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Business Groups Mum on Kagan

The American Enterprise Institute, the U.S. Chamber of Commerce, and other business groups have so far found little to criticize in the background of Obama's Supreme Court nominee.

By [Matthew Quinn](#) | May 12, 2010

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Newscom

Wondering where Supreme Court nominee Elena Kagan stands on business issues? Join the club.

Little is known about the thinking of the current U.S. Solicitor General and former dean of Harvard Law School on matters such as financial regulation and the federal preemption of state's authority, two hot-button legal questions that could find their way to the High Court in the coming years and have an impact on businesses.

Even think tank scholars who are usually more than willing to weigh in on any political and judicial matters are having trouble figuring out how Kagan will rule on these questions. The legal staff of the libertarian Cato Institute declined to offer up an opinion on Kagan, saying there is no record on where she stands on business because she has never litigated.

The lack of such a record is not confined to Kagan. Even if such a record does exist, identifying a judge as "pro-business" or "anti-business" is a messy matter. For example, John Roberts, the current Chief Justice, **couldn't be stamped with either label** when he was nominated to the Court despite spending time as a corporate lawyer.

And don't expect to gain much insight from the Congressional grilling Kagan will face, as a Supreme Court nominee's ideological leanings on business rarely enter the spotlight in such hearings. While some grandstanding is possible over an advisory role Kagan held at Goldman Sachs from 2005 to 2008, she's unlikely to be haunted by that bit of her past, as she only received \$10,000 for her troubles in 2008.

The fact of the matter, says Michael Greve, a scholar at the American Enterprise Institute, a conservative think tank, is that Supreme Court decisions that impact the business community are seldom divided over normal liberal-conservative ideological lines, which define votes on more high-profile issues such as civil liberties in the age of terrorism, abortion, and the death penalty.

Greve says that over the past 10 years, there have been maybe three or four decisions in business cases that have come down to an ideologically-driven, 5-to-4 vote. "And the reason for those votes is that those cases had to do with credo passions, like global

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warming," he said.

Businesses likely don't have much to fear from Kagan, Greve says, at least by comparison to Justice John Paul Stevens, whom Kagan would replace if confirmed.

"Almost anybody at this point would be a net-plus for business," he said. "That's just a fact."

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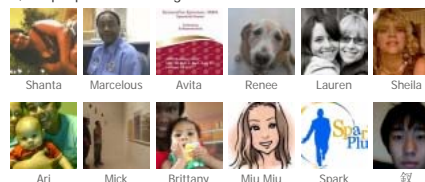
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