intellectual and analytic talent, judicial temperament, and professional demeanor to serve on the highest court in the land. The Committee is equally confident that she will approach cases and controversies with a mind that is open to all perspectives and with an appreciation of the professional and societal difficulties encountered by women and minorities. We therefore encourage your vote in favor of her confirmation.

Founded over 100 years ago, and with thousands of members from all 50 states, NAWL is committed to supporting and advancing the interests of women lawyers and women’s legal rights. From campaigning in the early 1900’s for women’s voting rights and the right of women to serve on juries, to supporting in 2009 the Lilly Ledbetter Fair Pay Act, NAWL has been a

supporter of the interests of women. As such, NAWL cares deeply about the composition of the Supreme Court and insuring that it includes the perspectives of all Americans, especially those of women, not just because most of our members are women, but because all of our members care about issues that affect women. This is the fourth nomination on which the Committee has submitted an evaluation and recommendation.

NAWL's recommendation today is based on the work of NAWL's Committee for the Evaluation of Supreme Court Nominees. In accordance with NAWL procedures, the Committee independently evaluated the qualifications of General Kagan to serve as an Associate Justice of the Supreme Court. The Committee placed special emphasis on matters regarding women's rights or that have a special impact on women. The 21 Committee members, appointed by the President of NAWL, include law professors and a law school dean, appellate practitioners and lawyers concentrating in litigation.

The Committee's work was extensive and exhaustive. We read thousands of pages of documents relating to General Kagan including her published articles, her publicly available speeches and voluminous other materials relating to her work as a scholar, as a law clerk and as an advocate in her various positions from Dean of Harvard Law School to Solicitor General and White House counsel. Committee members reviewed these documents as part of its assessment of General Kagan's ability to present sound legal analysis. While advocacy writings do not necessarily represent personal views and opinions, those writings were assessed for quality of reasoning including appropriate reliance on precedent.

In addition, members of the Committee interviewed well over 100 people who know General Kagan in a variety of capacities. Those interviewed included former colleagues in her various positions in the government and academia, former students, professional acquaintances,

former classmates, fellow law clerks and others with knowledge of General Kagan and her qualifications. The purpose of the interviews was to obtain information regarding General Kagan's legal abilities, legal philosophy and temperament, as well as information concerning her record of hiring and treatment of women, particularly during her tenure as the Dean of Harvard Law School. During the interviews, the Committee also sought information on the following specific topics: Women and the Workplace; Women and the Criminal Justice System; Women and Health Care; Women and Education; Women and Family; Women in the Military; Women and Finance; Women and Retirement; Policies and Laws Impacting Multicultural Women; Enforcement of Statutes regarding Women's Rights; Federal versus State Law Relief; and any other issues with likely impact on women.

Of those interviewed about General Kagan, one described her as having the potential to be "a great justice and to live up to the legacy of replacing a true legal giant." Another predicted that Kagan would be one of the best 15 justices to ever serve on the Court. Another said General Kagan will be the "Justice of the Ages." In over 100 interviews, not one person questioned her skill, intellect or capability. All emphasized her openness to listening to all disparate sides of an issue. Support for her nomination to the Supreme Court came from all demographic groups.

General Kagan has a keen intellect, as well as a deep knowledge of and respect for the Constitution, which she has repeatedly demonstrated in her writings and statements. She has already served in two of the highest positions in our nation's legal profession – Dean of Harvard Law School and Solicitor General of the United States – with great distinction and success. We note that she was also the first women to hold either of these positions. Her tenure in these positions was marked by accomplishments, leadership and the highest quality legal thinking. In addition, our extensive interviewing process indicates that General Kagan was a leader in

bringing diversity into the hiring process of Harvard Law School. She is clearly an effective consensus builder. Moreover, the Committee believes that the fact that she has never served on the bench will bring a diversity to the current Supreme Court that will enhance and enrich its deliberations. We believe she will follow in the footsteps of many of our finest Supreme Court Justices who also did not have prior judicial experience.

Finally, while the Committee does not support her nomination simply because she is a woman, it is long past time to increase the number of women who serve on the Court. With her confirmation, you will be taking an important step to rectify the centuries-old disparity in the representation of women on our highest court.

For all of these reasons, NAWL strongly supports the confirmation of Solicitor General Elena Kagan to be an Associate Justice of the United States Supreme Court.