



July 28, 2010

VIA FEDERAL EXPRESS

Clerk of the Court
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: COMPLAINT TO DISBAR ELENA KAGAN FROM PRACTICE BEFORE THE U.S. SUPREME COURT AND FOR REFERRAL TO U.S. JUSTICE DEPARTMENT FOR CRIMINAL INVESTIGATION AND FOR OBSTRUCTION OF JUSTICE.

Dear Justices:

On behalf of Freedom Watch and Declaration Alliance, and as a member of the U.S. Supreme Court bar, I hereby file a complaint to disbar Elena Kagan from practice before the U.S. Supreme Court and for referral to the U.S. Department of Justice for criminal investigation and for obstruction of justice.

The grounds for this complaint and request for referral stem from the documented events contained and set forth in Exhibit "1", which is a report prepared by Americans United for Life ("AUL"). This report is entitled "Investigating the Confirmation Testimony of Elena Kagan Before the U.S. Senate Judiciary Committee and the Negative Impact of her Amendment of the January 1997 Policy Statement of the American College of Obstetricians and Gynecologists (ACOG) on the Federal Administration of Justice and the U.S. Supreme Court" (the "Report").

As documented in great detail, with supporting documents, in the AUL Report, U.S. Supreme Court nominee, Elena Kagan, while she was Associate White House Counsel, in the Clinton White House falsified a medical report of the American College of Obstetricians & Gynecologists (ACOG) in an intentional effort to mislead not just Congress and the White House concerning the efficacy and health risks of partial birth abortion, but also to mislead the various federal courts and the U.S. Supreme Court which ultimately relied on this falsified medical report to strike down legislation concerning partial birth abortion. For instance, this Court relied in large part upon this falsified ACOG medical report to overturn Nebraska's partial birth abortion ban, which was then used as binding precedent among the circuits.

This action by Ms. Kagan was obviously deliberate, as set forth in the AUL Report, and worked a fraud on this Court. Attached is also a recent news account of what has transpired.

The American Bar Association Model Rules of Professional Conduct (ABA Code) provide in its "Preamble" that "... a lawyer who commits fraud in the conduct of business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. (See Rule 8.4.) In Rule 1.0 the TERMINOLOGY "Fraud," is defined at subsection (d) as follows: "Fraud' or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive."

With regard to misconduct, Rule 8.4 provides:

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice.

Rule 4.1: Truthfulness in Statements to Others provides;

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person;
- or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client....

See also Rule 3.3 regarding Candor Toward the Tribunal.

Clearly, Elena Kagan's conduct in falsifying the ACOG report violates these Canons of the ABA Code. It was, at a minimum, reasonably foreseeable that her fraudulent changes to the ACOG report would ultimately be used by this Court in its proceedings concerning partial birth abortion. Indeed, Ms. Kagan, who was White House Associate Counsel at the time knew, or should have known, given her sophistication in the law and her position, that this would be so.

This Court must stand for the principle that “no one is above the law.” If this is not the case, then “We the People,” do not have a Supreme Court as envisioned and implemented by our founding fathers. Ms. Kagan cannot, and should not be treated differently than anyone else who deceives this Court or any other court. She is thus unfit to remain a member of the Court and should be disbarred from further representation before it. The issue of partial birth abortion, and the lives which it takes and affects, is too important than to allow a member of this Court to pervert the medical findings of a body that is the expert in the field and upon which this Court logically has relied in deliberating, reaching decisions and issuing opinions on life and death. And, even were this a lesser matter, there can be no excuse for deceiving this Court, much more the American people, from which this Court solely derives its powers under God.

In addition to disbarment, this matter should respectfully be referred to the Criminal Division of the U.S. Department of Justice for investigation of obstruction of justice and other related crimes.

Thank you for your prompt attention to this serious matter.

Sincerely,

FREEDOM WATCH

Larry Klayman
Chairman and General Counsel

cc: Chief Justice John G. Roberts
Justice Antonin Scalia
Justice Anthony Kennedy
Justice David Hackett Souter
Justice Clarence Thomas
Justice Ruth Bader Ginsburg
Justice Stephen Breyer
Justice Samuel Alito
Justice Sonia Sotomayor