

CORRECTING THE RECORD: JUDICIAL EXPERIENCE IS NOT A PREREQUISITE FOR SERVING ON THE SUPREME COURT

RHETORIC: *Republicans have suggested that Solicitor General Kagan is not qualified for the Supreme Court because she has not been a judge and has insufficient legal experience to merit a seat on the Supreme Court.*

FACT: *Elena Kagan's background is similar to that of many of our most distinguished Supreme Court justices. Forty-one Justices have served on the Supreme Court without having had any prior judicial experience. Throughout our history, Republicans and Democrats have said that judicial experience is not a prerequisite for serving on the Supreme Court. For the first time in history, the current Supreme Court is comprised entirely of Justices with federal judicial experience, so Solicitor General Kagan will add important diversity.*

Of the 111 Justices to serve on the Supreme Court, more than one-third had no federal or state judicial experience.

FACT: **Forty Supreme Court Justices have been confirmed to the U.S. Supreme Court without having served on a lower federal or state court.** Many have had experience similar to that of Solicitor General Kagan.

- Chief Justice Rehnquist was an Assistant Attorney General
- Justice Lewis Powell worked in private practice and was the President of the American Bar Association
- Justice Byron White was Deputy Attorney General
- Justice Earl Warren was the Governor of California
- Justice Robert Jackson was a U.S. Attorney General
- Justice John Marshall was a U.S. Secretary of State

FACT: Twelve Supreme Court Justices served as Attorney General, Deputy Attorney General, Assistant Attorney General or Solicitor General.

FACT: Seven Supreme Court Justices served as U.S. Department Secretaries or in other executive positions.

FACT: Eight Supreme Court Justices served in private practice prior to confirmation, and **three Supreme Court justices had been law school deans prior to their appointments to the Court.**

FACT: More than a dozen Justices were U.S. Senators, U.S. Congressmen, state governors or state legislators.

FACT: **The three most recent Republican-appointed Supreme Court Justices – Chief Justice Roberts and Justices Alito and Thomas – all had significant Executive Branch experience similar to that of Solicitor General Kagan. Chief Justice Roberts worked in the White House Counsel's Office, just as Solicitor General Kagan did.**

Conservatives have lauded experience outside the federal judiciary.

JUSTICE O'CONNOR: When asked, "Does it matter if someone hasn't been a judge before they go to the Supreme Court?" O'Connor responded, "I don't think it does. We've had at least a third of the justices over time were never a judge. I think it's fine, just fine. If you ... are a scholarly in nature, if you are willing to do all the reading (LAUGH) and the homework, you'll be fine. If you can write well, think well, you'll be fine." (*ABC News Transcript, Good Morning America, May 27, 2010*)

JUSTICE SCALIA: "I think it's a good thing to have people with all sorts of backgrounds" and "Currently, there is nobody on the Court who has not served as a judge...I am happy to see that this latest nominee is not a federal judge..." (*May 26, 2010*)

SENATOR SESSIONS: "It is not necessary that [Harriet Miers] have previous experience as a judge in order to serve on the Supreme Court. It's perfectly acceptable to nominate outstanding lawyers to that position." (*Press Release, 10/3/05*)

BOTTOM LINE: A lawyer with two decades of experience working in all three branches of the federal government, Elena Kagan is considered among the top legal thinkers in the nation. Her breadth of experience will bring diversity to a Court consisting entirely of former judges.