
Thurgood Marshall's Pro-Abortion Record Good Indicator of Elena's Kagan's

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Washington, DC (LifeNews.com) -- A pro-life legal group says it is not tough to predict how pro-abortion Supreme Court nominee Elena Kagan will decide abortion-related cases if she is confirmed to the Supreme Court. Americans United for Life says she will likely follow the lead of her mentor, the late pro-abortion Justice Thurgood Marshall.

Since Kagan has never served as a judge, it is important to review her jurisprudential influences and mentors.

"Elena Kagan has expressed a deep affection for the Supreme Court Justice she clerked for, Thurgood Marshall," AUL tells LifeNews.com in a new memo on the high court judge. "While many of Justice Marshall's legal endeavors deserve the praise and gratitude of the nation, his written opinions on abortion do not."

AUL cites Marshall's four dissenting opinions in cases following *Roe v. Wade* as indicative of the kind of justice Kagan would be if the Senate confirms her to replace retiring pro-abortion Justice John Paul Stevens.

In the 1977 companion cases of *Beal v. Doe* and *Maher v. Roe*, the Supreme Court held that state funding restrictions on the use of Medicaid funds for non-therapeutic abortions was constitutional.

"Justice Marshall, on the other hand, felt the denial of funds for abortions amounted to a violation of Equal Protection under the Fourteenth Amendment," AUL noted. "Justice Marshall not only believed that legalized abortion was constitutionally required, but also that the Fourteenth Amendment mandated that states pay for abortions."

Next, in the 1980 case of *Harris v. McRae*, a case argued by Americans United for Life before the United States Supreme Court and in which the Court upheld the constitutionality of the Hyde Amendment, Marshall also argued that the amendment to prevent HHS from funding abortions with tax dollars was unconstitutional under the Fourteenth Amendment's Equal Protection Clause.

Marshall stated that "denial of a Medicaid-funded abortion is equivalent to denial of a legal abortion altogether."

AUL also points out a 1981 case, *H.L. v. Matheson* where Marshall dissented in a parental notification case that was decided on another issue.

"With respect to minors, the court and Marshall acknowledged that the state could restrict abortion, but Marshall thought parental notification laws did not pass even 'rational basis' scrutiny," AUL said.

Marshall claimed the state did not have a "legitimate interest" in protecting the rights of parents to know when their minor daughter is considering an abortion.

And in the 1990 case of *Hodgson v. Minnesota*, Marshall dissented in a parental notification case in which the Supreme Court approved a "judicial bypass option" as well as a 48-hour delay requirement for a minor to get an abortion.

"Marshall argued, contrary to the Court, that no part of the Minnesota parental notification requirement was 'even reasonably related to a legitimate state interest,'" AUL explained. "Even Justice John Paul Stevens acknowledged that notification of only one parent and a 48-hour waiting period were reasonable restrictions on abortion."

AUL says it is a concern that Justice Marshall, of whom Kagan thinks so highly and for whom she clerked "believed that abortion is an unrestricted fundamental right, and did not uphold reasonable state restrictions."

"In addition, Marshall was in favor of using the Equal Protection clause to force taxpayers into paying for abortions because abortion offered "an escape" from poverty and racial injustice," AUL said.

"If Elena Kagan shares Justice Marshall's views on reasonable abortion restrictions, any victory that the pro-life movement has won could be quickly overturned," the pro-life group concluded.

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Americans United for Life - <http://www.AUL.org>

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