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Elena Kagan Confirmation: Big Victory for Big Government

Opinion [by Cato Institute](#)
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By Ilya Shapiro

Elena Kagan's confirmation represents a victory for big government and a view of the Constitution as a document whose meaning changes with the times. Based on what we learned the last few months, it is clear that Kagan holds an expansive view of federal power — refusing to identify, for example, any specific actions Congress cannot take under the Commerce Clause. She will rarely be a friend of liberty on the Court.

It is thus telling that Kagan received the fewest votes of any Democratic nominee to the [Supreme Court](#) in history, beating the record set only last year by Sonia Sotomayor. Even several senators who had voted for Sotomayor voted against Kagan, including Democrat Ben Nelson — as did Scott Brown, the darling of these high-profile Senate votes.

It was Scott Brown's election, after all, that signaled that last year's elections in Virginia and New Jersey were no fluke, that whether people lived in a Red, Blue, or Purple state, they were tired of bailouts, "stimulus," re-regulation, and, especially, the government takeover of one-sixth of our economy. This anger has only grown since then, making itself felt most recently in Missouri voters' overwhelming (71-29) rejection of the individual health insurance mandate.

"Where does the government get the constitutional authority to do this?" the cry goes up across the land. Elena Kagan won't give a satisfactory answer but the American people are right to continue asking.